

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

Tel: 604 687 0411  
Fax: 604 669 9385

## CASE SUMMARY: ALBERTA COURT OF APPEAL QUASHED VETERINARIAN'S SUSPENSION FOR LACK OF PROCEDURAL FAIRNESS

Administrative law – Decisions of administrative tribunals – Veterinary Associations; Veterinarians – Disciplinary proceedings – Competence – Licence to practice – Suspensions; Judicial review – Natural justice – Procedural requirements and fairness – Notice – Disclosure

*Irwin v. Alberta Veterinary Medical Assn.*

The Alberta Court of Appeal allowed an appeal made by a veterinarian from a regulatory order suspending his licence and requiring him to attend addictions treatment on the basis that he was denied procedural fairness.

[2015] A.J. No. 1398

2015 ABCA 396

Alberta Court of Appeal

December 18, 2015

R.L. Berger, P.A. Rowbotham and B.L. Veldhuis JJ.A.

The Alberta Veterinary Medical Association (“Association”) received two complaints from former employees about the appellant veterinarian which suggested that the veterinarian was incapacitated. On two random occasions, the Complaints Director attended the veterinarian’s practice and opined the veterinarian seemed normal. During the first visit, the veterinarian disclosed to the Complaints Director he had Tourette syndrome and was medicated for this. A few months later, another complaint was received by the Association regarding the veterinarian, this time by an estranged friend. As a result, the veterinarian was referred to the Practice Review Board (“Board”) for a capacity assessment.

The Board did not conduct an independent inquiry into the complaints. Rather, the Board reviewed the (i) complaint letters and (ii) recommendation made by Complaints Director that the veterinarian be referred for a physical and mental examination and that he be suspended in the interim. The Board directed the veterinarian to comply with this recommendation. The veterinarian did so. When he saw the psychiatrist for his examination, an urinalysis toxicology screen was taken. Before the toxicology reports were seen by the psychiatrist, the psychiatrist provided his report to the Board which included the opinion that the veterinarian was exhibiting a severe substance use disorder for opiates and nicotine and the veterinarian ought to refrain from practicing until he demonstrated a suitable period of sobriety after attending an inpatient treatment with an aftercare program. The Board reviewed the toxicology results and found that they confirmed the psychiatrist’s conclusions. Therefore the Board ordered the veterinarian to comply with the psychiatrist’s recommendations. The veterinarian appealed this decision to the Committee of Council of the Association (“Council”) but the appeal was dismissed. The veterinarian then sought judicial review to the Appeal Court.

On Appeal, the veterinarian argued that his right to procedural fairness was breached. The Appeal Court outlined that the issue before it was whether the appellant was entitled to procedural fairness during the process that led to his initial suspension and the subsequent confirmation of that suspension.

The veterinarian also argued that the Board's decision was unreasonable and the Council erred in confirming the decision.

Regarding the procedural fairness issue, the veterinarian maintained that prior to receiving the letter directing him to attend a psychiatric examination: (i) he had not been given any notice he was being scrutinized, (ii) he had not been given copies of the complaints, and (iii) he was unaware a Board had been convened to assess his capacity. The Association disagreed, arguing that the veterinarian had sufficient notice of the Board's capacity related concerns as the Complaints Director informed him (when he attended his office unannounced after the first complaint) that he had received information from the public concerning alleged substance abuse.

The Appeal Court held that the veterinarian was entitled to notice of the complaints that had been made and disclosure of the materials documenting those complaints. The Appeal Court also found that the veterinarian was entitled to know that his capacity to practice had been challenged; the Appeal Court disagreed with the Association and held that such a conversation nine months earlier did not constitute the required notice when a professional is facing immediate suspension. Further, the Appeal Court held the appellant was entitled to participatory rights; the right to submit a written reply to the Board before it implemented the Complaints Director's recommendations. The Court did not however go so far as to suggest a hearing was required.

With respect to its findings, the Appeal Court commented that it was not suggesting that the duty of procedural fairness will always mandate notice, disclosure and the opportunity to provide a written reply before an incapacity suspension may be imposed. It was emphasized that context always plays a critical role in determining the nature and content of the duty. In this case, it was found that the complaints themselves, as well as the Complaint's Director's first hand observations indicating the veterinarian seemed fine, suggested there was no obvious urgency requiring an immediate suspension to protect the public.

Although the Appeal Court's conclusion on procedural fairness was sufficient to dispose of the appeal, the Court went on to address the reasonableness of the Council's decision. The Court commented that they had two concerns with the reasonableness of the decision. The first related to the transparency of the Council's decision. The veterinarian argued it was inaccurate to state that the toxicology screen confirmed the psychiatrist's conclusions given that the psychiatrist did not opine on those results. The Association argued that the Council, comprised of veterinarians, has sufficient medical training to understand laboratory results. The Court accepted the Association's submission but noted that if it was obvious to the Council that the laboratory results supported the psychiatrist's opinion, it was incumbent on them to answer the veterinarian's concern and to explain its decision.

The second concern with the reasonableness of the Council's decision related to the veterinarian's request to be examined by a psychiatrist with expertise in Tourette syndrome. There was nothing in the psychiatrist's report indicating he had any particular expertise with the condition, nor was there any indication provided by the Association why the "seemingly reasonable request was denied". For these reasons the Court also found the Council's decision unreasonable.

The Appeal Court allowed the appeal and quashed the decision of the Council.

This case was digested by [Lindsay R. Johnston](#) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact her directly at [ljohnston@harpergrey.com](mailto:ljohnston@harpergrey.com) or review her biography at <http://www.harpergrey.com>.