

Report of legal counsel

Before the Courts and the British Columbia Human Rights Tribunal

The following matters were before the Courts and the British Columbia Human Rights Tribunal for the fiscal year 2012:

Bozena Borowska-Machala v. Her Majesty the Queen in Right of the Ministry of Health and Medical Services Commission, The College and Health Authorities

Ms. Borowska-Machala filed a complaint with the British Columbia Human Rights Tribunal on behalf of British Columbians diagnosed or yet to be diagnosed with multiple sclerosis and any of its variants alleging discrimination with respect to physical disability and inability to obtain screening and appropriate treatment for vascular medical care. The College filed an application with the Tribunal to dismiss the complaint on the basis that it had no reasonable chance of success if it proceeded to a hearing. The Tribunal granted the College's application and the complaint was dismissed.

Olivia Pratten v. British Columbia (Attorney General) and The College

Ms. Pratten, who was conceived by artificial insemination, brought a lawsuit in the British Columbia Supreme Court against both the Attorney General of British Columbia and the College. As against the Attorney General, it was alleged that government's failure to enact legislation to allow for contact between children born of artificial insemination and sperm donors was unconstitutional and it was mandatory for the government to do so. As against the College, it was alleged that the College's Bylaw requiring members of the College to keep records for a minimum of six years was invalid and the plaintiff sought an order that the court declare that registrants of the College had to keep medical records concerning artificial insemination and donors identity, indefinitely.

Prior to the commencement of the trial, the parties agreed that the claim against the College will be automatically dismissed if the claim against the Attorney General is

dismissed. The parties also agreed that in the event the plaintiff was successful against the Attorney General, the College would amend its Bylaw to conform to the order the court granted.

The Supreme Court of British Columbia issued Reasons for Judgment agreeing with Ms. Pratten's claim. Subsequently, the Attorney General of British Columbia took an appeal to the British Columbia Court of Appeal and that Court reversed the lower Court thereby dismissing the Plaintiff's claim. The Plaintiff has requested the ability to appeal to the Supreme Court of Canada but at the time of this report there has been no ruling on that application.

Linda Lenning v. Dr. Tracy Hicks, Fraser Health Authority operating as Langley Memorial Hospital and the College

On October 5, 2012, Ms. Lenning filed a Notice of Civil Claim with the Vancouver Registry against Dr. Hicks, Langley Memorial Hospital, and the College. Ms. Lenning's allegations relate to a surgical procedure performed by Dr. Hicks at Langley Memorial Hospital on October 9, 2010. She alleges that he negligently performed the surgery and failed to provide adequate pre- and post-operative care. With respect to the College, Ms. Lenning alleges that the College was negligent and/or in breach of contractual obligations by failing to cancel Dr. Hicks' surgical privileges when they knew or ought to have known that he was not providing adequate care. To date, each party has filed a Response to Civil Claim. No further steps have been taken subsequent to the pleadings being filed.

Dr. Alan Moore v. the College and the Health Professions Review Board

On December 20, 2011, Dr. Moore filed a Petition for Judicial Review of the Health Professions Review Board Decision No. 2010-HPA-0108(b) (the "Decision") seeking an order that the Decision was in error, that the Decision be quashed, that the College's Inquiry Committee be prohibited from compelling Dr. Moore to attend an interview, or, in the alternative, that the Decision be set aside and the HPRB be directed to reconsider. The Decision found the College's investigation

to be inadequate and remitted the complaint to the Inquiry Committee with a direction that Dr. Moore be interviewed to seek clarification on various issues. The underlying complaint was commenced by an inmate and centered on Dr. Moore's decision to change his prescription. The complainant alleged that Dr. Moore had been wrongfully influenced by a policy of the institution restricting the use of the particular medication, and failed to consider the medical needs of the patient. The Decision directed an interview with Dr. Moore in order to "resolve issues of credibility" not adequately considered by the Registrar and further held that it was beyond the Registrar's jurisdiction to dismiss a complaint based on a finding that the conduct of the physician was satisfactory. The Judicial Review Hearing was held in Victoria the week of February 25, 2013. The College adopted the Registrant/Petitioner's position and submitted evidence regarding the complaints process generally, the distinct roles of the Inquiry Committee and Discipline Committee as they relate to issues of credibility, and emphasized the expertise of the College in addressing complaints of this nature. The HPRB defended the Decision by focusing on its exclusive authority to review College complaint dispositions and the need to establish a patently unreasonable error, before inferring judicially. A decision from the Courts is expected within the next few months.

**Tiffany Samira Montgomery v. Ian Joseph Morgan,
Suzanne Mary Langley, the Health Professions Review
Board and The College**

On June 20, 2012, Ms. Montgomery filed a Petition for Judicial Review of a Health Professions Review Board Decision which refused Ms. Montgomery's application for review because it had been filed outside of the 30-day time limit set out in the *Health Professions Act*. Ms. Montgomery's Petition also sought 34 other orders relating to her complaint to the College and subsequent application to the HPRB. On July 5, 2012, subsequent to the filing of the Petition, the HPRB issued a memorandum which clarified the sequence of events leading up to the filing of Ms. Montgomery's application for review and ordered that the matter proceed before a different panel of the Review Board. The College, the HPRB, and counsel for the Registrants have all argued that the Petition is premature.

The hearing of the Judicial Review was scheduled for February 2013. However, it was postponed by Ms. Montgomery and a date later in 2013 is expected.

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