HARPER GREY LLP
3200 – 650 West Georgia Street
Vancouver, British Columbia, V6B 4P7
Canada

Tel: 604 687 0411
Fax: 604 669 9385

CASE SUMMARY: COURT OF APPEAL AGREES IT WAS NOT PATENTLY UNREASONABLE FOR BC HUMAN RIGHTS TRIBUNAL TO SUMMARILY DISMISS APPELLANT'S DISCRIMINATION COMPLAINT FOLLOWING HIS TERMINATION FOR USING DATING APPS TO HOOK UP WITH MALE STUDENTS ON CAMPUS WHERE HE WORKED

Court of Appeal agrees it was not patently unreasonable for BC Human Rights Tribunal to summarily dismiss appellant's discrimination complaint following his termination for using dating apps to hook up with male students on campus where he worked.

Administrative law – Decisions reviewed – Human Rights Tribunal – Judicial review – Appeals – Standard of review – Patent unreasonableness – Employment – Termination of employment – Off-duty conduct – Human rights – Discrimination – Sexual orientation

Conklin v. University of British Columbia, [2022] B.C.J. No. 1827, 2022 BCCA 333, British Columbia Court of Appeal, September 22, 2022, M.V. Newbury, G.B. Butler and J. DeWitt-Van Oosten JJ.A.

Appellant's employment as an academic advisor for the University of British Columbia (UBC) was terminated for cause based on his conduct surrounding his use of private dating applications. He used the apps to arrange romantic and sexual interactions with other men, including UBC students, while living on campus. UBC terminated his employment on the basis that he acted in a conflict of interest and his conduct amounted to a fundamental breach of his employment obligations. The appellant filed a complaint with the BCHRT alleging discrimination based on sexual orientation. His complaint was summarily dismissed under s. 27(1)(c) of the Human Rights Code after the BCHRT determined there was no reasonable prospect that the complaint would succeed. His application for reconsideration of that dismissal was denied.

In his petition for judicial review, the appellant sought to have both BCHRT decisions set aside for patent unreasonableness. The chambers judge dismissed the petition. In respect of his argument about the reconsideration, its essence was that the evidence could have supported an inference favourable to him and, as a result, the matter should have proceeded to a hearing. The judge noted that, "the fact that evidence is capable of supporting different conclusions [than the one reached] does not make … [a] decision patently unreasonable."

On appeal, the appellant challenged the judge's conclusion on patent unreasonableness and asked the Court of Appeal to set aside the BCHRT decisions. The Court reviewed the standard of review and the test to be applied in summarily dismissing a complaint under s. 27(1)(c), and concluded that it agreed with the chambers judge that neither of the BCHRT decisions were patently unreasonable. The evidence in the record before the BCHRT did not take the appellant's complaint out of the realm of speculation or conjecture, and as such, it was reasonably open to the BCHRT to find that there was no reasonable prospect of the appellant establishing at a hearing that his sexual orientation factored into UBC's decision to terminate. To survive scrutiny under s. 27(1)(c), a complaint need not include direct evidence of discrimination, and inferences that could reasonably arise from the record may be sufficient. However, those inferences cannot be purely speculative or based on conjecture. The appeal was dismissed.

This case was digested by Kara Hill, and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Kara Hill at khill@harpergrey.com.