



Case in Brief: *Groia v. Law Society of Upper Canada*

2018 SCC 27 | Judgment of June 1, 2018 | On appeal from the Court of Appeal for Ontario

A lawyer’s uncivil behaviour in court may not amount to professional misconduct if it was based on a mistaken understanding of the law, the Supreme Court has ruled. All the circumstances must be taken into account.

Joseph Groia was the lawyer for John Felderhof, a Bre-X mining executive charged with insider trading and other crimes. The trial was tense, marked by personal attacks and sarcastic remarks. During the first half of the trial, Mr. Groia believed prosecutors were acting wrongly. He accused them—repeatedly and in harsh language—of abuse of process. Mr. Groia was actually wrong about the law, but the judge did not correct him.

Lawyers have to follow many ethical rules. In Ontario, these are enforced by the Law Society of Ontario (formerly known as the Law Society of Upper Canada). The duty to practice law with “civility” is only one of them. Civility is not just about being polite; when lawyers attack each other personally, it weakens the justice system. Personal attacks distract from the parties’ dispute and makes it harder for lawyers to work together to find solutions. The Law Society can charge lawyers who act uncivilly with professional misconduct.

The Law Society began an investigation into Mr. Groia in 2004 for his behaviour toward the prosecution, even though no one complained. He was charged with professional misconduct in 2009 and found guilty by a Law Society Hearing Panel in 2012. The Law Society Appeal Panel confirmed this in 2013. Mr. Groia’s licence to practice law was suspended for a month and he was ordered to pay \$200,000 in costs. He disagreed with the decision and asked the courts to review it. Both the Divisional Court and the Court of Appeal upheld the Law Society Appeal Panel’s decision.

Justice Michael Moldaver, writing for the majority at the Supreme Court, ruled for Mr. Groia. In his view, the Law Society’s decision was unreasonable. He said that Mr. Groia had a reasonable basis to accuse the prosecution of misconduct, even though the allegations stemmed from his mistaken understanding of the law. The prosecutors’ conduct, the fact that the judge did not correct him, and the legal uncertainty about how to raise the issue of abuse of process all led him to act as he did. Justice Moldaver worried that the Law Society’s decision would make lawyers think twice about forcefully defending their clients, for fear they could be charged with misconduct. He also said the Law Society should pay careful attention to the legal rulings made by a trial judge who, unlike the Law Society, saw Mr. Groia’s behaviour in person. Four judges agreed with Justice Moldaver.

Justice Suzanne Côté agreed with Justice Moldaver that the Law Society was wrong to punish Mr. Groia. But unlike the majority, she thought that courts should not simply accept a law society’s disciplinary decision about a lawyer’s conduct in the courtroom. This was because letting a law society review in-court behaviour raises concerns about the role and independence of judges.

Justices Karakatsanis, Gascon, and Rowe disagreed with Justice Moldaver on how to review the Law Society’s decision and on the outcome. They said it was open to the Law Society to find Mr. Groia guilty of misconduct. In their view, he had disrupted the trial and unfairly accused the other side’s lawyers of dishonesty. They said the Law Society reasonably decided that Mr. Groia’s own mistaken view of the law was no excuse for his bad behaviour.

Lawyers have both a professional obligation to advocate strongly for their clients and a duty to act civilly during a trial. This case was about deciding when strong courtroom advocacy becomes incivility, and when incivility becomes professional misconduct. The Supreme Court said that decision-makers should look at the full situation when deciding if a line was crossed.

For more information (case no. 37112):

- [Reasons for judgment](#)
- [Case information](#)
- [Webcast of hearing](#)

Breakdown of the decision:

- Majority: [Moldaver](#) J. ([McLachlin](#) C.J. and [Abella](#), [Wagner](#) and [Brown](#) JJ. concurring)
- Concurring: [Côté](#) J.
- Dissenting: [Karakatsanis](#), [Gascon](#) and [Rowe](#) JJ.

Lower court rulings:

- Court of Appeal for Ontario ([appeal judgment](#))
- Ontario Superior Court of Justice - Divisional Court ([appeal judgment](#))
- Law Society of Upper Canada Appeal Panel ([appeal decision](#))
- Law Society of Upper Canada Hearing Panel ([decision](#) and [penalty decision](#))

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