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Law Society Tribunal
Tribunal du Barreau

LAW SOCIETY TRIBUNAL
HEARING DIVISION

2024 ONLSTH 104 (CanLII)

Citation: *Law Society of Ontario v. Caruso*, 2024 ONLSTH 104
Date: September 11, 2024
Tribunal File No.: 23H-068

BETWEEN:

Law Society of Ontario

Applicant

- and -

Antonio Caruso

Respondent

Before: Malcolm M. Mercer (Chair), Demetra Dimokopoulos, Eric Whist

Heard: August 15-16 and 26, 2024, by videoconference

Appearances:
Alex Kens and Holly Chapman, for the applicant
Leon Presner, for the respondent

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Summary:
CARUSO – Abuse of Process – Motion to Stay Proceedings – The Paralegal submitted that the complainant breached the Bencher Code of Conduct in making her complaint against him by using her position as a bencher to initiate the investigation and bring about the conduct application – The panel found there was no impropriety in the complainant's behaviour in making the complaint or in following up after the complaint was made – The Paralegal also submitted that the investigation and conduct application should not have proceeded while his application for judicial review regarding the paralegal scope of practice was ongoing – The panel found that the timing of the investigation and application were matters of regulatory discretion.

The panel found no prejudicial delay in the commencement of the investigation – Nor was there any requirement that the Paralegal receive prior notice before commencing the investigation – The panel found that there was no search or seizure under s. 8 of the Charter when copies of social media posts were made – The Proceedings Authorization Committee was not required to offer the Paralegal an opportunity ask to be heard – PAC's decisions are final and not subject to appeal or review.

An implied undertaking applies in administrative proceedings as well as in courts that prevents the use of compelled disclosure outside of the proceeding prior to it becoming part of the public record of proceedings – The Paralegal did not show that the documents he sought were potentially relevant to matters at issue and so the motion for further disclosure was dismissed.

The issue of hearing fairness did not arise – Nothing alleged by the Paralegal would bring the administration of justice into disrepute – Section 7 of the Charter does not apply – The motion to stay the proceedings as an abuse of process was dismissed.

REASONS FOR DECISION ON MOTIONS

[1] Malcolm M. Mercer (for the panel):– The Law Society has brought a conduct application against Antonio Caruso. Mr. Caruso has brought motions (collectively, this motion) seeking a dismissal of this application as an abuse of process, a stay of this application as a breach of his rights under s. 7 of the *Charter of Rights and Freedoms* (the *Charter*), and other relief in the alternative.

[2] Mr. Caruso is a paralegal. He has disputed the Law Society's position regarding the permitted paralegal scope of practice in immigration matters since at least 2019. Mr. Caruso's position was rejected by the Divisional Court in *Caruso v. The Law Society of Ontario*, 2023 ONSC 6744. Leave to appeal the Divisional Court decision was granted after this motion was heard.

[3] In this application, the Law Society alleges that Mr. Caruso has misconducted himself in two respects:

1. he has misrepresented the permitted scope of paralegal practice to fellow licensees and has encouraged and/or induced other licensees to violate or

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attempt to violate the *Paralegal Rules of Conduct*, the *Law Society Act*, RSO 1990, c. L.8 (the Act), or By-Law 4 by providing legal services outside of their permitted scope of practice; and

2. he has failed to communicate with requisite civility, respectfulness, and professionalism in his social media posts in relation to fellow licensees.

[4] Mr. Caruso makes several allegations in his notice of motion in support of his claim of abuse of process:

1. The complainant, Cathy Corsetti, was a bencher when she made her complaint about Mr. Caruso. Mr. Caruso claims that Ms. Corsetti breached the *Bencher Code of Conduct* in making her complaint. Mr. Caruso also alleges that Ms. Corsetti's complaint lacked context and was misleading, and amounted to false testimony and malicious prosecution.
2. Regarding the Law Society's conduct of the investigation:
    a. Mr. Caruso alleges that the investigator's report lacked context and was misleading and amounted to false testimony and malicious prosecution.
    b. Mr. Caruso takes issue with the involvement of the Law Society's Litigation Services Department prior to authorization by the Proceedings Authorization Committee (PAC).
    c. Mr. Caruso takes issue with the process by which PAC authorization was obtained.
    d. Mr. Caruso alleges that the Law Society failed to make proper disclosure in this application.
    e. Mr. Caruso alleges that the Law Society improperly sought to limit his use of disclosure provided to him during this application and that the Law Society attempted to intimidate him in that regard.
3. Mr. Caruso alleges that the Law Society is in breach of the *Business Names Act*, RSO 1990, c. B.17, and that this application is a reprisal by the Law Society for Mr. Caruso having made this allegation.
4. Mr. Caruso also alleges breach of s. 7 of the *Charter* and, alternatively, he seeks further disclosure from the Law Society and disqualification of the discipline paralegal who represents the Law Society in this application.

[5] For the following reasons, this motion is dismissed.

THE EVIDENCE

[6] Mr. Caruso swore three affidavits for this motion on which he was examined. He examined two witnesses under summons, Cathy Corsetti, the complainant, and Glenn Stuart, the Law Society's Executive Director, Professional Regulation. He

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filed affidavits of two paralegals who had exchanged messages with Ms. Corsetti on the Internet with respect to the permitted scope of paralegal practice. Mr. Caruso served summonses for other witnesses, which we quashed. He sought to adduce an affidavit from a former paralegal which we found to be inadmissible.

[7] The Law Society filed the affidavit of Deanne O'Brien, who was examined on her affidavit at the motion hearing. The Law Society also filed the affidavit of Zargul Lohar, a legal assistant, who was not examined on her affidavit.

[8] After the evidence was completed, Mr. Caruso sought to refer to further evidence:

- Mr. Caruso sought to rely on an email dated January 11, 2023 from John Peddle, the Law Society's Manager - Call Centre and Law Society Referral Service, to Mr. Caruso and copied to Ms. O'Brien. This email appears to have been included in disclosure provided to Mr. Caruso.[1] Mr. Caruso could have included this email in his evidence. He could have put this email to Ms. O'Brien in cross examination. However, this email would not have been proper reply evidence. Nevertheless, we do not see any prejudice by including this email in our analysis, which we do below.
- Subject to the disposition of this motion, the conduct application hearing is scheduled to start on September 13, 2024. In accordance with Rule 10.5(1)(c), the Law Society has served three affidavits on Mr. Caruso, which it expects to file at the application hearing. Mr. Caruso alleges that several issues relevant to this motion arise from these affidavits. As these affidavits were served *after* the evidence in this motion was completed, Mr. Caruso's position is that he could not have anticipated the contents of these affidavits and issues arising from them. We will consider the issues raised by Mr. Caruso at the end of these reasons.

ABUSE OF PROCESS AND THE MERITS OF THE CONDUCT APPLICATION

[9] Some of the matters raised by Mr. Caruso in this motion are in respect of the merits of the conduct application. However, these are not issues for us to decide in this motion hearing. The Tribunal's *Rules of Practice and Procedure* (Tribunal Rules) do not provide for summary judgment or any similar procedure.

[10] Furthermore, while s. 23 of the *Statutory Powers Procedure Act*, RSO 1990, c. S.22 (*SPPA*), permits a tribunal to dismiss proceedings that are frivolous on their face (*Papouchine v. Touram LP d.b.a. Air Canada Vacations*, 2022 ONSC

[1] Exhibit B to the affidavit of Zargul Lohar, DOC144.

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7010), this is not such a case. The extent of the evidence adduced and required submissions on this motion makes this entirely clear.

[11] More specifically, several authorities relied on by Mr. Caruso in his submissions show that he is raising issues with respect to the merits of the conduct application, specifically with respect to expressive rights: *Histed v. Law Society of Manitoba*, 2007 MBCA 150; *Doré v. Barreau du Québec*, 2012 SCC 12; *Groia v. Law Society of Upper Canada*, 2018 SCC 27; and *Strom v. Saskatchewan Registered Nurses Association*, 2020 SKCA 112. As *Groia* makes clear at para. 79, a "fundamentally contextual and fact specific" inquiry is required in this context. Refer also to *Law Society of Ontario v. McCallum*, 2024 ONLSTH 29 at paras. 171-173. This contextual and fact-specific inquiry is properly undertaken at a merits hearing and is not feasible on the evidentiary record on this motion, which has been developed for by the parties for this motion.

[12] Mr. Caruso has also raised other issues relating to expressive freedom. While not directly applicable in professional conduct proceedings, Mr. Caruso has relied on the defamation law principle of fair comment: *WIC Radio Ltd. v. Simpson*, 2008 SCC 40, and *Hansman v. Neufeld*, 2023 SCC 14. Whether or not fair comment principles can usefully inform an assessment of licensee conduct remains to be seen. However, that exercise is properly undertaken at a merits hearing.

[13] Mr. Caruso has also cited authority with respect to the applicable standard of judicial review: *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2 and *Green v. Law Society of Manitoba*, 2017 SCC 20. Mr. Caruso appeared to ask that we review Law Society decisions for reasonableness.[2] It is not entirely clear whether Mr. Caruso wants us to "review" Law Society By-Law 4 that addresses permitted scope of paralegal practice, the *Paralegal Rules of Conduct*, or the Law Society's decision to bring this conduct application. In any event, it is for the court, not the Tribunal, to judicially review Law Society decisions. The Tribunal's role is to decide conduct and other applications in accordance with the Act and the *SPPA*.

[14] Mr. Caruso has cited *Edwards v. Law Society of Upper Canada*, 2001 SCC 80, which addresses the question of whether a private duty of care is owed by the Law Society. However, the question of private duty of care is not in issue here. What is in issue is whether Mr. Caruso engaged in professional misconduct or conduct unbecoming contrary to s. 33 of the Act. Whether a complainant is owed a private duty of care by the Law Society is not relevant to the question of

[2] Mr. Caruso's submission did not address the subsequent evolution of the standard of judicial review in *Vavilov*, 2019 SCC 65.

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whether a licensee has engaged in misconduct or to the propriety of a complaint.

[15] Finally, Mr. Caruso has addressed the interpretation of the Act, Law Society By-Law 4, the *Immigration and Refugee Protection Act*, SC 2001, c. 27, and the *College of Immigration and Citizenship Consultants Act*, SC 2019, c. 29, s. 292. It is unclear whether Mr. Caruso wants the Tribunal to consider, on this motion, the substance of the decision of the Divisional Court in *Caruso v. The Law Society of Ontario*, 2023 ONSC 6744 which is under appeal. It remains to be seen whether it is necessary or appropriate to interpret this legislation and By-Law 4 in order to determine whether Mr. Caruso has misconducted himself. However, this motion is not the forum in which to obtain an interpretation of these provisions by this Tribunal, particularly in the face of a judicial decision on point, other than as may be required to address allegations of abuse of process.

[16] In the balance of these reasons, we address Mr. Caruso's claims of abuse of process. The merits of the conduct application will be dealt with at the hearing of the conduct application.

THE *LAW SOCIETY ACT*, BY-LAW 11 AND THE TRIBUNAL RULES

[17] Before addressing Mr. Caruso's specific allegations, it is useful to address the sections of the *Law Society Act* that relate to misconduct, conduct investigations and conduct applications.

Required conduct

[18] Section 33 of the Act provides that "[a] licensee shall not engage in professional misconduct or conduct unbecoming a licensee".

[19] The *Paralegal Rules of Conduct* (Rules) define:

- "professional misconduct" to mean "conduct in a paralegal's professional capacity that tends to bring discredit upon the paralegal profession". The definition goes on to deem certain specific conduct to be included, such as violating the *Rules*.
- "conduct unbecoming" to mean "conduct in a paralegal's personal or private capacity that tends to bring discredit upon the paralegal profession", again with a number of deemed inclusions.

[20] In these reasons, we have used the term "misconduct" to refer to either professional misconduct or conduct unbecoming.

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Investigations

[21] There is an issue between Mr. Caruso and the Law Society as to the proper interpretation of ss 49.3(1), 49.3(2) and 49.10 of the Act. This issue arises from the fact that electronic information was downloaded from the Internet by a contractor engaged by the Law Society. Mr. Caruso's position is that a court order was required to do so.

[22] The proper approach to statutory interpretation is well-established. As quoted with approval in *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC) at para. 21:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[23] Section 49.3(1) of the Act provides that:

> The Society may conduct an investigation into a licensee's conduct if the Society receives information suggesting that the licensee may have engaged in professional misconduct or conduct unbecoming a licensee.

[24] While Law Society investigations often arise as a result of complaints, the Act makes no reference to complaints or complainants. Section 49.3(1) does not distinguish between information received from clients, former clients, opposing parties, other counsel, the judiciary, the media, spot audits, practice reviews, other conduct investigations or other sources. All that matters is that the Law Society has received information.

[25] As Chief Justice McLaughlin said in *Canadian National Railway Co. v. McKercher LLP*, 2013 SCC 39 at para. 15:

> The purpose of law society regulation is to establish general rules applicable to all members to ensure ethical conduct, protect the public and discipline lawyers who breach the rules — in short, the good governance of the profession.

[26] Ensuring proper professional conduct protects clients, opposing parties, the public and the administration of justice. Ensuring proper professional conduct supports public confidence in the legal professions and, as a result, public confidence in the administration of justice and our legal system.

[27] In *Pharmascience Inc. v. Binet*, 2006 SCC 48, the Supreme Court of Canada observed at para. 36 that "[t]he importance of … supervising the conduct of

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professionals stems from the extent to which the public places trust in them" and at para. 37 that:

> … it should be expected that individuals with not only the power, but also the duty, to inquire into a professional's conduct will have sufficiently effective means at their disposal to gather all information relevant to determining whether a [conduct application should be made].

[28] As the Court of Appeal put it in *Diamond v. Law Society of Ontario*, 2021 ONCA 255 at para. 66:

> The reputation of the legal profession rests on the public's confidence that self-regulation is taken seriously by the legal profession. This can only occur where the legal profession has at hand effective and efficient tools by which to achieve accountability among its members. This is fundamental to the health and vibrancy of the legal profession.

[29] Sections 49.3(1), 49.3(2) and 49.10 of the Act provide the Law Society with the tools by which the conduct of licensees may be investigated. Ensuring proper licensee conduct is a fundamental aspect of professional regulation. Effective and efficient investigative authority is necessary to achieve accountability for licensee conduct.

[30] These three sections must be read together in order to be properly interpreted:

- Section 49.3(1) provides the Law Society with authority to conduct an investigation if the Law Society receives information suggesting that the licensee may have engaged in misconduct.
- Section 49.3(2) provides the Law Society with certain specific investigative powers if a prescribed Law Society office-holder has a reasonable suspicion that a licensee being investigated under subsection (1) may have engaged in misconduct.
- Section 49.10 authorizes court orders for entry, search, seizure and removal if the court is satisfied that there are reasonable grounds for believing, among other things, that there are documents or other things that relate to the matters under investigation in a place sought to be searched.

[31] There is an apparent structure to these provisions. The evidentiary standard increases from s. 49.3(1) to s. 49.3(2) as does the position of the decision-maker and the extent of the authority provided:

- Section 49.3(1) does not require decision-making by a specific person at the Law Society. The "information suggesting" possible misconduct standard is a low threshold. While the conduct of an investigation is authorized by this provision, no specific powers are given.

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- Section 49.3(2) requires decision-making by a prescribed Law Society office-holder. The "reasonable suspicion" of possible misconduct is a higher standard. This provision authorizes entry into current or former business premises during office hours, requiring the production of documents, including client files, and requiring the provision of information by the licensee and people who work or worked with the licensee. Only certain premises may be entered and at certain times. Forced entry, search and seizure are not authorized.
- Section 49.10 requires judicial decision-making. The "reasonable grounds for believing" that a conduct investigation is authorized, that there are related documents or things in the place to be searched and that an order is necessary under s. 49.10(1)(c) set an even higher evidentiary standard. Forced entry of any premises may be authorized as may search and seizure.

[32] The question of interpretation comes down to what, if anything, may be done in an investigation conducted under the authority of s. 49.3(1).

[33] The Law Society may not need powers of compulsion or entry, search and seizure powers to conduct an effective investigation. The Law Society can gather evidence like other state actors can.[3] For example, the Law Society can ask a complainant for further information or documents. While the complainant is not compelled to do so, the Law Society may ask and the complainant may answer. The Law Society may obtain information from other persons who are willing to provide information. The Law Society can review real and personal property registries, court/tribunal files and decisions, newspaper reports and other generally available information. There is much investigative work that can be undertaken without special powers.

[34] In this case, the Law Society downloaded copies of information posted by Mr. Caruso on the Internet. Mr. Caruso says that the Law Society had to either require him to produce these postings under s. 49.3(2) or had to obtain a court order under s. 49.10 to obtain these postings.

[35] It is not entirely clear whether Mr. Caruso's submission is that the Law Society is only able to investigate using s. 49.3(2) powers or by obtaining a court order under s. 49.10. If so, we do not accept this submission. Interpreting s. 49.3(1) as not authorizing any actual investigative activities would be inconsistent with the language of s. 49.3(1) and would not be in harmony with the scheme of the Act, the object of the Act, and the intention of the legislature.

[3] Subject to s. 8 of the *Charter of Rights and Freedoms* as discussed below.

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[36] It would be absurd, for example, to conclude that a Law Society investigator could not interview a willing witness because doing so is not authorized by s. 49.3(2) or an order under s. 49.10.

[37] Subject to s. 8 of the *Charter*, we interpret s. 49.3(1) to authorize investigative actions by the Law Society short of the investigative actions contemplated in ss. 49.3(2) and 49.10. In our opinion, obtaining generally available information, including from the Internet, is part of conducting an investigation as contemplated by s. 49.3(1).

Investigation and prosecution by the Law Society

[38] The Law Society separates its investigative and prosecutorial staff into the Investigative Services department and the Litigation Services department. This administrative structure is not compelled or constrained by the Act or its by-laws. We do not see a basis for the submission that the internal administrative structure of the Law Society must be set out in its by-laws or as Mr. Caruso submits is appropriate.

[39] Section 8(1) of the Act provides that "[t]he Chief Executive Officer shall, under the direction of Convocation, manage the affairs and functions of the Society". The Chief Executive Officer has the obvious authority to separate the investigative and prosecutorial staff into separate departments and to appoint an executive director to oversee those departments, those staff and their roles. While Convocation has the authority to give direction and has the authority to govern the affairs of the Society, there is no basis for Mr. Caruso's submission that Convocation must establish the internal structure of the Law Society by by-law or otherwise.

[40] The roles of Law Society investigators and prosecutors are somewhat analogous to the roles of the police and crown prosecutors. However, unlike police and crown prosecutors who are employed by individual police services and the Ministry of the Attorney General respectively, Law Society investigators and prosecutors are all employed by, or retained by, the Law Society.

[41] Mr. Caruso claims that Law Society prosecutors may not be involved prior to PAC approval of a conduct application. There is no authority for this claim. There is no basis for this claim in the Act or its by-laws. It does not make sense that the Law Society's prosecution service is prohibited from any involvement in a matter until after PAC approval. The implication of this submission would be that prosecutors could not provide advice to investigators prior to PAC approval and could have no role in the prosecutorial decision of whether to bring a conduct application, subject to PAC approval, or to be appropriately involved in obtaining PAC approval. This is not how the Law Society works. This is not how

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police and prosecutors work in criminal proceedings. There is no merit to this claim.

[42] Mr. Caruso also claims that Law Society investigators may not be involved after a matter is transferred to Litigation Services. Again, there is no authority for this claim and there is no basis for this claim in the Act or its by-laws. The implication of this submission is that no further investigation would be permitted after a matter is transferred to Litigation Services. In many cases, questions arise during a conduct application that require further investigation. By way of example, defences may be raised, which require investigation. On-going licensee compliance or non-compliance with regulatory requirements may need to be evaluated. Prosecutors may require input and information from investigators. It may make sense that a communication with a respondent be made by a Law Society employee (i.e. not the prosecutor) after a notice of application has been filed who can give evidence about that communication. There is no merit to this submission.

Prosecution and PAC authorization

[43] With the approval of PAC, s. 34(1) of the Act authorizes the Law Society to apply to the Tribunal for a determination by the Hearing Division of whether a licensee has contravened section 33 of the Act (i.e. a conduct application).

[44] Section 50(1)(4) of By-Law 11 provides that the Law Society may refer a matter to PAC to obtain PAC's authorization to make a conduct application. Section 51(2) of By-Law 11 requires reasonable grounds for believing that the licensee has contravened s. 33 of the Act in order for PAC to authorize a conduct application.

[45] Subject to certain exceptions not applicable here, s. 49(1) of By-Law 11 provides that no person may participate in a PAC review, which is the process in which the members of PAC consider a matter referred by the Law Society and determine whether to authorize a conduct application.

[46] Section 49.20 of the Act provides that "[a] decision of the Committee is final and is not subject to appeal or review".

[47] To summarize, the Law Society may make conduct applications to the Tribunal but only if PAC has authorized the application. To authorize a conduct application, PAC must be satisfied that there are reasonable grounds for believing that the licensee has engaged in professional misconduct or conduct unbecoming. Attendance at a PAC review is limited. PAC decisions are final and are not subject to appeal or review.

[48] As described in *Law Society of Ontario v. Patterson*, 2022 ONLSTH 146 at para. 14:

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> … Law Society investigators investigate allegations of misconduct. Where the investigator is of the view that an allegation of misconduct is substantiated, the Law Society decides what regulatory action should be taken, including whether to bring a conduct application to the Tribunal. Before bringing a conduct application, PAC authorization must be obtained. As said in *Law Society of Upper Canada v. James*, 2017 ONLSTA 16 at para. 57:
>
> > … In satisfying itself that the Law Society has "reasonable grounds" to commence an application, the PAC was not fulfilling a quasi-judicial function. It was "…quintessentially a prosecutorial function, not an adjudicative one. Adjudicative and prosecutorial functions are independently exercised by different participants." (*Law Society of Upper Canada v. Dadepo*, 2009 ONLSHP 43, at para. 46). The statutory framework that we quoted earlier makes clear that the PAC conducts "…a confidential in-house process, with no right of audience on the part of the Lawyer." (*Law Society of Upper Canada v. Natale*, 2011 ONLSHP 192, at para. 44)

Disclosure

[49] Pursuant to s. 49.12(1) of the Act, information obtained in the course of a Law Society investigation must be kept confidential subject to certain exceptions.

[50] The exceptions are set out in s. 49.12(2). One of the exceptions is "disclosure required in connection with a proceeding under this Act".

[51] Tribunal Rule 10.1 provides that:

> The Law Society must disclose to the licensee or licence applicant, within a reasonable period of time following the filing of the application, all potentially relevant documents in its possession, except for those it is not disclosing due to privilege ….

[52] Rule 10.1 requires disclosure by the Law Society to the licensee, not to the Tribunal. As disclosure is not part of the Tribunal's record of proceeding, the open court principle codified in Rule 13 does not apply unless and until disclosed documents are filed with the Tribunal for an appearance.[4]

[53] We will consider the following assertions by Mr. Caruso below:

- The Law Society has failed to make required disclosure.

[4] Other than a pre-hearing conference.

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- He is free to make public the disclosure provided to him by the Law Society and claims that the Law Society has acted improperly by taking the position that he may not do so.

ALLEGATIONS OF ABUSE OF PROCESS

[54] We now review specific allegations of abuse of process made by Mr. Caruso.

The complaint by Ms. Corsetti

[55] Ms. Corsetti was a paralegal bencher when she made her complaint in 2022. She ceased being a bencher in May 2023. She testified that this is the first complaint that she had ever made.

[56] In his notice of motion, Mr. Caruso alleges that Ms. Corsetti breached the *Bencher Code of Conduct* in making her complaint against him.

[57] Convocation adopted the *Bencher Code of Conduct* (the *Code*) to set out the "ethical responsibilities of the Law Society's benchers". The *Code* provides that "[t]he Treasurer is the Ethics Lead for Convocation and may be consulted for advice by benchers concerning compliance with the Code" and provides that information suggesting non-compliance with the *Code* is to be referred to the Treasurer for the determination of the appropriate action. The Treasurer may refer issues to Convocation for a determination of whether there has been non-compliance with the *Code*.

[58] Enforcement of the *Code* is the responsibility of the Treasurer and Convocation, not the Law Society's investigators or prosecutors or the Tribunal. That said, the *Code* is an articulation of bencher ethical responsibilities and, as such, may be of assistance in assessing Mr. Caruso's allegations regarding the propriety of Ms. Corsetti's conduct.

[59] Section 20 of the *Code* provides that:

> Benchers must not use their positions in an improper way to further their private interests or those of associates, friends or relatives. Benchers must not use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing management with the intent of interfering with management's duties or another person's interests, including the duty to disclose improper activity.

[60] Mr. Caruso claims that Ms. Corsetti breached this provision in two respects. First, he alleges that Ms. Corsetti used her position as a bencher improperly to cause Mr. Caruso to be investigated and ultimately to be the subject of this conduct application. Second, he alleges that Ms. Corsetti's interests in respect

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of his alleged misconduct are purely personal and that Ms. Corsetti improperly used her position to make a complaint about him. In apparent support of these claims, Mr. Caruso appears to say that the allegations made against him in this conduct application are outside of the authority of the Law Society and the Tribunal.

[61] For the following reasons, we do not accept these claims.

[62] On February 2, 2022, Ms. Corsetti sent an email to Glenn Stuart, Executive Director of Professional Regulation. Her email stated:

> I have attached a complaint I have against a Paralegal Mr. Tony Caruso. There are many attachments from social media posts, please refer to the PDF document which is the details of my Complaint. This stems from a few issues with Mr. Caruso and his posts telling Paralegals that the rules have changed and all Paralegals can do full scope immigration without becoming a regulated immigration consultant. Because of this I have received numerous msg asking what courses need to be taken, and other confusion. His posts about immigration have caused the CBA to issue a complaint to the Minister of Immigration which in my mind could effect paralegals being able to appear at the IRB and possibly profession misconduct.
>
> He also has posted many disparaging remarks about me personally and as my role as a Bencher, which is very offensive to me as someone who has had a stellar career as a Paralegal for 45 years. Also as a Professor which some of my students have seen these posts.
>
> I am happy to clarify any issues if required.

[63] Ms. Corsetti's complaint, as attached to her email, raised two key issues. The first was Mr. Caruso's conduct with respect to paralegal scope of practice in immigration law and By-Law 4. Ms. Corsetti stated, among other things,:

> I believe that Mr. Caruso has committed professional misconduct and is advertising that he is engaging in unauthorized practice. He is encouraging other paralegal licensees to violate bylaw 4 which sets the scope of practice in immigration law for paralegals by encouraging them to provide legal services in Immigration matters. His misconduct is recorded in his posts on Linked In and other social platforms.

[64] The second was Mr. Caruso's "conduct toward me, other Benchers and the LSO". Ms. Corsetti complained that, amongst other things, Mr. Caruso has stated on the Internet in reference to Ms. Corsetti:

- BENCHER CATHY stop embarrassing the profession with your lack of no facts perhaps you don't have the training because you were

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grandfathered in. It's people like you that should go back to school for training and not the ones who already have.

- Coward Bencher nothing but a liar and a lazy politican (sic) ! ! !
- she has not spoken publicly about Osgoode hall bashing paralegals
- you are busy having discussions about law society butter tarts
- so before you open your mouth get educated .... because you are grandfathered and don't have the same education as I
- This shows you don't know what is going on at the LSO so put the Joint down or leave the butter tarts alone
- what are you smoking
- are you stupid

[65] Ms. Corsetti further stated that Mr. Caruso had stated that "our Benchers are useless and a bunch of Liars" and had "made many posts against the LSO and threats of suing including Paralegal benchers".

[66] At this motion hearing, Ms. Corsetti testified that:

> Mr. Caruso has been posting about me for over five years. I have a binder here, which is probably three inches thick, of posts about me. He's continuing to post about me as [of] this week, he was still posting about me and many of the things he says are totally inappropriate and not true.

[67] In her evidence, Ms. Corsetti characterized her complaint as being about Mr. Caruso's postings about her. While she accepted that her complaint was in fact broader, this was her focus in her evidence. We conclude that this was because Ms. Corsetti is no longer a bencher and is no longer focused on regulatory matters and that Ms. Corsetti's personal focus is understandably on ongoing posts by Mr. Caruso about her.

[68] Mr. Caruso alleges that Ms. Corsetti's communication of her complaint to Glenn Stuart, rather than by directly filing with the Complaints and Compliance Department, was an improper use of her position to influence the Law Society in respect of her complaint. Ms. Corsetti testified that she was not aware of the appropriate approach to take and so she consulted Treasurer Teresa Donnelly, who advised her to make her complaint to Mr. Stuart. Ms. Corsetti denied that she intended to influence the treatment of her complaint by sending it to Mr. Stuart and that she simply did what the Treasurer advised her to do. We see no evidence that Ms. Corsetti sought to have the Treasurer interfere with the proper processing of her complaint or that acting on that direction by contacting Mr. Stuart was inappropriate or garnered her any advantage.

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[69] Ms. Corsetti's email to Mr. Stuart included her standard electronic signature, which contained the words "Bencher of the Law Society of Ontario". Her complaint finished with her name, her telephone number and identified her as "Bencher".

[70] Ms. Corsetti denied that these indications that she was a bencher were intended to improperly use her position. We accept her evidence, which was straightforward and clear. Given the nature of Ms. Corsetti's complaint, it would have been obvious to all concerned that Ms. Corsetti was a bencher and that Mr. Caruso's communications about her were because she was a bencher. We conclude that there was no impropriety in Ms. Corsetti's identification of herself as a bencher.

[71] Mr. Stuart promptly responded to Ms. Corsetti. Mr. Stuart advised that complaints are processed through the Complaints and Compliance Department and asked Ms. Corsetti whether she would like him to forward this matter to that department. However, Mr. Stuart also noted the following and asked Ms. Corsetti whether she still wished to pursue her complaint:

> Given Mr. Caruso's ongoing litigation with the Law Society with respect to the question of the extent to which paralegals can provide legal services with respect to immigration matters, it is likely that this complaint would be closed due to concurrent litigation at this point in time. That being said, my view does not bind the Intake and Resolution staff.

[72] Ms. Corsetti promptly responded:

> I understand that Tony does have a law suit against the LSO regarding By-law 4, but that is not the basis of my complaint.
>
> My concern and my personal complaint against Mr Caruso results from his constant posts on Social Media discrediting my reputation. Along with his misleading posts telling paralegals the law has changed and to practice in full scope immigration. His posts discredit our profession.
>
> At this time I would appreciate you forwarding my complaint to "Complaints & Compliance"

[73] As a result, Mr. Stuart sent an email to the Manager, Complaints and Compliance stating:

> I received the attached email making a complaint regarding Tony Caruso. I am forwarding it to you for consideration through Complaints and Compliance in the ordinary course.

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[74] Mr. Stuart testified it was not unusual for him to receive potential complaints sent directly to him and that his general practice was to simply forward such complaints for processing as he did in this case.

[75] We accept Ms. Corsetti's evidence that she did not seek special treatment. We accept Mr. Stuart's evidence that Ms. Corsetti's complaint was dealt with in the ordinary course as his email to Complaints and Compliance directed.

[76] The Manager of Complaints and Compliance asked Mr. Stuart by email whether Ms. Corsetti should be treated as being the complainant or whether the Law Society should be treated as being the complainant. The Law Society sometimes deems itself to be the complainant rather than the person who provided information. Examples include cases where information is received from the judiciary or someone, including a bencher, who simply brings information to the attention of the Law Society. The Director, Intake & Resolution advised that:

> Generally, complaints by benchers should be opened as LSO complaints, unless they are complaining in their personal capacity. Although there were some comments directed at Cathy Corsetti personally, I think it would be better to make this a LSO complaint with Cathy Corsetti as referral source. Most of it relates to his criticisms of the Law Society generally, and improper advertising.

[77] Ms. Corsetti was asked for her preference, which she said was to be treated as being the complainant. We conclude that either option would have made sense. Ms. Corsetti has a personal interest in comments made about her whether in respect of her bencher activities or otherwise. There is a collective interest in the treatment of benchers and the Law Society. We find no impropriety in the engagement and decision-making on this issue. We also observe that the investigative authority and powers under the Act do not depend on the identity or capacity of the complainant. What matters are the regulatory issues disclosed by the information received, from whatever source.

[78] On December 5, 2022, Deanne O'Brien, the assigned investigator, wrote to Ms. Corsetti and advised her that the investigation was continuing and invited her to provide any new information that was available. Ms. Corsetti responded, saying:

> I know there are many other posts Tony has made but since he has blocked me I only see what people send me. I think his conduct is unbecoming and truly acting as a bully towards me. He knows I have filed a complaint but that seems to have no effect on his behavior. My wish is this complaint gets processed ASAP as he seems to be out of control and his campaigning for Bencher is making it worse. Is there not enough for a referral to PAC?

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> Its very embarrassing for me as I have said in my original complaint, I am at the end of my career, 13 years as a Bencher, over 44 years as a Paralegal and 4 years as a part time professor. This is not how I want to be remembered.

[79] Ms. O'Brien testified that this email is typical of emails from complainants who are concerned about the time taken to complete an investigation and who would like the process to be completed. We do not consider this email as being anything more than a response to an inquiry from Ms. O'Brien and a reflection of ongoing adverse effect on Ms. Corsetti that she hoped would end. We see no impropriety in this email exchange and accept Ms. O'Brien's evidence that the email did not influence her investigation.

[80] On January 10, 2023, Mr. Caruso emailed Ms. O'Brien, as well as the Treasurer; the Director, Intake & Resolution; and the Attorney General of Ontario. With respect to Ms. Corsetti, Mr. Caruso wrote (emphasis added):

> …
>
> I strongly advise you review the complaint I made against Bencher Cathy, as you are all going against the Law Society act. Why would you allow a complaint from a bencher abusing their power and title to allow this complaint to even move forward? Has the law society not learned its lesson with Bencher Groia? Have you not read my reply and documents? The law society V Lehay?
>
> Lastly be sure in your report to document why the Law Society of Ontario V Caruso why was that matter dropped in intake and why was this case with Bencher Cathy who has mislead this investigation allowed to move forward. She has left out the letter from Treasurer Donnely and the reply from the Immigration minister (be advised his office has been made aware and I am looking forward to their cooperation if this gets sent to the tribunal) , but again it seems you are fine with Benchers misleading investigations. Given how she has mislead the investigation its your duty to inform the "higher levels" why are you being so lenient with her conduct when a bencher is held in a higher standard?
>
> Again I am going to ask you the same question WHERE IN THE BYLAWS ARE PARALEGALS NOT ALLOWED TO PRACTICE? Why do you keep saying we have nothing more to add? How is one supposed to correct themselves moving forward? You are having a hard time to provide me the citation The bencher cant even provide the citation. So because you are investigating and taking the word from the bencher what are you relying on that paralegals cant practice? Have you not see the transcripts from Ottawa? Have you not see or read the law IRPA? Have you not read the letter from the immigration minister? Have you not

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> read the operational manual 9P ? have you not read the letter from the Immigration committee Chair of Ottawa? Have you even read bylaw 4, if you have you are able to point to me the citation where we cant practice.
>
> If you are unable to do so, then no offences has been committed under the law society act, or its bylaws, which now makes this investigation harassment and further it makes the complaint from Bencher Cathy harassment. Because it is not founded in any of the breach of rules. Once again you claim you have nothing more to add, I can only presume therefore that you have implicitly acknowledge that there is no breach of the rules if you can not tell me the rule or citation which was allege to have been breached. (sic)

[81] On January 25, 2023, Ms. O'Brien advised Ms. Corsetti that "investigation has been completed and I have submitted my report and recommendation." Ms. Corsetti responded by email, copying Treasurer Jacqueline Horvat and the Director, Intake & Resolution, asking "As I am awaiting what the decision might be, is there anyway he can be asked to provide an undertaking to stop posting about me on social media?". Ms. O'Brien advised in response that:

> I cannot advise what direction we may have given to Mr. Caruso, however I ask that if you become aware of further posts that you believe are contrary to the *Paralegal Rules of Professional Conduct*, please continue to forward me the evidence of same.

[82] We see no impropriety in Ms. Corsetti asking whether anything could be done to stop continued posting that she considered to be improper, and we see no impropriety in Ms. O'Brien responding that she could not advise what direction may have been given to Mr. Caruso.

[83] As to copying Treasurer Horvat and the Director, Intake and Resolution, this appears to reasonably follow from Mr. Caruso's email to them of January 10, 2023.

[84] On February 16, 2023, Ms. Corsetti emailed Treasurer Horvat to advise that she had forwarded a LinkedIn post from Mr. Caruso to Ms. O'Brien. Ms. Corsetti testified that she communicated with the Treasurer to keep her informed rather than to cause her to influence the investigation. Ms. Corsetti testified, and we accept, that she did not believe that the Treasurer had a role in respect of investigations. Mr. Stuart's evidence was to the same effect. We accept this evidence.

[85] On March 1, 2023, Mr. Caruso sent an email to approximately 20 email addresses including the Prime Minister, the Premier of Ontario, the Minister of Justice, the Attorney General for Ontario and the Treasurer. Mr. Caruso copied a number of media outlets. In his email, Mr. Caruso advised that "I will now be

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placing each of you on notice for my intent to call you in as a witnesses" as well as all Law Society benchers.

[86] Ms. Corsetti forwarded this email to Treasurer Horvat's law firm email saying, "Just wanted to make sure you saw this". As Mr. Caruso was communicating broadly about the Law Society and the Treasurer, we consider that it was entirely appropriate for Ms. Corsetti to ensure that Mr. Caruso's email was brought to Treasurer Horvat's attention.

[87] We see no impropriety in Ms. Corsetti's dealings with the Law Society in respect of her complaint. Whether Mr. Caruso's postings about her were misconduct is a matter to be decided. However, the ongoing postings and email comments about her by Mr. Caruso would understandably have been of concern to Ms. Corsetti.

[88] We see no merit in the allegation of abuse of process on the basis that Ms. Corsetti's complaint lacked context and was misleading and amounted to false testimony and malicious prosecution. First, complaints are merely information that may, or may not, trigger an investigation. A flawed complaint may trigger an investigation that discloses serious evidence of misconduct. It could easily subvert professional accountability to permit litigation of the complaint and thereby avoid litigation of the authorized allegations of misconduct. Further, Mr. Caruso's position practically amounts to little more than his strong disagreement with Ms. Corsetti's perspective in her complaint and, more importantly, the Law Society's perspective in the decision to bring this application. The right way to sort this out is to hear the merits of this application. There should not be two "kicks at the can" of a review of the merits of the complaint by way of a motion for abuse of process.

[89] We see no merit in the allegation that Ms. Corsetti's complaint was for an improper purpose. No authority is cited in support of this allegation. The Act and the *Paralegal Rules of Conduct* address conduct that may cause harm to clients, opposing parties and counsel, other licensees, members of the public, the administration of justice, regulation of the legal professions and the public interest. A complainant may simply elect to bring alleged misconduct to the attention of the Law Society for the purpose of professional accountability. Other complainants who are adversely affected by alleged ongoing misconduct may hope that the regulator will cause the alleged ongoing misconduct to cease. An example would be clients who had unsuccessfully attempted to obtain their respective client file from their lawyer or paralegal. Ms. Corsetti appears to have primarily wanted Mr. Caruso's conduct to stop. This is not abusive in our opinion. Whether Mr. Caruso's conduct was misconduct remains to be determined.

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[90] In his submissions, Mr. Caruso was critical of Ms. Corsetti's understanding of the legal issues relevant to the question of permitted scope of paralegal practice in immigration. This is not relevant for several reasons. First, this is not an inquiry into Ms. Corsetti's conduct. Second, what matters is the legally permitted scope of practice rather than Ms. Corsetti's opinion about the applicable law. Third, the Law Society is the legal service regulator, while Ms. Corsetti is simply one (now former) bencher. The Law Society's position as regulator with respect to permitted scope of practice is taken with the benefit of legal and policy advice and by decisions of Convocation as a whole with the benefit of advice and input. So far, the Law Society's position has been confirmed by the court.

[91] Mr. Caruso pointed to some alleged inconsistencies within Ms. Corsetti's evidence. For example, whether Ms. Corsetti characterized her complaint as being personal or as a Bencher and whether she knew Ms Horvat was the Treasurer throughout the period of the investigation. In our opinion, Ms. Corsetti reasonably described the nature of her complaint and reasonably qualified a number of her statements indicating that the information she was providing was given to the best of her recollection. Any inconsistencies were minor and did not affect our findings of fact.

[92] Mr. Caruso was also critical of Mr. Stuart's understanding of the permitted scope of paralegal practice in immigration arising from his responses to Mr. Caruso's questioning. However, Mr. Stuart's recollection of the permitted scope is of no relevance on this motion.

[93] Mr. Caruso also alleges that there is an abuse of process because the Law Society chose to investigate and not wait for the decision of Divisional Court in Mr. Caruso's application for judicial review.

[94] As of 2007, the Professional Regulation Department had *Operational Guidelines with respect to Third Party Complaints*. Mr. Stuart testified that these are not the current guidelines but that there has been no change to the portion of the guidelines cited by Mr. Caruso. Under the heading *Abuse of Process*, these guidelines state as follows:

> Some complaints are made as a tactic to apply pressure to an opposing party, or the opposing party's counsel, in civil proceedings, or with the hope of using the fruits of the Law Society investigation to advance a civil claim. Where a complaint is made for the purpose of advancing the position of a party in litigation, staff should consider whether the complaint should be closed or deferred until the outcome of the litigation proceedings.

[95] These guidelines express a legitimate concern, namely that complaints might be used for the collateral purpose of advancing the private interests of the

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complainant in civil proceedings. This concern is not applicable here. Ms. Corsetti is not a party to litigation with Mr. Caruso. She does not seek damages or other relief from him in civil litigation. Her position is that Mr. Caruso is in breach of his professional obligations in his social media posts and comments about her and hopes that these ongoing breaches will stop as a result of regulatory intervention.

[96] We find no collateral or improper purpose in Ms. Corsetti making her complaint. In any event, it is for the Law Society to determine whether to investigate and what steps to take after an independent investigation: *Law Society of Ontario v. Stanislawski*, 2021 ONLSTH 102 at paras. 229-234 and 246.

[97] The ongoing litigation by Mr. Caruso against the Law Society raises a different issue. Mr. Caruso's position as to permitted paralegal scope of practice is in issue both in this conduct application and in his application to the Divisional Court. It was open to the Law Society to defer this application while litigation in the courts was ongoing. That said, the Divisional Court rejected Mr. Caruso's position some nine months ago in *Caruso v. The Law Society of Ontario*, 2023 ONSC 6744. Given the nature of Mr. Caruso's conduct, it is understandable that investigation and prosecution proceeded without waiting for the ultimate judicial determination of the permitted scope of paralegal practice in immigration matters. In any event, it was for the Law Society as regulator to decide whether or not to proceed. It is not for the Tribunal to review that decision absent finding that there was an abuse of process.

[98] We find no impropriety in the decision to proceed with the conduct investigation and the conduct application in the face of Mr. Caruso's application for judicial review.

The investigation

[99] Mr. Caruso makes several allegations with respect to the investigation of this matter. He alleges that:

- the investigation began prior to the assignment of Ms. O'Brien as investigator (although it is not clear what turns on this claim);
- the Law Society was not entitled to download copies of his Internet postings without a court order;
- Ellwood was acting as an investigator and, as such, was required to be licensed, but was not;
- the Law Society was required to notify Mr. Caruso of the investigation at the outset and not to take any investigative steps prior to notification; and

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- the investigator's report lacked context, was misleading and amounted to false testimony and malicious prosecution.

February 10 to July 29, 2022

[100] Ms. Corsetti's complaint was acknowledged by the Complaints and Compliance Department by letter dated February 10, 2022. The letter advised that the complaint had been assigned to Intake & Resolution counsel for review.

[101] On March 8, 2022, Intake & Resolution counsel advised the Director, Intake & Resolution, that Ms. Corsetti's complaint, together with further documentation obtained, had been reviewed and that counsel's opinion was that there was a reasonable suspicion that Mr. Caruso may have engaged in professional misconduct.

[102] The Director, Intake & Resolution, then concluded that she was satisfied that there was a reasonable suspicion that Mr. Caruso may have engaged in professional misconduct and that persons assigned to conduct an investigation into Mr. Caruso's conduct may exercise the powers set out in s. 49.3(2) of the Act.

[103] In other words, the Law Society began to conduct an investigation pursuant to s. 49.3(1) of the Act around February 10, 2022. Section 49.3(2) investigative powers were authorized on March 8, 2022. The matter was then transferred from Intake & Resolution to Investigative Services. The evidence is that an investigator in Investigative Services was not immediately assigned due to a heavy workload.

[104] Ms. O'Brien was assigned to be the investigator on July 4, 2022. Ms. O'Brien was on a scheduled holiday from July 9 to July 24, 2022. She testified that, before she left on holiday, she made arrangements for a contractor (Ellwood Evidence Inc.) to be retained to preserve publicly available evidence on the Internet. As discussed below, we conclude that Ms. O'Brien did so under the authority of s. 49.3(1) to conduct an investigation.

[105] Ms. O'Brien wrote to Mr. Caruso on July 29, 2024, after her return from holiday. She advised him of the investigation and required that he provide her with information and that he produce documents to her. Ms. O'Brien was using the s. 49.3(2) powers that had been authorized on March 8, 2022.

[106] Mr. Caruso makes submissions about when an investigation had started. It is not entirely clear what he exactly means by this or why it matters. It is more accurate to consider what investigative authority was being exercised, by whom, and in which department. The word "investigation" is ambiguous in context as it could refer to the Law Society's overall process with respect to this matter or to the activities of the assigned investigator in Investigative Services.

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[107] By at least March 8, 2022, and likely by February 10, 2022, Mr. Caruso was the subject of a Law Society investigation. It was not until July 4, 2022 that the file had been transferred to Investigation Services, Ms. O'Brien had been assigned, and she had started her investigative work. Ms. O'Brien did not contact Mr. Caruso and exercise s. 49.3(2) powers until July 29, 2022. Mr. Caruso has suggested both that the investigation "started" prior to July 4, 2022 and that it did not "start" until July 29, 2022. The appropriate label to use at different points in time may be in doubt depending on what is meant by "investigation". But what was done and on what basis is not in doubt. It is the latter that matters.

[108] Mr. Caruso alleges delay in the investigation during this period. In our opinion, there was no significant delay from March 8, 2022 to July 29, 2022. While it is unfortunate that an investigator was not immediately available in Investigation Services and that Ms. O'Brien had a scheduled holiday just after she was assigned to the file, it is unsurprising that the intake of cases may exceed capacity and that brief delays occur. If anything, this three-month delay in assigning Ms. O'Brien tends to suggest that this matter was dealt with in the ordinary course rather than Ms. Corsetti's complaint being given preferential treatment. In any event, we find no material prejudice to Mr. Caruso in this regard.

The retainer of Ellwood Evidence Inc.

[109] Ms. O'Brien testified that she initially accessed some of Mr. Caruso's online posts, posts she identified as being publicly available. She concluded that these posts needed to be gathered by an expert in order to preserve all the relevant data. Consequently, Ellwood Evidence Inc. (Ellwood) was retained by the Law Society to obtain an electronic copy of the posts referred to by Ms. Corsetti. Ms. O'Brien testified that Ellwood was directed to obtain publicly-available information.

[110] Ellwood reported its findings on July 11, 2022. The cover page of the Ellwood Report was put in evidence by Mr. Caruso but the body of the report was not.

[111] Ms. O'Brien testified that Ellwood was retained before she advised Mr. Caruso that an investigation had been instructed in order to preserve the integrity of the electronic information. She testified that collecting posted electronic documents before notifying a licensee is a common investigative practice. She said that notifying Mr. Caruso in advance or relying on him to provide the electronic information would have risked not obtaining a reliable copy of this information.

Mr. Caruso's Facebook group

[112] Ellwood downloaded information from Mr. Caruso's website and from his LinkedIn and Facebook posts.

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[113] There is a dispute in the evidence with respect to the public accessibility of posts to Mr. Caruso's Facebook group. The evidence was as follows:

- In her written complaint, Ms. Corsetti stated "Tony Caruso has a Facebook page that is called **Paralegal Bencher Watchdog** group that is open to the public and each post is against the LSO & Paralegal Benchers. (see Watchdog attached)".
- Ms. Corsetti attached four pages of screenshots from what appears to be the "Paralegal Bencher Watchdog Group" from Facebook. The first page shows the group to be a public group with 378 members. The four pages appear to be the four of 18 pages printed on January 4, 2022.
- Both Ms. Corsetti and Ms. O'Brien testified that they were able to access posts on the "Paralegal Bencher Watchdog Group" in 2022.
- In his affidavit sworn March 6, 2024,[5] Mr. Caruso did not address this accessibility issue. His only reference to Ellwood in this affidavit is that "According to disclosure I received, Ellwood Evidence Inc. completed their investigation on July 11, 2022". Mr. Caruso attached only the cover page of the Ellwood report to his March 2024 affidavit.
- Mr. Caruso sought to examine Stephen Ellwood as a witness on this motion by summons. Mr. Caruso indicated that he intended to ask Mr. Ellwood "when and how he was authorized by the Law Society of Ontario to investigate Mr. Caruso and under what criteria", "who specifically signed off (via a contract) and/or contacted him". He also indicated that he intended to ask about the exception under the *Private Security and Investigative Services Act, 2005*, SO 2005, c. 34 (*PSISA*), which he relied on as an exemption from licensing, and whether a search warrant had been obtained. Mr. Caruso did not then suggest that the accessibility of the Paralegal Bencher Watchdog Group was in issue or that he sought to examine Mr. Ellwood with respect to access to his social media posts conducted in July 2022.
- Mr. Caruso swore a further affidavit on July 15, 2024. He attached (i) a copy of the first page of the screenshot of the "Paralegal Bencher Watchdog Group" provided by Ms. Corsetti in 2022, (ii) what appears to be an excerpt from the 2022 Ellwood report in respect of the same group, and (iii) a current screenshot from the "Paralegal Bencher watchdog Group". The 2022 screenshots indicate that the word "Watchdog" in the group name was capitalized. The 2024 screenshot shows that "watchdog" was not capitalized. The Facebook group is shown as being a public group in 2022, with 378 members in January 2022 and 406 members in July 2022, and a

[5] The jurat states that the affidavit was sworn on March 6, 2022 which is an obvious mistake.

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private group with 402 members in July 2024. There are two minor other differences in the form of the webpages.

- The 2024 screenshot provided by Mr. Caruso was of the "Group History" for the "Paralegal Bencher watchdog Group" which stated:

> Group history shows when this group was created, as well as changes to its name. You can use Group history to see whether a group's purpose has changed over time.
>
> May 1, 2023: Changed name to Paralegal Bencher watchdog Group
>
> Dec 5, 2022: Changed name to **Caruso for Paralegal Bencher**
>
> May 21, 2019: The group **Caruso for Paralegal Bencher** was created

- In his oral evidence at the motion hearing, Mr. Caruso alleged that the 2022 screenshots were fabrications. He relied on the uppercase "Watchdog" in the 2022 screenshot as being different from the lowercase "watchdog" in the 2024 screenshot. He testified that the group was always a private group, never a public group. He testified that all of the name changes for the group were shown in the Group History.
- The lateness of the claim that this was a private group in 2022 and of the claim that the 2022 screenshots were fabricated by showing the group as being public is troubling. While Mr. Caruso claims that the Group History tracks changes to the private/public status of the group, the Group History itself states that it provides "when this group was created, as well as changes to its name". There is no reference to the private/public status of the group from time to time in the Group History.
- Also troubling is Mr. Caruso's evidence that the Group History provides a comprehensive listing of name changes from the creation of the group in 2019. If this is so, the group was called **Caruso for Paralegal Bencher** from May 21, 2019 to May 1, 2023. This is inconsistent with name of the group being changed to **Caruso for Paralegal Bencher** on December 5, 2022. Unless there was an unreported name change between May 21, 2019 and December 5, 2022, there was no need to change the name to **Caruso for Paralegal Bencher** in December 2022 as the Group History indicates was done.
- Further and most importantly, Ms. Corsetti and Ms. O'Brien could not have anticipated the name **Paralegal Bencher Watchdog Group** (with or without a lower case "w") in 2022 if the group was always named "**Caruso for Paralegal Bencher**" prior to May 1, 2023.
- Mr. Caruso was unable, or unwilling, to accept in cross-examination that it made no sense that the 2022 screenshots could have been fabricated to

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include the name **Paralegal Bencher Watchdog Group** if Mr. Caruso had not used some form of that name in 2022.

- The oral evidence of Ms. Corsetti and Ms. O'Brien was that the **Paralegal Bencher Watchdog Group** was accessible to them in 2022. Their oral evidence was straightforward and consistent with the written evidence. Mr. Caruso's evidence that the group was a private group named **Caruso for Paralegal Bencher** in 2022 is not credible. On the evidence before us, we find that in 2022, the group was a public group named **Paralegal Bencher Watchdog Group**.

Downloading of information by Ellwood

[114] Mr. Caruso makes several allegations with respect to the retainer of, and work performed by, Ellwood. The first is that the Law Society was not entitled to have Ellwood download copies of his posts unless and until Mr. Caruso had been notified of the investigation. The second is that Ellwood was required to be licensed to do this work and was not. The third is that a court order was required and that the Law Society did not have the authority to obtain copies of his postings. While not a ground in his notice of motion, Mr. Caruso also alleges that the copying by Ellwood breached the *Personal Information Protection and Electronic Documents Act*, SC 2000, c. 5 (*PIPEDA*), the *Freedom of Information and Protection of Privacy Act*, RSO 1990, c. F.31 (*FIPPA*), and s. 8 of the *Charter*.

Prior notice

[115] Mr. Caruso cites no authority for his claim that he was entitled to prior notice before the Law Society was entitled to undertake any investigative steps or to exercise investigative powers. The preconditions set out in ss. 49.3(1) and 49.3(2) of the Act do not include licensee notification. The Law Society investigator has substantial discretion in deciding how an investigation should be conducted: *Law Society of Ontario v. David*, 2021 ONLSTA 17 at para. 65. The requirements of procedural fairness are limited in investigations. While subjects of investigations are entitled to know the substance of the matters being alleged against them and to be given a fair opportunity to provide their answers before a conclusion is reached, there is no requirement that these entitlements must be satisfied before other investigative steps are taken: *Law Society of Ontario v. De Rose*, 2021 ONLSTA 9 at paras. 90 and 95. We do not accept this submission.

Licencing under the Private Security and Investigative Services Act

[116] As to the requirement of licensing, Mr. Caruso relies on *PSISA*. Section 6 of the *PSISA* provides that "No person shall act as a private investigator or a security

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guard or hold himself or herself out as one unless the person holds the appropriate licence under this Act".

[117] A private investigator is defined in s. 2(2) of *PSISA* as being "a person who performs work, for remuneration, that consists primarily of conducting investigations in order to provide information". Section 2(3) provides examples of the types of information referred to in s. 2(2) as follows:

> Examples of the types of information referred to in subsection (2) include information on,
>
> (a) the character or actions of a person;
>
> (b) the business or occupation of a person; and
>
> (c) the whereabouts of persons or property.

[118] Section 2 of O. Reg. 435/07 under *PSISA* provides that:

> An individual who is authorized by another Act of Ontario or of Canada to perform work, for remuneration, that consists primarily of conducting investigations in order to provide information is exempt, with respect to the performance of that work, from section 6 of the Act.

[119] Mr. Caruso complained to the Registrar of Private Investigators and Security Guards that Ellwood was required to be licensed. The Registrar disagreed on the basis that Ellwood was retained by the Law Society, such that s. 2 of O. Reg. 435/07 exempted Ellwood from the requirement to be licensed. Mr. Caruso does not accept the Registrar's conclusion. Mr. Caruso also argues that s. 2 of O. Reg. 435/07 only applies to individuals and not to corporations.

[120] We do not consider it necessary, or appropriate, to determine whether we agree with the Registrar. The Registrar is well placed to assess and determine licensing requirements under the *PSISA*. In any event, we are not satisfied that the preservation of electronic evidence is an investigation to provide information as contemplated by s. 2 of the *PSISA*. We are not satisfied that the *PSISA* applied to Ellwood in the context of the work for which it was retained by the Law Society.

[121] In any event, the issue on this motion is abuse of process and not compliance by an independent contractor with licensing requirements. If there was a failure by Ellwood to be licensed, we do not consider any such regulatory non-compliance by a contractor would bring the administration of justice into disrepute in the context of a Law Society investigation. This is particularly so as there is no evidence that the Law Society was aware that Ellwood was required to be licensed to download information from the Internet and was not.

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The requirement for a court order: PIPEDA, FIPA and s. 8 of the Charter

[122] As to the alleged requirement for a court order, we conclude that the Law Society's authority under s. 49.3(1) was sufficient to permit downloading of generally available electronic information from the Internet.

[123] With respect to *PIPEDA*, we are not satisfied that *PIPEDA* applies to the Law Society, which is not an organization that "collects, uses or discloses [personal information] in the course of commercial activities" (emphasis added). We are not satisfied that this federal legislation applies to the Law Society as a regulator of legal services under a provincial statue: *PIPEDA*, s. 4.

[124] Section 38(2) of *FIPPA* provides that "[n]o person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity". The Law Society is not an institution as defined in *FIPPA*. Accordingly, *FIPPA* does not apply to the Law Society. In any event, an investigation under s. 49.3 of the Act expressly authorizes the collection of such information and is necessary to the proper administration of a lawfully authorized activity, namely the regulation of the legal professions by the Law Society, including regulation of licensee conduct. More specifically, we conclude that s. 49.3(1) of the Act authorized obtaining copies of Mr. Caruso's posts.

[125] While we are not satisfied that *PIPEDA* or *FIPPA* applies in this case, s. 8 of the *Charter*[6] would apply if the Law Society's actions amount to a search or seizure under s. 8: *Law Society of Ontario v. Marusic*, 2020 ONLSTH 18 at para. 31.

[126] The principal object of s. 8 of the *Charter* is protection of privacy, including informational privacy. To claim s. 8 protection, a claimant must first establish a reasonable expectation of privacy in the subject matter of the search, i.e. that the person subjectively expected it would be private and that this expectation was objectively reasonable: *R. v. Marakah*, 2017 SCC 59 at para. 10, and *R. v. Bykovets*, 2024 SCC 6 at paras. 29-30.

[127] As articulated in *Bykovets* at para. 31:

> … An expectation of privacy is reasonable where the public's interest in being left alone by the government outweighs the government's interest in intruding on the individual's privacy to advance its goals, notably those of law enforcement ([*Hunter v. Southam Inc.*, 1984 CanLII 33 (SCC)], at pp. 159-60). Courts analyze an expectation of privacy by considering many interrelated but often competing factors, which can be grouped

[6] Section 8 provides that "Everyone has the right to be secure against unreasonable search or seizure".

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> together under four categories: (1) the subject matter of the search; (2) the claimant's interest in the subject matter; (3) the claimant's subjective expectation of privacy; and (4) whether the subjective expectation of privacy was objectively reasonable ([*R. v. Spencer*, 2014 SCC 43], at para. 18, citing [*R. v. Tessling*, 2004 SCC 67], at para. 32).

[128] As to the subject matter of the alleged search, the evidence is clear. Ms. Corsetti complained that Mr. Caruso was posting statements on social media that were contrary to his professional obligations. As the regulator of legal services in Ontario, the Law Society sought to independently determine what had been posted by Mr. Caruso and to preserve the integrity of the evidence of what had been posted.

[129] As to Mr. Caruso's interest in the subject matter, the posts in issue were not about Mr. Caruso, but rather were his statements about others and about paralegal regulation. That said, Mr. Caruso has an interest in determining for himself when, how, and to what extent, information about his private opinions is communicated to others.

[130] As to Mr. Caruso's subjective expectation of privacy, Mr. Caruso did not suggest that he had any expectation of privacy in respect of his posts made to his Facebook group other than as a private group. There is also no evidence of any subjective expectation of privacy in respect of his LinkedIn posts or his website.

[131] If we accept that Mr. Caruso's Facebook group was private when Ellwood downloaded posts from it (which we do not), Mr. Caruso's subjective expectation of privacy must have been limited. He would have intended that his posts would be available to hundreds of people. He would have known that those within his Facebook group could disclose his posts to others – as in fact occurred after he made his group private. Ms. Corsetti testified that group members provided her with posts made about her after Mr. Caruso blocked her from his Facebook group. Further, Mr. Caruso has claimed that the Law Society is attempting to silence him for "advocating publicly". Mr. Caruso cannot credibly claim that he would have had a subjective expectation of privacy in respect of what he describes as public advocacy.

[132] Mr. Caruso's claim of a subjective expectation of privacy depends on the designation of his Facebook group as a private group. To repeat, we have found that the group was a public group in 2022 when the Law Society accessed Mr. Caruso's posts.

[133] For these reasons, we find that Mr. Caruso did not have a subjective expectation of privacy in respect of his posts accessed and copied by, or for, the Law Society in 2022.

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[134] As to whether any subjective expectation of privacy was objectively reasonable, there is no definitive list of factors to consider, but focus on the following is common: the claimant's control over the subject matter, the place of the search, and the private nature of the subject matter: *Bykovets* at para. 45.

[135] If and while private, Mr. Caruso would have had some control over access to posts on his Facebook group. He could have decided who was a member and who was not. On the other hand, he would have had no control over what members of his group did with the posts available to them. If public, as we have found, Mr. Caruso had no control.

[136] As to the place of the search, Facebook is a platform and means for sharing information on the Internet. This case is quite different than cases involving search of a computer[7] or a mobile device.[8]

[137] As to the nature of the subject matter, discussion about the scope of paralegal regulation and the actions and qualities of benchers is a discussion about matters of public interest rather than private matters. There is a further factor that is worthy of consideration in this case. Mr. Caruso is a paralegal licensee. His posts were about public matters, namely regulatory issues, and about other licensees, including benchers. The Law Society could have required production of the Facebook posts by Mr. Caruso under s. 49.3(2) of the Act.

[138] For these reasons, we find that any subjective expectation of privacy by Mr. Caruso was not objectively reasonable.

[139] As a result, we conclude that the Law Society did not conduct a search or seizure under s. 8 of the *Charter*. Accordingly, the principle that warrantless searches and seizures are presumptively unreasonable is not engaged. The Law Society was not required to obtain judicial authority pursuant to s. 49.10 of the Act or otherwise.

[140] In his affidavit filed two days before the hearing of this motion, Mr. Caruso filed copies of screenshots from the Ellwood report, which he says shows that "they capture everything and anything including irrelevant captions". The screenshots are of awards and honours received by Mr. Caruso. We accept that Ellwood copied some posts that were not *per se* relevant to the investigation. Ms. O'Brien testified that Elwood did so to ensure the integrity of the evidence gathered. We do not accept that the approach taken was improper or converts what was done into a search or seizure.

[141] Had we found that the evidence copied by Ellwood was obtained contrary to s. 8 of the *Charter* and that, having regard to all the circumstances, the admission of

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7 *R. v. Cole*, 2012 SCC 53.
8 *R. v. Masakah*, 2017 SCC 59.

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that evidence in the proceedings would bring the administration of justice into disrepute, we would have been required to exclude that evidence from the hearing of the conduct application. However, a dismissal of the entire conduct application would not necessarily follow. In any event, we would not conclude that the admission of that evidence in the proceedings would bring the administration of justice into disrepute: *R. v. Grant*, 2009 SCC 32 at paras. 71-86. Ellwood was retained in order to preserve the integrity of evidence that Mr. Caruso could have been compelled to produce. It is clear, and we find, that Ms. O'Brien proceeded in good faith in arranging for information technology assistance to preserve evidence. There are many witnesses to Mr. Caruso's Facebook posts who could testify about them, including Ms. Corsetti before she was blocked. The Law Society was and is entitled under s. 49.3(2) to require Mr. Caruso to produce copies of the Facebook posts. In our view, any breach of s. 8 would be at the lower end of seriousness. In this context, and assuming a private group, Mr. Caruso's privacy interest is, at best, limited. There is a strong public interest in proper conduct by licensees and in assessing professional accountability by adjudication on the merits. We conclude that, considering the subject matter, the admission into evidence of posts to a large Facebook group, even if it had been found to be private, would not bring the administration of justice into disrepute.

Notifying Mr. Caruso and making investigative requests of him

[142] On her return from holiday, Ms. O'Brien notified Mr. Caruso of her investigation by letter dated July 29, 2022. In her letter, Ms. O'Brien made investigative requests of Mr. Caruso. Mr. Caruso immediately responded, saying, "I will be contacting my Lawyer including the office of the Prime Minister, Immigration Minister, Attorney General of Ontario including the competition bureau of Canada and [will] reply to you in due course." (sic)

[143] While Mr. Caruso initially declined to provide answers, he later did so through his counsel on September 14, 2022.

[144] Mr. Caruso's position is that no "investigation" was begun until he was advised that his conduct was being investigated by letter dated July 29, 2022. No authority is cited for this proposition. Notice to the subject of an investigation is not a precondition to the authority to investigate under s. 49.3(1) of the Act or to having investigative powers under s. 49.3(2) of the Act. Requiring production from the licensee under s. 49.3(2)(b) practically requires contact with the licensee, as does requiring the licensee to provide information under s. 49.3(2)(b). Entering into former business premises under s. 49.3(2)(a) or requiring information from people who work or worked with the licensee under s. 49.3(2)(c) would not require notice to the subject licensee.

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[145] We do not accept the submission that the Law Society was not entitled to investigate under s. 49.3(1), or to exercise any investigative powers under s. 49.3(2), prior to July 29, 2022.

Completing the investigation

[146] Ms. O'Brien completed her investigation in early 2023. Her Investigation Report is dated February 16, 2023. Ms. O'Brien recommended a conduct application, having concluded that:

> It is reasonable to believe, based on the evidence contained herein, that the Paralegal has brought discredit to the profession and has discouraged the administration of justice (sic) through his conduct of not only advertising and encouraging unauthorized practice, however also through his posts and comments about members of the Law Society, his regulatory body, other licensees and legal organizations.
>
> Although it is believed that moderators of the various social media groups removed some of the Paralegal's posts and banned him and that the Paralegal himself appears to have removed publicly visible posts on his own accounts; the Paralegal maintains that he has not violated any of the Law Society Rules or has engaged in any type of professional misconduct. In addition, the Paralegal has often posted that he won't be "silenced" by the Law Society, "won't back down" and "will just get louder". This pattern of behaviour without any apologies or insight leads to concern about the Paralegal's governability.

[147] We see no merit in the allegation of abuse of process on the basis that Ms. O'Brien's Investigation Report lacked context, was misleading, and amounted to false testimony and malicious prosecution. Mr. Caruso's position practically amounts to little more than his strong disagreement with the investigator's conclusions. Again, the right way to sort this out is to hear the merits of this application. There should not be three "kicks at the can" by a review of both the merits of the complaint and the merits of the results of the investigation by way of a motion prior to a hearing of the application.

The Proceedings Authorization Committee

[148] The evidence is that two members of PAC authorized this application. Section 47(1) of By-Law 11 provides that "[t]wo members of the Committee constitute a quorum for the purposes of reviewing a matter and taking action in respect of the matter".

[149] By-Law 11 does not require that a paralegal member of PAC be one of the members of PAC who reviews a matter and takes action in respect of a matter

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involving a paralegal. Mr. Caruso's claim that this is required is without foundation.

[150] Mr. Caruso claims that "[p]ursuant to section 46 and section 51 of By-Law 11, the Procedures (sic) Authorization Committee may provide the licensee an opportunity to explain and offer explanation in response to submissions from the Law Society" and claims that PAC was required to offer him the opportunity to request this opportunity. There is no apparent basis for this claim.

[151] Section 49(1) of By-Law 11 provides that "[s]ubject to subsection (2), no person may participate in the review of a matter by the Committee". Section 49(2) of By-Law 11 provides that:

> For the purposes of answering any questions that the Committee might have about a matter referred to it or about actions that may be taken by the Committee with respect to a matter referred to it, the Committee may require one or more of the following persons to participate in a review of a matter:
>
> 1. The person who referred the matter to it.
>
> 2. An officer, employee, agent or representative of the Society who is or was involved in an audit, investigation, review, search or seizure relating to the matter.

[152] Mr. Caruso is not a person contemplated by s. 49(2) of By-Law 11. He could not have participated in the review of his matter by PAC. Section 51 of By-Law 11 sets out the actions that PAC may take after reviewing a matter. Section 51 does not authorize a licensee to be permitted to explain and offer explanation during the review of a matter or prior to PAC's decision to take an action under s. 51.

[153] It is not in dispute that two members of PAC authorized this application. There is no basis in fact or law to impugn that decision. Section 49.20 of the Act provides that PAC's decision is final and is not subject to appeal or review. We have no authority to do other than accept that PAC authorized the bringing of this conduct application.

[154] We find nothing that could lead to a finding of abuse of process by us in respect of, or arising from, PAC's decision to authorize this application.

Business Names Act

[155] Mr. Caruso alleges that the Law Society is not entitled to make this conduct application as a result of the provisions of the *Business Names Act*. There is no merit to this claim.

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[156] Section 34(1) of the Act authorizes the Law Society to make this application. The *Business Names Act* does not affect this authority, which is an important aspect of the regulatory authority and responsibility of the Law Society.

[157] In any event, Mr. Caruso's assertions with respect to the *Business Names Act* are without merit.

[158] Section 2(1) of the *Business Names* Act provides that:

> No corporation shall carry on business or identify itself to the public under a name other than its corporate name unless the name is registered by that corporation.

[159] Mr. Caruso claims that the Law Society must register the name *Law Society of Ontario* on the basis that this is not its corporate name. However, Law Society of Ontario is the corporate name of the Law Society in English. Section 2(1) of the Act was amended effective May 2018 to provide that:

> The Law Society of Upper Canada is continued under the name Law Society of Ontario in English and Barreau de l'Ontario in French.

[160] The Law Society is fully entitled to identify itself "under the name Law Society of Ontario in English and Barreau de l'Ontario in French".

[161] Section 7(1) of the *Business Names* Act provides that:

> A person carrying on business in contravention of subsection 2 (1), (2) or (3) or subsection 4 (4) or (6) is not capable of maintaining a proceeding in a court in Ontario in connection with that business except with leave of the court.

[162] This conduct application is not a "proceeding in a court in Ontario". The *Business Names Act* does not address statutory regulatory proceedings before an administrative tribunal under another act.

[163] Mr. Caruso's further submission that the Law Society's application is an act of reprisal, for him having raised compliance with the *Business Names Act*, is also without merit. There is no evidence that this was the case. Mr. Caruso raised compliance with the *Business Names Act* in May 2023, months after the investigation was complete and the file had been transferred to Litigation Services and days before PAC authorized this application.

Use of disclosure

[164] On December 6, 2023, Mr. Caruso advised that:

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> As for a courtesy be advised I will be using the disclosure given to by you for the following;
>
> 1. Laying of information, I intent to lay an obstruction of justice and I will be naming 5 people.
>
> 2. I will be using the disclosure for my civil matters which have already been commenced
>
> 3. A copy will be sent to the competition bureau of Canada
>
> 4. A copy will be sent to the European Union Privacy Division
>
> 5. A copy will be sent to Global Affairs Canada
>
> 6. A copy will be sent to the Italian Prime Minister and the Italian Senate
>
> 7. A copy will be given to the privacy commission of Canada (which you are aware the LSO and Ellwood are under investigation with the Illegal data scraping)

[165] Mr. Caruso alleges that the Law Society improperly asserted that he was not entitled to make use of the Law Society's disclosure other than for the purpose of this application proceeding and that the Law Society improperly did not consent to Mr. Caruso doing so.

[166] The question of permitted use of mandatory disclosure has arisen in the civil, criminal and administrative contexts. In *Goodman v. Rossi*, 1995 CanLII 1888 (ON CA), the Court of Appeal found an implied undertaking to have been given by recipients of compelled production and discovery in civil proceedings. In civil proceedings, the *Rules of Civil Procedure*, RRO 1990, Reg. 194, were amended by the addition of Rule 30.1 to provide for a deemed undertaking that:

> All parties and their lawyers are deemed to undertake not to use evidence or information to which this Rule applies for any purposes other than those of the proceeding in which the evidence was obtained.

[167] In *D.P. v. Wagg*, 2004 CanLII 39048 (ON CA), the Court of Appeal for Ontario considered whether an implied undertaking should be recognized in respect of criminal disclosure. The court did not find it necessary to decide the issue but observed at para. 46 that:

> There are important policy reasons for recognizing an implied undertaking rule with respect to disclosure of materials to the defence in a criminal case. The disclosure is compulsory and required because of the public interest in ensuring that the accused obtains a fair trial of the criminal charges. However, as a result of the criminal disclosure process, individuals, including innocent third parties, may find that highly personal information is made available to the accused. These individuals

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> must, as explained in Taylor, accept this intrusion in the interests of achieving a proper result in the criminal case, but the law should provide them with some reasonable protection against use of the information for entirely different purposes. In addition to the policy reasons referred to in Taylor, which essentially concern privacy interests of third parties, there are the policy reasons identified by the Divisional Court in this case, namely, the fact that the disclosure may contain documents over which the Crown could claim public interest immunity, that might attract privilege or which broadly speaking it is not in the public interest to produce.

[168] The nature of the issues addressed in Law Society investigations is such that highly personal, confidential and privileged third-party information is often included in Law Society disclosure. This is particularly so because professional accountability commonly requires consideration of protected client information and because the effect of s. 49.8 of the Act is that privileged and confidential information is often obtained in conduct investigations and used in conduct applications and that privilege nevertheless continues.

[169] Perhaps as a result of *Wagg*, requiring written undertakings limiting use of disclosure is common in criminal proceedings. *R. v. Mossaddad*, 2017 ONSC 5520[9] considered a case in which a written undertaking had not been given, concluding at para. 39:

> If defence counsel or an accused has received disclosure that is not the subject matter of a written undertaking, I am of the view that a deemed undertaking nonetheless applies to such disclosure and no use may be made of such disclosure outside of the context of the criminal proceedings without further direction from the court.

[170] In the administrative tribunal context, the Divisional Court concluded in *A Co. v. Naster*, [2001] O.J. No. 4997, 143 O.A.C. 356, 81 C.R.R. (2d) 128 at para. 23, that the implied undertaking rule is a principle of law recognized in Ontario. As such, it applies as well to proceedings before administrative tribunals as to the courts. The implied undertaking rule has been found to apply to proceedings before the Ontario Physicians and Surgeons of Ontario Tribunal in *Tribunal File No. 22-017,* 2023 ONPSDT 19; before the Capital Markets Tribunal in *Miller Bernstein LLP (Re)*, 2023 ONCMT 18; and other cases. There is no apparent reason why the implied undertaking rule would not apply to proceedings before the Law Society Tribunal. For clarity, it may be advisable that the Law Society seek written undertakings before providing disclosure. It may be advisable for the Tribunal Rules to provide for a deemed undertaking. But we conclude that

[9] Cited with approval in *R. v. Carter*, 2018 ONSC 1272 at paras. 54-55.

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the implied undertaking rule applies to proceedings before the Law Society Tribunal.

[171] However, it should be understood that the implied undertaking rule does not apply to information and documents that have become part of the Tribunal's record of proceeding. Tribunal Rule 13.2(1) provides that the contents of the record of proceeding and all appearances except pre-hearing conferences are public, unless the Tribunal or a court orders otherwise. Tribunal proceedings are open to the public unless an order otherwise is made in accordance with Rule 13.3.

[172] We see no impropriety in the position taken by the Law Society that, without prior written consent, disclosure made to Mr. Caruso could only be used for the purpose of this proceeding. If the Law Society does not consent, direction may be sought from the Tribunal.

Requested disclosure

[173] Mr. Caruso seeks further disclosure. He also alleges that the failure to make proper disclosure is an abuse of process.

[174] Mr. Caruso is entitled to all potentially relevant documents in the Law Society's possession, except for those it is not disclosing due to privilege.

[175] Disclosure ordinarily entitles a respondent to the information gathered during an investigation but not to the analysis, comments, and opinions of investigators or counsel: *Law Society of Upper Canada v. James*, 2017 ONLSTA 16 at paras. 48-52.

[176] On September 5, 2023, Mr. Caruso's representative made a request for disclosure. The Law Society's representative responded on September 14, 2023.

[177] With respect to items 3-7 below, the Law Society asked as follows. There was no response:

> With regard to the items requested in paragraphs 3-7, we invite you to more precisely particularize what you are seeking and explain how each of the items are relevant to Notice of Application 23H-068.

[178] With respect to item 8 below, the Law Society stated its position that there was no disclosure obligation and asked as follows. There was no response:

> Should you disagree with the Law Society's position, please feel free to clarify and particularize what exactly is being sought and explain the relevance.

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[179] Mr. Caruso says that he saw no point in replying. But had he provided the requested information, things might have been different. He did not provide the requested information for this motion either.

[180] The following sets out Mr. Caruso's requests for further disclosure and our assessments and conclusions:

1. *A copy of the PAC minutes confirming if Michelle Lamazzo (sic), Cathy Corsetti, Robert Burd or any member of the "Good Governance" coalition/corporation was in attendance at that meeting.*

   In its letter dated September 14, 2023, the Law Society stated:

   > As indicated in my letter to Mr. Lang, dated May 29, 2023, the members of the Proceedings Authorization Committee who participated in the decision were Robert Adourian and Gerald Sheff.

   As discussed above, PAC's decision is final and is not subject to appeal or review. The Tribunal does not have the authority to determine whether PAC's decision was properly reached. In any event, there is no evidence suggesting that Michelle Lomazzo, Cathy Corsetti, Robert Burd or any member of the "Good Governance" coalition/corporation may have been in attendance at the subject PAC meeting.

2. *Please advise of all anticipated witnesses, in this matter including non-licencee "Sam Rad" who is alleged to have sent screenshots to Michelle Lamazzo (sic), then forwarded them to Cathy Corsetti. This is known due to the facsimile number on the correspondence.*

   The Law Society advised Mr. Caruso's representative by letter dated July 18, 2023 that:

   > The Law Society's anticipated witnesses are Cathy Corsetti and Deanne O'Brien, Investigator. This may change if we sign an Agreed Statement of Facts, or if there are admissions pursuant to a Request to Admit. Summary of the anticipated oral evidence of the Law Society's witnesses is found in the Investigation Report mentioned above.

   In its September 14, 2023 letter, the Law Society advised that:

   > …the Law Society does not intend to call Sam Rad as a witness. As indicated in my letter to you, dated July 18, 2023, the Law Society's anticipated witnesses currently are Cathy Corsetti and Deanne O'Brien. However, the names and the number of witnesses that the Law Society will call to give oral evidence may change, depending upon the degree to which there is agreement,

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between the parties, regarding the facts. The Law Society will, of course comply with its obligations pursuant to Rule 10.5 of the *Rules of Practice and Procedure.*

This information sought in this request was twice provided before this request was made.

3. *Please provide copies of any and all minutes, or any other record in any meeting, wherein the subject of paralegal scope in providing legal services related to applications has been discussed, whether internally, externally or through convocation.*

   The appropriateness of the permitted scope of paralegal practice in immigration is not in issue in this conduct application. The conduct application is not a means by which Mr. Caruso can advocate for his preferred policy outcome. The permitted scope of practice is a question of law.

4. *Please provide an explanation of who, and when it was decided that paralegals have a limited scope in relation to immigration, along with the appropriate notations. Please provide the date.*

   See previous assessment and conclusion.

5. *Please provide all communications, notes, memorandums, or other documents that may exist, in relation to communications with the Minister of Immigration, or with any other governmental body in regarding paralegals and the immigration scope.*

   See previous assessment and conclusion.

6. *Please provide a detailed list specifically pertaining to the paralegal scope of immigration services that are approved currently by the LSO and not approved by the LSO, along with an explanation as to why it is approved or not approved.*

   See previous assessment and conclusion.

7. *Please provide all correspondence, or records related to LSO officials attending parliament in 2011 of the various times, dates and locations during the debate of the paralegal scope back in 2020.*

   See previous assessment and conclusion.

8. *All e-mail correspondence to the LSO regarding Antonio (Tony) Caruso, including replies from Cathy Corsetti and Glenn Stuart.*

   This request is exceedingly broad. The request is not limited to matters relating to the subject matter of this application or of the investigation that led to this application. Indeed, the request is not even limited to correspondence with respect to permitted scope of practice in immigration matters.

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9. The LSO's policy regarding "Third Party Complaints".

The issue of third-party complaints has been fully dealt with in this motion.

[181] Mr. Caruso has not shown that the documents sought are potentially relevant to matters actually at issue in this conduct application. His motion for further disclosure is dismissed.

[182] We note that, by summons, Mr. Caruso obtained copies of emails to and from Mr. Stuart regarding the initiation of Ms. Corsetti's complaint in February 2022 as well as Ms. Corsetti's copies of emails with Treasurer Horvat. Mr. Caruso is critical of the Law Society for failing to include these documents in its disclosure. While these documents were considered in this abuse of process motion, Mr. Caruso's 2023 request for further disclosure was for the apparent purpose of the hearing of the application and not for a stated purpose of making an abuse of process motion.

[183] Further, Mr. Caruso never requested disclosure of these emails. He did not bring a motion for disclosure of these emails. Had Mr. Caruso sought disclosure for the purpose of an abuse of process motion based on demonstration of a legally and factually tenable allegation of abuse of process, he might have obtained a disclosure order: *Law Society of Upper Canada v. Natale*, 2011 ONLSHP 192 at paras. 7-10. But Mr. Caruso did not request disclosure of these emails nor did he move for their disclosure. The Law Society cannot be faulted for failing to disclose documents, allegedly relevant to a claim of abuse of process, that were not requested, and where a factually tenable allegation of abuse of process had not been demonstrated.

[184] In any event, we do not consider the fact that Mr. Caruso did not obtain copies of these documents until just prior to this motion hearing as a result of summonses delivered to witness to have affected the disposition of this motion or to ground a claim of abuse of process.

[185] In his notice of motion and original factum, Mr. Caruso sought what he described as a "Laporte inventory" in accordance with *Laporte v. Saskatchewan*, 1993 CanLII 9145 (SK CA). Mr. Caruso did not pursue this request. In *R. v Chu*, 2016 SKCA 156, the Court of Appeal for Saskatchewan observed that the *Laporte* procedure is not mandatory in Saskatchewan. The *Laporte* procedure does not appear to have been adopted in Ontario. We see no need to require that the Law Society produce a written inventory as described in *Laporte* at para. 18.

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Conclusion with respect to abuse of process

[186] In his submissions, Mr. Caruso relied on the tort of abuse of process as discussed in *Harris v. Glaxosmithkline Inc.*, 2010 ONCA 872. The tort of abuse of process is the legal basis for civil claims seeking remedies for abuse of process.

[187] However, it is the doctrine of abuse of process that is relevant here: *Mitchinson v. Baker*, 2015 ONCA 623 at para. 14. As said in *Mitchinson*, the tort of abuse of process and the doctrine of abuse of process "are fundamentally different in law and each has its own legal requirements".

[188] *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29, is the most recent decision of the Supreme Court of Canada as to abuse of process in administrative tribunal proceedings. Importantly, Justice Rowe for the court concluded that it was necessary not to conflate whether there had been an abuse of process with the question of appropriate remedy: paras. 74-76.

[189] Notably, *Abrametz* fully articulates a test for abuse of process for delay but did not have to fully address an "unconflated" test for abuse of process where hearing fairness is not affected and delay is not the issue.[10]

[190] In *United Food and Commercial Workers, Local 175 v. La Rocca Creative Cakes*, 2024 ONSC 2243 (Div. Ct), Justice Sachs, for the Divisional Court, considered *Abrametz* and *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, with respect to the concept of abuse of process.

[191] Justice Sachs observed at para. 44 that abuse of process is a "flexible concept" and that *Abrametz* adopted the formulation that the doctrine "engages the inherent power of the court to prevent the misuse of its procedure, in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute".

[192] At paras. 48-50, Justice Sachs reviewed the *CUPE* reasons, noting the focus there on the "integrity of the adjudicative process". At para. 51, Justice Sachs summarized saying:

> What emerges from these cases is that the doctrine, while broad and flexible, is not one to be employed lightly. It is designed to prevent "manifest unfairness" to one party or to prevent bringing the administration of justice into disrepute. Further, in applying the doctrine,

[10] *Morabito v. British Columbia (Securities Commission)*, 2023 BCCA 395 at paras. 33(a) and 38.

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a court must be aware of the ways in which applying the doctrine could actually result in unfairness.

[193] As hearing fairness is not in issue here, the question becomes whether anything has been shown that would bring the administration of justice into disrepute. If so, the question of remedy must then be answered.

[194] We conclude that nothing alleged by Mr. Caruso brings the administration of justice into disrepute. We find no abuse of process in respect of Ms. Corsetti's complaint, in how the Law Society responded to the complaint (including its investigation), in the authorization of this application, or in the course of this application so far. There is nothing against which to balance the significant public interest in professional accountability.

[195] Mr. Caruso's allegations of impropriety cut a broad swath, but they are without depth or apparent substance. There is nothing that adversely affects the fairness or efficacy of the hearing of the conduct application or which would bring the administration of justice into disrepute.

THE *CHARTER OF RIGHTS AND FREEDOMS*

[196] Mr. Caruso alleges breach of s. 7 of the *Charter*. He says that this application infringes his right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

[197] Specifically, Mr. Caruso alleges non-compliance with the following principles of fundamental justice: overbreadth, vagueness and arbitrariness. He relies on *Canada (Attorney General) v. Bedford*, 2013 SCC 72, and *R. v. Nova Scotia Pharmaceutical Society*, 1992 CanLII 72 (SCC).

[198] Notably, *Bedford* and *Nova Scotia Pharmaceutical Society* are both criminal law cases in which s. 7 of the *Charter* is obviously engaged. However, this is a professional regulatory proceeding. In *Caruso v. The Law Society of Ontario*, 2023 ONSC 6744, Mr. Caruso submitted that s. 7 protected his right to practise his profession. This submission was rejected by the Divisional Court at paras. 118-131.

[199] We are bound by the decision of the Divisional Court in *Caruso* and by the decisions of the Court of Appeal in *Mussani v. College of Physicians and Surgeons of Ontario*, 2004 CanLII 48653 (ON CA); *Tanase v. College of Dental Hygienists of Ontario*, 2021 ONCA 482; and *Shaulov v. Law Society of Ontario*, 2023 ONCA 95. Therefore, we reject the submission that life, liberty and security of the person protect Mr. Caruso's right to practise his profession.

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[200] In his reply submissions, Mr. Caruso baldly claims that "[t]here is sufficient case law to suggest otherwise". Mr. Caruso refers to no authority in support.

[201] As to overbreadth, vagueness and arbitrariness, Mr. Caruso has not developed any argument on these claims in written or oral submissions. He has not indicated what he alleges is overbroad, vague, or arbitrary, nor why.

[202] We conclude that s. 7 of the *Charter* does not apply and, in any event, we have no basis to find any failure to adhere to the principles of fundamental justice.

APPOINTMENT OF A NEW PROSECUTOR

[203] There are no grounds in support of this request in the notice of motion. The subject is not addressed in the factums filed by Mr. Caruso. There does not appear to be evidence adduced in support of this request. The request was not addressed in oral submissions.

[204] The right of a client, including the Law Society, to choose its counsel is not to be interfered without good cause: *MacDonald Estate v. Martin*, [1990] 3 SCR 1235 at p. 1243. Removal requires demonstration that a fair-minded and reasonably informed member of the public would conclude that the proper administration of justice compels the removal: *Mallory v. Werkmann Estate*, 2015 ONCA 71 at para. 28. Mr. Caruso has not established that this is the case. This request is dismissed.

POST-MOTION HEARING EVIDENCE – THE MERITS AFFIDAVITS

[205] As mentioned above, the Law Society has served three affidavits (each a merits affidavit) on Mr. Caruso for the conduct application hearing in accordance with Rule 10.5. The deponents in these affidavits are Ms. O'Brien, Mr. Ellwood and Ms. Corsetti. We now discuss each of these merits affidavits in turn and conclude that the evidence on the motion hearing should not be reopened to permit evidence from the merits affidavits to be considered on this motion. In any event, we have concluded that our findings of fact would not change if we did so.

The O'Brien affidavits

[206] The jurats of Ms. O'Brien's motion and merits affidavits both state that these affidavits were commissioned on July 3, 2023. The Law Society advises that this is an error and that the commissioning dates should have been July 3, 2024 and August 23, 2024 respectively. This is obviously correct as both affidavits include evidence with respect to matters that occurred after July 3, 2023. This motion was not brought until 2024. The commissioning dates for the exhibits in the affidavits (as opposed to the affidavit itself) are in accordance with the Law Society's advice as to the correct commissioning dates. Ms. O'Brien was not

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asked about the date of the jurat in her motion affidavit at the motion hearing. Nothing turns on these obvious errors. There is no impropriety here.

[207] Mr. Caruso objects to the fact that Ms. O'Brien's merits affidavit includes evidence that was not in her motion affidavit. This difference is unsurprising as the issues to be determined in the motion hearing are not the same as the issues to be determined in the conduct application hearing. The Law Society has confirmed that all of the exhibits to both affidavits were provided to Mr. Caruso in disclosure long ago. There is no impropriety here.

[208] Mr. Caruso refers to paragraph 10 of Ms. O'Brien's merits affidavit, which explains that she caused the Law Society to retain Ellwood on July 5, 2022, to download publicly available material posted by Mr. Caruso. The evidence in this paragraph is no different than Ms. O'Brien's evidence on the motion. Mr. Caruso also refers to Exhibits B and B-1 to Ms. O'Brien's merits affidavit. The same documents are Exhibits D and D-1 to Ms. O'Brien's motion affidavit. This is not new or different evidence.

[209] Mr. Caruso suggests there are some further inconsistencies between Ms. O'Brien's testimony (and her affidavit filed for the abuse of process motion hearing) and her merits affidavit, such as how she referred to Mr. Caruso's online material and how she obtained it and her understanding of s. 49.3 of the Act. We find nothing substantive in these supposed differences, which are minor at best. Our findings of fact are not affected.

[210] Mr. Caruso has not shown that Ms. O'Brien's merits affidavit contains any evidence that requires the evidence on this motion to be reopened. We do not accept Mr. Caruso's submissions with respect to this affidavit.

[211] We will not consider Ms. O'Brien's merits affidavit on this motion.

The Ellwood affidavit

[212] Mr. Caruso observes that Mr. Ellwood's merits affidavit states that posts were captured from Mr. Caruso's Facebook group, which was publicly accessible. Mr. Caruso submits that this is not correct and that his Facebook group was never a public group. The Law Society did not submit evidence from Mr. Ellwood for this motion. It is odd that Mr. Caruso refers to this evidence, which is consistent with the evidence of Ms. Corsetti and Ms. O'Brien and inconsistent with Mr. Caruso's evidence.

[213] Mr. Caruso also takes issue with Mr. Ellwood's evidence that Ellwood was retained to capture Mr. Caruso's online activities within the time period from November 2021 to July 2022. Mr. Caruso refers to a disclosure listing which he says shows that Ellwood captured online activity after July 2022. However, it is not obvious that this disclosure listing actually shows that subsequent capture

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by Ellwood occurred. Nothing in this motion turns on the question of the time period over which Ellwood captured online activity.

[214] We will not consider Mr. Ellwood's merits affidavit on this motion.

The Corsetti affidavits

[215] Exhibit F to Ms. Corsetti's merits affidavit is an email from Ms. Corsetti to Ms. O'Brien. In her merits affidavit, Ms. Corsetti identified this exhibit as follows: "On December 8, 2022, I sent an email to Ms. O'Brien in which I attached additional evidence, such as the Paralegal's recent posts on LinkedIn, that I considered relevant to the investigation". Exhibits F-1 to F-5 are copies of the posts provided to Ms. O'Brien.

[216] Exhibit F-2 includes a copy of a letter (the letter) from the Minister of Immigration, Refugees and Citizenship to Treasurer Donnelly. Mr. Caruso alleges that this is inconsistent with Ms. Corsetti's evidence in cross-examination. Mr. Caruso claimed in his written submissions, "when directly asked about the letter, she stated she wasn't aware of the letter".

[217] In cross-examination, Ms. Corsetti was asked whether she had any knowledge of a letter by the Minister replying to a letter from the Canadian Bar Association (CBA). Ms. Corsetti responded saying that Minister replied to a letter from the Treasurer (rather than to a letter from the CBA) and that her recollection was that the Minister's letter talked about how paralegals could do IRB work. Ms. Corsetti was subsequently asked in her examination why she did not include the Minister's letter with her complaint. Ms. Corsetti responded saying she did not believe that the Minister had responded to the Treasurer's letter by the time that she made her complaint and that she did not believe that she had a copy of the letter as it was not sent to her.

[218] Ms. Corsetti did not testify that "she wasn't even aware of the letter" as claimed. She testified about the letter and stated that the letter was sent by the Minister in response to a letter from the Treasurer. She provided her recollection as to the contents of the Minister's letter. She testified that she doubted that the Minister had replied to the Treasurer's letter (of January 24, 2022) by February 7, 2022 when she made her complaint. None of this is inconsistent with Ms. Corsetti receiving a copy of the Minister's letter as part of a post by Mr. Caruso in December 2022, some ten months later.

[219] In the context of questions about her complaint, Ms. Corsetti testified that she did not believe that she had a copy of the letter as it was not sent to her. In context, Ms. Corsetti was addressing whether she could have included the letter in her complaint which she could not have done if she did not have a copy of the letter at the time. Whether Ms. Corsetti subsequently received a copy was

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not in issue. It appears that Mr. Caruso could have asked Ms. Corsetti about her December 2022 email to Ms. O'Brien in cross-examination as it was part of the Law Society's disclosure.[11]

[220] We do not accept that Ms. Corsetti's testimony at the motion hearing is impeached as alleged. In any event, Ms. Corsetti's awareness of the contents of the Minister's letter is not relevant to the allegations of abuse of process made in this motion.

[221] We are not satisfied that Ms. Corsetti's merits affidavit is fresh evidence in this respect and conclude that it would be procedurally unfair to reopen the evidence to include Exhibits F and F-2 from her merits affidavit.

[222] In para. 28 of Ms. Corsetti's merits affidavit, she states that:

> On February 7, 2023, I forwarded to Ms. O'Brien some additional screenshots from the Paralegal's LinkedIn account. I received those screen shots from a fellow paralegal licensee Elaine Page. Unfortunately, the screenshots were not very legible, so the next day, Ms. O'Brien asked me to provide images of better quality.

[223] Mr. Caruso alleges that this is inconsistent with Ms. Corsetti's evidence at the motion hearing in which Ms. Corsetti said that only Ms. Lomazzo provided her with screenshots for her complaint.

[224] Ms. Corsetti's evidence was as follows, "I'm going to say 99% sure that when I filed my complaint, the only LinkedIn posts that I received from someone else were from [Ms. Lomazzo]."

[225] There is no inconsistency. Ms. Corsetti filed her complaint in February 2022, which is a year prior to the February 7, 2023 email to Ms. O'Brien to which screenshots from Ms. Page were attached. In any event, how Ms. Corsetti obtained copies of Mr. Caruso's postings is not relevant to the allegations of abuse of process on this motion.

[226] We also note that Mr. Caruso testified in his March 6, 2024 affidavit that "Elaine Paige is a witness in the proceeding against me as providing screenshots to the Law Society's investigation. Elaine Paige is a friend of Cathy Corsetti." It appears that Mr. Caruso could have addressed this issue in cross-examination at the motion hearing.

[227] We reject Mr. Caruso's allegation that her merits affidavit shows that "Ms. Corsetti misled the Tribunal with her inconsistent and unreliable evidence that is

[11] Exhibit B to the Affidavit of Zargul Lohar, DOC96.

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contrary to her [merits] affidavit". We will not consider Ms. Corsetti's merits affidavit on this motion.

CONCLUSION AND COSTS

[228] For these reasons, this motion is dismissed.

[229] The Law Society may make written costs submissions in respect of this motion and the motion to quash summonses by October 2, 2024. Mr. Caruso may make written reply submissions by October 23, 2024.

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