

CITATION: Brodsky v. College of Nurses of Ontario, 2025 ONSC 3422
DIVISIONAL COURT FILE NO.: 709/24
DATE: 20250616

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

Lococo, Edwards, D.L. and Shore JJ.

BETWEEN:)
)
Faina Brodsky) Faina Brodsky, on behalf of herself
)
Appellant)
)
- and -)
)
)
College of Nurses of Ontario) Denise Cooney and Douglas Montgomery,
) for the Respondent
Respondent)
)
)
)
) **HEARD at Toronto:** May 26, 2025, by
) videoconference

2025 ONSC 3422 (CanLII)

REASONS FOR DECISION

THE HONOURABLE D.L. EDWARDS

I. Introduction

[1] This is an appeal by Ms. Brodsky from the decision of the Discipline Committee of the College of Nurses dated June 13, 2024, with reasons reported at 2023 CanLII 149410, and the related penalty decision dated January 29, 2025, with reasons reported at 2024 CanLII 140482.

[2] The Discipline Committee found that the appellant committed acts of professional misconduct by submitting false insurance claims through her employer’s benefits plan and receiving over \$9,000 in relation to those claims.

[3] In its Penalty Decision, the Discipline Committee ordered, among other things, that the appellant’s certificate of registration be suspended for a period of six months with terms and conditions noted on her certificate thereafter.

[4] As part of her appeal from the decisions, the appellant brings a motion to adduce fresh evidence, consisting mainly of various medical documents and receipts she says substantiate her claims for reimbursement.

[5] For the following reasons I dismiss the motion to adduce fresh evidence and dismiss the appeal.

II. Background

A. Benefit Claims

[6] The appellant was employed at Baycrest Health Sciences (“Baycrest”) from 2012 to 2019 as a Registered Practical Nurse (“RPN”). From 2016 to 2018, she submitted various claims for reimbursement to Baycrest’s employee group benefits plan for expenses that she said that she incurred, along with her husband, Alexander, and daughter, Rinat.

[7] In 2018, based on concerns of widespread misuse, Baycrest retained an auditor to review employee claims to its group benefit policy. The auditor’s investigation revealed that certain providers fraudulently gave employees cash or luxury goods, rather than the product or service claimed on their benefit claim form.

[8] Baycrest identified several providers suspected to be involved in the fraud. The appellant and her family had made claims with four of these providers. In addition, all three family members often made claims on the same day for identical services and products.

[9] Based on its investigation, Baycrest concluded that many of the appellant’s submitted claims were false and terminated her employment in 2019.

B. The Discipline Committee

[10] After terminating the appellant’s employment, Baycrest submitted a report to the College of Nurses of Ontario alleging that the appellant made false claims to the group benefits plan totaling \$9,480. The College’s Inquiries, Complaints and Reports Committee investigated the report and referred allegations of professional misconduct to a panel of the College’s Discipline Committee.

[11] The Discipline Committee found the testimony of the appellant, her husband and daughter not to be credible for several reasons.

[12] The Discipline Committee did not accept the appellant’s testimony regarding the timing of her husband and daughter’s visits to the same clinic. It also found that it was unlikely that all members of the family suffered such similar afflictions as to require the same treatments at the same time, especially since no corroborating evidence was submitted. It also concluded that it was unlikely that several separate providers would provide treatment or products and wait for the appellant’s husband to pay them separately, at a later date, and usually in cash.

[13] The Discipline Committee did not accept the appellant’s recollection of the January 2019 interview with Baycrest’s auditor, which she termed an “ambush”. It found that it was implausible

that such a meeting would deviate from Baycrest’s standard process for investigating false claims for employees. It accepted the testimony offered by one of the College’s witnesses, Mr. Ross, who testified that there were no exceptional circumstances and that the documentation and notes provided were accurate.

[14] Based on the totality of the evidence, the Discipline Committee concluded that the appellant and her family did not receive the products or services for the submitted claims and found that the submission of false benefit claim forms met the legal test for professional misconduct.

[15] The Discipline Committee ordered that the appellant receive an oral reprimand, a six-month suspension of her certificate of registration with the College, and that terms be placed on the appellant’s certificate, including a requirement that she meet with an expert to review the College’s standards. In addition, for an 18-month period the appellant was required to notify any employer of the Discipline Committee’s findings.

[16] It further ordered that the appellant pay to the College costs in the amount of \$2,880 within six months of the date of the order.

III. Court’s Jurisdiction:

[17] The Divisional Court may hear appeals on questions of law or fact or both with respect to proceedings before the Discipline Committee: s. 70 of the *Health Professions Procedural Code*, being Sched. 2 to *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18 (the “RHPA”).¹

[18] I will first deal with the motion to adduce fresh evidence and then analyze the appeal proper.

IV. Motion to adduce fresh evidence

[19] The appellant seeks to adduce fresh evidence on appeal.

[20] *R. v. Palmer*, [1980] 1 S.C.R. 759, describes the factors to be considered in exercising the discretion to receive fresh evidence. Those factors include:

- a. Admissibility: is the evidence admissible under the operative rules of evidence
- b. Cogency: is the evidence sufficiently cogent in that it could reasonably be expected to have affected the outcome of the decision under appeal; and
- c. Due diligence: what is the explanation offered for the failure to adduce the evidence and should that explanation affect the admissibility of the evidence.

¹ The RHPA, together with the *Nursing Act, 1991*, S.O. 1991, c. 32, determines how the nursing profession is regulated in Ontario. The *Health Professions Procedural Code* is deemed to be part of each health profession Act, including the *Nursing Act*: see RHPA, s. 4; *Nursing Act*, s. 2.

[21] I note that the proposed “fresh” evidence either was adduced or could have been adduced at the hearing before the Discipline Committee, if admissible. None of it post-dates the hearing.

[22] The motion for fresh evidence includes seven tabs containing various documents. Tabs 4, 5 and 6 of the applicant’s motion contain documents which the Discipline Committee refused to allow her to adduce at the hearing.

[23] The only explanation given by the appellant as to why the documents that pre-date the hearing were not adduced during the hearing is that when she requested an adjournment of the hearing to obtain the documents and then adduce them, the adjournment was refused.

[24] The procedural history is an important factor as this matter must be considered in context. The appellant requested and was granted multiple adjournments of the pre-hearing conference dates, as well as hearing dates. One adjournment was granted to allow the appellant to “get all the necessary evidence”. The July 2023 hearing was the fourth set of scheduled hearing dates, as the previous ones were adjourned at the appellant’s request.

[25] After the cross examination of the appellant and her spouse during the July 2023 hearing, the appellant provided several documents to her counsel. Her counsel then requested an adjournment to allow him to review these documents. Further, he indicated that he might seek leave to re-call both witnesses in order to introduce those documents into evidence.

[26] The Discipline Committee denied the requested adjournment, stating that the allegations had been known since 2020 and the appellant should have known that any receipts that she had to counter allegations of false claims were relevant and she should have had them ready for the hearing.

[27] Granting an adjournment is a highly discretionary decision and entitled to deference. Here the Discipline Committee considered the appropriate factors and dismissed the request.

[28] The attempt to adduce this evidence as “fresh” evidence is a collateral attack upon the Discipline Committee’s decision and is rejected for that reason.

[29] The balance of the documents was either already part of the record or disclosed to the appellant and she declined to adduce them during the hearing.

[30] Further, the Discipline Committee’s decision makes it clear that it found several other reasons to make credibility findings about the appellant and her witnesses. These documents, even if they were admitted, would not reasonably be expected to affect the outcome of the appeal.

[31] Finally, these documents are hearsay and presumptively inadmissible.

[32] The Appellant’s motion to adduce fresh evidence is denied.

V. Appeal

[33] The appellant raises the following issues on this appeal:

- a. Did the Discipline Committee have sufficient evidence to conclude that the appellant's reimbursement claims were fraudulent?
- b. Was the College required to summons the appellant's documents or witnesses?
- c. Did the Discipline Committee err in its findings regarding the January 2019 meeting?
- d. Did the Discipline Committee err by not qualifying Dr. Bosua as an expert?
- e. Did the Discipline Committee display a reasonable apprehension of bias?
- f. Did the Discipline Committee err in imposing its penalty?

VI. Standard of Review

[34] The standard of review on this statutory appeal is as set out in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235. Errors of law are reviewed on a correctness standard. For errors of fact, there must be a palpable and overriding error. Errors of mixed fact and law also require a palpable and overriding error unless there is an extricable error of law or principle, which is reviewed on a correctness standard. The standard of review on questions of procedural fairness in the context of a statutory appeal is correctness: *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29, 470 D.L.R. (4th) 328, at paras. 27, 30.

[35] With respect to the appeal from penalty, the Appellant must show that there was an error in principle or that the penalty was clearly unfit. To be clearly unfit, the penalty must be disproportionate or fall outside the range of penalties for similar offences in similar circumstances: *Gill v. College of Physicians and Surgeons of Ontario*, 2022 ONSC 49 (Div. Ct.), at para. 82.

VII. Analysis

[36] Although the appellant asserts that the Discipline Committee made several errors, in fact, collectively they constitute a more general concern. She does not accept the Discipline Committee's decision and fundamentally asserts that the decision is not based upon the evidence presented. She wishes us to re-weigh the evidence. As well, she asks that we reject the Discipline Committee's credibility findings and substitute them with our own.

[37] First, she asserts that there was insufficient evidence to reach its findings. She also disagrees with the facts found by the Discipline Committee and finds error with how it reached those findings.

[38] For example, she disagrees with the Discipline Committee's factual conclusions regarding the January 2019 meeting that she had with Baycrest's auditor. She had testified that it was an ambush. The Discipline Committee rejected her testimony and made its own findings of fact based upon the evidence before it. It is not our role to re-weigh the evidence.

[39] I find that the Discipline Committee made findings of credibility and fact that were available to it on the record before it. The Discipline Committee made no overriding or palpable error in reaching its findings of fact.

[40] Second, the appellant asserts that the College should have summonsed her evidence. There was no obligation on the College to do so, and in any event, the documents that she refers to are hearsay and inadmissible.

[41] Third, she asserts that the Discipline Committee erred by not requiring one of the College's witnesses, Dr. Bosua, to be qualified as an expert. However, he was produced as a fact witness and he was instructed not provide an opinion on whether the appellant's claims were false.

[42] Fourth, the appellant asserts that the Discipline Committee exhibited a reasonable apprehension of bias. She provides no evidence to support this assertion, other than the fact that the Discipline Committee decided adversely to her position. This is not sufficient to support her allegation.

[43] Fifth, she asserts that the penalty was not reasonable.

[44] Penalty decisions are owed deference and should only be set aside where it was imposed based on an error of principle or is clearly unfit: *Gill*, at para. 82.

[45] The appellant provides nothing to support her general allegation that the penalty was unreasonable.

[46] I find that in determining the penalty, the Discipline Committee described and applied the relevant factors. Further, the penalty is not clearly unfit.

VIII. Disposition

[47] In conclusion, I find that there were no errors of law, nor palpable and overriding errors of fact, or of mixed fact and law. Finally, there was no procedural unfairness.

[48] Accordingly, the appeal and the motion to admit fresh evidence are dismissed.

[49] The Respondent was successful on the motion and the appeal. It is entitled to a cost award. It has requested \$1,500 for the motion and \$5,000 for the appeal. Both amounts are reasonable. I order that the appellant pay to the Respondent the sum of \$6,500 fixed inclusive of HST.

D.L. Edwards J.

Lococo J.

Shore J.

Date: June 16, 2025

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BETWEEN:

Faina Brodsky

Appellant

– and –

College of Nurses of Ontario

Respondent

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THE HONOURABLE JUSTICE D.L. EDWARDS

Released: June 16, 2025