

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

Tel: 604 687 0411
Fax: 604 669 9385

CASE SUMMARY: REFUSAL TO GRANT AN ADJOURNMENT RESULTED IN A PENALTY HEARING THAT WAS PROCEDURALLY UNFAIR

Administrative law – Decisions of administrative tribunals – College of Physical Therapists – Permits and licences; Physical Therapists – Professional misconduct or conduct unbecoming – Disciplinary proceedings – Penalties and suspensions; Judicial review – Natural justice – Procedural requirements and fairness

Bayfield v. College of Physiotherapists of Ontario

Appeal from penalty decision of Ontario College of Physiotherapists on basis registrant was denied procedural fairness.

[2015] O.J. No. 5830

2015 ONSC 6808

Ontario Superior Court of Justice – Divisional Court

November 12, 2015

E.R. Kruzick, H.E. Sachs and H.J. Wilton-Siegel JJ.

The appellant was a registrant with the respondent Ontario College of Physiotherapists. The College began discipline proceedings against the appellant. The College found the appellant committed professional misconduct. A separate hearing was scheduled to deal with penalty.

The penalty hearing was scheduled to proceed on July 19, 2013. On July 18, 2013, the College served the appellant with its factum and brief of authorities. The factum set out the College's position. The College was seeking a reprimand and revocation of the appellant's registration on the basis that his acts of misconduct demonstrated he was ungovernable. The appellant attended the penalty hearing on July 19, 2013, and requested an adjournment given the new material filed. The request for an adjournment was denied. The Discipline Committee found the appellant was ungovernable and revoked his registration.

On appeal to the Divisional Court, the appellant argued he was denied procedural fairness when the Discipline Committee denied him an adjournment of the penalty hearing. The appellant argued the denial of the adjournment denied him the ability to make full reply to the charges of professional misconduct and respond to the new material served on July 18, 2013, the day before the penalty hearing. The College argued the appellant had notice that the issue of penalty would be dealt with when the matter was set down, and had noticed the Discipline Committee could revoke his registration.

The Divisional Court held the appellant was denied procedural fairness. It noted that a higher standard of justice is required when the right to continue one's professional employment is threatened. Having been served with the College's factum and brief of authorities on July 18, 2013, the day prior to the penalty hearing, the appellant was entitled to sufficient time to read and absorb the material before being asked to address it. The Divisional Court held the Discipline Committee failed to consider the relevant factors for determining whether to grant an adjournment to retain counsel. Had the Discipline Committee considered the relevant factors, the preponderance of factors would have favoured granting an adjournment. The appellant had no history of lack of compliance with prior orders, this was his first request for an adjournment, there were no previous hearing dates, and there was no finding the appellant was seeking to manipulate the system by orchestrating delay. The Discipline Committee failed to properly balance the public's interest in having the matter heard against the very serious prejudice to the appellant when the Discipline Committee denied the adjournment and proceeded to base its decision on the material the appellant had been served with the day before. The refusal to grant an adjournment resulted in a penalty hearing that was procedurally unfair to the appellant.

The Divisional Court set aside the penalty order and remitted the matter to the Discipline Committee to deal with penalty.

This case was digested by [Joel A. Morris](#) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact him directly at jmorris@harpergrey.com or review his biography at <http://www.harpergrey.com>.