

# Neither All nor Nothing? Navigating the Complexity of Witness Credibility

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Credibility lies at the heart of any regulatory hearing where the facts are disputed and cannot be deduced through independent verifiable means. Credibility assessments are required to choose between competing evidence or to scrutinize a single witness' account. Given that credibility will often determine the result in contested hearings, it is critical for administrative decisions-makers to master not only how to assess credibility but also how to explain those assessments in reasons for decision.

Conceptually, credibility covers both honesty and accuracy: a witness may lack credibility either because they are dishonest or because they are mistaken in what they recall. Reliability, though similar, is distinct from credibility. While credibility assesses a witness's willingness to tell the truth, reliability focuses on their ability to perceive, remember, and recount events.<sup>[1]</sup> Credibility findings are ordinarily afforded considerable deference on appeal, given that the trier of fact is uniquely positioned to observe witnesses. But, as the Divisional Court recently reminded in *Outram v. College of Massage Therapists of Ontario ("Outram")*,<sup>[2]</sup> that deference is not unchecked even on a standard of palpable and overriding error.

While it is true that credibility is not an "all or nothing proposition" – adjudicators do not have to choose between believing everything a witness has said and believing none of it – the Divisional Court in *Outram* emphasized that credibility cannot be compartmentalized during its assessment. That is, adverse findings on one aspect of a witness' testimony must inform the overall assessment of their reliability and honesty. It is not sufficient to simply accept part of a witness' evidence and reject the balance as lacking in credibility. If this is the decision-maker's conclusion, a tenable explanation is required. In other words, if a shortcoming in one aspect of the witness' evidence does not taint the account as a whole, the decision-maker must explain *why* that is the case. The failure to consider how contradictions, implausibility, or inconsistencies affect a complainant's broader credibility can risk undermining the fairness and integrity of the credibility assessment, leading to findings that could be vulnerable on appeal.<sup>[3]</sup>

## ***Lessons From Outram: Credibility Cannot be Compartmentalized***

### ***The Discipline Committee Decision: Evidence of Witness Accepted Despite Material Flaws***

*Outram* involved a registered massage therapist accused of professional misconduct and sexual abuse by a patient following a massage session. The complainant alleged that the registrant had engaged in an inappropriate massage amounting to sexual misconduct, including the grazing of her genitals. However, the complainant did not allege the member grazed her genitals in her initial statements to the College or to police. Rather, she disclosed it for the first time months later during the College's investigation.<sup>[4]</sup>

During the hearing, the presiding Discipline Committee panel found the complainant to be generally reliable, except with respect to the alleged grazing of her genitals. It found that aspect of her testimony to be inconsistent and implausible and rejected that portion of her evidence. Notwithstanding its adverse credibility finding on one aspect of the complainant's testimony, the panel relied on other aspects to support findings of professional misconduct.<sup>[5]</sup> The panel concluded that the registrant's actions amounted to, among

other things, sexual abuse of a patient in circumstances that triggered mandatory revocation.[\[6\]](#)

#### *The Appeal: Credibility Must be Assessed Globally*

In deciding the statutory appeal of the Discipline Committee decision, the Divisional Court emphasized that inconsistencies or implausibilities in a complainant's testimony may undermine the totality of their credibility, and, accordingly, credibility must be evaluated holistically.[\[7\]](#)

The *Outram* court accepted the registrant's argument that the panel erred in its credibility assessment.[\[8\]](#) Drawing from similar statutory appeals, the court reiterated that administrative tribunals must consider how significant inconsistencies in a witness' evidence impact their overall credibility and that such inconsistencies should not be viewed in isolation.[\[9\]](#) While finding a lack of credibility in one component of a witness' testimony does not automatically undermine all of it, serious negative credibility findings on some aspects of the evidence may mean the totality of evidence fails to meet the threshold of as "clear, convincing, and cogent" and therefore render it unable to satisfy proof on a balance of probabilities.[\[10\]](#)

The Divisional Court reinforced its conclusion, relying on a recent case *Aslam v. Ontario College of Pharmacists* ("Aslam"),[\[11\]](#) which also cautioned against a compartmentalized approach to credibility. In *Aslam*, the registrant faced multiple allegations of sexual assault and harassment raised by a former employee and patient. The panel of the Discipline Committee made findings on two of the acts alleged by the complainant but dismissed the remaining five. On appeal, the Divisional Court found that the panel's assessment of the complainant's reliability and credibility was flawed, noting that the complainant had given contradictory testimony about several of the alleged incidents and had a history of making serious, unsubstantiated allegations against others.[\[12\]](#) The court held that, in a context where all seven allegations turned on the complainant's credibility, the panel should have articulated why the complainant's credibility was fatal to some allegations but not others.[\[13\]](#) Instead, it assessed credibility allegation-by-allegation without explaining why the markers of the complainant's credibility did not affect her testimony as a whole.

The court also relied upon *Stefanov v. College of Massage Therapists of Ontario*,[\[14\]](#) another earlier Divisional Court case overturning the findings of the Discipline Committee, for the notion that significant inconsistencies in part of a witness's evidence should alert adjudicators to global credibility concerns: [\[15\]](#)

Where a trier of fact finds significant inconsistencies in the evidence of a witness and rejects the witness's evidence on an issue, it is incumbent upon it to consider how the inconsistencies and rejection affect the witness's overall credibility and reliability. The trier must not place evidence on each allegation in separate silos; it must consider the totality of the evidence in light of any inconsistencies.

In its decision in *Outram*, the Divisional Court held that the problems in the complainant's testimony were material to her evidence in respect of *all* the allegations against the registrant. The panel's failure to address how a major inconsistency and implausibility in her testimony – the omission of an allegation that her genitals had been grazed – affected her overall credibility, was itself a palpable and overriding error. Consequently, the findings of professional misconduct based on that testimony could not stand.[\[16\]](#)

#### **Conclusion and Considerations for Adjudicators and Counsel**

*Outram* serves as reminder that, where adjudicators find aspects of a witness evidence credible even if other aspects of their testimony is not entirely credible or reliable, the basis for accepting the witness' evidence notwithstanding the inconsistencies must be explained.[\[17\]](#) As a matter of logic, major shortcomings in a witness' credibility will often extend to the assessment of their credibility as a whole. Even where the credibility concern relates to only one part of the witness' account, it is incumbent on the decision-maker to turn their mind to whether the entire testimony has been compromised. If the answer is "no", then the reasons for decision must explain why the problem is isolated and that continued reliance on the witness can be justified. The lessons of *Outram* gives rise to the

following takeaways:

1. Credibility is not an all or nothing exercise. Adjudicators are entitled to believe parts of a witness's evidence while rejecting other parts. Nor is it a numbers game: one credible witness's testimony may outweigh contradictory accounts from multiple less credible witnesses. However, adjudicators must be careful to assess how any serious flaws in testimony affect the witness' reliability as a whole, not just on a single allegation.
2. Discrepancies in a witness's testimony should not automatically lead to disbelief. Innocent misrecollection and differing perceptions are common, and minor inconsistencies may be immaterial. But serious contradictions, particularly those involving central allegations, must be addressed directly because they can undermine the persuasiveness of the evidence overall.
3. A compartmentalized approach to credibility should be avoided. Adjudicators must both examine the evidence on specific issues but also take a holistic approach, considering the entire body of testimony and how inconsistencies or implausibility affect overall credibility and reliability. Failure to do so risks overlooking the cumulative overall effect of credibility concerns on the witness's evidence.
4. When making closing submissions, counsel should not shy away from perceived shortcomings in their witnesses' evidence. A preferred approach is to address any problems head-on, point to a plausible explanation based in the evidence, and offer reasoning as to why the witness is deserving of belief notwithstanding any flaws in their testimony.

***The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.***

[1] [Joe Singer Shoes Limited v. A.B.](#) 2019 ONSC 5628 at para. 40.

[2] [2025 ONSC 4201](#).

[3] [Outram v College of Massage Therapists of Ontario](#), 2025 ONSC 4201 at paras 38-39.

[4] [Outram v College of Massage Therapists of Ontario](#), 2025 ONSC 4201 at paras 1, 5-10.

[5] [Outram v College of Massage Therapists of Ontario](#), 2025 ONSC 4201 at paras 14-15.

[6] [Outram v College of Massage Therapists of Ontario](#), 2025 ONSC 4201 at paras 19-21.

[7] [Outram v College of Massage Therapists of Ontario](#), 2025 ONSC 4201 at paras 39-42.

[8] [Outram v College of Massage Therapists of Ontario](#), 2025 ONSC 4201 at paras 46-49.

[9] [Outram v College of Massage Therapists of Ontario](#), 2025 ONSC 4201 at paras 39-42 & 46.

[10] [Outram v College of Massage Therapists of Ontario](#), 2025 ONSC 4201 at para 25.

[11] 2023 ONSC 2549.

[12] *Aslam v Ontario College of Pharmacists*, 2023 ONSC 2549 at paras 1-2 & 14-15.

[13] *Aslam v Ontario College of Pharmacists*, 2023 ONSC 2549 at paras 13-15.

[14] 2016 ONSC 848.

[15] *Outram v College of Massage Therapists of Ontario*, 2025 ONSC 4201 at para. 39 (citations omitted; emphasis added).

[16] *Outram v College of Massage Therapists of Ontario*, 2025 ONSC 4201 at para 47-49.

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