On judicial review from a decision of The Law Society of Manitoba and the Complaints Review Commissioner

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Docket: CI 25-01-51972
(Winnipeg Centre)
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COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

FROZAN SARWARY,	)	Frozan Sarwary
	)	on their own behalf
applicant,	)	
	)	
- and -	)	Robert J. Walichnowski
	)	for the respondents
THE LAW SOCIETY OF MANITOBA AND	)	
THE COMPLAINTS REVIEW COMMISSIONER,	)	
	)	Judgment Delivered:
respondents.	)	August 5, 2026

KOTLER J.

INTRODUCTION

[1] The applicant seeks judicial review of two administrative decisions arising out of a complaint she made against her former lawyer to The Law Society of Manitoba ("the Law Society"). The first decision – to address her complaint by way of a reminder letter to the lawyer – was made by the Law Society's complaints resolution department. The second decision, which affirmed the first, was made by the Law Society's Complaints Review Commissioner (the "Commissioner"). The applicant asks that I quash both decisions and remit the matter for fresh investigation by a new panel.

FACTS

[2] In August of 2023, the applicant retained a lawyer to assist her in contentious divorce proceedings. Approximately one year later, she filed a complaint with the Law Society alleging a number of failures on the part of the lawyer, including:

- Failure to act in a timely manner, resulting in personal and financial consequences for the applicant and her children, including risks to their safety;
- Encouragement to sign an inappropriate "limited" retainer agreement;
- Negligence, largely consisting of the aforementioned failure to act;
- Discrimination on the basis of disability;
- Refusal to provide an itemized statement of account; and
- Inappropriate withdrawal of retainer trust funds without consent.

[3] Pursuant to Rule 5-64(3) of the Law Society of Manitoba Rules, adopted by the Benchers of the Law Society on October 31, 2002 (the "Rules"), the lawyer provided a written response, which was provided to the applicant. He acknowledged that the preparation of certain documents had taken an unusual amount of time but attributed some of this delay to disagreements with the applicant over what information to include. He also admitted having failed to reply to two of the applicant's messages during this period.

[4] The Law Society investigated the complaint. On March 31, 2025, the director of the complaints resolution department wrote to the parties advising that pursuant to Law Society Rule 5-66(b), he was issuing a formal reminder to the lawyer in relation to his

obligations to provide thorough and timely service as per Rule 3.2-1 of the Code of Professional Conduct, adopted by the Benchers of the Law Society on December 29, 2010, effective January 1, 2011. He effectively dismissed the remainder of the complaint, stating that:

- The scope of the applicant's retainer was extensive and not inappropriate;
- The complaints resolution department did not have jurisdiction to determine whether the lawyer had been negligent;
- The evidence did not suggest that the lawyer had discriminated against the applicant;
- The lawyer's statements of account had been sufficiently itemized;
- Withdrawals from the lawyer's trust account had followed the applicable procedure; and
- The lawyer's response to the complaint had not been inappropriate.

[5] The applicant requested a review of the complaints resolution department's decision by the Commissioner, an independent member of the public. On April 28, 2025, the results of this review were provided to the applicant by way of letter. The Commissioner indicated that he had reviewed the case file, which included all documents provided with the original complaint as well as additional submissions that had been made to the Law Society. He dealt with each of the issues addressed by the complaints resolution department, stating every time that he agreed with the conclusion it had drawn. Accordingly, he advised the applicant that no further action would be taken.

[6] On May 28, 2025, the applicant filed a notice of application for judicial review, asking the court to set aside both the decision of the complaints resolution department and that of the Commissioner. Her grounds are discussed below.

POINTS IN ISSUE

[7] The applicant raises a number of concerns with the treatment of her complaint. Most notably, she argues that:

- The respondents failed to properly consider her former lawyer's breach of fiduciary duty, constructive obstruction of access to legal remedies and dangerous inaction;
- The respondents failed to correct false and defamatory information provided by the lawyer during the investigation of the complaint; and
- The respondents failed to discharge their statutory and public interest duties, including their obligations to protect vulnerable individuals, ensure ethical practice and uphold public confidence in the legal profession.

[8] She says by failing to address these issues, the respondents acted inconsistently with the public protection purpose ascribed to the Law Society by s. 3(1) of ***The Legal Profession Act***, C.C.S.M. c. L107 (the "***Act***"). She also alleges violations of several provisions of the ***Charter of Rights and Freedoms*** (the "***Charter***") including ss. 6, 7, 15 and 28. While her application brief stated that she was not seeking a constitutional determination, in oral argument she indicated that to the extent the provisions of the ***Act*** permitted the respondents' actions, she seeks a declaration that they are of no force and effect. Finally, she argues that the respondents' decisions were unreasonable insofar as

they failed to engage with key evidence or apply the governing legal framework (see ***Canada (Minister of Citizenship and Immigration) v. Vavilov***, 2019 SCC 65, at paras. 108 and 126).

[9] The respondents oppose the application on several grounds, including the applicant's standing to seek relief. For the reasons that follow, I agree that this issue requires me to dismiss the application.

ANALYSIS

The Governing Statutory Scheme

[10] The practice of law in Manitoba is self-governed. Section 3(2)(b) of the ***Act*** gives the Law Society the mandate to "regulate the practice of law in Manitoba". Pursuant to s. 3(1) of the ***Act***, this power is granted so that the Law Society can "uphold and protect the public interest in the delivery of legal services with competence, integrity and independence".

[11] The governing body of the Law Society is composed of elected and appointed members known as "benchers". Section 66 of the ***Act*** requires the benchers to establish processes for (a) receiving and responding to complaints concerning the conduct or competence of lawyers, and (b) investigating lawyers' conduct, competence or practice. Pursuant to ss. 64(1) and 65 of the ***Act***, the Law Society has disciplinary jurisdiction over lawyers in respect of their conduct in Manitoba and may make rules defining professional misconduct and establishing consequences for its commission. Further to that, s. 70 requires the benchers to make rules establishing a discipline committee and defining its

duties and powers. Sections 72(1) and 72(2) grant this committee broad discretion in determining how to address a finding of incompetence or professional misconduct.

[12] The Law Society has used this grant of authority to adopt the Rules which expand on the framework set out in the ***Act***. Rule 5-61 provides that the chief executive officer must "consider" every written complaint received about a member and may treat as a complaint information that comes to the attention of the Law Society about a lawyer's conduct or competence, even if a formal complaint has not been made. Rule 5-62(1) allows an initial screening to eliminate complaints that do not "merit investigation" or fall outside the jurisdiction of the Law Society. Otherwise, complaints must be investigated.

[13] Pursuant to Rule 5-64(7), this investigation is initially carried out by Law Society staff in the complaints resolution department who send a letter to the lawyer whose conduct is the subject of the complaint. A timely response is mandatory and is disclosed to the complainant. Pursuant to Rule 5-66, the complaints resolution department may then deal with the complaint in a number of ways:

> **5-66** After investigating a complaint, the [complaints resolution department] may:
>
> (a) <u>take no further action</u> if [the department] is satisfied that;
> (i) the complaint is without substance or its substance cannot be proved;
> (ii) the member has provided a satisfactory explanation; or
> (iii) the complaint has been satisfactorily resolved through informal means;
>
> (b) <u>send a letter to the member reminding the member of his or her obligations under the Act, rules or code</u>;
>
> (c) send a letter to the member recommending that a certain course of action be taken;
>
> (d) refer the complaint to the complaints investigation committee for its consideration;

(e) direct that a charge be laid against the member when the member has:
(i) failed to respond to communication from the society or provide a full and substantive response to questions raised in the communication; or
(ii) breached any condition or restriction imposed on the member by the society or any undertaking given to the society;

(f) require the member to appear personally before the complaints investigation committee to further the investigation of a complaint when the member has:
(i) failed to respond to communication from the society or provide a full and substantive response to questions raised in the communication; or
(ii) breached any condition or restriction imposed on the member by the society or any undertaking given to the society;

(g) recommend that a member obtain healthcare treatment.

[emphasis added]

[14] The "complaints investigation committee" referred to in Rule 5-66(d) is a group of benchers who, pursuant to Rule 5-70(1), consider complaints referred to them, suggest the development of programs to help lawyers practice competently and recommend remedial measures to lawyers who do not meet accepted standards in the practice of law. Like the complaints resolution department, the complaints investigation committee has a number of options after considering a complaint. Pursuant to Rule 5-74(1), it may:

(a) decide to take no further action;

(b) send a letter to the member reminding the member of his or her obligations under the Act, rules or code;

(c) send a letter to the member recommending that a certain course of action be taken;

(d) make recommendations to the member under rule 5-83, which, if carried out, will improve the member's practice of law;

(e) decide to hold consideration of the complaint in abeyance until any related proceedings are concluded or until such time as the committee decides to resume consideration of the complaint;

(f) issue a formal caution to the member under rule 5-77;

(g) direct that a charge be laid against the member under rule 5-78(1);

(h) accept a written undertaking from the member under rule 5-79;

(i) impose restrictions on the member's practice of law or suspend him or her under subsection 68(c)(1) of the Act; [Note: these are solely interim measures following the laying of a charge.]

(j) order a practice review of the member's practice under rule 5-82(1);

(k) decide to hold disposition of the complaint in abeyance until the member has completed any action plan recommended under rule 5-83;

(l) suspend or impose restrictions on the permit of a member's law corporation under subsection 37(1) of the Act;

(m) recommend that the member obtain healthcare treatment.

[emphasis added]

[15] Where either the complaints resolution department or the complaints investigation committee determine that a formal charge should be laid, Rules 5-93 *et seq*. provide for adversarial disciplinary hearings in which the Law Society prosecutes the charge and the lawyer is entitled to be represented by counsel. A finding of incompetence or misconduct opens the door to significant sanctions under ss. 72 and 73 of the ***Act***, including restricting the lawyer's ability to practice or even disbarment.

[16] In this case, the applicant's complaint survived the initial screen under Rule 5- 62(1). The complaints resolution department sought a response from the applicant's former lawyer and then allowed additional reply submissions from the applicant. After

considering this material, it decided to deal with part of the complaint under Rule 5-66(b), sending the lawyer a formal reminder letter in relation to his obligations, and to take no action in relation to the remainder of the complaint. Pursuant to Rule 5-67, it advised the complainant of her ability to apply for a review of its decision by the Commissioner under Rule 5-63.

[17] The Commissioner is appointed under the Rules but, pursuant to Rule 5-63(1), is independent of the Law Society and cannot be "a member of the society, a lawyer or a bencher". The Commissioner can review "all files, records and documents obtained, collected or produced" by the complaints resolution department and in a case like the applicant's must either confirm the decision of the complaints resolution department or direct the complaints resolution department to refer the complaint to the complaints investigation committee for consideration (see Rules 5-63(3)(b), 5-63(7) and 5-63(8)(c)). As noted above, in this case, the Commissioner confirmed the decision.

[18] Finally, Rule 5-63(10) provides that subject to a narrow exception that does not apply in this case, decisions of the Commissioner are "final and not subject to further review".

Standing

[19] The question of standing determines who can ask the court to decide an issue. It plays an important role in the efficient and orderly administration of justice. As Cromwell J. observed in ***Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society***, 2012 SCC 45:

> [1] … Limitations on standing are necessary in order to ensure that courts do not become hopelessly overburdened with marginal or redundant cases, to screen

> out the mere 'busybody' litigant, to ensure that courts have the benefit of contending points of view of those most directly affected and to ensure that courts play their proper role within our democratic system of government. …

[20] The respondents argue that the applicant is not a party to their proceedings concerning her prior lawyer and thus lacks standing to pursue judicial review. Their decisions do not affect her legal rights – indeed, they are unable to draw legal conclusions that might be construed as determinations of those rights. On the contrary, disciplinary proceedings are a matter between the regulator and the lawyer whose conduct is at issue. This is consistent with the Law Society's role, which is not to vindicate the interests of individual complainants but to protect the public interest in general terms.

[21] The applicant argues that she is a member of the public the Law Society is supposed to protect and was affected by its alleged failure to do so. She also notes that as a practical matter, if complainants are not granted standing it is unlikely that a claim like hers will ever reach the court as a lawyer is unlikely to seek review of a decision not to discipline. Finally, she argues that she has suffered individual consequences from the respondents' decisions as they have been filed by her former lawyer in a separate proceeding in which she seeks assessment of his fees.

Does the Applicant Have Standing to Challenge the Respondents' Decisions?

[22] Notwithstanding her able argument, the applicant faces strong jurisprudential headwinds in her effort to seek standing. As the Alberta Court of Appeal recently reaffirmed in ***Wang v. Law Society of Alberta***, 2026 ABCA 62, "[a] complainant in professional regulatory proceedings is not a party to those proceedings, unless made one

by the governing legislation." This is because "[i]t is the role of the regulator, and not the complainant, to ensure that professional standards are met" (at para. 8).

[23] As such, the court continued, "[t]he complainant has no standing to seek judicial review of the merits of the regulator's decision, <u>including a decision not to proceed with disciplinary action</u>" (at para. 9, emphasis added). While complainants do have a form of standing, it is limited to challenging the fairness of the procedures the regulator followed in reaching its decision. The substance of the decision cannot be reviewed.

[24] The Nova Scotia Supreme Court reached the same conclusion in ***Dempsey v. Nova Scotia Barristers' Society***, 2026 NSSC 109. In that case, as here, the applicant had unsuccessfully complained about a lawyer's conduct. Following the dismissal of his complaint, the applicant requested a review by the "Complaints Review Committee," which confirmed the society's decision. The applicant then sought judicial review. Like the Alberta Court of Appeal, Norton J. held that absent legislative provision, complainants are not parties to the disciplinary process and have no special legal interest in the proceedings. "Judicial review," he wrote, "is therefore limited to procedural fairness only, and only to the minimal degree of fairness owed in these circumstances" (at para. 16).

[25] As Brothers J. confirmed in ***Brinton v. The Judicial Council of Nova Scotia et al.***, 2024 NSSC 397, this precludes review of the reasonableness of a decision:

> [73] Courts across the country have held that "[u]nless a statute expressly provides otherwise, <u>a complainant in a professional discipline case has no standing to challenge the substantive reasonableness of a decision not to refer a complaint to a discipline hearing</u>." (*Fuchigami v. Ontario College of Teachers*, 2024 ONSC 106, para. 14)
>
> [emphasis added]

[26] Other attempts by complainants to challenge law societies' handling of disciplinary matters have met the same fate (see ***Watson v. Nova Scotia Barristers' Society***, 2025 NSSC 332; ***Davidoff v. Law Society of Alberta***, 2014 ABQB 370; ***Howe v. Nova Scotia Barristers' Society***, 2026 NSSC 52; ***McKinnon v. Law Society of the NWT***, 2022 NWTSC 14; and ***Del Valle v. Law Society***, 2017 NWTSC 29).

[27] These decisions form part of a broad consensus denying standing to complainants in professional disciplinary matters (see ***Friends of the Old Man River Society v. Association of Professional Engineers, Geologists and Geophysicists of Alberta***, 2001 ABCA 107, leave to appeal refused [2001] SCCA No. 366; ***Cameron v. The Association of Professional Engineers and Geoscientists of Saskatchewan***, 2022 SKCA 118; ***Allen v. College of Dental Surgeons of British Columbia***, 2007 BCCA 75; ***Mitten v. College of Alberta Psychologists***, 2010 ABCA 159; ***Fairchild v. Bligh***, 2015 NUCJ 17; and ***Robichaud v. College of Registered Nurses of Nova Scotia***, 2011 NSSC 379). In all these cases, standing was allowed only in relation to the narrow issue of procedural fairness.

[28] As Gerecke J. acknowledged in ***Fineday v. Public Complaints Commission and The Chief of Police of The Saskatoon Police Service***, 2024 SKKB 6, this restriction can appear unfair to complainants, who understandably feel that they have an interest in proceedings that arise as a result of their own alleged mistreatment:

> [39] … a complainant is treated by the law as external to the complaint. From the complainant's own point of view, that may seem wrong or even offensive. The issue about which they complain is something that happened to <u>them</u>.
>
> [emphasis in original]

[29] As he explained, however, screening mechanisms like Rule 5-66(b) play an important role in preserving scarce administrative and quasi-judicial resources:

> [44] … A quasi-judicial hearing consumes considerable resources. Legal counsel often become involved. Entry into the quasi-judicial phase entails evidence, often taken under oath. Beyond that stage there may be rights of appeal or judicial review … If adverse findings are made against a member, real consequences generally flow.
>
> [45] <u>Before arriving at that stage, a screening process enhances efficiency and allows prioritization of often-scarce resources</u>. …
>
> [emphasis added]

[30] Regulatory bodies like law societies are tasked with deciding when it is appropriate to employ these screening mechanisms. While they make these decisions in the public interest, this does not mean that individual members of the public – even the complainants whose experiences gave rise to the decision – are entitled to challenge them. Section 3(1) of the ***Act***, like analogous provisions in similar legislation, speaks to a general duty to protect the public, not one enforceable by individual claimants. As the Federal Court held in ***Douglas v. Canada (Attorney General)***, 2013 FC 451:

> [35] … the investigation process contemplated under … the *Judges Act* is concerned with the broader public interest in protecting public confidence in the administration of justice. It transcends the interests of the individual complainant. … <u>The complainant has no individual legal right … in the outcome of the inquiry process</u>.
>
> [emphasis added]

[31] This does not minimize the importance of the values cited by the applicant. People place significant trust in their lawyers, often at times in their lives when they and their loved ones are especially vulnerable. They rightfully expect that those lawyers will fulfill their responsibilities diligently pursuant to the rules that govern their conduct. And they

rightfully expect that when those rules are not followed, the regulator will respond appropriately to ensure that public trust in the provision of legal services is maintained.

[32] However, these are issues for the benchers who supervise law society staff and, ultimately, for the legislators who choose to grant the privilege of self-regulation to the legal profession. Having weighed the applicant's particular circumstances, I am unable to distinguish her case from the many decisions discussed above. Absent a clear legislative indication to the contrary – which is not present here – individual complainants like her simply do not have standing to challenge law societies' disciplinary decisions *via* judicial review, except as discussed above.

[33] This conclusion is not changed by the fact that the respondents' decision letters have been filed in fee assessment proceedings by the applicant's former lawyer. As an initial matter, it is unclear what inferences, if any, they are intended to support – the reasonableness of the lawyer's fees is a separate question from whether he committed misconduct or what the penalty should have been if he did. Moreover, these parallel proceedings do not alter the fundamental nature of the relationships here – the disciplinary process is a matter between the lawyer and the regulator, not the lawyer, the regulator and the client. The applicant is not a party to the process and does not have standing to challenge it.

[34] I have considered the possibility of public interest standing, particularly given the applicant's observation that a lawyer is unlikely to appeal lenient treatment of his or her own misconduct. In ***Downtown Eastside Sex Workers United***, Cromwell J. observed that this generally involves an analysis of three factors: (i) whether the case raises a

"serious justiciable issue," (ii) whether the party bringing the action has a "real stake or genuine interest" in the outcome, and (iii) whether the proposed suit is a "reasonable and effective means to bring the case to court" (at para. 2). These factors are weighed and assessed cumulatively in light of the purposes of limiting standing and the most effective way of serving them (at para. 20).

[35] A number of the cases referenced above have addressed public interest standing in the context of complainants seeking to review disciplinary decisions. In ***Fairchild***, Ouellette J. declined to grant standing, noting that the case did not raise broader questions about the relationship between branches of government or the role of the courts – it simply asked what penalty, if any, an individual judicial justice of the peace should have received (at para. 29). Similarly, in ***Del Valle***, the court held that:

> [36] This case does not raise a serious justiciable issue. The only issue under review is whether or not the actions of the Law Society were appropriate in the context of the complaint against the member. …

[36] In ***Coalition of Interested Advocates v. Nova Scotia (Judicial Council)***, 2026 NSSC 48, Keith J. reached the opposite conclusion, but on the basis of "specific, exceptional facts" involving "very serious judicial misconduct" (at paras. 28, 32, and 38). Without minimizing the applicant's complaints about her former lawyer, they do not rise to this "exceptional" level. Rather, like the complainant in ***Del Valle***, the applicant objects to the handling of her complaint against an individual lawyer in relation to an individual case. While the respondents' decisions were important, in my view they do not rise to the level of general public seriousness contemplated by ***Downtown Eastside***

Sex Workers United. They do not require public interest standing so they can be brought before the court.

[37] I also struggle to find that individual complainants like the applicant have a "real stake or genuine interest" in the disciplinary process – at least, not one that differentiates them from other similarly unsuccessful complainants. As Cromwell J. observed in ***Downtown Eastside Sex Workers United***, this factor "reflects the concern for conserving scarce judicial resources" and the risk of a multiplicity of actions (at paras. 26-28, and 43). If the applicant's concern about the sufficiency of Law Society disciplinary proceedings in her case constitutes an "interest" capable of grounding public interest standing, so, arguably, does that of every other concerned complainant. While courts have occasionally allowed an individual's well-established interest in a pressing societal issue to support public interest standing for a "test case" – see, *e.g.*, ***Minister of Justice (Can.) v. Borowski***, [1981] 2 S.C.R. 575 – this is a very different context. Again, the applicant's case is specific to her particular facts and does not raise an easily identifiable issue of public concern.

[38] This leaves the question of whether the proposed lawsuit represents a "reasonable and effective means" of bringing the issue to court. Had I reached different conclusions in relation to the other factors, I would have been satisfied that the applicant's case could effectively bring the necessary issues before the court for adjudication. Despite her self-represented status, the applicant presented her arguments in logical, articulate and well-researched terms. Weighing the three factors flexibly and purposively, however, I am unable to conclude that this is an appropriate case for public interest standing.

[39] What impact does this have on the applicant's claims? The applicant maintains that her concerns are strictly procedural. Her written materials insist, for example, that "[t]he harm alleged is not dissatisfaction with outcome, but deprivation of a lawful decision-making process" (reply motion brief of the applicant, filed February 2, 2026, at para. 28), and that she "does not ask this Court to reweigh evidence, substitute outcomes or assume the discipline function" (reply/supplemental motion brief of the applicant, filed March 13, 2026, at para. 8). That said, she purports to challenge the reasonableness of the respondents' decisions and the errors she alleges call for a substantive weighing of the evidence. After listing several provisions of the ***Act***, for example, her motion brief alleges that "[b]y failing to enforce these provisions, <u>or act upon credible evidence of … misconduct, discrimination and inaction</u>, the Respondents breached their … duties[.]" (motion brief of applicant filed October 24, 2025, at para. 7). It goes on to discuss individual allegations of misconduct on the part of her former lawyer, adding each time that the respondents' "failure to address" or "failure to recognize" the issue represents an actionable subject for judicial review.

[40] With respect, it is clear to me that the applicant's complaint is, for the most part, that the respondents did not take her former lawyer's conduct seriously enough and that they ought to have said and done more to address it. To make these arguments, she requires standing (see ***Wang***, at para. 10; and ***Howe***, at para. 29). Without it, her claims cannot proceed.

Review for Procedural Fairness

[41] As discussed above, complainants in disciplinary proceedings <u>do</u> possess limited standing to challenge the fairness of the procedures used to assess their claims. As Hood J. observed in ***Perry v. Nova Scotia Barristers' Society***, 2016 NSSC 121, "[a]s a participant in the complaints process, [the complainant] was entitled to be treated fairly" (at para. 32). To the extent that the applicant raises procedural fairness arguments, I can consider them.

[42] One such argument is her claim that by "tolerating" references in her former lawyer's written submission to obsessive-compulsive disorder, which she does not suffer from, and his omission of autism-spectrum disorder, which she does have, the respondents adopted these characterizations and thus raised a reasonable apprehension of bias. Further to that, she argues that by referring to her as a "difficult client" in its decision letter to her former lawyer, the complaints resolution department demonstrated "a lack of neutrality" and used "gender and disability-coded bias language" (motion brief, at para. 17).

[43] For context, the former lawyer's reference to obsessive-compulsive disorder appeared in his formal response to the applicant's complaint. He wrote that "[d]uring the course of our initial meeting, [the applicant] indicated to the writer that she suffered from, in her … words, extreme obsessive-compulsive disorder, which while … not formally diagnosed for most of [her relationship with her ex-husband], was her belief and drove most of what she did on a daily basis." He went on to describe an "extremely long and drawn out" process getting agreement on facts to include in an affidavit to file on the

applicant's behalf (see exhibit O of the affidavit of Frozan Sarwary, affirmed October 24, 2025, "Sarwary affidavit").

[44] The complaints resolution department did not comment directly on the lawyer's reference to obsessive-compulsive disorder but wrote in its decision letter to the lawyer: "We appreciate that [the applicant] was a difficult client and we do not discount her role in ultimately delaying the Affidavit's finalization. However, the delay in getting the draft to her was extended. Please be reminded of your obligations pursuant to Rule 3.2-1 of the Code." (Exhibit Q of the Sarwary affidavit).

[45] The Commissioner did not comment on the lawyer's reference either but agreed with the complaints resolution department's finding that the applicant had not been the victim of disability-based discrimination.

[46] With respect, nothing in these facts suggests bias on the part of either respondent. The complaints resolution department was referring to the applicant's role in the delay finalizing her affidavit, a fact which it accepted but found did not excuse the lawyer's failure to act in a timely manner. It said nothing about any reasons for the applicant's role in the delay, which is unsurprising – she was not the subject of the complaint and was not required to justify her behaviour. The Commissioner simply agreed with the complaint resolution department's assessment of the evidence. None of this, in my view, raises the spectre of discrimination based on disability or any other factor.

[47] As Hamilton J.A. observed in ***Ritchot v. Law Society of Manitoba***, 2010 MBCA 13, disciplinary bodies like the respondents benefit from a presumption of impartiality that is not easily displaced. While the applicant understandably would have liked them

to say more, this is not evidence that they acted out of bias. A reasonable and informed person would not find it more likely than not that they were unable to decide fairly (at paras. 35-40, and authorities cited therein).

[48] Turning to the adjudicative process itself, the leading authority remains the Supreme Court of Canada's decision in ***Baker v. Canada (Minister of Citizenship and Immigration)***, [1999] CanLII 699 (SCC). L'Heureux-Dubé J. held that:

> 22 … the purpose of the participatory rights contained within the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker.

[49] This involves analysis of several factors, including:

- The nature of the decision and the process followed in making it;
- The nature of the statutory scheme and the terms of the statute within which the tribunal operates;
- The importance of the decision to the individual or individuals affected;
- The legitimate expectations of the person challenging the decision; and
- The tribunal's choice of procedures, to the degree appropriate (***Baker*** at paras. 23-28).

[50] The respondents argue that the principle of collateral attack makes only the applicant's appeal to the Commissioner the proper subject of judicial review. I take the respondents' point – see, *e.g.*, ***Perry***, at para. 46 – but I find it helpful to consider that step in the context of the complaint process as a whole. To reiterate, that process includes:

- A complaint to the Law Society, which may be either in writing or by way of "information that comes to the attention of the society." (Rule 5-61.) Either way, there is no prescribed form and a complainant can set out their concerns and allegations as they wish;
- An initial screen to ensure that the complaint "merits investigation" and falls within the jurisdiction of the Law Society. There does not appear to be an ability to make submissions in relation to this screening process, but complainants whose complaints are not investigated are entitled to written reasons explaining the decision and instructions on how to have the decision reviewed by the Commissioner (Rule 5-62(1) and (2));
- Where, as occurred in this case, a complaint survives the initial screen, it is investigated by the complaints resolution department, which sends a letter to the lawyer whose conduct is in question. Pursuant to Rule 5-64(6), the complainant is entitled to a copy of the lawyer's response or a summary of it. While the Rules do not refer explicitly to a right to reply or add additional information, the complaints resolution department appears to retain the discretion to receive new information from the complainant – in this case, not only did it allow a reply from the applicant, it allowed her to effectively amend her complaint after receiving the lawyer's response;
- As noted above, the complaints resolution department may address a complaint in a number of ways under Rule 5-66. Pursuant to Rule 5-67, the complainant is entitled to written notice of the disposition and to

instructions on how to apply for a review of the decision by the Commissioner. This involves a written application which, again, has no prescribed form;

- Pursuant to Rule 5-63(7), the Commissioner may "review all files, records and documents obtained, collected or produced" by the complaints resolution department. There does not appear to be any right to make additional submissions to the Commissioner other than what is contained in the application for review. In this case, the Commissioner received the applicant's entire file which totaled over 1,000 pages;
- Following the review, the Commissioner must either confirm the decision of the complaints resolution department or direct that the complaint be investigated or referred for additional consideration. Rule 5-63(9) entitles the complainant to written reasons for the Commissioner's decision; and
- Finally, pursuant to Rule 5-63(10), the Commissioner's decision is final and not subject to further review.

[51] A number of cases have considered the requirements of procedural fairness in the context of disciplinary proceedings. In ***Howe***, the court weighed the ***Baker*** criteria and concluded that the procedural requirements were "on the low end". A complainant seeking review of a disciplinary decision was entitled to:

- The identity of the commissioner reviewing the decision;
- An independent and unbiased review of the decision; and

- Reasons for the commissioner's decision (see ***Howe***, at paras. 22-23, and 43).

[52] Courts reached similar conclusions in ***Perry*** at paras. 47-53; ***Aylward v. Law Society of Newfoundland and Labrador***, 2013 NLCA 68, at paras. 29-49; ***Dempsey***, at paras. 17-18; and ***Watson***, at paras. 23-32. I agree with the reasoning in these cases. The statutory scheme does not envision a broad role for complainants, particularly at the review stage. The Commissioner's role is narrow, limited to either affirming the complaint resolution department's decision or referring it for further consideration. It cannot affect a complainant's rights, nor can it award any remedy. In the circumstances, the procedural fairness requirements are, as the court concluded in ***Howe***, "on the low end".

[53] Applying the ***Howe*** requirements here, both the identity of the complaints resolution department investigator and the Commissioner were provided to the applicant. She knew throughout who was reviewing her complaint.

[54] I have dealt above with the issue of bias. Again, I see no evidence that the respondents did not deal objectively with the issues before them.

[55] The question of reasons is somewhat more complex. As noted above, the applicant is clearly unsatisfied with what she sees as the shallow nature of the respondents' reasons and their failure to address questions of fiduciary duty, her former lawyer's alleged endangerment of herself and her children and the sections of the ***Act*** and Rules governing his conduct.

[56] This argument was addressed directly in ***Howe***, in which the complainant alleged that the Nova Scotia Barristers' Society's Complaints Review Committee had failed to

provide reasons that "engaged with his central issues." Norton J. held that such complaints went to the substantive merits of the Review Committee's decision and thus required standing. As he put it, "to the extent [the complainant] asks this Court to consider whether the Decision adequately engages with certain issues, or provides sufficient justification on findings, this constitutes a substantive judicial review." (At para. 33, emphasis added).

[57] Rather, the procedural requirement of reasons speaks simply to the presence of an explanation for the conclusions in question. The qualitative sufficiency of that explanation is a merits issue for which standing is necessary. As the Supreme Court held in ***Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)***, 2011 SCC 62:

> It is true that the breach of a duty of procedural fairness is an error in law. Where there are no reasons in circumstances where they are required, there is nothing to review. But where, as here, there *are* reasons, there is no such breach. Any challenge to the reasoning/result of the decision should therefore be made within the reasonableness analysis.
>
> [Italics in original; underline added]

(See also ***Skjodt v. College of Physicians & Surgeons of Alberta***, 2024 ABCA 206, para. 8)

[58] Both the complaints resolution department and the Commissioner provided written reasons outlining the basis for their disposition of the applicant's complaint. The substantive merits of these reasons is beyond the scope of review for procedural fairness, the only review available to the applicant.

[59] Consistent with the cases discussed above, I find that the applicant's right to procedural fairness was met. She had two opportunities to present her case to the Law

Society – her initial complaint and a reply to the letter produced by her former lawyer – and one to present it to the Commissioner. Each time, her concerns were considered by an independent decision-maker who provided a written decision with reasons. I cannot say that the ***Baker*** criteria required more.

The Applicant's Constitutional Arguments

[60] As noted above, the applicant seeks a declaration that to the extent that the rules and provisions discussed above deny access to protection offered by various ***Charter*** provisions, they are of no force and effect. The respondents object on a number of grounds, including standing. They note that none of the applicant's rights, ***Charter*** or otherwise, are directly affected by the impugned decisions, particularly the Commissioner's decision.

[61] In my view, there is a more fundamental difficulty with the applicant's position. As noted above, in her motion brief, she wrote that she "does not seek a … constitutional determination within this proceeding" and that the ***Charter*** falls "outside the direct jurisdiction of this Honourable Court for the purposes of judicial review". She advised that she raised the ***Charter*** only "as [a] contextual and substantively relevant framework" to assist in the interpretation of the ***Act*** and the Rules (motion brief, at pp. 26-27).

[62] This motion brief was filed on October 24, 2025. A supplemental affidavit filed by the applicant on March 13, 2026, shows that the Government of Manitoba, who is responsible for the ***Act***, was provided with the applicant's materials and declined to intervene after reviewing them.

[63] With respect, I do not think it would be fair to address the constitutionality of the legislation in circumstances where its proponent was led to believe this would not be a subject of debate and chose not to intervene on that basis. It is one thing to argue that the applicant's ***Charter*** rights informed the respondents' duties under the ***Act*** and the Rules, it is another thing to argue that those rights require the invalidation of those provisions altogether. In accordance with the applicant's brief, I have applied the well- established principle that administrative decision-makers must exercise discretion in accordance with ***Charter*** values, but I am not prepared to go farther than that.

Conclusion

[64] The applicant does not have standing to challenge the substantive merits of the respondents' decisions. Nor can she challenge the adequacy of their reasons, as this also represents substantive review. She received the degree of procedural fairness appropriate to the process in question. With respect, there is no basis for the relief she seeks and her application must be dismissed.

[65] Again, none of this is intended to minimize the importance of the values raised by the applicant. Regulators are entrusted with significant responsibility to keep the public safe and encourage trust in the industries they supervise. It is essential that they exercise discretion with these principles in mind. But that alone does not make judicial review available where a complainant alleges that a regulator has fallen short.

COSTS

[66] In their written materials, the respondents requested a costs order. At the hearing, however, they indicated that they would consider their position following my decision. Should they still wish to pursue costs, the issue can be argued at the parties' convenience.

[67] In closing, I would like to thank both sides for their helpful submissions and constructive answers to my questions. I appreciate their assistance.

___________________________________ J.