



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

Citation: *Cluney v. of Association of Chartered Professional Accountants of
Newfoundland and Labrador*, 2026 NLSC 34

Date: March 25, 2026

Docket: 202301G4136

2026 NLSC 34 (CanLII)

BETWEEN:

JUDITH CLUNEY

APPELLANT

AND:

**ASSOCIATION OF CHARTERED
PROFESSIONAL ACCOUNTANTS OF
NEWFOUNDLAND AND LABRADOR**

RESPONDENT

Before: Justice Peter N. Browne

On Appeal From: A Decision of the Association of Chartered Professional Accountants of Newfoundland and Labrador dated the 12th day of May, 2023.

Place of Hearing: St. John's, Newfoundland and Labrador

Date of Hearing: December 11, 2025

Summary:

The Appellant, Judith Cluney (“Cluney”), appealed a finding of the Association of Chartered Professional Accountants of Newfoundland and

Labrador (“CPANL”) Adjudication Tribunal that held she was guilty of professional misconduct in failing to cooperate with an investigation of her accounting practice.

Held: The appeal is dismissed. The Adjudication Tribunal evidentiary record does not support the finding it erred in not considering Cluney’s personal difficulties as evidence of a good faith defence to the allegation. The record supports Cluney did not disclose the ten files requested promptly. There is an insufficient basis to establish a palpable and overriding error. Rather, the evidence supports a finding of fact that Cluney did not promptly produce documents when required to do so as required under Rule 104(2) of the *Chartered Professional Accountants and Public Accountants Act*, SNL 2014, c. C-10.1.

Appearances:

Cletus E. Flaherty Appearing on behalf of the Appellant

Augustine F. Bruce, K.C. Appearing on behalf of the Respondent

Authorities Cited:

CASES CONSIDERED: *Gulliver v. Law Society of Newfoundland and Labrador*, 2024 NLCA 23; *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29; *Law Society of Ontario v. Diamond*, 2021 ONCA 255; *Fishery Products International Ltd. v. Rose*, 2018 NLCA 65; *Rich v. Bromley Estate*, 2013 NLCA 24; *Mirolo v. College of Physicians and Surgeons of Newfoundland and Labrador*, 2021 NLSC 12; *Law Society of Upper Canada v. Baker*, 2006 ONLSHP 21; *Law Society of Upper Canada v. Wysocky*, 2009 ONLSHP 77

STATUTES CONSIDERED: *Chartered Professional Accountants and Public Accountants Act*, SNL 2014, c. C-10.1

REASONS FOR JUDGMENT

BROWNE, J.:

INTRODUCTION

[1] The Appellant, Judith Cluney (“Cluney”), was a self-employed CPA, CA since 1992 and was registered under the *Chartered Professional Accountants and Public Accountants Act*, SNL 2014, c. C-10.1 (the “*Act*”). She operated a public accounting practice since 2010 primarily comprised of compilation engagements and working with physicians as a chartered professional accountant.

[2] On May 12, 2023, she was found guilty of professional misconduct deserving of sanction in relation to several allegations (the “Allegations”) following a hearing and decision (the “Merits Decision”) of a tribunal of the Association of Chartered Professional Accountants of Newfoundland and Labrador (the “CPANL Tribunal”).

[3] On July 31, 2023, the CPANL Tribunal imposed various sanctions on Cluney based on its findings in the Merits Decision (the “Sanctions Decision”).

[4] Ms. Cluney has appealed the findings of the Merits and Sanctions Decisions in their entirety and seeks they be quashed. Her appeal of the Sanctions Decision includes an appeal of the subsequent CPANL Tribunal decision of December 16, 2024 . These matters will be addressed separately (see matter 202501G0370).

[5] Prior to hearing this appeal, I determined that, as a matter of judicial economy, both appeals could be heard together. However, I would decide each appeal separately beginning with the appeal of the Merits Decision.

[6] For the reasons that follow, the Merits appeal is dismissed.

POSITION OF THE PARTIES

Judith Cluney

[7] Cluney's legal counsel acknowledges he is not challenging the Adjudication Tribunal's findings of professional misconduct in relation to her failure to perform compilation engagements. The appeal focuses solely on the Adjudication Tribunal's finding of professional misconduct in relation to her failure to cooperate with its Practice Review Investigation.

[8] Ms. Cluney's legal counsel also agrees that the Adjudication Tribunal Record shows Cluney missed deadlines established by the Complaints Authorization Committee (the "CAC"). However, the concession of this fact is not determinative of whether she had failed to cooperate overall.

[9] He argues the allegation of uncooperativeness is not determined solely by missed deadlines. Rather, it requires consideration of all circumstances. This determination includes assessing Cluney's personal situation, her requests for extensions and the CAC's handling of these requests.

[10] During the CAC investigation, Cluney was addressing a personal and family crisis that began prior to the commencement of the practice review. Throughout the review process, she did her best to complete the CAC requests and completed most of them prior to the submission of the Practice Review Report.

[11] The Adjudication Tribunal Record shows that the CAC had been made aware of Cluney's personal and family difficulties, but it does not contain any evidence that Cluney had not acted in good faith or that she was not honest, open and helpful during the practice review.

CPANL

[12] The discipline decision under appeal involves repeated efforts on the part of CPANL to obtain information from Cluney regarding her professional practice, a significant aspect of which was in relation to the timeliness of services to her clients.

[13] Cluney repeatedly indicated to CPANL during its investigation that she was in the process of leaving practice and attempting to sell or transfer it to a successor accountant. It was evident that this was still the case at the time of submissions on sanctions on July 21, 2023; (see: Merits Decision, Record, at para. 78, 106; Adjudication Tribunal Record, Volume 2, A, Tab 7; Letter from Cluney to CAC October 14, 2021, page 1; Adjudication Tribunal Record, Volume 2, B, Tab 4; Letter from Cluney to Registrar May 13, 2021, page 3; Adjudication Tribunal Record, Volume 3, Tab 4; Transcript of Judith Cluney testimony Jan. 9, 2023, pp. 103-108; Adjudication Tribunal Record, Volume 3, Tab 6; Transcript of submissions by counsel for the Appellant, July 21, 2023, pp. 28, 29, 35-37).

[14] Regarding the extent of Cluney's personal and family problems during the discipline proceedings, the documentary evidence from the Adjudication Tribunal Record indicates that she assured CPANL that her personal problems had been dealt with and that she was able to bring her practice up to date in terms of meeting client expectations and deadlines.

[15] Cluney also assured the CAC that she would be able to fully co-operate with the Practice Reviewer, Blair Jewer, who had been appointed to conduct a practice review of the Appellant's practice; (see Merits Decision, Record, Volume 1, Tab 1, paras. 165, 167, 168, 171; Memo from Cluney to the Registrar, dated April 1, 2021, read to the CAC in accordance with the Appellant's instructions to the Registrar, Record, Volume 2, A, Tab 14, page 3 (sealed for the Court); Record, Volume 2, B, Tab 4, Letter from Cluney to Registrar May 13, 2021, page 1; Transcript of Cluney before the CAC on October 14, 2021, Record, Volume 2, A, Tab 8, page 8, lines 20-25; page 9, lines 1-9; page 14, lines 3-16; page 16, lines 12-15; Record, Volume 2, A, Tab 7, Letter from Appellant to Registrar May 13, 2021, page 1).

[16] In view of this background, the Appeal should be dismissed because there is no palpable and overriding error by the Adjudication Tribunal when it applied these findings of fact to the law under Rule 104.2, and they made no error in concluding that Cluney breached Rule 104.2 (Duty to Cooperate).

ISSUES

Issue #1: Is the Standard of Review Correctness v. Palpable and Overriding Error?

Issue #2: Did the Adjudication Tribunal err in finding the Appellant guilty on Charge 1 in file 21-088?

Issue #3: Did the Adjudication Tribunal err in determining that the CAC provided the Appellant the six-week extension she requested on September 20, 2021?

RELEVANT LEGISLATION AND JURISPRUDENCE

Legislation and accompanying regulations and rules - *Chartered Professional Accountants and Public Accountants Act*, SNL 2014, c. C-10.1

Appeal to Trial Division

43. (1) The association or the respondent may, within 30 days after receiving notice of the decision or order of an adjudication tribunal under this Act, appeal the decision or order to the Trial Division by filing a notice of appeal with the court.

(2) An appeal under this section does not stay the decision or order being appealed unless the Trial Division orders otherwise

Rule 104.2 of the Rules of Professional Conduct-Duty to cooperate

104.1 A registrant shall co-operate with the regulatory processes of CPA Newfoundland and Labrador.

104.2 A registrant shall

(b) promptly produce documents when required to do so by CPA Newfoundland and Labrador;

Guidance to the Rules of Professional Conduct – Rule 104

Lack of co-operation includes attempts to delay, mislead, or misdirect CPA Newfoundland and Labrador by concealing relevant information, providing false, incomplete or misleading statements or information, failing to respond to communications or otherwise obstructing the regulatory process of CPA Newfoundland and Labrador. Lack of co-operation does not include good faith assertions of legal privilege.

The requirement for prompt written replies and production of documents contemplates the establishment of a reasonable timeframe to respond to the request. Requests for reasonable extensions will not normally be refused, however, repeated requests without adequate grounds will be refused.

The requirement to co-operate with CPA Newfoundland and Labrador includes requirement to co-operate with officers, staff, volunteers or agents acting on behalf of CPA Newfoundland and Labrador in matters described in Rule 104.1 and 104.2.

Standard of review - Statutory Appeals

[17] Our Court of Appeal in *Gulliver v. Law Society of Newfoundland and Labrador*, 2024 NLCA 23, at paragraphs 60 to 62, reaffirmed the Supreme Court's decision in *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29 that courts are required to use appellate standard of review in a statutory appeal; in other words, the standard of correctness for questions of law and the standard of palpable and overriding error for questions of fact and for questions of mixed fact and law (where there is no extricable error of law).

Issue #1: Is the Standard of Review Correctness v. Palpable and Overriding Error?

Analysis

[18] Both parties agree that this is a statutory appeal under section 43 of the *Act* but disagree as to whether the issues under appeal are questions of law or questions of fact or mixed fact and law. The Appellant says the standard to be applied is correctness. The Respondent says it is palpable and overriding error.

[19] Cluney cites *Law Society of Ontario v. Diamond*, 2021 ONCA 255, at paragraphs 36 and 37, in support of her submission that the standard of “correctness” should be applied.

[20] CPANL says this assertion is not an accurate depiction of the court’s reasons in *Diamond*. This is because the Ontario Court of Appeal was reviewing a decision of the Divisional Court upholding a Law Society Tribunal decision on failure to cooperate with an investigation.

[21] At paragraphs 38 to 39 of *Diamond*, the Court of Appeal clearly stated that the test for assessing a failure to cooperate is a question of mixed fact and law, one reviewable on a standard of palpable and overriding error, namely one that permits consideration of all the facts, looked at through both a subjective and objective lens.

[22] To find that a tribunal made a “palpable and overriding error” when applying the appellate standard of errors of fact or inferences arising from the facts, the tribunal would have had to make an error that goes to the root of the challenged finding such that the fact could not survive.

[23] Our Court of Appeal in *Fishery Products International Ltd. v. Rose*, 2018 NLCA 65, at paragraphs 28 to 29, described the standard of palpable and overriding error as follows: **palpable** means “one that is obvious or clearly seen”, and **overriding** “as one which is significant; that is it must be an error that goes not just to the periphery but to the root of the challenged finding of fact, such that the fact cannot remain, survive or “stand”.”

[24] Later on in *Fishery Products International Ltd.*, at paragraph 38, the Court cited from its previous decision in *Rich v. Bromley Estate*, 2013 NLCA 24, which held that this standard encapsulates the highest level of appellate deference. Simply put, it is not enough for the appellant to show that an adjudicative tribunal considered one irrelevant factor, or that it failed to consider one relevant one. An appellate court will only intervene if the error is significant enough to displace the strong arguments in favour of deference.

[25] After hearing from the parties, I conclude that I must decide whether Issues #2 and #3 are to be determined on the standard of correctness or the standard of palpable and overriding error.

Issue #2: Whether the Tribunal erred in finding the Appellant guilty on Charge 1 in file 21-088

Cluney’s Position

[26] Cluney’s legal counsel asserts that a review of the Merits decision shows that the Adjudicative Tribunal did not utilize the correct legal test when considering whether his client failed to cooperate with the CAC. As a consequence, this Court should apply the correctness standard to determine this ground of appeal.

[27] Specifically, he argues the Adjudication Tribunal failed to consider (a) whether Cluney had acted reasonably and in good faith in responding promptly and

completely to the CAC's requests; and (b) whether Cluney was honest, open and helpful during the practice review process.

[28] The importance of an assessment of good faith and honesty of a Member is clearly contemplated by *Guidelines to Rule 104*, at paragraph 3:

... attempt to delay, mislead or misdirect CPA Newfoundland and Labrador by concealing relevant information, providing false, incomplete or misleading statements or information, failing to respond to communication or otherwise obstructing the regulatory process.

[29] The wording used in the Guideline is clear that a lack of cooperation requires an active intention to purposely delay, mislead, misdirect or otherwise deceive the CPANL's investigative process.

[30] During the hearing no evidence was adduced that Cluney purposely delayed, mislead, or misdirected the CAC or the Practice Reviewer, Blair Jewer. Therefore, when the Adjudication Tribunal determined that she failed to cooperate with the CAC as set out in Charge #1, it erred in law.

[31] Pointing to the Adjudication Tribunal Record, her counsel says it shows Cluney disclosed information and documents when she was able and that she maintained open lines of communication with the CAC, whether it be through communication with the CPANL's Director, Kathryn Mercer-Oliver, the Practice Reviewer, Blair Jewer, or meeting with the CAC.

The Position of the CPANL

[32] In response, the CPANL relying on the Court's analysis in *Mirolo v. College of Physicians and Surgeons of Newfoundland and Labrador*, 2021 NLSC 12, at paragraphs 52 to 53 and 84, says that an Adjudication Tribunal must first determine

that the Appellant was required as a matter of law to “*co-operate with the regulatory processes*” and further, to “*promptly produce documents*” under Rule 104. In making this type of a determination, the Adjudication Tribunal would be subject to the correctness standard on appeal because this is a legal question.

[33] This would be opposed to the approach of applying the factual circumstances of the allegation against Cluney to the legal obligations contained under Rule 104. Such an application would constitute a question of fact or mixed fact and law. In this circumstance, the Adjudication Tribunal would be subject to review on the deferential standard of palpable and overriding error.

Analysis (Issue #2)

[34] In the Merits Decision on Charge 1 in file 21-088, the Adjudication Tribunal detailed its reasons for its finding of failure to cooperate. The reasons include a chronology of events that runs from September 2, 2021, to January 10, 2022, during which time Cluney was made aware that a practice review had been ordered; (see paragraphs 186-197 of the Merits Decision).

[35] Once the decision to conduct a Practice Review was made, the reviewer contacted Cluney directly to arrange an interview and made a request for the immediate production of 10 of her client files. In response, Cluney requested a six-week extension which was granted with the *proviso* that she appear before the CAC on October 14, 2021. At that appearance, Cluney informed the CAC there was no reason why the Practice Review could not proceed without further delay; (Transcript of appearance before the CAC, Oct. 14, 2021, pages 8, 9, 14 and 18).

[36] Cluney appeared before the CAC again on November 1, 2021, and requested a second extension of time to provide her files to the Practice Reviewer. The reason she provided on this occasion was to accommodate client work she was performing. A second extension of time was granted until November 16, 2021, by which time only 7 of 10 files requested by the Practice Reviewer were received. Cluney continued to promise to send the remaining 3 files between November 22, 2021, and

January 4, 2022, but did not offer them up. The Reviewer went on to complete his investigation and issue his Practice Review Report on January 10, 2022.

[37] Cluney's legal counsel directs this Court to consider Item 3 under the "Guidance to Rule 104" and argues that his client made reasonable and good faith requests for extensions. This is because she was dealing with personal and family problems that affected her professional work. She informed the CAC her problems were being dealt with, and that she had a plan of action to bring her work up to date.

[38] In my review of the Adjudication Tribunal Record, in particular the chronology of events, there is clear evidence that during the process of the Practice Review, the Reviewer encountered difficulties in communicating with and obtaining documentation from Cluney.

[39] Under Rule 104 of the CPA Rules of Professional Conduct, the CPANL only need show that Cluney did not "promptly" produce the documents requested as required under Rule 104.2 (b). This finding was supported by the evidence of the Practice Reviewer, Blair Jewer, who testified that he made it clear to Cluney that his requests made were for "as is" files.

[40] The term "cooperate" has been considered extensively in a series of decisions involving the Law Society of Upper Canada. As referenced by the Ontario Court of Appeal in *Diamond* at paragraph 44, its meaning is "simple" in the context of a licensee's relationship with their regulatory body. It requires the licensee to be honest, open and helpful in relation to its supervisory and investigatory functions. Misconduct does not necessarily equate with a licensee not providing documents quickly. If there are factors beyond the licensee's control that result in an inability to respond to the regulatory body, then a finding of professional misconduct may not result. I note with reference the hypothetical posed by Cluney's legal counsel of a licensee who falls into a coma following the order for a Practice Review.

[41] At paragraphs 47 to 48 of *Diamond*, the Ontario Court of Appeal agreed with the conclusion of the lower court that a failure to comply with or to be aware of one's

record-keeping obligations as a licensee could not constitute a “good faith explanation” for delay. If ignorance by a licensee could constitute good faith, then it would be “inconsistent with the purpose of the duty to co-operate”.

[42] Later at paragraph 50 it set out the considerations that should be present in the analysis of an allegation of “failure to cooperate”:

(a) all of the circumstances must be taken into account in determining whether a licensee has acted responsibly and in good faith to respond promptly and completely to the regulatory body’s inquiries.

(b) good faith requires the licensee to be honest, open, and helpful to the Law Society;

(c) good faith is more than an absence of bad faith; and

(d) a licensee's uninformed ignorance of their record-keeping obligations cannot constitute a "good faith explanation" of the basis for the delay.

[43] In the context of this case, Rule 104.2 intentionally uses the transitive verb “promptly” because the rule is designed to ensure a complete response with no inordinate delays following a determination to initiate an investigation. Simply put, it requires nothing more of a licensee than to provide a prompt and complete response.

[44] Cluney was requested to produce ten files in an “as is” condition. This is because the allegation in question related to document deficiencies surrounding client engagements for previous tax years.

[45] Prompt production of an existing record at the initiation of a Practice Review is integral to the determination of the issue of completeness (or lack thereof). Promptness in responding to a regulator’s request for files is essential to move an investigation of alleged deficiencies forward. Promptness dispels the appearance of subversion by eliminating the possible game of “cat and mouse”. Delays in the production of the existing records can only serve to shake the public's confidence in

the authority of self-regulatory body over its members; (see *Law Society of Upper Canada v. Baker*, 2006 ONLSHP 21, at para. 6; *Law Society of Upper Canada v. Wysocky*, 2009 ONLSHP 77, at paras. 89-90).

[46] The test for “failure to cooperate” has both subjective and objective components. CPANL is charged with the burden to prove the failure to cooperate (the absence of good faith dealings) on a balance of probabilities. In coming to that determination, the Adjudication Tribunal had to consider all of the evidence (including Cluney’s requests for extensions) when determining whether or not she was honest, open, and helpful in regard to the requests for her files for the Practice Review.

[47] Unlike *Diamond*, Cluney did not respond to the requests for her files promptly. In fact, by the time the Practice Review Report was completed, five months after it was ordered, three out of the ten files requested from her were still not provided. At the appeal hearing, counsel confirmed that the three files still remain outstanding.

[48] I accept the CPANL’s position that the purpose of conducting a Practice Review is not to allow a member of a professional body with time to put their records in better order before producing them for inspection as this would defeat the purpose of conducting a Practice Review. In reviewing the Tribunal Record, I find Cluney’s personal and family difficulties had no bearing on her ability to produce the records requested.

[49] The order for a Practice Review was based on allegations that Cluney did not perform professional services in accordance with accepted standards of practice contrary to Rule 206.1 of the *CPA Rules of Professional Conduct*. In this context, the only requirement placed on the member is to promptly produce their files in their existing state at the time of notification. The duty to cooperate speaks to being helpful; failure to produce the requested records promptly or within a reasonable period without the consent of the regulatory authority undermines the integrity of the review and is unhelpful to the investigation.

[50] I find there is ample evidence from the Tribunal Record that Cluney did not cooperate with the CPANL's regulatory processes. I note in particular the transcript of Blair Jewer's evidence where he indicated, in part, that a probable reason why Cluney was delayed in providing the requested files was due to their incomplete state at the time the Practice Review was ordered. Jewer testified he had chosen the files at random, whether they were completed or not, and informed Cluney of this expectation; (see Transcript of Blair Jewer evidence, July 11, 2022, at page 63 - line 24; page 64 - line 7).

[51] I find that the standard to apply in this context is one of palpable and overriding error, as the issue involves findings of mixed fact and law; namely, was there evidence on the balance of probabilities that Cluney did not produce her files promptly.

[52] When I apply this standard to the Adjudication Tribunal's finding regarding Cluney's failure to cooperate, I conclude there was no palpable and overriding error. In fact, I conclude there was more than ample evidence to support a finding that Cluney was being unhelpful in producing her records promptly.

[53] Her claim that the Adjudication Tribunal erred in not considering her personal difficulties as evidence of a good faith explanation of why she did not disclose the ten files on a prompt basis is insufficient to establish a palpable and overriding error. It does not go to the root of the challenged finding of fact.

[54] Accordingly, I dismiss this ground of appeal.

Issue #3: (Appellant's Issue II) – did the adjudication tribunal err in determining that the CAC provided the Appellant the six-week extension she requested on September 20, 2021?

POSITION OF THE PARTIES

Cluney

[55] Cluney's legal counsel argues that at paragraph 23 of the Decision, the Adjudication Tribunal determined that the CAC had provided Cluney with the extension she had requested on September 20, 2021. There is no evidence in the Tribunal Record to support this finding; therefore, by doing so the Adjudication Tribunal made an unreasonable error in determining whether the extension had been approved by the CAC.

The CPANL

[56] In response, the CPANL's legal counsel says the Adjudication Tribunal did not make a such a finding. He refers the Court to paragraph 195 of the Merits Decision which said as follows:

Although requests for extensions made by the Member for information requests supporting the practice review were not formally approved by the CAC, repeated accommodations and extensions were, in substance, provided by Mr. Jewer and the CAC when establishing new acceptable dates for receipt of requested information.

Analysis (Issue #3)

[57] This ground of appeal does not raise any question of law so the standard of review to be applied to its determination is that of palpable and overriding error.

[58] At paragraph 23 of the Merits Decision the Tribunal noted that: “An extension was granted to the Member and an interview date set for October 26, 2021, with Mr. Jewer selecting ten files for review.” This statement simply refers to the result of Cluney’s appearance before the CAC on October 14, 2021, following which the interview date was set. It is not a finding of fact that the six-week extension requested by the Appellant in her letter of September 20 had been granted.

[59] Again, for the reasons cited above, I find that the standard of palpable and overriding error means it is not enough for Cluney to show that the Adjudicative Tribunal considered one irrelevant factor, or that it did not consider one relevant one. An appellate court will only intervene if the error is significant enough to displace the strong arguments in favour of deference.

[60] I accept CPANL’s position that it is unclear what, if any, significance could be placed on the wording in paragraph 23 of the Merits Decision, since there was no such factual finding that the CAC had granted Cluney a six-week extension. The statements contained in paragraphs 23 and 195 of the Decision are simply accurate factual depictions of the chronology of the events surrounding the CPANL’s investigation and its conduct of the Peer Review.

[61] Accordingly, this ground of appeal should be dismissed as there is no evidence to support the conclusion that the Adjudication Tribunal made a palpable and overriding error.

DISPOSITION

[62] In view of my reasons above, the appeal is dismissed. The finding of the Adjudicative Tribunal Merits Decision remains undisturbed.

COSTS

[63] As CPANL was successful as the respondent to this appeal, it shall be entitled to Costs on a Column III basis.

PETER N. BROWNE
Justice