

In the Court of Appeal of Alberta

Citation: Tran v College of Physicians and Surgeons of Alberta, 2018 ABCA 95

Date: 20180312

Docket: 1703-0146-AC

Registry: Edmonton

Between:

Anita Tran

Appellant
(Applicant)

- and -

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

Respondent
(Respondent)

The Court:

**The Honourable Mr. Justice Frans Slatter
The Honourable Mr. Justice J.D. Bruce McDonald
The Honourable Madam Justice Frederica Schutz**

Memorandum of Judgment

Appeal from the Order by
The Honourable Madam Justice J. M. Ross
Dated the 23rd day of May, 2017
Filed on the 22nd day of June, 2017
(2017 ABQB 337, Docket: 1403 08178)

Memorandum of Judgment

The Court:

[1] The appellant's 96 year old mother was taken to hospital in distress, and died a few days later. The appellant complained that a Do Not Resuscitate order had been placed on her mother's chart. The Complaints Director of the College of Physicians and Surgeons of Alberta dismissed her complaint without a hearing, concluding that there was no evidence of unprofessional conduct on the part of the two attending physicians, and that the Do Not Resuscitate order was medically and ethically compassionate.

[2] On further appeal, the Complaint Review Committee (the Committee) did note that the wrong box had been checked off on the Do Not Resuscitate order, but concluded that this was merely a clerical error.

[3] Thereafter, the appellant brought an application seeking judicial review of the Committee's decision. That application was dismissed by the reviewing judge. The appellant now appeals that dismissal to this Court.

[4] In dismissing the application for judicial review, the reviewing judge first addressed whether the appellant had standing to apply for judicial review of the merits of the Committee's decision. She held that a complainant under the *Health Professions Act*, RSA 2000 c H-7, as well as a complainant under any professional regulatory statute, has limited standing to seek judicial review. This was established by three cases of this court: *Friends of the Old Man River Society v Association of Professional Engineers, Geologists and Geophysicists*, 2001 ABCA 107, 277 AR 378, leave to appeal to SCC refused, [2001] SCCA No 366 (*Old Man River*); *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*).

[5] The reviewing judge concluded that the appellant could only challenge the procedural fairness of the Committee's decision and not the reasonableness of the Committee's decision on the merits.

[6] She held that the duty of fairness is limited and at the low end of the spectrum, citing *Old Man River* and *Mitten*. The issue was whether the appeal process was conducted in "a fundamentally unfair manner".

[7] With respect to the appellant's arguments that the Committee had breached its duty of procedural fairness, the reviewing judge identified two arguments in the appellant's submissions that were genuinely about procedural fairness.

[8] First, the appellant had argued that her “participation in the process” was an issue. The reviewing judge found no substance to this allegation. Second, the appellant argued that the dismissal of her complaint without a hearing, in the face of conflicting evidence, indicated an inadequate investigation. This argument was also rejected by the reviewing judge.

[9] We agree with the decision of the reviewing judge and with her reasons. Accordingly, this appeal is dismissed.

Appeal heard on March 8, 2018

Memorandum filed at Edmonton, Alberta
this 12th day of March, 2018

Slatter J.A.

McDonald J.A.

Schutz J.A.

Appearances:

A.M. Chak
for the Appellant

C.D. Boyer
for the Respondent