

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *MacDonald v. Health Professions Review Board*,
2024 BCSC 2051

Date: 20241113
Docket: S240970
Registry: Vancouver

Between:

Alison MacDonald

Petitioner

And

Health Professions Review Board, College of Physicians and Surgeons of British Columbia, Dr. Oxana Frizen, Dr. Jerrod Hendry, Dr. Sheila Kegel, Dr. Lindsay Christine Kennedy, Dr. Mujahid Ali Syed

Respondents

Before: The Honourable Justice K. Loo

On judicial review from: An order of the Health Professions Review Board dated October 11, 2023 (Complainant v. College of Physicians and Surgeons of British Columbia (No. 1), 2023 BCHPRB 78)

Reasons for Judgment

Appearing in person:

A. MacDonald

Counsel for the Health Professions Review Board:

G. Kesheva

Place and Date of Hearing:

Vancouver, B.C.
October 17, 2024

Place and Date of Judgment:

Vancouver, B.C.
November 13, 2024

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Introduction

[1] The petitioner seeks judicial review of a decision of the Health Professions Review Board denying her an extension of time to file a review of a decision made by the College of Physicians and Surgeons of British Columbia. The decision denying an extension of time (the “Extension Decision”) was made by the Review Board on October 11, 2023.

[2] The underlying decision in respect of which the petitioner seeks to file a review out of time (the “Complaints Decision”) was made by the Registrar of the College under s. 32(3)(c) of the *Health Professions Act*, R.S.B.C. 1996, c. 183 [“HPA”] on January 4, 2023. It dealt with complaints made by the petitioner against five physicians regarding her care. The Complaints Decision concluded with no criticism of the care provided by the physicians.

Background and chronology

[3] On November 23, 2020, the petitioner filed a complaint with the Registrar of the College against the five respondent physicians.

[4] On January 4, 2023, the College issued the Complaints Decision.

[5] On June 13, 2023, the petitioner submitted a partial application to the Review Board for an extension of time to review the Complaints Decision.

[6] By letter dated July 14, 2023, the Review Board acknowledged receipt of the petitioner’s application for an extension of time.

[7] On October 11, 2023, the Review Board issued the Extension Decision.

Relevant statutory provisions

[8] Section 50.6 of the *HPA* provides that an application for review of a disposition by the Registrar of the College, such as the one in this case, must be made within 30 days.

[9] Whether an extension of time may be granted is governed by s. 50.61(4) of the *HPA* which provides:

(4) On application, the review board may extend the time for filing an application for review under this Part, even if the time for filing an application has expired, if the review board is satisfied that special circumstances exist.

Issues

[10] There are three primary issues to be determined on this judicial review:

- a) Did the Review Board fail to afford the petitioner procedural fairness because she did not receive an in-person hearing?
- b) Did the Review Board fail to afford the petitioner procedural fairness because the selection of the panel chair for the Review Board resulted in restrictions on the petitioner's rights to low cost or free legal services?
- c) Was the Extension Decision patently unreasonable?

[11] I will address these issues in turn.

[12] In addition, the respondent College has raised evidentiary and procedural issues that will be dealt with at the end of these reasons.

Discussion

Did the Review Board fail to afford the petitioner procedural fairness because she did not receive an in-person hearing?

[13] The petitioner argues that the Review Board failed to afford her procedural fairness because she did not receive an in-person hearing, both in respect of the Complaints Decision and the Extension Decision. For the following reasons, I am unable to accede to these arguments.

[14] Section 36 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 ["ATA"] states:

In an application or an interim or preliminary matter, the tribunal may hold any combination of written, electronic and oral hearings.

[15] The form of hearing to be provided by a tribunal is a matter within the tribunal's discretion. The duty of procedural fairness in administrative law is flexible and context specific: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 77.

[16] In this case, the Complaints Decision was dealt with under s. 32(3) of the *HPA*, which requires a person who wishes to make a complaint against a registrant to deliver the complaint in writing to the Registrar. The section requires the Registrar to deliver a written report. Section 32 does not require an oral hearing, and the College was provided with the petitioner's complaint and the supplementary documents submitted by her.

[17] In my view, given the summary nature of the complaints process provided for in the statute, the petitioner was not denied procedural fairness because she was not provided with an in-person hearing in the process leading to the Complaints Decision.

[18] In relation to the Extension Decision, the petitioner's application was a relatively straightforward interim application, and the Review Board's process gave all parties an opportunity to provide written submissions. The petitioner availed herself of that opportunity and, importantly, she never made a request for an oral hearing in respect of the application for an extension of time. Again, in this regard, she was not denied procedural fairness.

Did the Review Board fail to afford the petitioner procedural fairness because the selection of the panel chair for the Review Board resulted in restrictions on the petitioner's rights to low cost or free legal services?

[19] The petitioner submits that she was not afforded procedural fairness because the panel chair selected to adjudicate her extension application is also employed by the Community Legal Assistance Society ("CLAS"). The petitioner argues that the

panel chair's role as an employee of CLAS has restricted her ability to obtain low-cost or free legal services from CLAS.

[20] There is no evidentiary basis for this argument. In particular, the petitioner has not established that the panel chair's role with CLAS affected the petitioner in any way. I am unable to find that the petitioner was denied procedural fairness as a result of the panel chair's employment by CLAS.

Was the Extension Decision patently unreasonable?

[21] The petitioner argues that the Extension Decision ought to be set aside because it was patently unreasonable. The parties agree that patent unreasonableness is the applicable test.

[22] The meaning of patent unreasonableness is well-established. In *The College of Physicians and Surgeons of British Columbia v The Health Professions Review Board*, 2022 BCCA 10 at para 129, the Court quoted with approval from the decision in *Victoria Times Colonist v. Communications, Energy and Paperworkers*, 2008 BCSC 109 as follows:

[65] When reviewing for patent unreasonableness, the court is not to ask itself whether it is persuaded by the tribunal's rationale for its decision; it is to merely ask whether, assessing the decision as a whole, there is any rational or tenable line of analysis supporting the decision such that the decision is not clearly irrational or, expressed in the Ryan [Law Society of New Brunswick v. Ryan, 2003 SCC 20] formulation, whether the decision is so flawed that no amount of curial deference can justify letting it stand. If the decision is not clearly irrational or otherwise flawed to the extreme degree described in Ryan, it cannot be said to be patently unreasonable. This is so regardless of whether the court agrees with the tribunal's conclusion or finds the analysis persuasive. Even if there are aspects of the reasoning which the court considers flawed or unreasonable, so long as they do not affect the reasonableness of the decision taken as a whole, the decision is not patently unreasonable.

[23] In the Extension Decision, the Review Panel assessed the petitioner's application by means of the "special circumstances" test set out at s. 50.61 of the *HPA*, cited above. Further, section 5(3) of the *Rules of Practice and Procedure* developed by the Review Board provide that, when considering whether there are

“special circumstances” justifying an extension of time, the applying party must address and the Review Board must consider:

- a) whether the applying party formed a genuine intention to apply for review and communicated that intention to any respondent before the expiry of the 30-day limitation period;
- b) the length of the delay and any legitimate explanation for the delay;
- c) whether any respondents would suffer any special prejudice if an extension were granted; and
- d) whether the application is bound to fail and whether the applying party’s reasons for challenging the underlying decision have sufficient merit to justify granting an extension.

[24] Both in the Extension Decision and on this judicial review, the Review Board conceded that the first and third of these considerations were met by the petitioner. It accepts that petitioner communicated an intention to challenge the College’s disposition of her complaints within 30 days and that there would be no special prejudice to either respondent if an extension were granted.

[25] The petitioner’s submissions in respect of the second and fourth considerations overlap and are appropriately dealt with together. The petitioner’s complaints arise in large part because she believes that the respondent physicians, among others, refuse to respond to her complaints about criminal behavior to which she has been subject.

[26] The petitioner asserts that she has been the subject of an ongoing campaign of identity theft and illegal surveillance for several years. She hears voices that are threatening and say vulgar things to her. She alleges, in relation to these voices, that she is an ongoing victim of sexual harassment and bullying. Her petition also alleges that she has been the victim of “psychiatric and cognitive abuse” and “torture,” as well as human rights violations. She disagrees with the respondent physicians who

have opined that her perceptions are linked to health issues. She alleges that the physicians do not take her concerns seriously.

[27] In relation to the second consideration under the “special circumstances” test – the length of the delay and the reasons for it – the petitioner argued on her extension application and on this judicial review that the delay was caused by the criminal behavior.

[28] The petitioner’s application was approximately 123 days late. In the Extension Decision, the Review Board acknowledged that a complainant’s mental health challenges may be considered in the interests of justice in relation to delay, but found that the petitioner failed to establish any link between the petitioner’s perceived challenges involving identity theft and voices and the 123-day delay in filing a review application.

[29] At the hearing of this petition, the petitioner was again unable to explain how her challenges caused the length of the delay, except to say that it would be patently unreasonable to expect no delays given the harassment, identity theft, and illegal surveillance that she is experiencing.

[30] In relation to the merits of the underlying review and the “bound to fail” test, the thrust of the petitioner’s argument is that the criminal behaviour and identity theft to which she is subject constitute special circumstances.

[31] However, in her submissions to the Review Board and in her submissions to this Court, the petitioner was unable to point to any specific aspect of the Complaints Decision which is patently unreasonable.

[32] The College’s role was to review whether the care provided by the physicians, and their conduct, met the expectations of the College. In a 19-page decision, the Registrar of the College did this, specifically addressing the complaints advanced by the petitioner, and summarizing the responses of each of the respondent physicians to her complaints.

[33] Many of the issues raised by the petitioner both before the Review Board and before this Court, such as alleged failures by the police to respond to her concerns, are not within the Review Board's mandate. As stated in the Extension Decision (at para 41), the petitioner's submissions regarding identity theft "do not disclose issues that address the adequacy of the College's investigation or the reasonableness of the College's disposition."

[34] The Review Board also addressed the petitioner's complaints regarding procedural fairness, in particular concerning the fact that the petitioner did not receive an in-person hearing in the process leading to the Complaints Decision and concerning redactions of information in medical records provided to her. The complaint regarding a lack of an in-person hearing has been addressed above in these reasons. The redaction of her medical records was required by privacy legislation. The Review Board found that the petitioner's arguments regarding procedural fairness were bound to fail.

[35] In summary, on the basis that: the 123-day delay was not adequately explained; the plaintiff's submissions did not disclose issues addressing the adequacy of the College's investigation or the reasonableness of its disposition; and the petitioner's procedural arguments regarding the process leading to the Complaints Decision were bound to fail, the Review Board concluded that an extension of time to permit a review of the Complaints Decision ought to be denied.

[36] The petitioner has not established that any of these conclusions were patently unreasonable.

Other issues

The named respondents and the style of cause

[37] Counsel for the Review Board raised an issue regarding the persons who ought to have been named as respondents to this petition proceeding. The style of cause of the originally filed petition is incorrect, as there are no parties listed on it either as petitioner or respondents.

[38] The petitioner is Alison MacDonald. The College submits, and I agree, that the proper respondents are the Health Professions Review Board, the College of Physicians and Surgeons of British Columbia, Dr. Oxana Frizen, Dr. Jerrod Hendry, Dr. Sheila Kegel, Dr. Lindsay Christine Kennedy, and Dr. Mujahid Ali Syed.

[39] The chair of the Review Board is not properly a respondent because it is the Review Board's decision that is being judicially reviewed, not the conduct of its chair.

[40] I order that the style of cause be amended to reflect these conclusions. These reasons for judgment shall bear the amended style of cause.

Admissibility of evidence and delay in filing of petition

[41] The Review Board has objected to the admission into evidence of an exhibit to the petitioner's affidavit created after the Review Board's decision. Further, it has complained that the petition was filed out of time. In light of my conclusions above, it is not necessary to rule on these issues and I decline to do so.

Conclusion

[42] As the petitioner was not denied procedural fairness by the Review Board and she has not established that the Extension Decision was patently reasonable, the petitioner's application for judicial review must be dismissed.

[43] Counsel for the Review Board advised the Court that her client is not seeking costs of this petition. Therefore, no costs will be ordered.

"The Honourable Justice Loo"