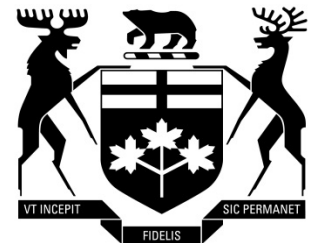


HIRTLE V. COLLEGE OF NURSES OF ONTARIO 2022 ONSC 1479

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BACKGROUND

- The Appellant was a registered nurse and a member of the College of Nurses. In 2016, he was responsible for supervising a group of nursing students during their clinical placement. In 2018, allegations of inappropriate conduct by the Appellant were referred to the College's Discipline Committee. A discipline hearing took place in 2019 and the Appellant represented himself throughout the proceedings.
- At the outset of that hearing, the Chair of the Discipline Panel briefly outlined the procedure that would be followed at the hearing. After explaining the procedure, the Chair then asked the Appellant if he had any questions, to which he answered, no.

BACKGROUND

- After considering the evidence, the Discipline Panel found that three of the allegations had been established and each constituted “a breach of professional standards and disgraceful, dishonourable and unprofessional conduct”.
- A separate penalty hearing took place on September 30, 2019 to which the Panel imposed a penalty that included a reprimand, a five-month suspension, regular meetings with a regulatory expert for at least six months with reporting to the College, as well as steps that had to be taken for a period of 18 months after his return to practice.
- The Appellant appealed both decisions of the Discipline Committee to the Divisional Court.

THE APPEAL

- The primary ground raised by the Appellant was that the Discipline Panel had not provided him with sufficient assistance, specifically that the Discipline Panel “failed to adequately assist him as a self-represented party and the hearing was therefore unfair”.
- In support of this position, the Appellant relied on the 2006 *Statement of Principles on Self-Represented Litigants and Accused Persons* established by the Canadian Judicial Council.

THE APPEAL

- The Court noted that although the *Statement of Principles* was directed at court proceedings, not tribunal proceedings, it was “*relevant guidance, to be considered bearing in mind the particular circumstances of this case.*”
- The Appellant relied on the following passage from the *Statement of Principles*:

“4. When one or both parties are proceeding without representation, *non-prejudicial and engaged case and courtroom management may be needed to protect the litigants’ equal right to be heard. Depending on the circumstances and nature of the case, the presiding judge may:*

- explain the process;*
- inquire whether both parties understand the process and the procedure;*
- make referrals to agencies able to assist the litigant in the preparation of the case;*
- provide information about the law and evidentiary requirements;*
- modify the traditional order of taking evidence; and*
- question witnesses; ...*

[Emphasis added.]”

THE APPEAL

- The Court noted that the Discipline Panel had provided information and explained the hearing process, invited the Appellant to ask questions, and took additional steps both before and during the hearing.
- The Court suggested that the Panel's responsibilities to self-represented parties are not unlimited and must be fulfilled without compromising the requirements of judicial neutrality.
- The Court acknowledged that in many cases it could be said that the presiding judge could have done more to assist the self-represented litigant. *“But that is not the test. [The issue] is whether the proceedings were fairly conducted. Did the self-represented litigant get a fair hearing?”*

PRE-HEARING INFORMATION

- The Appellant submitted that he did not recall receiving or reading any documentation about his upcoming hearing.
- The Court disagreed, finding that the Appellant was “provided with considerable assistance before the hearing, along with invitations to make inquiries if he had any questions.”
- The Court concluded that the Appellant:
 - “was given substantial information in advance of the hearing with strong urging to review it, was invited to ask questions, and had an obligation to inform himself and prepare for his hearing. In addition, at the outset of the hearing the Panel gave an overview of the process that would be followed at the hearing and invited questions from [the Appellant].”*

DURING THE HEARING

- The Appellant argued that the Panel failed to explain “*the concept of credibility and specifically the role of prior inconsistent statements that could be put to a witness for the purpose of impeachment.*”
- The Appellant also objected to the role played by College counsel, submitting that counsel was usurping the role of the Panel “*because she made submissions about the process when issues arose and because when she objected to the appellant’s form of questioning, the Panel did not call for submissions and make a formal ruling.*”
- The Court rejected the Appellant’s concerns about how his hearing was handled by the Discipline Panel.

THE DECISION

The Divisional Court ultimately dismissed the appeal from both decisions and with respect to the grounds of being provided insufficient assistance, concluding that:

“The Discipline Committee process, including the pre-hearing communications, provided significant assistance in a manner encouraged by the Statement of Principles. Further assistance was provided during the hearing. Having considered all of the relevant context, and the specific instances noted by the appellant, I conclude that the appellant had a fair opportunity to present his case to the best of his ability. The hearing was fairly conducted.”

TAKEAWAYS

This case provides some useful takeaways for adjudicators:

- **Be familiar with the *Statement of Principles on Self-Represented Litigants and Accused Persons***
- **Be prepared to offer assistance to self-represented parties**
- **Do not descend into the arena**

THANK YOU!