Court of Queen's Bench of Alberta

Citation: Tran v College of Physicians and Surgeons of Alberta, 2017 ABQB 337

Date: 20170523
Docket: 1403 08178
Registry: Edmonton

Between:

Anita Tran

Applicant

- and -

College of Physicians and Surgeons of Alberta (Complaint Review Committee)

Respondent

Reasons for Decision of the Honourable Madam Justice J.M. Ross

---

Introduction

[1] The Applicant, Ms. Anita Tran, seeks judicial review of a decision of the Complaint Review Committee [the Committee] of the College of Physicians and Surgeons [the College]. The Committee upheld the decision of the Complaints Director of the College [Complaints Director] that dismissed the Applicant's complaint against two physicians (Dr. Connie Switzer and Dr. Penny Turner) regarding the care provided to the Applicant's 96 year old mother, Mrs. Hao Tran [Mrs. Tran].

Background Facts

[2] The Applicant was appointed Guardian of Mrs. Tran, a dependent adult, under a Guardianship Order dated January 22, 2008. The Guardianship Order empowered the Applicant "to consent to any health care that is in the best interests of the dependent adult."

[3] Mrs. Tran was taken to the Royal Alexandra Hospital by ambulance on December 28, 2009. She was in severe respiratory distress. She was responsive to pain only, and not communicative. She was assessed and found to be a frail elderly female patient with severe comorbid disease who would not tolerate aggressive therapies. It was determined that she was not a dialysis candidate, was not a candidate for the Intensive Care Unit and, for medical reasons, she should have a "Do Not Resuscitate" code status [DNR].

[4] The hospital chart contains notes of physicians' discussions with the Applicant about there being no medical reason for heroic intervention. A "DNR" order was placed on Mrs. Tran's hospital chart after her admission to the hospital by Dr. Turner.

[5] Around 2:15 p.m. on January 4, 2010, a laboratory technician was unable to get a blood sample from Mrs. Tran despite four attempts to do so. At 4:05 pm the same day, Ms. Tran's mother was found with no pulse, no heart sound, no breath sounds and pupils unreactive to light. She was pronounced dead.

[6] The Applicant made a written complaint to the College on April 27, 2011, regarding Drs. Switzer and Turner. The complaint regarding Dr. Switzer related to management of Mrs. Tran's feeding tube during a previous hospital visit. The complaint against Dr. Turner related to the "DNR" order.

[7] The College's Complaints Director undertook an investigation, receiving a number of letters from the Applicant, responses from the physicians and Mrs. Tran's hospital records. He wrote to the Applicant, by letter dated January 11, 2013, advising that there was insufficient evidence of unprofessional conduct by either physician, that he considered the care provided was appropriate, and the determination that Mrs. Tran should have a "DNR" status was medically and ethically compassionate.

[8] The information considered by the Complaints Director in reaching his decision to dismiss the complaint is set out in his Investigation Report, dated January 8, 2013.

[9] The Applicant wrote to the College on March 7 and 22, 2013, questioning the decision to dismiss her complaint. In a letter dated June 28, 2013, the Hearings Director of the College confirmed the Applicant's request for a review of the dismissed complaint by the Committee; and advised that the review would be held on September 13, 2013, and that she had until July 29, 2013 to provide any further written submissions.

[10] The Applicant sought extensions of the deadline for submissions and of the review date. On September 10, 2013, newly retained counsel for the Applicant requested further extensions. These requests were granted. The Applicant was given until November 7, 2013 to provide further submissions, and the review was set for January 9, 2014.

[11] Counsel for the Applicant provided further written submissions on November 6, 2013. The focus of these submissions, and the present application, was the DNR order. The concerns raised regarding the order included:

i. The order was made without the Applicant's permission;

ii. The order form mistakenly indicated that it was "requested by agent for a patient with diminished decision-making capacity";

iii. While the DNR order and hospital records refer to discussions with family, the Applicant and her husband stated they were not aware that a DNR order was in place.

Committee Decision

[12] The Committee met on January 9, 2014 and subsequently issued a written decision upholding the dismissal of the complaints against Drs. Switzer and Turner on the basis of there being insufficient evidence of unprofessional conduct.

[13] In relation to the DNR order, the Committee decision stated:

> *Issue: Management of Ms Hao Tran's care*
>
> Dr. Turner's management of Ms. Hao Tran's care was appropriate and reasonable given Ms Tran's age and degree of illness.
>
> *Issue: Consent for DNR (do not resuscitate) order*
>
> Page 1 of the Do Not Resuscitate Order states: *"Family is aware of the DNR order and its implications have been explained in detail to family members (daughter and son-in-law)."*
>
> Page 2 of the Do Not Resuscitate Order states: "I have discussed the resuscitation status/Treatment Plan with the family (daughter; son-in-law)." However, it appears the wrong box is ticked below: *Requested by agent for a patient with diminished decision-making capacity*. The correct box to be ticked based on the circumstances of this case is the one below which reads: *CPR is futile or not beneficial (would not be medically effective or achieve any expressed goal(s) of treatment*.
>
> The DNR decision was appropriately made on medical grounds with input from more than one physician and with indication of prior involvement in similar discussions of Ethics personnel.
>
> It is unfortunate that the wrong box appears to have been checked on page 2 of the DNR. However, this appears to have simply been in error as the notation on page 1 properly notes that the family was advised of the DNR order and its implications, as opposed to any suggestion they requested the DNR.
>
> For all of the above reasons, the CRC finds the decision to dismiss the complaint to be reasonable.
>
> In considering what action to take, the Committee has specifically considered whether there is sufficient evidence that the Investigated Members have engaged

in "unprofessional conduct" to warrant a hearing by a Hearing Tribunal. The term "unprofessional conduct" is defined in section 1(1) of the *Health Professions Act*.

In particular the CRC considered whether there is sufficient evidence of the conduct described in the following section of the definition of unprofessional conduct:

- Lack of knowledge, skill or judgment [section 1(1)(pp)(i)];
- Contravention of the HPA, the code of ethics, or standards of practice [section 1(1)(pp)(ii)];
- Contravention of other legislation that applies to the profession [section 1(1)(pp)(iii)]; or
- Conduct that harms the integrity of the medical profession [section 1(1)(pp)(xii)].

The CRC has determined that there is insufficient evidence to suggest that Drs. Connie Switzer and Peggy Turner have engaged in any of the conduct described above.

[14] On June 17, 2014, the Applicant filed the within application for judicial review. In February 2016, the hearing was set for March 16, 2017. A Certified Record was filed in October 2016. On February 27, 2017, the Applicant filed an Affidavit sworn by her on February 23, 2017.

Legislative Provisions

[15] The relevant provisions of the *Health Professions Act*, RSA 2000, c H-7 read:

54(1) A person who makes a complaint to a complaints director regarding a regulated member or a former member must do so in writing and must sign the written complaint.

...

66(1) When an investigator concludes an investigation, the investigator must make a report within a reasonable time and, if the investigator is not the complaints director, submit the report to the complaints director.

...

(3) If, on reviewing a report prepared under this section, the complaints director determines that the investigation is concluded, the complaints director must

(a) refer the matter to the hearings director for a hearing, or

(b) dismiss the complaint, if in the opinion of the complaints director

(i) the complaint is trivial or vexatious, or

(ii) there is insufficient or no evidence of unprofessional conduct.

...

67 The complaints director must notify the complainant and the investigated person in writing of the action taken under section 66(3) and if the complaint is dismissed

(a) must give the reasons, and

(b) notify the complainant in writing of the right to apply to the hearings director for a review under section 68.

68(1) A complainant may apply, in writing with reasons, to the hearings director for a review of the dismissal of a complaint within 30 days after being notified of the dismissal under section 55 or 67.

(2) Despite section 14(2), on receipt of an application under subsection (1) the hearings director must notify the investigated person, give a copy of the application to the complaint review committee and direct the complaints director to give a copy of the report made under section 66 to a complaint review committee.

(3) Within 60 days after receipt of a report under subsection (2), a complaint review committee must commence a review of the report and the decision to dismiss the complaint.

(4) A complaint review committee may determine whether the submissions to it with respect to a review under subsection (3) by the complainant and the investigated person must be written, oral or both.

(5) The complaint review committee, on complying with subsection (3), must

(a) refer the matter to the hearings director for a hearing,

(b) direct the complaints director to conduct or appoint an investigator to conduct a further investigation and to prepare a report on the further investigation and submit it to the complaint review committee for its consideration before acting under clause (a) or (c), or

(c) confirm that the complaint is dismissed if in the opinion of the complaint review committee

(i) the complaint is trivial or vexatious, or

(ii) there is insufficient or no evidence of unprofessional conduct.

(6) The complaint review committee must give the complainant and the investigated person written notification, with reasons, of any action taken under subsection (5).

Standing

[16] The Applicant made a complaint to the College under s 54 of the *Health Professions Act*. The Complaints Director investigated, determined that there was insufficient evidence of unprofessional conduct, and dismissed her complaint under s 66. The Applicant, as complainant, was notified of the dismissal of her complaint under s 67. She was entitled to and sought review of the dismissal of her complaint under s 68(1). The Committee confirmed that the complaint was dismissed (s 68(5)) and notified the Applicant (s 68(6)). The *Health Professions Act* provides no further right of appeal for the Applicant.

[17] The role of a complainant under a professional regulatory statute, and the limited standing of a complainant to seek judicial review, have been addressed by the Alberta Court of Appeal in ***Friends of the Old Man River Society v Association of Professional Engineers, Geologists and Geophysicists of Alberta***, 2001 ABCA 107, 277 AR 378, leave to appeal to SCC refused, [2001] SCCA No 366 [***Friends***]; ***Mitten v College of Alberta Psychologists***, 2010 ABCA 159, 487 AR 198 [***Mitten***]; and ***Warman v Law Society of Alberta***, 2015 ABCA 368, 609 AR 83 [***Warman***].

[18] In ***Friends***, the Court of Appeal commented on the role of a complainant at paras 41-42:

> The Act makes it clear that the disciplinary process is a matter between the Association and the individual member whose conduct has been questioned. The Act is directed solely to the Association and its members; the rights, duties and responsibilities contained in the Act relate only to them. Under the investigative process contained in Part 5, a complainant is not made a party either to the investigation or the disciplinary process itself. The only parties are the Association and the member whose conduct is under investigation. Council's decision to terminate the investigation of the Engineers could have no detrimental impact on either FOR [Friends of the Oldman River Society] or Opron [Opron Construction Co Ltd]. It did not affect their personal or economic rights or obligations. They have no more interest in the conduct of the Engineers than any other member of the public. There is no *lis inter partes* between FOR and Opron, on the one hand, and the Association or the Engineers, on the other. Judicial review is not available in these circumstances.
>
> The discretion exercised by Council is analogous to prosecutorial discretion in the criminal process. With respect to the review by the courts of prosecutorial discretion, L'Heureux-Dube J. said in ***R v. Power***, [1994] 1 S.C.R. 601, 89 C.C.C. (3d) 1, at 15, that it "is especially ill-suited to judicial review". And in ***R v. Osiowy,*** (1989), 50 C.C.C. (3d) 189, the Saskatchewan Court of Appeal held that the discretion of the Attorney-General to stay a private prosecution is not reviewable "in the absence of some flagrant impropriety on the part of the Crown officers" (per Vancise J.A. at 191).

[19] In ***Mitten***, the Court held that notwithstanding this limited role, complainants are afforded statutory appeal rights, and are entitled to seek judicial review if the appeal process is conducted in a fundamentally unfair manner (para 17):

> While the role of the complainant in discipline proceedings at the investigative stage is limited, the statute does afford the complainant some rights. The College and the investigated psychologist may be the only full parties at that stage, but the claimant is clearly a participant in the appeal of the decision not to proceed to hearing. The *Act* specifically gives that right of appeal to the complainant. What the obiter comments in ***Friends of the Old Man River*** signify is that the complainant cannot turn the appeal of the decision not to proceed to a hearing into a surrogate hearing on the merits. ***Friends of the Old Man River*** should not be read as suggesting that a complainant who launches an appeal under the statute has no remedies if the appeal process is conducted in a fundamentally unfair manner.

[20] In ***Warman***, the Court affirmed ***Mitten***, and held that this limited form of standing was arguably available in the case before it, and that the judicial review application should not be summarily dismissed (para 6):

> In ***Mitten***, this Court confirmed that a party who has a statutory right to appeal a decision dismissing a complaint has standing to seek judicial review if the appeal process is conducted in a fundamentally unfair manner. Mr. Warman's argument is not that, by virtue of exercising his statutory right of appeal, he has standing to question any downstream procedure as stated by Wakeling J.A. at paras 4 and 35. Rather, he argues that he has standing to seek judicial review of the fairness of the specific procedure which effectively reversed the results of his previous statutorily mandated appeal without his participation. While the modern test for summary judgment is to determine, based on the record, if a disposition that is fair and just to both parties can be made without the need for a trial, the intent is not to summarily prevent novel arguments on unsettled law from going forward: ***Windsor v Canadian Pacific Railway Ltd***., 2014 ABCA 108 at para 13, 572 AR 317; ***Hyrniak v Mauldin***, 2014 SCC 7 at paras 4-5, [2014] 1 SCR 87; ***Tottrup v Clearwater (Municipal District No. 99)***, 2006 ABCA 380 at para 11, 401 AR 88. Mr. Warman's argument, although novel, is not foreclosed by any previous decision of this Court nor by the *Act* and is not devoid of merit. Counsel were unable to cite any authority on point and we were unable to find one. Therefore, Mr. Warman's application should not be summarily dismissed.

[21] The Applicant submits that she should have standing, just as a complainant whose complaint to the Human Rights Commission is dismissed before hearing has standing to seek judicial review. The Applicant refers to ***Brewer v Fraser Milner Casgrain LLP***, 2008 ABCA 160, 432 AR 188 [***Brewer***], where the issue related to standing of the Commission, not the unsuccessful complainant. The Applicant submits that she is the person in the best position to make submissions regarding whether her wishes and her mother's wishes were adequately taken into account when the DNR order was made.

[22] This submission misses the point made in ***Friends*** regarding the role of a complainant who seeks to have a professional regulatory body commence disciplinary proceedings. The

complainant is not seeking a personal remedy, unlike the human rights complainant in ***Brewer***, and the plaintiffs in civil actions that have been referred to by the Applicant (***Sweiss v Alberta Health Services***, 2009 ABQB 691, 483 AR 340; ***Jin (next friend of) v Calgary Health Region***, 2007 ABQB 593, 428 AR 161).

[23] A person who complains to a professional regulatory body has the same interest as any member of the public: an interest in ensuring that members of the profession meet the standards set by the governing body. It is the role and the obligation of the professional regulator, not the complainant, to ensure that standard is met.

[24] This point is discussed by Justice Wakeling, in his dissenting decision in ***Warman***, where he reviews the rationale of ***Friends*** and ***Mitten*** (at paras 35-43). While the majority decision disagreed with Justice Wakeling regarding the potential applicability of ***Mitten*** in the circumstances of the case, they did not support expanding the restricted form of standing recognized in ***Mitten***.

[25] I conclude that the Applicant's standing is limited to issues of procedural unfairness before the Committee. The Applicant is not entitled to seek review of the reasonableness of the Committee's decision on the merits.

Admissibility of the Applicant's Affidavit

[26] This Court has discretion to allow relevant affidavit evidence on an application for judicial review: Alberta Rules of Court, r 3.22(d); ***Yuill v Alberta (Workers' Compensation Appeals Commission)***, 2016 ABQB 369 at para 60, 2016 CarswellAlta 1282; ***White v Alberta (Workers' Compensation Board, Appeals Commission)***, 2006 ABQB 359 at para 35, 400 AR 183 [***White***]. However, the use of affidavit evidence in this context is exceptional. In particular, affidavit evidence cannot be introduced on judicial review when it is "intended to alter or supplement the factual record used by the tribunal to decide the issue on the merits": ***White*** at para 35.

[27] The Applicant's Affidavit attempts to alter or supplement the record before the Committee, as it reiterates concerns she expressed to the Complaints Director and the Committee. The Affidavit also includes argument regarding the sufficiency of the Committee's reasons. Both of these aspects of the Affidavit are improper, and I place no weight on this "evidence."

[28] The Affidavit also contains reference to concerns about the "complaint process." including the delayed provision to the Applicant of the Investigation Report. As the letter from the College enclosing the Report is not included in the Record, and this evidence may be relevant in relation to fairness of the proceeding before the Committee, the Affidavit is admissible for this limited purpose.

Standard of Review

[29] Issues of procedural fairness are not subject to a traditional standard of review analysis. Rather, the issue is "whether the proceedings met the level of fairness required by law": ***Institute of Chartered Accountants of Alberta v Barry***, 2016 ABCA 354 at para 5, 2016 CarswellAlta

2166; see also ***Farhat v College of Physicians and Surgeons of Alberta***, [2014] ABQB 731 at paras 26-27, 603 AR 35.

[30] ***Friends*** and ***Mitten*** indicate that the duty of fairness applicable in these circumstances is "limited" and "at the low end of the spectrum": ***Friends*** at paras 46, 49; ***Mitten*** at para 16. The issue is whether the statutory appeal process was conducted "in a fundamentally unfair matter": ***Mitten*** at para 17.

[31] ***MH v College of Physicians and Surgeons of Alberta***, 2006 ABQB 395, 400 AR 87 [***MH***] dealt with the College's previous governing legislation, the *Medical Profession Act*, RSA 1980, c M-11. The process of investigation and review of a dismissed complaint were essentially the same as under the *Health Professions Act*, except that the review of a dismissed complaint was conducted by the Council, rather than a Complaint Review Committee. In dismissing a complainant's application for judicial review, the Court in ***MH*** stated (at para 45):

> In conclusion, the duty of fairness owed to M.H. was at the lower end of the spectrum. In my view, the College took the complaint seriously and took appropriate steps to investigate. The Council extended to M.H. a full opportunity to participate in the process, extending to her an opportunity to make submissions that does not appear to be strictly required under the statute. In my view, the Council has more than met the duty of fairness.

Grounds of Review

[32] The Applicant takes issue with the merits of the decision of the Committee under the heading "Issue 1 – the Review of the Complaint with respect to the "DNR" Order." The Applicant does not have standing with respect to the merits of the decision, so I will not address these arguments.

[33] Under the heading "Issue 2 – Procedural Fairness," the Applicant states (at para 36 of her Written Brief):

> The fact that his review deals with a summary decision, certain facts are of utmost importance:
>
> (a) The *Health Professions Act* is meant to be a public process which allows for [complainants] to bring their issues with the medical profession in a fair, just, transparent and accountable manner.
>
> (b) The [reasons in the] decision under review are simply conclusions with no evidence of a review of the facts and the details which Ms. Tran brought before the Complaint Review Committee.
>
> (c) Ms. Tran was the legal guardian and had a Court Order. This was never discussed in the medical records or by the Complaint Review Committee.
>
> (d) There is no discussion (in the decision) of any aspect of the Standards of Care with regards to the treatment or the DNR Order.
>
> (e) The issue of Ms. Anita Tran's participation in the process is an issue.

(f) The adequacy of the decision is an issue with respect to the issues raised by Ms. Tran.

(g) The fact that the summary dismissal (under Section 67 – *Health Professions Act*) by the Hearings Director and the Complaints Review Committee has notes or other evidence is disconcerting.

(h) There was no discussion of the "best interest of the patient" analysis by the Complaint Review Committee.

(i) There was no discussion of whether medical intervention would be "medically futile".

(j) The Certified Record discloses documents without any sort of review to determine the test of "insufficient evidence" under Section 68(5)(c)(ii) of the *Health Professions Act*.

Analysis

[34] The concerns raised by the Applicant in paragraphs (a) through (d) and, (f), and (h) through (j) all relate to the alleged inadequacy of the reasons provided by the Committee. The Applicant complains that there was insufficient review of the "facts and details" that she had raised, or discussion of the standard of care and related issues regarding DNR orders.

[35] In ***Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)***, 2011 SCC 62 at paras 20-22, [2011] 3 SCR 708, the Supreme Court of Canada held that an issue regarding the sufficiency of reasons is not an issue of fairness, but a matter to be reviewed in the context of a reasonableness review of the merits of the decision. Such a review is beyond the scope of this application, given the limited standing of the Applicant.

> [20] Procedural fairness was not raised either before the reviewing judge or the Court of Appeal and it can be easily disposed of here. [*Baker v Canada (Minister of Citizenship and Immigration*), [1999] 2 SCR 817] stands for the proposition that "in certain circumstances", the duty of procedural fairness will require "some form of reasons" for a decision (para. 43). It did not say that reasons were *always* required, and it did not say that the *quality* of those reasons is a question of procedural fairness. In fact, after finding that reasons were required in the circumstances, the Court in *Baker* concluded that the mere notes of an immigration officer were sufficient to fulfil the duty of fairness (para. 44). (*emphasis in original*).
>
> [21] It strikes me as an unhelpful elaboration on *Baker* to suggest that alleged deficiencies or flaws in the reasons fall under the category of a breach of the duty of procedural fairness....
>
> [22] ...Where there are no reasons in circumstances where they are required, there is nothing to review. But where, as here, there *are* reasons, there is no such breach. Any challenge to the reasoning/result of the decision should therefore be made within the reasonableness analysis. (*emphasis added*).

[36] In paragraph (e), the Applicant states that her "participation in the process" is an issue. There is no substance to this allegation. The Applicant was permitted to make a submission to the Committee, and in fact was given extensions of time limits by the Committee for that purpose. While there was some delay in providing the Applicant with medical records and the Investigation Report, these were provided in advance of the deadline for the Applicant's submission. I am satisfied that the Applicant had a full opportunity to participate in the process.

[37] In paragraph (g), the Applicant raises a concern regarding "summary dismissal" of the complaint. Dismissal of a complaint before hearing on the ground that there is "insufficient or no evidence of unprofessional conduct" is expressly contemplated in sections 67 and 68 of the *Health Professions Act*. However, the Applicant submits that dismissal before hearing indicated an inadequate investigation in this case, as there was contradictory evidence regarding the Applicant's awareness of the DNR order.

[38] The Applicant relies on the decision of the Ontario Health Professions Appeal and Review Board in *MKC v JH*, 2010 CanLII 43201 (ON HPARB) regarding the requirement for a proper investigation. In that administrative decision, the Board stated that an "investigation need not be exhaustive by obtaining all available information; only adequate to ensure that there is sufficient relevant information for the Committee to be able to reasonably assess the complaint and any other related issues raised by the complaint." The Board found that the investigation was inadequate because the College of Nurses and the Complaints Committee had "failed to determine the actual nurses that the Respondent only vaguely identifies."

[39] There is no similar issue regarding the investigation in this case. The physicians that were the subject of the Applicant's complaint were identified, and they provided responses to the complaint.

[40] The Applicant further relies on ***Moore v College of Physicians and Surgeons of British Columbia***, 2013 BCSC 2081, aff'd 2014 BCCA 466, 84 Admin LR (5th) 159 [***Moore***] regarding the requirements for a proper investigation, citing, in particular, the following comments at paras 105, 106, 117 and 121:

> The adequacy of any investigation must be considered relative to the matter being investigated…
>
> Thus, the nature of the complaint will inform the extent of the investigation required…
>
> ...
>
> There can be no doubt that the objects of protection of the public interest and promoting transparency are fundamental to the establishment of the Board…
>
> ...
>
> ...The Board must intervene where there is either no investigation or only a cursory investigation that is inconsistent with the nature of the complaint, or where even though there has been a proper, full investigation the disposition of the College is unreasonable…

[41] ***Moore*** involved judicial review of a decision of the British Columbia Health Professions Review Board. The comments above are the Court's comments on the jurisdiction of the Review Board, which is broader than the jurisdiction of the Court on this application, because it included

not only the procedural fairness issue of the adequacy of the investigation, but also review of the reasonableness of the decision.

[42] ***Moore*** does not support the Applicant's position that dismissal before hearing in the face of contradictory evidence is indicative of an inadequate investigation. In that case, the College of Physicians and Surgeons had declined to send a complaint to hearing. The Review Board reversed the College decision because there were conflicts between the statement of the complainant and the response of the physician.

[43] The Court held that the Review Board had exceeded its jurisdiction (at paras 119-121):

> The Board must approach its review with the context of the complaint at issue in mind. The College does not have unlimited resources available to process complaints. Thus, it must use its resources wisely when it makes its initial assessment. Some complaints will be easily categorized as serious and put into the proper "stream" to be dealt with by the Inquiry Committee or Discipline Committee. Others will fall at the opposite end of the spectrum and will require little more than a fair assessment of a registrant's response to the complaint to dispose of it.
>
> It does not necessarily follow that simply because a complaint is disposed of in a summary way that the process warrants intervention by the Board. This is so even where there is a conflict between the complainant's statement and the response of the registrant. The nature of the complaint process will frequently result in conflicting versions of events and not all of them can be fully investigated and resolved.
>
> The Board must defer to the College in cases where the investigation, given the context of the complaint and the disposition of the College fall within a range of outcomes that are reasonable and rational. The Board must intervene where there is either no investigation or only a cursory investigation that is inconsistent with the nature of the complaint, or where even though there has been a proper, full investigation the disposition of the College is unreasonable.

[44] In my view, the record in this case demonstrates that the Applicant's complaint was taken seriously and was subject to a proper investigation. The Committee was not required to refer the matter to a full hearing, notwithstanding a conflict between the Applicant's statement and other evidence (the physician's response and hospital records). The Committee was entitled to consider the information before it and determine that there was "insufficient or no evidence of unprofessional conduct."

[45] The reasonableness of that determination is not in issue on this application, although in my view, there is nothing on the record that suggests that the Committee's disposition fell outside a range of outcomes that are reasonable and rational. More to the point, given the limited standing of the Applicant, the Committee's determination is certainly not indicative of any shortcoming in the investigation.

Conclusion

[46] The application for judicial review is dismissed.

[47] The parties may speak to me regarding costs if they are unable to agree.

Heard on the 16th day of March, 2017.
Dated at the City of Edmonton, Alberta this 23rd day of May, 2017.

J.M. Ross
J.C.Q.B.A.

Appearances:

Mr. Arman Chak
Forensic Law
for the Applicant

Mr. Craig D. Boyer
Shores Jardine LLP
for the Respondent