
A COMMENTARY ON LEGAL ISSUES AFFECTING PROFESSIONAL REGULATION

Two Uncommon Decisions

Below is a discussion of two uncommon court decisions. They are uncommon in that they deal with matters rarely addressed by the courts.

Registration Process Issues

It is rare for courts to deal with the registration process and when they do the issue is usually the ethical character of the applicant. The Ontario Divisional Court decision in *Ahmed v. Ontario (Health Professions Appeal and Review Board)*, 2011 ONSC 4217 gives regulators a sense of how courts view the entire registration process.

Dr. Ahmed, a medical graduate of Bangladesh, had been practising in the United States for years. He applied for registration with the College of Physicians and Surgeons of Ontario. The College put his application through the usual process for international graduates that involved assessment of his abilities including practising under supervision. Concerns were identified about his abilities as well as his sense of boundaries, ethics and behaviour. Dr. Ahmed suggested his supervisor was biased (not an unusual occurrence in such

circumstances). Some of his communications with the College raised additional concerns about his communications style and reasoning.

The College required a psychiatric assessment (which he did not attend) and an additional assessment of his abilities using a tool frequently employed in the College's quality assurance program. That assessment raised significant concerns about his ability to practise safely. Dr. Ahmed appealed first to an appellate tribunal and then to the Divisional Court, both of which upheld the College's decision.

In reading the Divisional Court's decision the following points emerge:

1. The Court was impressed by the College's provision of multiple opportunities for the applicant to demonstrate his abilities and not relying solely on the initial negative results.
2. The Court found it appropriate for the College to require Dr. Ahmed to undergo additional assessments where the usual assessment processes provided concerning results.
3. The Court accepted the College's assessment that the supervisor was not

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biased, particularly where his observations were supported by other assessment tools.

4. The Court accepted concerns about Dr. Ahmed's communications style and related behaviour even though this was based primarily on the observations of the supervisor and Dr. Ahmed's own "rambling" communications with the College.

When one reads the facts of the case, it is not surprising that the College's decision was upheld. Dr. Ahmed made some rather bizarre statements. However, from a regulatory perspective, what is interesting is the approach taken by the Court to the registration process.

Complaints – Past History of Member

The second case involved a complaint against a physician, RM, for rudeness. RM had sixteen previous complaints against him. The previous complaints were not provided to the Inquiry Committee, which decided to take no formal action. The complainant appealed to the Review Board. The Review Board proposed to disclose the sixteen previous complaints to the complainant for the purposes of the review. Both RM and the College challenged the decision before the British Columbia Supreme Court.

In *RM v. The College of Physicians and Surgeons of British Columbia*, 2011 BCSC 832, the Court upheld the Review Board's ruling. It noted that the Board "further ordered as a condition of disclosure that [the complainant] be advised in writing that the information must not be used for any purpose other than the review and that [the complainant] be required to sign an agreement to return the documents at issue

upon completion of the Review Board proceedings."

The Court concluded that the Review Board had considered the physician's privacy interests in this non-public information and balanced it appropriately against the competing interest of a fair review process. The Court concluded as follows:

In determining how he would exercise his discretion, the Chair did not ignore RM's privacy interest, nor did he purport to make public any private information. What he did was allow certain information to be released to the complainant so the complainant could make proper representations on the review to which the complainant is a party. I am satisfied that the decision is not patently unreasonable. It was not based entirely or predominantly on irrelevant factors nor did it fail to take into account the appropriate statutory requirements. The discretion was not exercised arbitrarily, in bad faith or for an improper purpose.

A member's past complaints history is, at least sometimes, relevant to the consideration of a complaint. In an external review of such complaints, the review body has to balance the competing considerations, including the privacy interests of the member. Likely there is more than one possible result in balancing those considerations.

The *Ahmed* and *RM* cases can be found at: www.canlii.org.