

# **In the Court of Appeal of Alberta**

**Citation: Law Society of Alberta v Smith, 2026 ABCA 308**

**Date:** 20260929  
**Docket:** 2501-0164AC  
**Registry:** Calgary

**Between:**

**Law Society of Alberta**

Respondent

- and -

**C. Michael Smith**

Appellant

**The Court:**

---

**The Honourable Justice Jolaine Antonio  
The Honourable Justice Alice Woolley  
The Honourable Justice Karan M. Shaner**

---

## **Memorandum of Judgment**

Appeal from the Decision of an  
Appeal Panel of the Law Society of Alberta  
Dated the 15th day of May, 2025  
(2025 ABLs 13)

---

## Memorandum of Judgment

---

### The Court:

#### I. Introduction

[1] The appellant, C. Michael Smith, appeals the decision of an Appeal Panel of the Law Society of Alberta. The Appeal Panel confirmed a Hearing Committee decision that the appellant was guilty of conduct deserving of sanction because he failed to act with courtesy and civility in his dealings with opposing counsel and failed to respond fully and substantively to inquiries from the Law Society.

[2] The appellant submits the Law Society failed to provide him with sufficient particulars of the allegations against him. He further argues the requirement of civility does not apply to “private communication in writing” and that the Hearing Committee and Appeal Panel failed to apply the decision of the Supreme Court of Canada in *Groia v Law Society of Upper Canada*, 2018 SCC 27 [*Groia*]. In his view, his e-mails to opposing counsel were substantively justified and sufficiently polite; he “conducted himself throughout from a position of earnestly held principle”. The appellant also argues the Law Society put improper questions to him in its investigations, and he had no obligation to answer them. In any event, his answers were proper and accurate. Finally, he submits the costs award against him was improper and unjustified.

[3] For the reasons that follow, we confirm the decisions of the Appeal Panel.

#### II. Background Facts

[4] The appellant acted for his daughter and her partner in a dispute with their landlords. During the course of that retainer, the appellant had a verbal altercation with one of the landlords, WS, and removed a real estate sign from the property. Both the altercation and sign removal were captured on video. WS swore affidavits attesting that the tenants had obstructed his access and had altered and caused damage to the property. The tenants disputed that account.

[5] The appellant took issue with how counsel for the landlords, CS, was conducting the matter. He communicated those issues in part by e-mail to CS.

[6] Ultimately, the landlords obtained an order from an applications judge allowing them to evict the tenants on the basis that the tenants’ actions “significantly interfered with the Landlords’ rights to access and market the Premises for sale” contrary to the *Residential Tenancies Act*, SA 2004, c R-17.1 and to the residential tenancy agreement. The tenants appealed the applications judge’s decision. The parties settled their dispute prior to the appeal being heard.

[7] WS submitted a complaint to the Law Society regarding the verbal altercation, sign removal, and the appellant's e-mails to CS. Following its investigation, the Law Society directed three citations to hearing. The first related to the sign removal:

It is alleged that C.M. Smith engaged in conduct that brings the legal profession into disrepute by removing and damaging a realtor's lawn sign and that such conduct is deserving of sanction.

The second related in part to the e-mails to CS:

It is alleged that C.M. Smith failed to act with courtesy and civility and that such conduct is deserving of sanction.

And the third related to the appellant's response to the investigation conducted by the Law Society:

It is alleged that C.M. Smith failed to respond fully and substantively to inquiries from the Law Society and that such conduct is deserving of sanction.

[8] The Hearing Committee dismissed the first citation but found the other two were made out: *Law Society of Alberta v Smith*, 2023 ABLS 26 [*Hearing Committee Decision*]. It reprimanded the appellant, imposed a fine of \$5,000, and required him to pay \$20,000 in costs: *Law Society of Alberta v Smith*, 2024 ABLS 12 [*Hearing Committee Sanctions*]. The appellant appealed to a panel of Law Society benchers. The Appeal Panel confirmed the findings of the Hearing Committee: *Law Society of Alberta v Smith*, 2025 ABLS 13 [*Appeal Panel Decision*]. It also required the appellant to pay an additional \$5,500 in costs for the appeal: *Law Society of Alberta v Smith*, 2025 ABLS 18 [*Appeal Panel Costs*].

### III. Issues and Standard of Review

[9] The appellant submits the Appeal Panel erred by confirming the Hearing Committee's decision. He submits the Appeal Panel failed to recognize the Hearing Committee erred by:

- (a) finding he received sufficient particulars;
- (b) finding he breached his duty of courtesy and civility despite his e-mails being private communications sent in good faith with a reasonable basis;
- (c) finding he did not respond fully and substantively to the Law Society's inquiries without recognizing his response was legitimate and the Law Society's questions were improper; and
- (d) requiring him to pay costs despite his good conduct in representing himself and for an amount that included investigation costs.

[10] Section 80(1)(c) of the *Legal Profession Act*, RSA 2000, c L-8 allows the appellant to appeal the Appeal Panel's decision to this Court; the legislation does not state the standard of

review applicable to the appeal. As such, appellate standards of review apply: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 33, 36-52; *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 at para 29; *Burgener v Law Society of Alberta*, 2023 ABCA 227 at para 20.

[11] The legal framework for assessing whether a lawyer has failed to act with the requisite level of courtesy and civility, and the related question of how to interpret the Supreme Court's decision in *Groia*, are questions of law reviewable for correctness. The application of that framework to the conduct of a particular lawyer will raise questions of mixed fact and law, or fact, which are entitled to deference. Further, while costs are discretionary, this Court will intervene when that discretion is not exercised judicially based on relevant considerations: *Charkhandeh v College of Dental Surgeons of Alberta*, 2025 ABCA 258 at paras 143, 149, 166 [*Charkhandeh*].

[12] The remaining issues identified by the appellant raise questions of fact or mixed fact and law reviewable only for palpable and overriding error.

[13] The internal standard of review applied by the Appeal Panel is relevant to this Court's review of the merits of its decision: *Beaver v Law Society of Alberta*, 2024 ABCA 354 at para 32. The standard of review to be applied by an appeal tribunal in a professional disciplinary context was discussed in *Yee v Chartered Professional Accountants of Alberta*, 2020 ABCA 98 at paras 31-35 [*Yee*]; *Charkhandeh* at para 48. The Appeal Panel referenced *Yee* and took a deferential approach to reviewing the Hearing Committee's factual determinations, while at the same time appreciating that legal conclusions reached by the Hearing Committee "merit closer scrutiny". Citing *Muradov v College of Naturopathic Doctors of Alberta*, 2024 ABCA 224 at para 11, the Appeal Panel recognized, "When setting standards of conduct, we are entitled to apply our own expertise and make findings about what constitutes professional misconduct": *Appeal Panel Decision* at para 13. Neither party has challenged the internal standard of review applied by the Appeal Panel, and we detect no error in that regard.

#### **IV. Sufficiency of the Particulars Provided**

##### *Background*

[14] Before the Hearing Committee and Appeal Panel, the appellant argued the Law Society citations were "not sufficiently particularized to afford me a reasonable opportunity to understand exactly what I have been accused of and prepare my defence accordingly".

[15] In argument before the Hearing Committee, counsel for the Law Society pointed out that the appellant received disclosure, proposed particulars and a proposed book of exhibits, and that there had been five pre-hearing conferences. For his part, the appellant argued the particulars he received were inadequate, that he had not received notice of witnesses, and that he was not consulted about the contents of the proposed exhibit book. The Hearing Committee rejected the appellant's application. It emphasized the robust pre-hearing process, and that the appellant had

the opportunity to identify issues with the particulars during the pre-hearing conferences: *Hearing Committee Decision* at paras 19-22.

[16] The Appeal Panel upheld the Hearing Committee's ruling. It emphasized the point made by Law Society counsel before the Hearing Committee; namely, that the Law Society had provided the appellant with "Particulars of Citations" in December 2022, nearly a year prior to the hearing. The proposed particulars contained "specific details of the dates, people, communications and events at issue in the citations", and provided the appellant with sufficient notice of the allegations to allow him to make a proper defence: *Appeal Panel Decision* at paras 60-62.

### *Analysis*

[17] A member charged with professional misconduct is entitled to a fair opportunity to make full answer and defence: *Alsaadi v Alberta College of Pharmacy*, 2021 ABCA 313 at para 29. To that end, members must be given sufficient particulars to allow them adequate notice of the case to meet: *Dr Ignacio Tan III v Alberta Veterinary Medical Association*, 2026 ABCA 176 at para 13. Section 59(1)(a) of the *Legal Profession Act* specifically requires "reasonable particulars" be given "of each act or matter" at issue. The Appeal Panel appreciated this: *Appeal Panel Decision* at para 63.

[18] Based on the procedure afforded to the appellant, which included the particulars provided in December 2022, disclosure and multiple pre-hearing conferences where he had the opportunity to voice his concerns, we conclude the Appeal Panel made no reviewable error in deciding the Hearing Committee acted reasonably in finding the Law Society had provided the appellant with enough information to ensure he was sufficiently informed of the case against him.

[19] This ground of appeal is dismissed.

## **V. Failure to Act with Courtesy and Civility**

### *Background*

[20] During the course of the eviction proceedings before the applications judge, the appellant took issue with how CS represented his clients, the landlords, in a number of ways.

[21] First, the appellant pointed out that CS had incorrectly represented to the court that CS had not received certain affidavit exhibits. The exhibits had been provided by the appellant's office and received, but not noticed, by CS prior to the court appearance. CS acknowledged his error to the appellant, undertook to correct it at the next court appearance, and did so.

[22] Second, based on his personal recollection of events as the father of one of the tenants, and based on what the tenants had told him, the appellant asserted the affidavit evidence provided by

WS about damage and alterations to the property was false. He accused CS of acting improperly by presenting WS's evidence, and by not confirming its accuracy.

[23] Finally, the appellant objected to CS's verbal statement to the applications judge in a preliminary appearance that CS had authority to support a legal characterization of the tenancy arrangement, which the appellant said was incorrect.

[24] The appellant sent CS various e-mails about the foregoing areas of disagreement:

**November 24, 2020:**

I also draw your attention to your obligations under the Code of Professional Conduct Rule 5.1-2 (d), (g), (i) and (j) in case you have either forgotten them or perhaps never knew about them.

[WS] knowingly gave false evidence in his Affidavit of October 16, 2020, which I remind you was commissioned by you.

How he could have done this after receiving competent legal advice is an interesting question of and in itself.

**December 1, 2020:**

Since we did not send you a version without exhibits it follows that you could not have received one.

If you would care to send me the copy of the Affidavit you say you received from us and the covering email you say it came with I might form a different opinion of your personal ethical standards.

I believe [WS] has lied under oath in the affidavit you commissioned and that you made no reasonable effort to check whether he was telling the truth or not.

It seems [WS] is not the only person involved in this case who has a cavalier attitude to the truth.

As of right now in my opinion you have knowingly or been willfully blindly (which frankly seems unlikely) made a factual misrepresentation to the Court.

**December 2, 2020**

So you admit to carelessly misrepresenting the facts [about receiving the exhibits] to the Court. You purported to read to the Court from the [tenant's] affidavit that you also claimed had no attached exhibits. You made no effort to ensure that your

information was correct before you did so, contradicting me in open Court in the process.

Now you compound that scurrilous act by implying some sort of wrongdoing on my part. Your resemblance to the lame duck POTUS continues to impress me. I frankly have no idea what you are talking about when you suggest I commented on material not yet received from your office. Perhaps you should review the exchange of correspondence more carefully and if you still somehow believe you are correct be a bit more specific as to dates and what was communicated. I have good reason to understand that I possess powers of perception and analysis that are not normal but I am assured they are not paranormal. I do not expect to hear further from you on that point, whatever it may be, as I do not expect any apology given your dismal track record in that regard.

In the meantime I ask you to carefully consider your ethical obligations when putting perjury before the Court. You represent three landlords and at least two of them have different versions of the facts to tell. Radically different. How can you continue to represent more than one of the landlords under such conditions?

### **December 2, 2020**

I fail to understand to what you may be referring. To what "serious and offensive accusations" are you referring. I recall making no such accusations. It is a fact that [WS] has given false testimony, in his affidavit as I pointed out and under cross examination. The false statements are obvious. The question is do you intend to ask the Court to rely upon perjured evidence? You cannot avoid dealing with this problem indefinitely but it seems you are intent on doing so. I again draw your attention to your obligations under the Code of Professional Conduct Rule 5.1-2 (d), (g), (i) and (j).

... [WS]'s testimony is rife with perjury, some of which is compounded perjury upon cross examination. That is a very serious matter. You have ready access to the truth. I should be very careful in making argument before the Court if I were you.

### **December 3, 2020**

You don't get off that easily. You represented to the Court that you were aware of authority specific to the Residential Tenancies Act. You now admit this was not true. You say now that you rely upon "the entire body of 'implied' contract law" and compound this by suggesting that common sense is a legal principle applying to contracts. It is not.

I had previously only seen a tv actor in a law drama (perhaps it was really a comedy) try this routine. It is unethical to suggest you know of specifically applicable precedent when you know there is no such thing.

...

I look forward to receiving the case law you do intend to rely upon prior to the December [18<sup>th</sup>] hearing.

You cannot ignore the perjury. If you present perjured testimony to the Court asserting that it is reliable there will be consequences. That is specifically prohibited by the Code of Professional Conduct.

[emphasis added]

[25] Based on these e-mails, the Hearing Committee found the citation alleging the appellant had failed to act with courtesy and civility, and that such conduct was deserving of sanction, was made out.

[26] In its view, the appellant had failed to act with courtesy and civility contrary to rules 7.2-1 and 7.2-6 of the Law Society of Alberta Code of Conduct. It held the Code's requirements for civility applied to the appellant's e-mails; Rule 7.2-1 requires a lawyer to be "courteous and civil and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice", and Rule 7.2-6 prohibits a lawyer from sending correspondence, including to another lawyer, or communicating in a "manner that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a lawyer".

[27] The Hearing Committee determined it did not matter whether the appellant had a "legally sound or correct" basis for the substance of what he wrote to CS: *Hearing Committee Decision* at para 94(b). While lawyers have a "responsibility to express themselves... there is an expectation on lawyers that communication shall not be uncivil or abusive": *Hearing Committee Decision* at para 94(c). The appellant had called CS a liar, suggested he was incompetent and unethical, and tried to intimidate and bully him: *Hearing Committee Decision* at paras 91-92. The communications had "the tone of incivility" and "discourteousness", and the appellant "engaged in belittling CS and intimidating tactics": *Hearing Committee Decision* at para 96.

[28] The Appeal Panel unanimously agreed the requirement of civility applies to communication outside of the courtroom, including communication between counsel. It held the language of the Code of Conduct is not restricted to "public or courtroom" interaction. The goals of civility regulation, including promoting public confidence in the profession and administration of justice, and allowing "all lawyers to practice in a reasonable environment," could not be accomplished if limiting the regulation of civility to courtroom interactions: *Appeal Panel Decision* at paras 19-21.

[29] The Appeal Panel divided on whether the Hearing Committee had properly identified and applied the test for incivility. Both the majority and dissenting member agreed the contextual and fact-specific assessment for incivility approved by the Supreme Court of Canada in *Groia* applied to the assessment of the appellant's conduct.

[30] In the majority's view, the Hearing Committee had applied that contextual and fact-specific analysis, even if not citing *Groia: Appeal Panel Decision* at paras 95-99, 103, 105-108. Regulation of civility cannot "compromise a lawyer's duty of resolute advocacy". However, incivility, and in particular "bullying, threats and intimidation," cannot be used to "delay, interfere with, or prevent the administration of justice": *Appeal Panel Decision* at para 100. The Hearing Committee sufficiently balanced the appellant's duty of civility with his expressive rights under the *Charter: Appeal Panel Decision* at para 110.

[31] The majority held *Groia* did not mandate consideration of "whether the lawyer had an honest, good faith belief in her comments"; *Groia* required a "fundamentally contextual and fact specific" inquiry: *Appeal Panel Decision* at para 92. The majority found it to be reasonable for the Hearing Committee not to assess whether the appellant's "position in his communications with CS was legally sound or correct" in the circumstances: "regardless of whether Mr. Smith's position was legally sound, Mr. Smith's comments were bullying, intimidating and threatening, and interfered with the administration of justice": *Appeal Panel Decision* at para 103. In any event, based on the content of his e-mails, "Mr. Smith was not acting in good faith nor on a reasonable basis in his communications with CS; rather, he was acting in an effort to bully and intimidate CS and to interfere with the administration of justice": *Appeal Panel Decision* at para 104. Bullying, threats and intimidation will harm, or have the potential to harm, the public, clients and the administration of justice. Lawyers may express themselves, but the Code makes it "clear that there is an expectation on lawyers that communication shall not be uncivil or abusive": *Appeal Panel Decision* at para 112.

[32] The dissenting member thought *Groia* required the Hearing Committee to expressly consider whether the appellant had an "honest, good faith belief" in his comments: *Appeal Panel Decision* at para 127. Specifically, he held the Hearing Committee should have considered whether the statements were made in good faith, and whether the appellant had a reasonable (even if mistaken) basis for making them: *Appeal Panel Decision* at para 134. He suggested there "is something unseemly about punishing a lawyer for alleging misconduct without investigating if the other lawyer was indeed out of line": *Appeal Panel Decision* at para 140.

[33] The dissenting member found the Hearing Committee did not consider whether the appellant made his statements in good faith or had a reasonable basis for them, which was an error of principle: *Appeal Panel Decision* at para 149. Assessing the record, he accepted there was reason to be skeptical about whether the appellant made his statements in good faith. Nevertheless, there was some basis for the appellant's allegations given CS acknowledged making an inadvertent misrepresentation about not receiving the exhibits. The appellant's allegations were "not

concocted from thin air” even if they “went well beyond the modest basis for suspicion available to him”. In the dissenting member’s view, the e-mails were a “core advocacy activity”, and there was a “plausible good faith basis for the accusations made, even if they are mistaken”: *Appeal Panel Decision* at paras 167, 170.

### *Analysis*

[34] The Supreme Court has recognized the “importance of professional discipline to prevent incivility in the legal profession, namely ‘potent displays of disrespect for the participants in the justice system, beyond mere rudeness or discourtesy’”: *Doré v Barreau du Québec*, 2012 SCC 12 at para 61 [*Doré*]. It is of “profound importance” that lawyers act with civility; incivility undermines trial fairness and the administration of justice: *Groia* at paras 63-68.

[35] Nevertheless, the obligation of civility cannot “compromise the lawyer’s duty of resolute advocacy”; a lawyer’s speech must be assessed “in light of the expressive rights guaranteed by the *Charter*”: *Groia* at paras 71, 76; *Doré* at para 63. In particular, regulators must be careful “to ensure that free expression, resolute advocacy and the right of an accused to make full answer and defence are not sacrificed at the altar of civility”: *Groia* at para 3.

[36] As such, the assessment of whether incivility amounts to professional misconduct “must remain a context-specific inquiry that is flexible enough to assess behaviour arising from the diverse array of situations in which lawyers find themselves”. What constitutes incivility must be “articulated with a reasonable degree of precision”, and the assessment must reflect “a proportionate balancing of the law society’s statutory objective with the lawyer’s expressive freedom”: *Groia* at paras 62, 77-80, 113.

[37] In *Groia*, the Supreme Court endorsed the Law Society of Ontario’s articulation of several factors relevant to a “fundamentally contextual and fact specific” assessment of whether a lawyer’s speech in court crossed the line to sanctionable incivility. Those included what the lawyer said, the manner and frequency of the lawyer’s behaviour, and how the trial judge responded. Challenges to the integrity of opposing counsel will cross the line into professional misconduct unless they are made in good faith and have a reasonable basis, even if a mistaken one. In upholding the Law Society’s approach as reasonable, the Supreme Court emphasized the list of relevant factors was not closed and the weight assigned to each factor would vary case-by-case: *Groia* at paras 5, 45, 47, 79-110, 118-119, 121.

[38] The appellant takes issue with the decision of the Hearing Committee because it did not expressly apply the factors identified in *Groia*.

[39] However, the factors identified in *Groia* are not a test against which a lawyer’s speech must be measured. Rather, the focus of *Groia*, and of the assessment of incivility, is on whether the lawyer’s speech warrants a finding of professional misconduct given the facts and specific context, with particular attention to the lawyer’s expressive rights in relation to the advancement

of their client's cause. As noted by the Appeal Panel, the Hearing Committee considered the words used by the appellant in his emails to CS, the context in which those words were communicated, the duty of resolute advocacy, and the appellant's expressive rights. We detect no reviewable error with the Appeal Panel's conclusion that the Hearing Committee applied the type of contextual and fact-specific analysis approved by *Groia*.

[40] The appellant also argues that, unlike in *Groia*, his communications to CS were "entirely private dealings". He submits the obligation of civility does not apply to "private communications in writing".

[41] A lawyer's obligation of civility applies to a lawyer's public communications, both in and out of court, and – contrary to the appellant's assertions – also to communications the lawyer makes that are not public. The breadth of the obligation of civility flows not only from the broad terms of the Law Society's Code of Conduct (Rule 7.2-1 requires a lawyer to be "courteous and civil... with all persons") but also from the role civility plays in promoting effective advocacy, a functional legal profession and confidence in the administration of justice: *Groia* at paras 63-68. In *Doré*, for example, the Supreme Court affirmed a decision imposing professional discipline for a lawyer's incivility in a letter written and sent to a judge.

[42] That a lawyer's communication is not made publicly may affect the contextual assessment of whether a finding of professional misconduct is warranted. That type of communication will be less widely disseminated, which may reduce its impact on confidence in the administration of justice. However, the reality is that a lawyer's professional communications are, by definition, not "private". As this case illustrates, and as was the case in *Doré*, clients and other legal system participants may well see purportedly private communications. Moreover, and importantly, when a lawyer writes or phones opposing counsel, they do so outside the procedural safeguards of in-court proceedings, including a judge's oversight and authority, the possibility of an adverse costs award, and the specific ethical obligations that apply when a lawyer acts as an advocate in court (e.g., Rule 5.1-2 of the Code of Conduct). An unscrupulous lawyer may use what they write to opposing counsel to bully or intimidate that counsel, knowing no judge is there to prevent it. That type of communication risks harm to both fairness and the administration of justice.

[43] The appellant contends his allegations that CS acted improperly were not uncivil or discourteous because they were made in good faith with a reasonable basis, as contemplated in *Groia*.

[44] The Appeal Panel made no reviewable error in affirming the Hearing Committee's determination that the appellant's e-mails were uncivil and discourteous, and in concluding the appellant "was not acting in good faith nor on a reasonable basis in his communications with CS; rather, he was acting in an effort to bully and intimidate CS and to interfere with the administration of justice": *Appeal Panel Decision* at para 104. The appellant's e-mails are aggressive, belittling and sarcastic. They treat CS as a person of no account, to be communicated to, rather than with.

The e-mails imply that unless CS complies with the appellant's directions, WS risks criminal sanction, and CS risks law society discipline. They are, on their face, bullying and intimidating.

[45] The appellant defends his e-mails by asserting his confidence in the falsity of WS's affidavits, and his belief that CS had an ethical obligation to investigate and verify the accuracy of the information provided by WS. As the appellant put it in one of his e-mails, "I believe [WS] has lied under oath in the affidavit you commissioned and that you made no reasonable effort to check whether he was telling the truth or not."

[46] We disagree. The appellant's belief that WS had "lied" arose from his own recollection about the condition of the property when his daughter and her partner moved in, and from information they had provided to him. Assessment of conflicting evidence was a matter for the trier of fact. The appellant's reliance on his personal knowledge, and his close personal relationship with his clients and their situation, undermines the reliability of his beliefs and, moreover, calls into question the propriety of his decision to act as their lawyer in this matter: Code of Conduct, Rule 3.4-12, Commentary 2, Rule 5.2-1; *Terrigno v Weal*, 2026 ABCA 300 at paras 7-8; *Zaldin v Zaldin*, 2014 ONSC 6504 at para 23.

[47] Further, while a lawyer owes a duty not to offer into evidence an affidavit he knows is false or misleading, that does not mean he has a duty to investigate to determine whether what his client states is true: *Martel v Andrew*, 2005 ABCA 63 at para 12. In his evidence before the Hearing Committee, the appellant acknowledged the lawyer's ethical obligations prohibit a lawyer from *knowingly* providing false information to the Court: Code of Conduct, Rule 5.1-2(g)-(i). As CS explained when cross-examined by the appellant, he had no reason to disbelieve his client:

I had multiple conversations with both Mr. [WS] and his daughter about this matter. So -- and again, you're loading these questions with words like, "you didn't bother to check". No. Again, I find that offensive. I am not not bothering to check. I did what I always do. I have to rely upon my client's evidence. I had no reason to disbelieve it was [true]. Maybe because of your personal involvement you knew that to be untrue, but unlike you, I was arms length with my clients, and so I wouldn't have firsthand knowledge.

[48] In short, the record amply supports the majority of the Appeal Panel's assessment that the facts and context of the appellant's communications to CS show those communications were uncivil and discourteous, an effort to bully and intimidate CS rather than a good faith and reasonable effort to advance the appellant's client's cause. It made no reviewable error in confirming the Hearing Committee's decision that the appellant was guilty of conduct deserving of sanction by failing to act with courtesy and civility.

[49] This ground of appeal is dismissed.

## VI. Failure to Respond Fully and Substantively

### *Background*

[50] During the course of its investigation, the Law Society considered video evidence of the altercation and sign removal outside the rental property and asked the appellant to confirm he was the person seen in the video. While ultimately acknowledging he had removed the realtor's sign, the appellant repeatedly refused to acknowledge being the person in the video. He took the position – one he maintains through to this appeal – that it is cognitively impossible for a person to recognize themselves in a video: “although you might think that you recognize yourself in a video ... you in fact do not, because you don't actually know what you look like... there is no actual way that a human can recognize his own face”.

[51] The appellant also justified his refusal to answer questions on the basis that he removed the sign and had the altercation with WS in his private capacity, not as a lawyer, such that the Law Society had no authority to ask him questions about it, and he had no obligation to answer any questions that it did ask. He told conduct counsel for the Law Society, “Neither the Act nor the Code supports requiring a lawyer to answer any question that springs to the mind of the Law Society staff”.

[52] The Hearing Committee found the appellant's responses were “evasive and non-cooperative” and he was “not honest, open or helpful”. It stated, “While Mr. Smith may think [of] his evasiveness or non-cooperation as something trivial, these actions impact a professional regulatory body's ability to function”. It concluded the appellant's conduct in failing to respond fully and substantively to inquiries from the Law Society was worthy of sanction: *Hearing Committee Decision* at paras 120-124.

[53] The Appeal Panel unanimously upheld the Hearing Committee's conclusion. It explained the Law Society has authority to discipline a lawyer whether or not the lawyer's conduct “relates to the member's practice as a barrister and solicitor” but that, in this case, the appellant's conduct “certainly *did* arise in the course of practice” because he “was acting as the tenants' lawyer”. It thus rejected the position that the Law Society investigation “was being made into his ‘private life’”: *Appeal Panel Decision* at para 39.

[54] The Appeal Panel described the appellant's behaviour as “curt, argumentative, and obfuscating. He did not respond ‘completely,’ ‘fully and substantively,’ or ‘cooperate fully’”. Often, he refused to respond at all, even to basic questions”: *Appeal Panel Decision* at para 29. There was no reasonable basis for the appellant to refuse to identify himself, when he is “depicted in crisp resolution, in broad daylight, on his clients' lawn”: *Appeal Panel Decision* at para 31. The Appeal Panel characterized the appellant's position that people cannot recognize themselves as “unserious... at best, disingenuous and, at worst, an exercise in bad faith obstruction. Lawyers owe the Law Society frankness and honesty, not sophistry. ... Lawyers are not entitled to manufacture metaphysical doubt to avoid regulatory oversight”: *Appeal Panel Decision* at para 47.

### *Analysis*

[55] The appellant argues the Hearing Committee and Appeal Panel erred by failing to acknowledge the Law Society's questions about the video evidence exceeded its authority, and by failing to recognize that his responses to the questions were not improper. In his view, as he explained in oral argument, a different understanding of a scientific question ought not to be characterized as non-responsive.

[56] Both these arguments challenge factual findings: that the investigation targeted the appellant's professional activities, and that his answers to questions were non-responsive. Yet, the decisions below were grounded in the record and properly explained. The Appeal Panel identified the evidence supporting its conclusion that the appellant's conduct in relation to the altercation and sign removal related to his retainer by the tenants. It reviewed and assessed the appellant's responses to the investigation and reached a conclusion available on the record before it – that the Hearing Committee did not err in characterizing the appellant's conduct as obstructive given that conduct was "at best disingenuous and, at worst, an exercise in bad faith obstruction".

[57] The appellant has not shown a palpable and overriding error in the assessment of these matters. This ground of appeal is dismissed.

## **VII. Costs**

### *Background*

[58] After considering prior decisions and the principles relevant to sanctions, the Hearing Committee imposed a reprimand and fine of \$5,000, being \$2,500 for each guilty citation: *Hearing Committee Sanctions* at para 33.

[59] The Law Society sought costs in full of \$33,504.68 based on an estimated statement of costs prepared in accordance with Rule 99(1) of The Rules of the Law Society of Alberta. It cited a number of factors in support of its request for a costs award, including: the two and a half day hearing; the two preliminary applications; the appellant's refusal to agree to any exhibits, a statement of uncontested facts or the provision of documents or authorities prior to the hearing; his objection to video identification evidence at the hearing; and, his evasiveness and refusal to respond to Law Society questions. The appellant argued no costs should be awarded, as a costs order would constitute a penalty.

[60] The Hearing Committee accepted the Law Society's submissions on why costs were appropriate in this case. It found the statement of costs submitted by the Law Society was reasonable, noting counsel's fees were based on a \$125 per hour billable rate, which was significantly below the market rate. Because the appellant was found guilty of only two of the three citations, the Appeal Panel ordered him to pay \$20,000 which was less than two thirds of the estimated statement of costs: *Hearing Committee Sanctions* at paras 34-37.

[61] The Appeal Panel unanimously upheld the sanction and costs award. It cited the appellant’s “obstreperous non-cooperation, and the absurdity of his underlying rationale”: *Appeal Panel Decision* at para 72. The appellant engaged in “prolonged hearing misconduct” and was “obstinate” in advancing a position – that human cognition prevented him from identifying himself in a clear video – that was “baseless to the point of being unprofessional”: *Appeal Panel Decision* at para 73. The Appeal Panel also noted the appellant’s “insistent, digressive cross-examination” and his “choice of a let-me-tell-you-a-story method of submission” that increased the length of the hearing: *Appeal Panel Decision* at para 73. The Appeal Panel was satisfied the statement of costs submitted by the Law Society were adequately scrutinized by the Hearing Committee: *Appeal Panel Decision* at para 73.

[62] In relation to the costs of the appeal, the Appeal Panel considered whether a potential award “would effectively amount to a penalty”: *Appeal Panel Costs* at para 8. It considered the parties’ relative success, the importance of the issues, and the reasonableness of costs incurred by the Law Society on appeal: *Appeal Panel Costs* at para 9-12. It held “the most important factor in setting the costs of this appeal is Mr. Smith’s conduct during it”, which it viewed as increasing the costs, in particular his argument that a person cannot recognize themselves in a clear video, which it described as “so frivolous as to be unbecoming a member of the bar”: *Appeal Panel Costs* at para 14.

[63] The Appeal Panel reviewed the Law Society’s estimated statement of costs of the appeal for reasonableness, and reduced the hours claimed. It ultimately awarded \$5,500 in costs and disbursements, which was approximately 80% of the reduced statement of costs: *Appeal Panel Costs* at paras 15-16.

### *Analysis*

[64] After publication of the decisions below, this Court issued its decision in *Charkhandeh*, which sets out the principles applicable to the assessment of costs in professional discipline matters.

[65] While *Charkhandeh* arose in the context of the *Health Professions Act*, RSA 2000, c H-7, its guidance applies generally to professional discipline cases in the province, albeit with attention to the specific statutory context within which the professional discipline occurs. Here, the basic framework for costs awards under the *Legal Profession Act* is similar to that of the *Health Professions Act* as described in *Charkhandeh*: the granting of costs is discretionary, not presumptive, mandatory or automatic; the expenses that can be included are broadly defined; there is no external review of costs except by an appeal to this Court; costs can be awarded against the professional, but not against the regulator; and there are enforcement mechanisms to make sure costs are paid: *Charkhandeh* at para 133; *Legal Profession Act*, ss 49(2)(c), 52(1)(g), 52(2), 72(2)(c), 72(5), 77(1)(c); The Rules of the Law Society of Alberta, Rules 99, 102.

[66] *Charkhandeh* held there is no presumption for or against a costs order. In deciding whether to award costs, and how much, the disciplinary body may consider a wide range of factors, including the number of allegations and overall success, the length and extent of the hearing, and the conduct of the parties at the hearing, including “unreasonable or inefficient litigation conduct of either party”: *Charkhandeh* at paras 136, 137, 140, 142. Because costs relate to the hearing process itself, the seriousness of the charge is not *per se* relevant: *Charkhandeh* at paras 138-140. Any costs order must be reasonable and proportionate; “[f]ull indemnity is neither the starting point nor the default award”: *Charkhandeh* at paras 144-145. The disciplinary body must assess whether claimed expenses were “reasonably incurred”: *Charkhandeh* at para 146. Costs may include legal fees, but those fees should ordinarily be limited to one lawyer, of mid-level seniority, at appropriate rates: *Charkhandeh* at para 153. A costs award must not constitute an unduly onerous or “crushing” burden on the professional: *Charkhandeh* at para 147.

[67] In substance, the Hearing Committee complied with the direction of this Court in *Charkhandeh*. It reviewed the expenses submitted by the Law Society in its estimated statement of costs for reasonableness, took into account the appellant’s partial success, and relied on the appellant’s conduct in extending the length of the hearing, rather than on the seriousness of the offences: *Hearing Committee Sanctions* at paras 14, 35-37. In affirming the decision, the Appeal Panel referred to the seriousness of the appellant’s offences, but largely in relation to his “obstreperous non-cooperation”, which spoke directly to how the appellant’s conduct lengthened and increased the complexity of the proceeding, a factor *Charkhandeh* recognizes as relevant. The Appeal Panel properly focused on what it referred to as the appellant’s “prolonged hearing misconduct”.

[68] In its decision about the costs of the appeal itself, the Appeal Panel similarly relied largely on the conduct of the appellant in lengthening the appeal. It also scrutinized and adjusted the statement of costs submitted by the Law Society.

[69] Given the focus of its analysis, we are satisfied the Appeal Panel made no reviewable error in its approach to the assessment of costs either with respect to its award of costs for the appeal or its review of the costs awarded by the Hearing Committee.

[70] The appellant argues both the Hearing Committee and Appeal Panel erred in finding his conduct had the effect of lengthening the proceedings and making them more complex. However, the factual findings made by both the Hearing Committee and Appeal Panel in this regard are amply supported by the record and entitled to deference.

[71] The appellant also argues it was an error for the Hearing Committee to include costs of the investigation in the costs award, because costs of the “investigation” are not costs of the “proceedings”. He argues “proceedings” can “only mean the hearing itself”.

[72] This argument is inconsistent with the terms of the *Legal Profession Act*. While it is true section 72(2)(c) contemplates an order requiring the payment of all or part of the “costs of the

proceedings”, the proceedings include the investigation. Section 49(3)(a) provides that “proceedings” commence “when a complaint respecting the conduct is received”, which is – as in this case – prior to the investigation. Moreover, section 49(2)(c) defines “costs of proceedings” to mean “the costs determined in accordance with the rules as being attributable to those proceedings”. Rule 99(1)(a) of the Rules of the Law Society of Alberta identifies costs associated with the investigation as costs “incurred in connection with the proceedings”.

[73] A professional should not have to pay all or a significant portion of the “background expenses” generally associated with conducting investigations or with the infrastructure for conducting hearings (*Charkhandeh* at para 150); however, the appellant has not identified any costs of this type included in the statements of costs submitted by the Law Society or relied upon by the Hearing Committee or Appeal Panel. He has also not identified any other costs inconsistent with the specific guidelines set out by this Court in *Charkhandeh*.

[74] This ground of appeal is dismissed.

### **VIII. Conclusion**

[75] The decisions of the Appeal Panel are confirmed, and the appeal is dismissed. Rule 9.4(2)(c) is invoked, and the Court will prepare the resulting order.

Appeal heard on September 10, 2026

Memorandum filed at Calgary, Alberta  
this 29th day of September, 2026

---

Authorized to sign for: Antonio J.A.

---

Woolley J.A.

---

Shaner J.A.

**Appearances:**

S.L. Hunka  
for the Respondent

Appellant C.M. Smith