

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

Tel: 604 687 0411
Fax: 604 669 9385

CASE SUMMARY: PETITIONER’S APPLICATION FOR JUDICIAL REVIEW OF AN INQUIRY COMMITTEE DECISION DISMISSED ON THE BASIS THAT IT WAS NOT AMENABLE TO JUDICIAL REVIEW

The petitioner’s application for judicial review of an Inquiry Committee decision was dismissed on the basis that it was not amenable to judicial review.

Administrative law – Physicians and surgeons – Inquiry committee decisions; Judicial review – Mootness – Jurisdiction – Standard of review – Reasonableness; Physicians and surgeons – Competence

Maroofi v. College of Physicians and Surgeons of British Columbia, [2017] B.C.J. No. 1747, 2017 BCSC 1558, British Columbia Supreme Court – Vancouver, British Columbia, September 1, 2017, S.A. Donegan J.

The petitioner was registered with the College of Physicians and Surgeons of British Columbia (the “College”) as an educational clinical trainee in 2012. In 2015, concerns were raised about his conduct and competence. The College’s Inquiry Committee (“IC”) investigated and determined to resolve the matter pursuant to s.33(6)(b) of the *Health Professions Act*, RSBC 1996, c.183 when it sent the petitioner a letter of caution or criticism. The petitioner sought judicial review of the IC’s disposition.

In 2015, the petitioner had a number of issues arise regarding his registration with the College, including that the College’s Registration Committee (“RC”) had received complaints about the petitioner’s professional, personal, and clinical judgment. In the process of investigating these issues, the RC learned that the petitioner had been practising without his required liability insurance. The RC referred these issues to the IC to be dealt with through the College’s complaints department. In its disposition, the IC expressed criticism of the petitioner’s conduct, and took no further action.

While the IC investigation was ongoing, the RC communicated to the petitioner its decision to grant him registration in the same class under certain conditions. The petitioner took issue with some of the conditions imposed by the RC, and he therefore appeared before them to request that it reconsider this condition. The RC agreed to reconsider, and later reaffirmed its conditions of registration. The petitioner applied to the Health Professions Review Board (“HPRB”) for a review of the RC’s decision, which was dismissed by the HPRB. No appeal from this decision was sought.

The primary issue before the Court was whether the IC's disposition was amenable to judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c.241 (the "JRPA"). The Court considered *Risdale v. Anderson*, 2016 BCSC 942, and held that the IC did not exercise a "statutory power or decision" required for judicial review under the JRPA. The IC concluded, on a provisional basis, that it was critical of the petitioner for unprofessional conduct, substandard clinical skills and contravention of College bylaws regarding liability insurance. Based on that provisional conclusion, the IC directed staff to convey its criticism to the petitioner. The Court confirmed that this conveyance of criticism is not a "decision" about misconduct. The IC did not make any findings of fact binding on anyone, nor did it impose formal disciplinary measures which depend on findings of fact. It had no impact on the petitioner's registration. Therefore, the Court held that the IC's decision was not amenable to judicial review. The Court clarified for the petitioner that the IC's decision did not affect his registration status.

Had the Court held that the IC disposition was amenable to judicial review, the Court held that his application to change the IC's disposition was moot because the IC's disposition did not alter any of his rights or privileges, as the decision did not impact his rights or privileges, the disposition is confidential, past decisions of the RC were before the IC and future decisions of the RC do not depend on the non-binding opinions contained in the IC disposition.

The Court also went on to hold that, in the event the IC disposition is amenable to judicial review and is not moot, the decision was reasonable.

This case was digested by [JoAnne G. Barnum](#) and first posted on Quicklaw and published in the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact JoAnne G. Barnum at jbarnum@harpergrey.com.

To stay current with the new case law and emerging legal issues in this area, subscribe [here](#).