

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *The Law Society of British Columbia v.
Samarakoone*,
2026 BCCA 224

Date: 20260522
Docket: CA50610

Between:

The Law Society of British Columbia

Appellant
(Respondent)

And

Priyan M.B. Samarakoone

Respondent
(Petitioner)

Before: The Honourable Mr. Justice Willcock
The Honourable Madam Justice Fenlon
The Honourable Justice Winteringham

On appeal from: An order of the Supreme Court of British Columbia, dated
March 19, 2025 (*Samarakoone v. The Law Society of British Columbia*,
2025 BCSC 492, Vancouver Docket S235410).

Counsel for the Appellant: A.D. Gay, K.C.
T.P. Barker

Counsel for the Respondent: C.E. Hunter, K.C.
L.T. McDonald

Place and Date of Hearing: Vancouver, British Columbia
March 10, 2026

Place and Date of Judgment: Vancouver, British Columbia
May 22, 2026

Written Reasons by:

The Honourable Madam Justice Fenlon

Concurred in by:

The Honourable Mr. Justice Willcock
The Honourable Justice Winteringham

Summary:

The appellant Law Society imposed a penalty on the respondent lawyer for failing to comply with a client verification rule prior to receiving money into his firm's trust account. The penalty was set aside on judicial review on the basis that, as the Law Society had to concede before the court below, the impugned transaction fell under an exemption for money being transferred from the trust account of another lawyer. The judge declined to remit the matter to the Law Society for reconsideration, since there was only one possible outcome. The judge also awarded special costs to the respondent lawyer, primarily because the Law Society continued to press for the dismissal of the petition even after acknowledging the exemption. On appeal, the Law Society challenges the order for costs and the judge's decision not to remit the matter, arguing that a second transaction (the transfer of money from the respondent lawyer to his client) was not subject to the exemption and could therefore result in a penalty.

Held: Appeal allowed only to the extent of setting aside the order for costs. Because costs are not generally awarded against a tribunal, disapprobation of a tribunal's conduct is achieved through an award of ordinary, rather than special, costs. Ordinary costs should not be awarded here because pursuing a meritless position, without more, is not a basis for judicial rebuke. The judge did not err in declining to remit the matter to the Law Society on the basis that there could only be one possible outcome. Although the second transaction was referred to early in the investigation, the notice of penalty issued to the respondent lawyer and the Law Society's decision imposing the penalty only referred to the first, exempt, transaction.

Reasons for Judgment of the Honourable Madam Justice Fenlon:

[1] This appeal concerns an administrative penalty imposed by the appellant Law Society on the respondent lawyer, Priyan Samarakoone, for failing to comply with a client verification rule intended to address money laundering. The penalty was set aside on judicial review on the rather unusual basis that, as the Law Society had to concede before the court below, the impugned transaction was exempt from the rule relied on.

Background

[2] Mr. Samarakoone is a sole practitioner who was called to the bar in 2013. For the next seven years he worked with Access Pro Bono doing civil duty counsel work. In 2019 he established EQ Law, a firm serving clients who have difficulty securing legal representation. Mr. Samarakoone was retained by one such client to help her

obtain her share of the family home which was in foreclosure. The client had moved to the United States to escape a persistent threat of spousal abuse.

[3] On June 10, 2020, Mr. Samarakoone received about \$104,000 into his firm's trust account from the trust account of the law firm dealing with the foreclosure. On August 17, 2020, Mr. Samarakoone disbursed the funds, less his fees, to the client.

[4] On being retained, Mr. Samarakoone verified the client's identity by videoconference. He also corroborated her identity with her former family lawyer and had the client attend a notary in Texas to affirm several affidavits. In addition, before releasing the funds, he obtained a clearance certificate from the Canada Revenue Agency ("CRA") in the client's name. At the time, he was not aware of the need to have an agent in the client's location verify the client's identity in some circumstances.

[5] The Law Society is the licensing and regulatory body for lawyers in British Columbia. Under the *Legal Profession Act*, S.B.C. 1998, c. 9, the Law Society is empowered to enact rules binding on lawyers. As part of its effort to strengthen the legal profession's response to the risk of money laundering, the Law Society in April 2022 enacted rules under which administrative penalties can be imposed against lawyers for, among other things, the violation of rules relating to client identification and verification.

[6] At the relevant time, Rule 3-102 required lawyers providing legal services in respect of a financial transaction to verify the identity of the client in the manner prescribed by the Rules. Rule 3-104 provided that a lawyer could retain an agent to obtain the information required under Rule 3-102 and was required to do so if the client was not present in Canada and was not physically present before the lawyer.

[7] In July 2022, the Law Society conducted an audit of Mr. Samarakoone's firm records. The auditor identified a concern with client matter 00064, and in particular what appeared to be Mr. Samarakoone's failure to have an agent verify the client's

identity while acting on her behalf to receive money into his trust account and pay that money out to her in the summer of 2020.

[8] On January 17, 2023, the Law Society notified Mr. Samarakoone in writing that it had opened an investigation into his conduct in relation to client matter 00064 as a result of the audit. After the investigation concluded, the Law Society issued a Notice of Penalty to Mr. Samarakoone on March 13, 2023, advising him that the Executive Director had assessed an administrative penalty in the amount of \$5,000. Mr. Samarakoone applied to the Chair of the Discipline Committee for review of the penalty on April 11, 2023. In accordance with the Law Society's procedures, the review was conducted in writing. He sought a reduction in the amount of the penalty, saying:

... I make this appeal under Law Society Rule 4-60(2) to reduce the amount of the penalty on the basis of hardship.

... The money was coming from a known source through a legal foreclosure process that had been ongoing for several years through a first mortgage. The client verified her ID, her children's ID and I corroborated her ID with her former family lawyer and a CRA agent prior to releasing any funds to her...

...

[Particulars of financial hardship set out.]

...

I am now aware that those steps taken by me almost 4 years ago, although ensured in my mind the client's authenticity, fell short of the Law Societies [*sic*] requirement for client ID and verification. I understand the significance of money laundering in the Province of British Columbia and globally. I have learned, through my failure, to sufficiently identify a client when they are not in my presence and will not repeat this error again...

[9] In a written decision dated May 29, 2023, the Chair dismissed the application for review and confirmed the penalty ("the Decision").

The judicial review proceeding

[10] Mr. Samarakoone filed a petition for judicial review. The thrust of the petition was an allegation that the Chair erred by failing to find a warning or reduced fine would suffice to protect the public, given the efforts Mr. Samarakoone had made to verify the client's identity—even if he had not strictly complied with the rule to have

an agent in Texas do so. Mr. Samarakoone also raised procedural fairness grounds, contending he was denied an opportunity to address the proposed penalty before it was imposed.

[11] The petition was heard in November 2024. The judge reserved his decision. While the judgment was under reserve, the judge issued a memorandum to the parties advising that he wanted to schedule a further 30-minute hearing to address the potential applicability of Rule 3-101(b)(ii). That rule exempted from verification transactions in which a lawyer “receives money paid from the trust account of another lawyer”—as was the case in the foreclosure transaction in issue. Neither the Law Society nor Mr. Samarakoone had raised the exemption at the initial hearing.

[12] At the subsequent hearing, the Law Society conceded the verification rules did not apply to the receipt of the foreclosure funds because they came from another lawyer’s trust account. However, the Law Society took the position that the Notice of Penalty and the Decision concerned two distinct transactions: the money that went into Mr. Samarakoone’s trust account on June 10, 2020, which was exempt from the verification rules, and the payment of funds to the client on August 17, 2020, which was not exempt and therefore constituted a breach of the verification rules.

[13] In reasons indexed as *Samarakoone v. The Law Society of British Columbia*, 2025 BCSC 492, the judge did not agree with the Law Society’s characterization of what was in issue in the proceedings before the Chair. He found the Decision to be unreasonable because it relied upon a single transaction (receipt of the money) to which the exemption in Rule 3-101(b)(ii) applied. On that basis, he declined to remit the matter to the Law Society for reconsideration, since there could be only one possible outcome. Finally, he awarded special costs to Mr. Samarakoone in the amount of \$5,000.

[14] Although it was not necessary to the outcome of the judicial review, the judge went on to consider Mr. Samarakoone’s procedural fairness argument and found that it too would warrant quashing the Decision.

On appeal

[15] The Law Society submits that the judge erred by:

- (i) failing to remit the matter to the Law Society;
- (ii) ordering special costs; and
- (iii) finding that the Law Society’s process was procedurally unfair.

[16] The first and second grounds of appeal involve discretionary decisions reviewable on a deferential standard. This Court will intervene only if the chambers judge erred in principle, gave no or insufficient weight to relevant considerations, or made a palpable and overriding factual error: *Situmorang v. Google, LLC*, 2024 BCCA 9 at para. 53. The third ground of appeal concerns questions of procedural fairness; the standard of review is whether the process followed was unfair: *British Columbia (Police Complaint Commissioner) v. Sandhu*, 2024 BCCA 17 at para. 66.

1. Did the judge err in failing to remit the matter to the Chair of the Discipline Committee?

[17] When the decision of an administrative tribunal is set aside on judicial review, the general rule is that the matter is to be remitted to the tribunal. That practice respects the legislature’s decision to entrust a particular subject matter to a tribunal rather than the court: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 140–141. However, there are limited scenarios in which remitting the matter “would stymie the timely and effective resolution of matters in a manner that no legislature could have intended”—for example, where it becomes evident to the court that a particular outcome is inevitable and that remitting the matter would therefore serve no useful purpose: *Vavilov* at para. 142.

[18] The judge in the present case determined this was such a case because, as noted, he found that the only financial transaction in issue before the Chair was exempt from the verification rule. This ground of appeal turns on whether the judge erred in that conclusion.

[19] The Law Society concedes that, if the second financial transaction was not before the Chair, there could be only one outcome and sending the matter back would be an exercise in futility. However, the Law Society contends the judge failed to appreciate that the second transaction—the transfer of the funds to the client—was part of the Chair’s decision, even though she did not expressly refer to it.

[20] In support of this submission, the Law Society draws a distinction between the Decision, which it acknowledges was unreasonable because it only referred to the first exempt transaction, and the investigation preceding that ruling, which clearly addressed both transactions. The Law Society points to a number of communications between the auditor and Mr. Samarakoone, and Mr. Samarakoone and the Law Society, which refer to the file as a whole (i.e., matter number 00064) and the steps taken by Mr. Samarakoone to obtain a clearance certificate from the CRA before he transferred the money to the client. The Law Society says that it is evident from these communications and the very nature of the retainer (obtaining the client’s share of the family home, which necessarily involved both receiving the money and sending it on to her), that both transactions were in issue throughout. It says the Chair did not refer to both transactions in the Decision because, by that point, Mr. Samarakoone had conceded he breached the verification rule and was simply asking the Chair to reduce the \$5,000 penalty.

[21] If remitted, the Law Society submits that a number of considerations would come into play that could result in a different penalty being imposed. First, the Chair would have to recognize that one of the two financial transactions originally before her was subject to an exemption. Second, the portion of Rule 3-104 requiring a lawyer to retain an agent when a client is not present in Canada and is not physically before the lawyer has since been repealed. A lawyer can now verify the client’s identity by electronic copies of documents issued by a foreign government if the lawyer uses reliable technology to confirm the identification document is genuine, and has confirmed that the name and photograph are those of the individual in the identification document—as Mr. Samarakoone apparently did in this case. Third, the Law Society has implemented changes to its penalty schedule. Whereas the

schedule formally provided for a penalty of \$5,000 in a case like this, it now provides for a penalty of “up to \$5,000”.

[22] The Law Society submits that, although it was open to the judge to set aside the Decision on the basis that it only referred to the first transaction, it would be neither inappropriate nor unfair to remit the matter to the Chair to determine what penalty should be imposed for the breach established by the second transaction.

[23] I would not accede to this ground of appeal. Although I agree that both transactions were referred to early in the investigation, I cannot agree that the second transaction was implicitly before the Chair when she rendered the Decision.

[24] Rule 4-59(3) provides that “[a]t least 30 days before the effective date of an administrative penalty under this rule, the Executive Director must deliver to the lawyer notice in writing” setting out “(c) the reasons for the penalty, including the specific rule breach alleged” (emphasis added). The Law Society provided the requisite notice by letter dated March 13, 2023 (“the Notice”), the relevant portions of which I set out here:

1. You represented [the client] who was located in Texas, USA, in the settlement of a dispute over the distribution of the proceeds of sale of a family home located in BC (client matter #00064).
- ...
4. Contrary to Rule 3-102 and 3-104, upon accepting the referral, you did not:
 - a. confirm with [the referring lawyer] if he verified [the client’s] identity in accordance with Rule 3-102; or
 - b. retain an agent to verify [the client’s] identity for a non-face-to-face financial transaction in accordance with Rules 3-102 and 3-104.
5. The first relevant financial transaction took place on June 10, 2020, when the firm received a settlement of \$103,887.50 [in] the firm’s trust account.

To address this breach, the Executive Director has assessed an administrative penalty of \$5,000 in accordance with the Administrative Penalty Payment Schedule, a copy of which is enclosed. Please also see the enclosed Law Society invoice.

[Emphasis added.]

[25] As the judge observed, the Notice referred to only the first transaction: at para. 39. Although a notice of administrative penalty under Rule 4-59 is less formal than a misconduct citation, it serves a similar function. It is intended to inform the lawyer of the case to be met.

[26] The Decision reflects the same narrow focus as the Notice:

Facts and Determination

2. Based on the information before me and by your own admission, the above elements have been met:
 - (a) A financial transaction took place on June 10, 2020, when the firm received the settlement funds in the amount of \$103,887.50 into the firm's trust account, rendering this a financial transaction to which Rule 3-102 applies;
 - (b) This was a non-face-to-face financial transaction as your client was in Texas, USA and you met with the client via video conference to verify the client's identity and review the client's various identity documents, and not in-person; and
 - (c) As a result of the non-face-to-face financial transaction, you were required to either confirm that the referring lawyer had verified the client's identity in accordance with the Rules or to retain an agent and enter into an agency agreement with an agent in Texas in order to comply with the Rules.

[Emphasis added.]

[27] The Law Society submits that, even if the Notice and the Decision do not refer to the second transaction, Mr. Samarakoone understood both transactions to be in issue. In his April 12, 2023 submission to the Law Society seeking review of the amount of the penalty, he said:

[The client] was dealing with her matrimonial home being foreclosed, and being squeezed out of any remaining equity that she would've been entitled to. The money was coming from a known source through a legal foreclosure process that had been ongoing for several years through a first mortgage. The client verified her ID, her children's ID and I corroborated her ID with her former family lawyer and a CRA agent prior to releasing any funds to her. My practice had not dealt with clients outside the country, and it was my 3rd month of running a practice.

...

I am now aware that those steps taken by me almost 4 years ago, although ensured in my mind the client's authenticity, fell short of the Law Societies requirement for client ID and verification. I understand the significance of money laundering in the Province of British Columbia and globally. I have learned, through my failure, to sufficiently identify a client when they are not in my presence and will not repeat this error again. The issuance of such a penalty may cause my practice to shut down at a time when I am just beginning to learn the business of law.

[Emphasis added.]

[28] I do not read this submission as an acknowledgment by Mr. Samarakoone that both transactions were in issue. He was, rather, describing the steps he took to verify the client's identity in support of a reduction in the penalty that had been imposed. Nor do I read this submission as a binding admission. As the judge observed, the Law Society had repeatedly and erroneously conveyed to Mr. Samarakoone that he was required to obtain an agent to verify the client's identity before receiving the foreclosure funds in June 2020. As the judge put it:

[83] It can hardly be surprising, then, that Mr. Samarakoone acknowledged in his Dispute document dated April 12, 2023, that he "fell short" of what the [Law Society] expected of him.

[29] Having concluded that the judge did not err in finding that only the first transaction was in issue before the Chair, it follows that he did not err in exercising his discretion to set aside the Decision without remitting the matter to the Law Society.

2. Did the judge err in awarding special costs against the Law Society?

[30] The judge recognized that, as a general rule, costs will not be awarded against a tribunal even if its decision is set aside. However, he concluded this was one of the rare cases in which it was appropriate to impose special costs, because he found the Law Society to be deserving of "at least mild judicial rebuke": at paras. 91, 95.

[31] I begin my analysis by observing that an award of costs is a discretionary decision subject to a deferential standard of review. The judge's decision cannot be

interfered with unless he erred in principle, gave no or insufficient weight to relevant considerations or made a palpable and overriding factual error.

[32] In my respectful view, the judge’s decision to award special costs against the Law Society warrants appellate intervention. First, as Mr. Samarakoone concedes, he did not seek special costs. The Law Society did not have notice that such costs would be awarded and was not afforded an opportunity to make submissions on the issue. It is settled law that an award of special costs in such circumstances is procedurally unfair: *Gichuru v. Pallai*, 2018 BCCA 78 at paras. 88–90; *Harun-ar-Rashid v. British Columbia (Commissioner for Teacher Regulation)*, 2024 BCCA 407 at paras. 43–45.

[33] Second, because costs are generally not awarded against a tribunal, the judge did not consider that disapprobation of a tribunal’s conduct is expressed through an award of ordinary costs. Although an award of special costs against a tribunal cannot be foreclosed, the parties could point to only one case in which a special costs award was made against a tribunal, and that award was overturned on appeal: *18320 Holdings Inc. v. Thibeau*, 2014 BCCA 494.

[34] Having conceded that it was not open to the judge to award special costs, Mr. Samarakoone submits that the order should be upheld as ordinary costs. He points out that \$5,000 is a conservative sum, well within the range for ordinary costs of a one-day petition proceeding. The question before us, then, is whether the judge erred in finding that the Law Society’s conduct warranted the “judicial rebuke” of a costs award.

[35] The judge gave two reasons for finding an award of costs to be appropriate in this case. First, he found the Law Society had ignored its own statutory provisions concerning exempt transactions, basing “the entire investigation and subsequent finding of a breach of the *Rules*...on a fundamentally flawed premise”: at para. 92. Second, when the court drew the exemption to the Law Society’s attention, although it conceded the first transaction was exempt, it continued nonetheless to press for dismissal of the petition: at para. 94.

[36] That the Law Society found Mr. Samarakoone to be in breach of the rules with respect to the first transaction is puzzling; it demonstrates a lack of the precision to be expected of a regulator. However, it does not, in my view, constitute misconduct. Indeed, the judge acknowledged as much, noting that, if the regulator had admitted to its mistake and agreed that the petition should be allowed when the hearing reconvened to address the exemption issue, “[he] might have viewed the matter differently”: at para. 95. It was thus the second reason that ultimately justified the award of costs—the Law Society’s conduct in “submitting to the end that the petition should be dismissed,” even after becoming aware that the first transaction was exempt: at para. 95.

[37] As noted, the Law Society’s insistence that the Notice and the Decision included both transactions relied heavily on the investigation stage and on Mr. Samarakoone’s references during the review stage to his efforts to confirm the client’s tax status with the CRA before transferring the funds to her. It was submitted that this focus on the steps taken before disbursing the funds amounted to an acknowledgement that the second transaction was very much in issue.

[38] The judge found this position to be inconsistent with the express identification of the first transaction in the Notice and the Decision, and the submissions made by the Law Society at the initial judicial review hearing. He criticized the Law Society for refusing to admit its error. However, at the subsequent hearing on December 6, 2024, counsel for the Law Society conceded that the exemption applied to the first transaction. She also acknowledged that, if the judge did not accept her argument that the Notice and the Decision implicitly dealt with both financial transactions, it was open to the court to find the Chair’s decision to be unreasonable and to set it aside.

[39] On appeal, the Law Society again acknowledges it was open to the judge to entirely reject its argument on the judicial review. But it submits that pursuing even a meritless position, without more, is not a basis for an award of special costs, or in the case of a tribunal, ordinary costs. I agree with this submission.

[40] This was not the Law Society's finest hour. It overlooked a provision in rules it had recently enacted, pursued a fledgling pro bono lawyer over verification efforts that were extensive but fell short of a rule it subsequently repealed, and pressed a weak argument at a continuation made necessary by the Law Society's initial misapplication of the exemption provision. However, the question that must be addressed is not whether this conduct was that to be expected of a regulator tasked with the oversight of the legal profession, but rather whether the conduct merited the extraordinary rebuke of having to pay costs to the lawyer who was the object of the regulatory efforts.

[41] As Justice Saunders (writing on behalf of the Court) observed in *Berthin v. British Columbia (Registrar of Land Titles)*, 2017 BCCA 181 at para. 53: "special costs as a sanction for lack of merit generally are to be eschewed for their potential to chill members of the community from solving disputes in the forum designed for that very purpose". Matters that attract rebuke by the court commonly involve "actions taken in bad faith, disobedience of court processes, incivility, frivolity, and impertinence ... [D]eclining to accept a preliminary and *ad hoc* assessment of the merits of a case and misguided submissions do not themselves draw condemnation": *Berthin* at para. 43.

[42] In my view, it cannot be said that the position taken by the Law Society in this case was capricious, dishonest, or so utterly without hope as to amount to misconduct or an abuse of process: *Berthin* at paras. 51, 53.

[43] Put another way, persistence in making a weak argument that a judge signals he has no time for does not, without more, justify an award of extraordinary costs against a party, even when that party is the Law Society. Counsel on appeal, not counsel below, made many of the same arguments credibly before us. Granted, on appeal the position was not that the petition should be dismissed—leaving in place a decision that expressly referred to only an exempt transaction—but was, rather, that if the petition were to be allowed, the matter should be remitted to the Chair for redetermination. Nonetheless, the foundation of the argument in both courts rested

on the same premise: that the investigation, the Notice and the Decision all addressed both the receipt and disbursement of funds.

[44] In summary on this ground of appeal, I would set aside the award of costs against the Law Society.

3. Did the judge err in finding procedural unfairness?

[45] Although acknowledging that it was unnecessary to decide the issue, the judge indicated that he would also have remitted the matter to the Law Society on the basis of procedural unfairness. In this regard, he said:

[65] The process that led to the imposition of the administrative penalty was significantly unfair to Mr. Samarakoone in one discrete but extremely important respect. There was no opportunity for Mr. Samarakoone to make submissions on the central question of whether a penalty should be imposed. Thus, Mr. Samarakoone was deprived of his right to be heard prior to the decision being rendered against him.

[46] In short, the judge found that the review procedure available to Mr. Samarakoone after the penalty had been decided came too late in the day. He also observed that the right to review as set out in the Notice was not clear, resulting in Mr. Samarakoone not realizing he could challenge both the penalty and the finding of breach: at para. 69.

[47] The Law Society submits that any unfairness at an earlier stage of a proceeding can be cured at a later stage, and says that was so in this case because a review before the Chair is a hearing *de novo*.

[48] Having found no error in the judge's decision to set aside the penalty on the basis that the Decision was unreasonable, it is unnecessary for us to resolve this issue. I would therefore leave it for another day.

Disposition

[49] I would allow the appeal only to the extent of setting aside the award of costs against the Law Society.

[50] The parties agree that no costs should be awarded in this Court as the Law Society retained counsel to represent Mr. Samarakoone on appeal.

“The Honourable Madam Justice Fenlon”

I AGREE:

“The Honourable Mr. Justice Willcock”

I AGREE:

“The Honourable Justice Winteringham”