Court File No.: 162-14

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

B E T W E E N:

JOSEPH PETER PAUL GROIA

Appellant
(Respondent on Cross-Appeal)

-and-

THE LAW SOCIETY OF UPPER CANADA

Respondent
(Appellant on Cross-Appeal)

-and-

THE ADVOCATES' SOCIETY, the CANADIAN CIVIL LIBERTIES ASSOCIATION, and the CRIMINAL LAWYERS' ASSOCIATION

Interveners

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November 28, 2014

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I. OVERVIEW

1. In the disciplinary proceeding against Mr. Groia, both the Hearing Panel and the Appeal Panel admitted into evidence the reasons for decision of Justices Campbell and Rosenberg relating to the Ontario Securities Commission's application to have Justice Hryn removed as the judge in the *Felderhof* proceeding (collectively, the "Prior Reasons").

2. They erred in doing so. These errors raise matters that are of significant concern to the Bench and the Bar.

3. It is fundamentally unfair to allow the comments of courts to be used against an advocate in subsequent disciplinary proceedings when the advocate had no opportunity to give evidence before the court, had no right of appeal, and where the client's interest in moving forward with the case and the advocate's interest in defending herself may come into significant conflict.

4. Moreover, as the courts have repeatedly recognised (including in the *Felderhof* proceedings), the Law Society has exclusive jurisdiction to determine matters of professional responsibility under the *Rules of Professional Conduct*. For the disciplinary panel to defer to the courts on this issue is to abandon its adjudicative responsibility – the independence of the bar means that the bar, not the courts, must determine matters of professional responsibility.

5. In the *Felderhof* proceeding, the OSC's application was heard initially in the Superior Court and on appeal by the Court of Appeal (collectively, the "Prior Proceedings").[1] On this appeal, there is no dispute that Mr. Groia was not a party to the Prior Proceedings, did not have the opportunity to give evidence, and had no right of appeal from either proceeding.

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[1] Both the Prior Proceedings and the Prior Reasons are extensively reviewed in the facta filed by the parties on this appeal. The Advocates' Society does not propose to review them again here.

6. In these circumstances, the Prior Reasons cannot be admitted as evidence against Mr. Groia. The test set out in the Supreme Court of Canada's decision in *British Columbia (AG) v. Malik* is not satisfied because Mr. Groia was not a "participant" in the Prior Proceedings. The Court need not consider weight, because the pre-conditions for admissibility are not satisfied in this case. If we are wrong on admissibility, then the Prior Reasons should be accorded very limited weight, pursuant to the *Malik* factors and for reasons set out later.

7. As a general matter, when determining the use that can be made of prior reasons in a subsequent proceeding, there are three distinct steps in the analysis. They are:

(i) Do the doctrines of *res judicata* or abuse of process apply, such that the prior reasons have preclusive effect and bind the parties and the Court in the subsequent proceeding?

This issue is governed by the Supreme Court's decisions in *Toronto (City) v. Canadian Union of Public Employees*[2] and *Penner v. Niagara (Regional Police Services Board)*.[3]

(ii) If the doctrines of *res judicata* and abuse of process do not apply, and the prior reasons therefore do not have preclusive effect, are the prior reasons nevertheless admissible as evidence in the subsequent proceeding?

This issue is governed by the Supreme Court of Canada's decision in *British Columbia (AG) v. Malik*.[4]

(iii) If the prior reasons are admissible, what weight should they be given?

This issue is also governed by the Supreme Court's decision in *Malik*.

8. On this appeal, only steps (ii) and (iii) – admissibility and weight – are at issue. Neither party takes the position on this appeal that the doctrines of *res judicata* or abuse of process

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[2] 2003 SCC 63 [*CUPE*].

[3] 2013 SCC 19 [*Penner*].

[4] 2011 SCC 18 [*Malik*].

should have been applied so as to prevent Mr. Groia from re-litigating the Prior Reasons.[5] This factum will therefore only address the issues of admissibility and weight.

II. ADMISSIBILITY OF THE PRIOR REASONS

9. The admissibility of the Prior Reasons is governed by the Supreme Court's decision in *Malik*.[6] The issue was whether the findings of a judge in a prior proceeding (to which only Mr. Malik was a party) were admissible as evidence a subsequent proceeding against Mr. Malik and certain members of his family who were not parties to the prior proceeding.

10. Justice Binnie made clear that prior reasons are only admissible if the parties to the subsequent proceeding were parties to or "participants in" the prior proceeding:

> ...a judgment in a prior civil or criminal case is admissible (if considered relevant by the chambers judge) as evidence in subsequent interlocutory proceedings as proof of its findings and conclusions, **provided the parties are the same or were themselves participants in the proceedings on similar or related issues.** It will be for that judge to assess its weight. The prejudiced party or parties will have an opportunity to lead evidence to contradict it or lessen its weight (unless prevented from doing so by the doctrines of *res judicata*, issue estoppel, or abuse of process).[7] [Emphasis added.]

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[5] The parties disagree about whether the Hearing Panel in fact applied the doctrine of abuse of process, which may in turn be relevant to the issue of whether the Appeal panel owed deference to the Hearing Panel's assessment of the weight of the Prior Reasons. However, neither party suggests that, if the Hearing Panel did apply the doctrine of abuse of process, it was correct to do so.

[6] Mr. Malik had previously brought a *Rowbotham* application to have his defence funded by the government of British Columbia and in that application a number of his family members testified on his behalf regarding the properties and financial affairs of the Malik family and its business. The application was unsuccessful, but the provincial government subsequently loaned money to Mr. Malik to fund his defence. When Mr. Malik failed to repay the loan, the government sought and was granted an *Anton Piller* order to search the business and residential properties of the Malik family. In granting the order, the motion judge relied on the findings and conclusions set out in the prior reasons dismissing the *Rowbotham* application.

[7] *Malik* at para. 7.

11. The basis for the Appeal Panel's conclusion that the Prior Reasons were admissible is not clear. The conclusion (without further explanation) is found at paragraph 164 of its reasons:

> In our view, the hearing panel correctly answered the first question and properly treated the reasons for decision of the reviewing courts as admissible evidence. ...

12. The Appeal Panel then goes on to discuss *Malik* and Rule 24.08(2) of the Law Society of Upper Canada's *Rules of Practice and Procedure*, but never directly explains the basis for its conclusion that the Prior Reasons were admissible as evidence or for what purpose they were being admitted.

13. It is submitted that the Appeal Panel's conclusion must be based on one of the following two propositions:

(i) The Prior Reasons were admissible pursuant to Rule 24.08(2) of the Law Society's *Rules of Practice and Procedure*; and/or

(ii) The Prior Reasons were admissible because the admissibility test set out in *Malik* was met in this case.

14. Each of these possibilities is addressed below.

1. The Law Society's Rules of Practice *and Procedure*

15. Rule 24.08(2) of the Law Society's *Rules of Practice and Procedure* states:

> At a hearing, the reasons for decision of an adjudicative body may be admitted as evidence.

16. This Rule is permissive ("may"), but does not indicate the circumstances in which it should be applied or the purposes for which reasons may be admitted. As a result, a hearing panel must exercise a principled discretion regarding the admissibility of prior reasons. Prior

reasons should not be admitted as a matter of course under Rule 24.08(2) without any principles guiding their admittance. That would be inconsistent with the discretionary language of the Rule.

17. However, neither the Hearing Panel[8] nor the Appeal Panel[9] in this case explicitly set out any factors to guide their discretion concerning the admissibility of the Prior Reasons. In its discussion of the admissibility and weight of the Prior Reasons, the Appeal Panel's only reference to Rule 24.08(2) is as follows:

> Rule 24.08(2) allows a hearing panel to admit "as evidence" the reasons for decision of an adjudicative body. This rule does not place any restrictions on when such reasons can be admitted into evidence, and leaves it open to the hearing panel to determine the weight to be given to such evidence. In other words, the panel admitting such evidence is free to apply the factors discussed in *Malik* in determining its weight.[10]

18. While this Court will ordinarily give deference to a Law Society appeal panel in the interpretation of the *Rules of Practice and Procedure*,[11] the Appeal Panel's failure to set out any principles to guide its discretion under Rule 24.08(2), or to give any reasons for the exercise of that discretion, amounts to an error of law that is reviewable on a correctness standard. Even if the appropriate standard is reasonableness, the failure to give reasons on these issues means the Appeal Panel's decision lacks both transparency and intelligibility and therefore cannot be said to be reasonable.[12]

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[8] *Law Society of Upper Canada v. Joseph Peter Paul Groia*, 2012 ONLSHP 0094; see also *Law Society of Upper Canada v. Joseph Peter Paul Groia*, 2010 ONLSHP 78 at para. 28.

[9] *Law Society of Upper Canada v. Joseph Peter Paul Groia*, 2013 ONLSAP 0041 [Appeal Decision].

[10] Appeal Decision at para. 171.

[11] *Igbinosun v. Law Society of Upper Canada*, [2008] O.J. No. 2848 at para. 9; aff'd 2009 ONCA 484.

[12] *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 47.

19. A statutory discretion does not confer an unfettered discretion. A hearing panel's exercise of the discretion set out in Rule 24.08(2) must be based on principles. As with the question of weight,[13] the question of admissibility under Rule 24.08(2) must also be guided by the principles set out in *Malik*, especially given that *Malik* makes explicit reference to disciplinary proceedings.[14]

2. The Test Set Out in *Malik*

20. As noted at paragraph 9, above, the Supreme Court held in *Malik* that prior reasons are only admissible in subsequent proceedings "provided the parties are the same or were themselves participants in the prior proceedings on similar or related issues."[15]

21. *Malik* also makes clear that relevance is a further precondition for admissibility, therefore whether a prior judgment is admissible depends on the purpose or purposes for which it is sought to be admitted:

> Whether or not a prior civil or criminal decision is admissible in trials on the merits - including administrative or disciplinary proceedings - will depend on the purpose for which the prior decision is put forward and the use sought to be made of its findings and conclusions. ...[16] [Emphasis added.]

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[13] Both parties to this appeal agree that the Appeal Panel correctly held that the principles in *Malik* should guide the determination of the weight to be accorded the Prior Reasons, if admitted (see Appeal Decision at para. 174.

[14] *Malik* at para. 46.

[15] *Malik* at para. 7.

[16] *Malik* at para. 46.

22. The fact that a prior judgment is admissible for one purpose does not determine whether it can be used for other purposes:

> The mere fact that the *Rowbotham* decision was properly before the chambers judge does not determine what use may properly be made of it.[17]

23. Malik therefore establishes two necessary requirements for the admissibility of a prior decision: (i) that the party against whom it is to be admitted was a party to or participant in the prior proceeding; and also (ii) that the prior decision is relevant to a matter at issue. Each of these will be considered in turn.

(i) Was Mr. Groia a Participant in the Prior Proceedings?

24. There is no dispute that Mr. Groia was not a party to the proceedings before Justices Campbell and Rosenberg. The Appeal Panel explicitly found that he was not a party and found that the Hearing Panel erred when it concluded that Mr. Groia was a party to those proceedings "as a matter of substance."[18] The Appeal Panel's conclusions in this regard are not criticised on this appeal.

25. The only question, then, is whether Mr. Groia is properly considered a "participant" in the Prior Proceedings for the purposes of the test set out in *Malik*.[19] There is no discussion in *Malik* of the scope of the term – no guidance is provided regarding what level of involvement is required to make someone a "participant" in a proceeding.

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[17] *Malik* at para. 39.

[18] Appeal Decision at paras. 196 and 174, respectively.

[19] The Appel Panel does not address this issue, apparently concluding the Prior Reasons are admissible without any consideration of the factors set out in *Malik* or whether Mr. Groia was a "participant" for the purposes of the test set out in *Malik*. This failure to is an error of law reviewable on a correctness standard and there are no findings to which this Court could give deference.

26. In *Malik* itself, the term "participant" referred to someone who had testified as a witness, had a direct stake in the outcome of the proceedings that aligned with that of a party (Mr. Malik), and whose conduct or activities were squarely in issue.

27. As noted by the Appeal Panel, *Malik* itself involved a prior *Rowbotham* application that:

> ...had been initiated by Malik and involved the other family members and their finances. The underlying issue in both proceedings was whether the Malik family was playing games with the Province with respect to its financial affairs. Thus, the prior judicial decision involved the "same or related parties or participants".[20]

28. That is very different from the situation in the present case. While the Appeal Panel found that Mr. Groia's conduct during the *Felderhof* trial was squarely in issue in Justice Campbell's costs decision (though not in Justice Campbell's or Justice Rosenberg's decision on the merits), it also found that Mr. Groia did not have the opportunity to lead evidence and his interests were not aligned with those of the actual party, his client Mr. Felderhof.[21]

29. The scope of the term "participant" as used in *Malik* is unclear. There is, however, no basis in law or policy to extend the definition of "participant" to encompass Mr. Groia's role in the Prior Proceedings.

30. An advocate acting in the ordinary course, as Mr. Groia was, can never be a "participant" in the proceeding for the purposes of the *Malik* test. Where a lawyer has no opportunity to give evidence, is duty-bound to act in her client's interests, and has no right to appeal, it would be

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[20] Appeal Decision at para. 169.

[21] Appeal Decision at paras. 196-198.

grossly unfair and highly prejudicial to admit the reasons into evidence against her in a subsequent disciplinary proceeding on the basis that counsel was a "participant".[22]

31. Articulating a clear and objective standard regarding when a lawyer crosses the line from advocate to participant may not be possible. But in this case, Mr. Groia came nowhere near doing so. He was Mr. Felderhof's lawyer and acted in that capacity in the ordinary course.

32. The mere fact that Mr. Groia's own conduct was at issue in Justice Campbell's costs decision is insufficient to make him a "participant" in that proceeding. The conduct of counsel can be and frequently is at issue when a court determines costs, but that does not transform the lawyer's role in the proceeding from that of advocate to participant.[23]

33. The test for the admissibility of prior reasons set out in *Malik* cannot be satisfied in this case because Mr. Groia was not a "participant" in the Prior Proceedings. All three of the Prior Reasons were therefore inadmissible as evidence against him, and both the Hearing Panel and Appeal Panel erred in admitting them as evidence.

(ii) Are the Prior Reasons Relevant?

34. If the preceding conclusion is incorrect, and Mr. Groia was a "participant" in the Prior Proceedings for the purposes of the test set out in *Malik* (which is denied), then the second step

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[22] There may be circumstances where a lawyer does cross the line from advocate to participant. One example of this may be the *Coady* case cited by the Appeal Panel (*Law Society of Upper Canada v. Mary Martha Coady*, 2009 ONLSHP 51, cited by the Appeal Panel at para. 175 of its reasons). In that case, the lawyer was herself a party to four out of the five proceedings that the disciplinary panel relied upon, and in the fifth the disciplinary panel found that she was the "real litigant", having used the "putative applicant" as a straw man to seek relief that would benefit her personally (see para. 43 of the *Coady* decision). In these circumstances, it might well be appropriate for a hearing panel to conclude that the lawyer was, in fact, a participant in the prior proceeding. But that is not this case.

[23] The one exception may be a motion for costs against a lawyer personally under Rule 57.07 of the *Rules of Civil Procedure*, in which no order can be made unless the lawyer has had an opportunity to make representations to the Court regarding her own conduct.

of the analysis asks whether the Prior Reasons are relevant to any matter at issue in the disciplinary proceeding. As discussed at paragraphs 21-23, above, relevance is the second necessary pre-condition to admissibility under the *Malik* framework. Of the three sets of Prior Reasons, only Justice Campbell's costs decision is potentially relevant, though it is still inadmissible because Mr. Groia was not a participant in that proceeding.

35. There are three ways in which the reasons from prior proceedings might, in general, be relevant in a subsequent case:

(i) To prove the fact that the prior proceeding took place;

(ii) As legal authority regarding standards of civility and other questions of law; and

(iii) To prove matters at issue.

36. Each of these possibilities will be considered in turn and applied to the circumstances of this case.

Proving the Fact of the Prior Proceedings

37. In *Malik*, the prior *Rowbotham* decision was admissible as proof that the application had occurred and what its outcome had been:

> It seems clear the *Rowbotham* application was properly put before the chambers judge. … In this aspect, the judgment was tendered for the purpose of proving the *fact* that the proceedings were taken by Mr. Malik, and supported by testimony from his family.[24] [Emphasis in original.]

38. Similarly, in the present case, the Prior Reasons were admissible before both the Hearing Panel and the Appeal Panel for the purpose of proving that the Prior Proceedings took place and what their outcome had been.

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[24] *Malik* at para. 38.

Legal Authority

39. The Prior Reasons were also properly before the Hearing Panel and Appeal Panel as judicial guidance regarding standards of civility. As the Appeal Panel noted:

> ...the Court of Appeal's decision can be fairly characterised as one of the leading cases in Canadian law about civility obligations of trial counsel.[25]

40. Strictly speaking, the Prior Reasons are not "admitted" for this purpose because they are not being used to prove facts, but it is nevertheless a way in which the Prior Reasons were properly before the Hearing Panel and Appeal Panel.

Proving Matters at Issue

41. In *Malik*, the Court concluded that the prior *Rowbotham* decision was admissible as evidence of the findings and conclusions contained within it.[26] The words "findings and conclusions" are ambiguous, but it is clear from the decision as a whole that the Court was referring to findings and conclusions *of fact*.[27]

42. The same point was made by Justice Conway in *Ontario v. Rothmans*.[28] In that case, the defendant tobacco companies challenged the Ontario courts' jurisdiction to hear claims against them brought against them by the provincial government. A preliminary issue was whether the Crown could introduce as evidence the decisions of courts in other provinces on jurisdiction challenges brought by the same defendants on essentially the same grounds.

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[25] Appeal Decision at para. 153.

[26] *Malik* at para. 7. The Court in fact uses the word "proof", but it is clear that the prior decision was not conclusive or binding and was therefore only admitted as evidence.

[27] The findings and conclusions referred to included that the Malik family's financial affairs were interconnected and managed as one, that Mr. Malik and his family jointly owned businesses that grossed millions of dollars, and that Mr. Malik's alleged debts to family members were questionable because they were imprecise and there was no legitimate documentation for them (see *Malik* at paras. 15 and 18). All of these findings and conclusions are factual in nature (indeed, the section dealing with the findings from the prior decision is titled "The *Rowbotham* Facts").

[28] 2011 ONSC 5356.

43. Justice Conway held that the prior decisions could not be admitted as evidence because they did not contain findings *of fact*. Her Honour reviewed *Malik* and noted:

> In *Malik*, the "findings and conclusions" were factual ones – that Mr. Malik and his family had tried to arrange his financial and business affairs to minimize the value of his estate, render him insolvent and limit the amount that he could contribute to fund his legal defence. Those conclusions were based on specific factual findings made about the Malik family finances.
>
> ...
>
> In my view, the Crown's reliance on *Malik* to admit the Decisions into evidence is misplaced.
>
> The "findings and conclusions" that the Crown seeks to rely on from the Decisions are not factual, as in *Malik*, but consist of legal analysis and conclusions or questions of mixed fact and law.[29]

44. In the case before Justice Conway, the parties were the same, the issues were the same, and the evidence was largely the same. The prior decisions were not admissible, however, because they did not contain findings of fact; only factual findings, not comments or legal conclusions, can be admitted *as evidence*.

45. Turning to the present case, the issue is therefore whether the Prior Reasons contain factual findings that are relevant to the matters in issue in the disciplinary proceeding. For the purposes of this analysis, it is important to distinguish between Justice Campbell's and Rosenberg's decisions regarding whether Justice Hryn had lost jurisdiction (the "Merits Decisions") and Justice Campbell's decision regarding the costs of the application before him (the "Costs Decision").

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[29] *Ontario v. Rothmans* at paras. 11, 13-14.

46. All the Prior Reasons, including the Costs Decision, are inadmissible because the first "participant" condition set out in *Malik* is not satisfied in this case. However, even if Mr. Groia had been a participant in the Prior Proceedings, only the Costs Decision is capable of satisfying the second "relevance" condition set out in *Malik*, because only that decision contains potentially relevant findings of fact. The Merits Decisions would be inadmissible in any event.

47. The issue before Justice Campbell on the Costs Decision was whether Mr. Groia's conduct "went so far beyond the range of responsible conduct that it was reasonable for the prosecution" to bring the jurisdiction application.[30] His Honour, relying on the same transcript that was before the Hearing Panel and Appeal Panel, found that Mr. Groia's conduct was an "essential triggering cause" of that application, and the Appeal Panel found that this finding was essential to the Costs Decision.[31]

48. This factual finding could support the conclusion that Mr. Groia's conduct had interfered in a material way with the conduct of the *Felderhof* trial, which in turn may be relevant to the issues in the disciplinary proceeding if it were otherwise admissible. In this way, the Costs Decision passes the second *Malik* condition (though not the first) because it makes a finding of fact that could be relevant to a matter at issue before the Hearing Panel.

49. However, not even this much can be said for the Merits Decisions. Having failed to apply the test in *Malik*, the Appeal Panel admits these decisions as evidence, but does not address the purpose for which they are to be used. The Merits Decisions do not contain any findings of fact, only comments about the nature of Mr. Groia's conduct and statements of legal principle. They therefore lack the essential characteristic of reasons that can be admitted as evidence.

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[30] Appeal Decision at para. 192.

[31] Appeal Decision at paras. 193-94.

50. Moreover, none of the prior Reasons (neither on costs nor on the merits) purport to apply the *Rules of Professional Conduct* to Mr. Groia's conduct, nor could they have. As the Appeal Panel points out:

> ... as the courts in *Marchand v. The Public General Hospital Society of Chatham* and *Felderhof* made clear, they do not decide what constitutes professional misconduct; Law Societies do. The court and the professional regulator address issues of civility and courtroom conduct from different perspectives.[32]

3. Conclusion Regarding Admissibility

51. While the Prior Reasons were admissible to prove the fact of the Prior Proceedings, and were properly before the Hearing Panel and Appeal Panel as judicial guidance regarding standards of civility, they were not admissible against Mr. Groia as evidence of his alleged misconduct. Mr. Groia was not a "participant" in the Prior Proceedings for the purposes of the admissibility test set out in *Malik*, and therefore all the Prior Reasons were inadmissible against him. Even if Mr. Groia was properly considered a "participant" in the Prior Proceedings, only Justice Campbell's Costs Decision (not Justice Campbell's or Justice Rosenberg's Merits Decisions) contains findings of fact relevant to the disciplinary proceeding. Therefore, <u>at best</u> only the Costs Decision could be admitted as evidence against Mr. Groia under the relevance branch of the *Malik* admissibility test.

III. WEIGHT TO BE ASSIGNED TO THE PRIOR REASONS

52. As discussed above, all of the Prior Reasons are inadmissible because they fail to satisfy one or both of the preconditions set out in *Malik*. However, if the Prior Reasons, or any of them,

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[32] Appeal Decision at para. 199.

were admissible in the disciplinary proceeding as evidence of Mr. Groia's alleged misconduct, then the Hearing Panel and Appeal Panel were obliged to consider the weight to be assigned to them.

53. As noted at paragraph 17, above, the Appeal Panel concluded that the weight to be assigned the Prior Reasons should be determined having regard to the non-exhaustive list of factors set out in *Malik*. These are:

(i) the identity of the participants;

(ii) the similarity of the issues;

(iii) the nature of the earlier proceedings;

(iv) the opportunity given to the prejudiced party to contest the earlier proceedings; and

(v) all the varying circumstances of the case.

54. At paragraph 81 of the factum it filed on its cross-appeal, the Law Society agrees that this is the correct approach, though it maintains that the Appeal Panel failed to follow it. The Advocates' Society also agrees that the *Malik* factors should govern the determination of weight.

55. Where The Advocates' Society differs from the Law Society is on what results from applying these factors to the present case. Mr. Groia was counsel in the Prior Proceedings, the issues addressed in the Prior Reasons are not the same as those in the disciplinary proceeding, the earlier proceedings concerned an application to remove Justice Hryn, rather than disciplinary proceedings against Mr. Groia, and Mr. Groia had no opportunity to give evidence in the Prior Proceedings or to appeal the Prior Reasons. If admissible at all, the Prior Reasons should at most be given very limited weight on the issue of Mr. Groia alleged breach of the Law Society's *Rules*

of Professional Conduct and would have to be considered in the context of all the evidence led at the hearing.

IV. ORDER REQUESTED

56. As an intervener, The Advocates' Society takes no position on what order should be made.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of November, 2014.

Terrence J. O'Sullivan

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SCHEDULE "A"

TABLE OF AUTHORITIES

1. *Toronto (City) v. Canadian Union of Public Employees*, 2003 SCC 63
2. *Penner v. Niagara (Regional Police Services Board)*, 2013 SCC 19
3. *British Columbia (AG) v. Malik,* 2011 SCC 18
4. *Law Society of Upper Canada v. Joseph Peter Paul Groia*, 2010 ONLSHP 78
5. *Law Society of Upper Canada v. Joseph Peter Paul Groia*, 2012 ONLSHP 0094
6. *Law Society of Upper Canada v. Joseph Peter Paul Groia*, 2013 ONLSAP 0041 [Appeal Decision]
7. *Igbinosun v. Law Society of Upper Canada*, [2008] O.J. No. 2848; aff'd 2009 ONCA 484
8. *Dunsmuir v. New Brunswick*, 2008 SCC 9
9. *Ontario v. Rothmans*, 2011 ONSC 5356

SCHEDULE "B"

TEXT OF STATUTES, RULES, AND REGULATIONS

Law Society of Upper Canada, Rules of Practice and Procedure

RULE 24 – EVIDENCE

TRANSCRIPT OF PROCEEDING

24.08 (1) At a hearing, a transcript of a hearing before an adjudicative body may be admitted as evidence.

Reasons

(2) At a hearing, the reasons for decision of an adjudicative body may be admitted as evidence.

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

Rule 57 COSTS OF PROCEEDINGS

LIABILITY OF LAWYER FOR COSTS

57.07 (1) Where a lawyer for a party has caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default, the court may make an order,

(a) disallowing costs between the lawyer and client or directing the lawyer to repay to the client money paid on account of costs;

(b) directing the lawyer to reimburse the client for any costs that the client has been ordered to pay to any other party; and

(c) requiring the lawyer personally to pay the costs of any party. O. Reg. 575/07, s. 26.

(2) An order under subrule (1) may be made by the court on its own initiative or on the motion of any party to the proceeding, but no such order shall be made unless the lawyer is given a reasonable opportunity to make representations to the court. R.R.O. 1990, Reg. 194, r. 57.07 (2); O. Reg. 575/07, s. 1.

(3) The court may direct that notice of an order against a lawyer under subrule (1) be given to the client in the manner specified in the order. R.R.O. 1990, Reg. 194, r. 57.07 (3); O. Reg. 575/07, s. 1.

JOSEPH PETER PAUL GROIA

Appellant/Respondent by Cross-Appeal

-and-

THE LAW SOCIETY OF UPPER CANADA

Respondent/Appellant by Cross-Appeal

Divisional Court File No.: 162-14

ONTARIO
ONTARIO SUPERIOR COURT
(DIVISIONAL COURT)

FACTUM OF THE INTERVENER, THE ADVOCATES' SOCIETY

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