

The RHPA's "blanket provision": protecting professional self-regulatory colleges from human rights complaints

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In a recently released decision, *Dindial v. College of Nurses*[1], the Human Rights Tribunal of Ontario ("HRTTO") dismissed an application by a registered nurse alleging that she was discriminated against by the College of Nurses ("CNO") on the grounds of race, colour, ethnic origin, and disability.

The allegations arose from the CNO carrying out its duties under the *Regulated Health Professions Act, 1991, S.O. 1991, c.18* ("*RHPA*"). The HRTTO found that the applicant's allegations were based almost exclusively on evidence that was inadmissible before the HRTTO pursuant to s. 36(3) of the *RHPA* and, on that basis, the application had no reasonable prospect of success.

As a result of this decision, it will be rare that a professional self-regulatory college's handling of a regulatory decision can be challenged before the HRTTO or any other tribunal.

BACKGROUND

The applicant self-reported to the CNO several criminal convictions and provided background information relevant to those convictions. The CNO's Inquiries, Complaints and Reports Committee ("ICRC") conducted an inquiry, suspended the applicant's license on an interim basis, and referred the matter to the Fitness to Practise Committee ("FTPC") for a hearing. The applicant lost wages and, she alleged, training opportunities over the period of suspension and prior to the FTPC's decision.

The applicant alleged that she was harassed and discriminated against by the CNO. She claimed that during the ICRC and FTPC proceedings, the CNO failed to consider the background information surrounding her convictions and her response to them, and used the suspension of her license to pressure her to acquiesce to its requests.

THE *RHPA*'s "BLANKET PROVISION"

Section 36(3) of the *RHPA* states:

No record of a proceeding under this Act, a health profession Act or the *Drug and Pharmacies Regulation Act*, no report, document or thing prepared for or statement given at such a proceeding and no order or decision made in such a proceeding is admissible in a civil proceeding other than a proceeding under this Act, a health profession Act or the *Drug and Pharmacies Regulation Act* or a proceeding relating to an order under section 11.1 or 11.2 of the *Ontario Drug Benefit Act*.

In its decision, the HRTTO relied on court cases that found s. 36(3) to be "a blanket prohibition against the admissibility of all evidence collected during the course of a health profession's college's investigation and that this prohibition is an absolute one." [2] As well, the HRTTO recognized its own jurisprudence, which has "effectively prevented issues arising from [*RHPA* proceedings and decisions] from being adjudicated before the Tribunal." [3]

On the basis of s. 36(3) and the jurisprudence interpreting and applying it, the HRTO held that the information and documents pertaining to the ICRC and FTPC proceedings were inadmissible. Given that the applicant relied almost exclusively on this evidence, the HRTO agreed with the CNO that there was no reasonable prospect of success and dismissed the application in its entirety.

LESSON LEARNED

Going forward, health regulatory colleges whose mandates arise from the *RHPA* can confidently rely on s. 36(3) and *Dindial v. College of Nurses* when responding to human rights complaints relating to the work of staff and Council members in carrying out the work of the college's statutory committees. This decision may also be of assistance to other regulatory colleges that have a similar provision in their governing legislation.

[1]*Dindial v. College of Nurses of Ontario*, 2016 HRTO 1170 [*Dindial*].

[2]*Dindial* para. 21.

[3]*Dindial* at para. 22.

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