

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
DIVISIONAL COURT

Sachs, Backhouse and S.T. Bale JJ.

BETWEEN:

Tara Bortolon

)  
)  
Applicant )

) *Anne Marshall and John McIntyre,*

) for the applicant

– and –

)  
)  
College of Occupational Therapists  
of Ontario )

)  
)  
Respondent

) *Ahmad Mozaffari,* for the respondent

Heard on January 23, 2024, at Toronto

REASONS FOR DECISION

**S.T. Bale J.:-**

**Introduction**

[1] Tara Bortolon applies for judicial review of a decision of the Inquiries, Complaints and Reports Committee (“ICRC”) of the College of Occupational Therapists of Ontario. The ICRC ordered that she complete a Specified Continuing Education or Remediation Program (“SCERP”), following an investigation of a complaint concerning her billing practices. The complaint and investigation dealt with two issues. First, whether she had instructed clients to pay her directly, rather than through the clinic where she worked. And second, whether she had invoiced the clinic for sessions for which clients had already paid her directly.

[2] The College appointed an investigator to investigate the complaint and provided Ms. Bortolon with a copy of the investigation report. In reviewing the report, she identified what she said were inaccuracies and asked the investigations manager whether she should respond to concerns other than the two issues which were the subject of the complaint and investigation. She was told that she should not – that she should restrict her response to the two issues, as would the ICRC when making their decision. She followed the direction of the investigations manager.

[3] Ms. Bortolon challenges the decision on both procedural and substantive grounds. She argues that the imposition of the SCERP was procedurally unfair, because it was based on findings

of fact not sufficiently related to the two issues set out in the complaint and investigation report, and to which she had been advised to restrict her response. She also argues that the decision was unreasonable because the ICRC: (1) failed to obtain relevant and material evidence; (2) made findings of fact in the absence of evidence; and (3) misapprehended the evidence before it.

[4] Ms. Bortolon requests an order quashing the ICRC's decision and directing that it take no further action. In the alternative, she requests an order remitting the matter to a new ICRC panel for further investigation and reconsideration.

[5] For the following reasons, I would set aside the ICRC's decision but would not remit the matter to the College for further investigation and reconsideration. It would serve no useful purpose to do so.

### **Background**

[6] Tara Bortolon is an occupational therapist licensed by the College of Occupational Therapists of Ontario. From November 2019 to October 2022, she worked as an independent contractor at the Play Clinic, a multidisciplinary health clinic which primarily provides mental health services to children. Jodie Hiebert is the owner of the clinic.

[7] In October 2022, a psychotherapist at the Clinic resigned abruptly. Ms. Hiebert went through that individual's emails, and found communications between Ms. Bortolon and the psychotherapist, in which the psychotherapist had asked Ms. Bortolon for advice before leaving. The next day, Ms. Hiebert revoked Ms. Bortolon's access to her work email account and OWL account, which included all client treatment notes and contact information, her calendar, and her financial records. Ms. Hiebert then terminated Ms. Bortolon's contract with the Play Clinic without notice, contacted Ms. Bortolon's existing clients using Ms. Bortolon's work email address and alleged Ms. Bortolon had defrauded her.

[8] Ms. Hiebert then filed a complaint with the college alleging that Ms. Bortolon, contrary to their fee agreement, had instructed some clients to pay her directly rather than through the clinic, and that she had then billed the clinic for the same services.

### **The investigation**

[9] Upon receiving the complaint, the College appointed an investigator pursuant to s. 75(1)(a) of the Health Professional Procedural Code, Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18. Ms. Bortolon was interviewed during the investigation process and was invited to provide a response once it was completed. The report stated that there were two issues under investigation:

- (1) that Ms. Bortolon may have instructed clients to pay her directly; or, where a client proposed to pay her directly, did not instruct them to redirect payment to the clinic; and
- (2) that Ms. Bortolon may have invoiced the clinic for one or more sessions for which clients had paid her directly.

[10] The report contained an analysis of financial documents provided by Ms. Hiebert, including information provided by a financial analyst she had retained to investigate the matter. The report also contained summaries of the college investigator's interviews with Ms. Hiebert, Ms. Bortolon, and several clients to whom she had provided services.

[11] Upon terminating Ms. Bortolon, Ms. Hiebert did not allow her access to her financial, billing, or scheduling records. Ms. Bortolon argues that those records would be exculpatory and corroborate her position but were withheld by Ms. Hiebert during the investigation. As a result, she complains that the evidence provided was lop-sided and that she was forced to verify this information with only her memory, which was not adequate given the time that had passed since the events in question.

[12] Upon receiving the report, and before filing her responding submissions, Ms. Bortolon contacted the College's manager of investigations to express concerns with some of its findings. She wrote that there were "a number of inaccuracies that I will have to address in the report which will take some time." The manager replied the same day, saying: "It is important to keep in mind the only issue that was investigated, and to direct your response to this issue." She then referred to the two issues set out in the report: direct billing of clients and alleged double billing.

[13] Ms. Bortolon replied with the following email:

There are some inaccurate comments throughout the document that do not necessarily pertain to the 2 issues outlined. For example, there is a comment made in an email exchange from December 2023 that I was contacting past clients. This is just not true and I recognize would be entirely inappropriate. It is unrelated to the 2 issues at hand, however, should I still respond to these statements? It is difficult to read and not "defend" myself.

[14] The investigations manager responded:

If it's not relevant to the issue, then you do not need to comment. Also, the ICRC panel is also told to focus on the issues, and they will look to the information pointed out in the report.

I would recommend focusing on the issues and the chart summary in the invoice summary. I understand it can be hard to see other issues and not respond, but it may only serve to convolute and distract from what the investigation was fundamentally looking at.

[15] Ms. Bortolon filed her responding submissions on June 9, 2024. With respect to the first issue, she wrote that certain clients were directed to pay her directly for certain services, which Ms. Hiebert had agreed to. With respect to the second issue, she said that she had never intentionally double-billed and that if she had made an error in billing, she would have gladly reimbursed Ms. Hiebert, had such error been brought to her attention.

### **ICRC decision**

[16] The ICRC released its decision on July 3, 2024, ordering that Ms. Bortolon complete a SCERP. It cited Ms. Bortolon’s “lack of administrative processes, including billing, as well as [her] decision to use the Clinic’s system for her own clients”, which indicated “a significant gap in [her] knowledge, skill and judgment.” The Committee stated that it was “incumbent on [Ms. Bortolon], in the absence of processes instituted by the Clinic, to establish her own practice processes and to ensure her own organization” and that “[Ms. Bortolon] herself, during the investigation referred to a better system that could have been implemented wherein all clients paid the clinic directly.”

[17] Despite these findings, the ICRC found that referring the matter to the College discipline committee was unnecessary. It concluded that there was no information indicating that Ms. Bortolon had acted knowingly or dishonestly. While the ICRC “wished not to minimize the impact of unorganized billing and record keeping, the Registrant’s conduct did not rise to the level of seriousness normally seen in matters referred to discipline.” Rather, a SCERP was the most appropriate course in light of her general billing issues, which were “the result of serious disorganization that [she] ultimately bore accountability for as a regulated health professional.”

### **Ms. Bortolon’s grounds for judicial review**

[18] Ms. Bortolon challenges the decision on both procedural and substantive grounds. She argues that the SCERP was imposed based upon findings of fact not sufficiently related to the two billing issues raised by the complaint and investigation report, and to which she had been advised to restrict her response. Had she been aware that the broader practice management issues cited by the ICRC might result in an order against her, she would have provided it with detailed information about how she organized her practice and ensured the accuracy of her billing.

[19] She also argues that the decision was unreasonable because the ICRC: (1) failed to obtain relevant and material evidence; (2) made findings of fact in the absence of evidence; and (3) misapprehended the evidence before it.

### **Analysis**

#### *Whether the ICRC process was procedurally unfair*

[20] In my view, the ICRC process in this case was procedurally unfair.

[21] In *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at paras. 23-27, the court set out a non-exhaustive list of factors that inform the content of the duty of procedural fairness in a particular case. Those factors include: (1) the nature of the decision being made and the process followed in making it; (2) the nature of the statutory scheme; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the decision; and (5) the choices of procedure made by the administrative decision maker itself.

[22] In *RS v. EF*, 2023 CanLII 7337 (ON HPARB), at paras. 77-78, the Health Professions Appeal and Review Board said the following about the level of procedural fairness owed to members of a health profession:

77. This Board has previously stated that:

Procedural fairness is owed to a professional member in circumstances where the Committee identifies substantive new issues or interprets the issues differently than the member during the course of its investigation, and where the Committee intends to be critical of a member's practice and to take some action concerning this member. [Citation omitted.]

78. The Board observes that these standards, at a minimum, include providing notice to a member of any new concerns that have been identified by the Committee and providing the member with an opportunity to respond to same when they form a substantial basis for the findings of the Committee, as in the case here.

[23] In the present case, Mrs. Bortolon was given notice of only two issues: whether she had instructed clients to pay her directly, rather than through the clinic where she worked; and whether she had invoiced the clinic for sessions for which clients had paid her directly. She responded only to those issues and the ICRC found that there was no information to support that she had acted knowingly or dishonestly, and no evidence of actual or serious harm to clients. The ICRC instead made findings about broader practice management procedures, stating Ms. Bortolon was disorganized, lacked appropriate billing processes, and demonstrated gaps in her knowledge and skills because she had used the Play Clinic's systems for her own independent clients. It then relied on the findings on these broader issues in its reasons for ordering a SCERP.

[24] Citing *Dr. Rajiv Maini v. HPARB*, 2022 ONSC 3326 (Div. Ct.), at paras. 24-25, the College argues that the duty of procedural fairness at the investigative stage is limited:

The ICRC exercises a screening and not an adjudicative function. The Committee does not conduct hearings nor listen to witnesses but decides issues before it on paper-based reviews. It does not find whether professional misconduct is warranted, and it has no authority to order sanctions or penalties. Its function is to screen the results of an investigation and determine whether the matter should be referred for adjudication, or whether some other remedy is appropriate, such as a requirement for educational upgrading." [Citations omitted.]

[25] However, while the potential impact of a decision on the member affected is relevant to the required level of procedural fairness, in paragraph 26 of *Maini*, the court goes on to confirm that the member must none-the-less be given sufficient information to answer the case against him or her:

This Court has recognized that "The standard of disclosure at the screening or investigative stage has been held to require adequate notice to ensure that a member has sufficient information to answer the case against him or her. It has also been held that it is adequate at the investigative stage for the member to know the allegations or substance of the complaint against him or her, not all of the information obtained during the course of the investigation." [Citation omitted.]

[26] I also note that while the College may not consider the imposition of a SCERP to be a sanction, in this case it involved a finding that there were serious deficiencies in Ms. Bortolon's

administrative practices and that she lacked an appropriate degree of insight and accountability regarding the impact of those deficiencies and the potential for client harm. Those findings would be a matter of public record and in their reasons, the ICRC said that the decision would be considered by any future panel of the ICRC considering Ms. Bortolon's conduct. I also note that the SCERP that was ordered includes the appointment by the College of a practice monitor at Ms. Bortolon's expense.

[27] The College argues that Ms. Bortolon had notice of the practice management concerns referred to in the ICRC's decision because during the investigation, while she raised several concerns with the way Ms. Hiebert ran the clinic, she acknowledged concerns with her own practice. However, the fact that there may have been discussion about these issues during the investigation is not notice to Ms. Bortolon that her practice management was under investigation. If the ICRC identified new issues and intended to be critical of her practice and to take action against her, she was entitled to notice of those issues and an opportunity to respond.

[28] The College argues that the practice management concerns upon which imposition of the SCERP was based were sufficiently related to the two billing issues raised in the complaint and investigated by the College. However, while poor administrative practices could potentially result in double-billing, the implication of Ms. Hiebert's complaint to the College was that Ms. Bortolon had engaged in dishonest and criminal activity (Ms. Hiebert had also complained to the police). In these circumstances, one would expect Ms. Bortolon to focus on defending these allegations, rather than on the adequacy of her practice management.

[29] With respect to the guidance given by the investigations manager to Ms. Bortolon, the College argues that she was not directed to ignore inaccuracies in the investigation report, but rather to focus her submissions on what was relevant, and not be distracted by what appeared to be significant animus between herself and Ms. Hiebert. The College submits that the manager was making her best efforts to assist a self-represented registrant.

[30] The College acknowledges that the role of administrative tribunals in providing assistance to self-represented registrants includes promoting opportunities for registrants to understand and meaningfully present their case and not leave the self-represented party to flounder: *Hirtle v. College of Nurses of Ontario*, 2022 ONSC 1479 (Div. Ct.), at paras. 55-58. However, it argues that self-represented parties bear the responsibility of preparing their own case: *Hirtle*, at para. 64, and that it was not for the manager to craft Ms. Bortolon's response or provide her with legal advice.

[31] While I agree with these principles, the issue in the present case is not whether the guidance given by the manager to Ms. Bortolon was adequate. Rather, the point is that she reasonably understood from the investigation manager's email guidance that she should restrict her response to the two billing issues raised in the investigation report, as would the ICRC in making its decision.

#### *Substantive issues*

[32] Having found that the ICRC's process in this case was procedurally unfair, it is unnecessary for me to deal with the substantive issues raised by Ms. Bortolon.

## **Disposition**

[33] For the reasons given, I would allow the application and quash the decision of the ICRC.

[34] However, I would not remit the matter to the College for further investigation or reconsideration, because to do so would serve no useful purpose.

[35] Ms. Bortolon is no longer working at the Play Clinic, so the difficulties that arose from the integration of her practice with the clinic practice will no longer be an issue.

[36] The records that Ms. Bortolon would require to adequately respond to the College's concerns with her practice management have not been provided by the complainant, and the subject-matter of the complaint is now several years old. Without those records, Ms. Bortolon would be forced to work entirely from memory, and her recollection of the events has faded.

[37] Finally, in its reasons for decision, the ICRC noted that Ms. Bortolon had acknowledged the importance of policies, standardized payment procedures, written contracts and regular accounting and auditing procedures. She had undertaken remedial activities on her own and had sought regular legal and accounting advice on her administrative practices.

[38] Ms. Bortolon is entitled to her costs of the application in the agreed-upon amount of \$5,000, inclusive of disbursements and HST.

“S.T. Bale J.”

“I agree. Sachs J.”

“I agree. Backhouse J.”

**Released:** June 27, 2025

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DIVISIONAL COURT FILE NO. 447/24  
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BETWEEN:

Tamara Bortolon

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REASONS FOR JUDGMENT

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Released: June 27, 2025

S.T. Bale J.