

**CITATION:** Sohail Aslam v. Ontario College of Pharmacists, 2025 ONSC 3070  
**DIVISIONAL COURT FILE NO.:** 499/24  
**DATE:** 20250711

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**DIVISIONAL COURT**  
**Sachs, Reid and Nakatsuru**

**BETWEEN:** )  
 )  
Sohail Aslam )  
 )  
Applicant ) *Craig Colraine and Vladislav Lynsaght, for*  
 ) *the Applicant*  
 )  
**– and –** )  
 )  
Ontario College of Pharmacists ) *Edward Marrocco and Olivia Eng, for the*  
 ) *Respondent*  
Respondent )  
 )  
 )  
 ) **HEARD at Toronto:** May 15, 2025

2025 ONSC 3070 (CanLII)

**REASONS FOR JUDGEMENT**

**THE COURT**

**Notice of Publication Ban**

**In the hearing of the Ontario College of Pharmacists and Sohail Aslam, the Discipline Committee made an Order:**

- 1. That no person shall publicly disclose, publish, broadcast, or transmit the name of the complainant or any patient(s) referred to at a hearing in this proceeding or in documents filed as exhibits in this proceeding, or any information or evidence that could disclose their identities, in accordance with s. 45(3) of the *Health Professions Procedural Code*.**

2. **That no person shall publicly disclose, publish, broadcast or transmit any information that could disclose who testified as a witness at Mr. Aslam’s criminal trial, heard March 7 and 8, 2016.**
3. **That any adjudicative records filed in evidence on the within motion shall not be released to any non-party without first being redacted by counsel for the College and for the Registrant to ensure compliance with this order and to ensure that no contents of pre-hearing materials are disclosed.**
4. **Subject to [section 36\(3\)](#) of the [Regulated Health Professions Act, 1991](#), this order does not apply in respect of the disclosure of information in the course of the administration of justice when it is not the purpose of the disclosure to make the information known in the community.**

### **Background**

- [1] On November 18, 2020, the Discipline Committee (the “Discipline Committee”) of the Ontario College of Pharmacists (the “College”) found Mr. Aslam guilty of numerous counts of sexual misconduct against the complainant, M.T., a former employee of his pharmacy.
- [2] Ms. Aslam appealed that decision to the Divisional Court, and, on April 28, 2023, the Divisional Court allowed his appeal, set aside the Discipline Committee’s decision, and dismissed all allegations against Mr. Aslam, except for the allegation that he committed sexual misconduct in his office on September 14, 2013 (the “Office Incident”). That allegation was remitted to the Discipline Committee for a rehearing.
- [3] Mr. Aslam brought a motion to stay the Office Incident charge on the basis of delay. On July 23, 2024, the Discipline Committee dismissed his motion, finding that Mr. Aslam’s numerous motions, and the innate time necessary to deal with them, had materially contributed to the delay and that, when the timeline was viewed in its proper context, the delay was not inordinate. The Discipline Committee found that the delay would not impair the fairness of the hearing. The Discipline Committee also found that, notwithstanding any link between Mr. Aslam’s health and the inherent stress of his legal proceedings, Mr. Aslam’s evidence failed to draw the requisite causal connection between harms to his health and delay in the proceedings. The Discipline Committee was satisfied that in all the circumstances, including the College’s public protection mandate and the seriousness of the allegations, allowing the matter to continue would not bring the administration of justice into disrepute.
- [4] This is an application by Mr. Aslam to review the Discipline Committee’s abuse of process decision. For the following reasons, we dismiss the application.

### **Issues Raised**

- [5] This application raised the following issues:
- (a) Should the application be dismissed on the basis of prematurity?
  - (b) Did the Discipline Committee err in concluding there was no inordinate delay?
  - (c) If the delay was inordinate, did the Discipline Committee err in concluding that hearing fairness was not impaired?
  - (d) If the delay was inordinate, did the Discipline Committee err in concluding that Mr. Aslam had not demonstrated significant prejudice (unrelated to hearing fairness) resulting from the delay ?
  - (e) If the delay was inordinate and caused significant prejudice to Mr. Aslam, does it rise to the level of abuse of process?

### **Standard of Review**

- [6] The parties agree that the question of whether there was an abuse of process in the proceedings below is a matter of procedural fairness that attracts the correctness standard.

### **Prematurity**

- [7] With respect to prematurity, the College is not taking the position that, in the particular circumstances of this case, this Court should decline to hear this application. However, it does so only because of the expert evidence as to the increased risk that a second discipline hearing will present to Mr. Aslam's health. In making this concession, the College is not conceding that the delay in the proceedings caused or contributed to Mr. Aslam's health struggles.
- [8] In view of the College's appropriate concession, we are not dismissing the application as premature.

### **The Legal Test for a Finding of Abuse of Process in the Administrative Law Context**

- [9] The leading case is *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 S.C.R. 307. The Supreme Court of Canada set out a two-branch test for abuse of process arising out of inordinate delay. The two branches of the test can be summarized as follows, at para. 102:
- 1) Has the inordinate delay in the proceedings impugned the fairness of the hearing; or

- 2) Has the inordinate delay directly caused significant prejudice to the applicant such that an administrative process would be brought into disrepute if the hearing proceeded?

[10] In determining whether a delay is “inordinate” the following non-exhaustive factors ought to be considered:

- 1) The nature and purpose of the proceedings;
- 2) The length and causes of the delay; and
- 3) The complexity of the facts and issues in the case

See *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29, [2022] 2 S.C.R. 220, at para. 51.

[11] Regarding the second branch of establishing an abuse of process, where the delay does not affect trial fairness, a three-step analytical framework is followed:

- 1) Was the delay inordinate?
- 2) Did the delay cause significant prejudice to the applicant?
- 3) A final assessment as to whether the delay is manifestly unfair to a party to the proceedings or the delay in some other way brings the administration of justice into disrepute.

See *Abrametz*, at para. 43.

[12] It is also worth noting that a permanent stay of proceedings does not automatically follow a finding of abuse of process. When this “high threshold is not met, when there is inordinate delay and resulting prejudice, but it is not significant enough that proceeding in its wake would, in and of itself, shock the community’s sense of fairness and decency” (*Regan*, at para. 107), then other remedies are available”: *Abrametz*, at para. 76. Other remedies can include costs or a reduction in sanctions. A stay is a remedy of last resort, only granted in the “clearest of cases” when the abuse is at the high end of the spectrum of seriousness: *Abrametz*, at paras. 74-77, 83-100.

### **Did the Discipline Committee err in deciding that the delay was not inordinate?**

[13] There is no issue that the delay in this case was a lengthy one. However, as pointed out in *Abrametz*, at para. 59 “...a lengthy delay is not *per se* inordinate; it may be justifiable in context.”

[14] As noted above, *Abrametz* provides a list of non-exhaustive factors to be considered in deciding whether a delay is inordinate. Mr. Aslam submits that in this case there is an additional factor that must be considered, not only in relation to prejudice but also in

assessing whether the delay is inordinate – Mr. Aslam’s health. We disagree. In doing so, we make no finding either way on whether there can ever be a case where a registrant’s health can be considered as a contextual factor in the assessment of inordinate delay. However, as detailed further below, this is not a case where the registrant conducted his defence in a manner that made it clear to the College, either expressly or by his conduct, that the proceedings had to proceed expeditiously because of his health concerns.

- [15] With respect to the nature and the purpose of the proceedings, like in *Abrametz*, this was a disciplinary proceeding conducted by a regulatory body with a mandate to “protect the public, to regulate the profession and to preserve public confidence in the profession”: *Abrametz*, para. 53. There is a real societal interest in having such proceedings conducted expeditiously, but not at the expense of jeopardizing the registrant’s opportunity to make full answer and defence.
- [16] With respect to the length of the delay, the complaints giving rise to these proceedings were filed on May 2, 2016. The stay motion was heard in March of 2024 and decided July 23, 2024. Thus, the delay at issue was approximately eight years.
- [17] With respect to the causes of delay, it is important to assess whether Mr. Aslam contributed to or waived parts of that delay: *Blencoe*, at para. 122. A party cannot complain about delay that they cause or waive. Moreover, “[n]or will there be unfairness if the delay is an inherent part of a fair process”: *Abrametz*, at para. 62.
- [18] Analysis of the causes of the delay reveals that significant portions of the delay were caused by Mr. Aslam or were an inherent part of ensuring fairness.
- [19] No complaint of delay has been made about the investigative phase of the case. On February 8, 2017, the Inquiries, Complaints, and Reports Committee referred the allegations to the Discipline Committee for a hearing. On March 29, 2017, Mr. Aslam received his disclosure package. A pre-hearing conference was conducted on May 12, 2017.
- [20] At the pre-hearing conference, Mr. Aslam raised his intention to bring a motion for abuse of process and a motion to introduce his criminal court acquittals. Two days were scheduled. Ms. Aslam abandoned his abuse of process motion, but the other motion was heard on October 30, 2017, with the decision dismissing the motion on November 20, 2017.
- [21] A further pre-hearing conference on December 18, 2017, set a five-day misconduct hearing at the end of April of 2018, but due to the unavailability of a panel, an institutional resource reason, the hearing dates were re-scheduled for November 5 to 9, 2018.
- [22] The delay occasioned by the lack of availability of a panel is a source of concern. However, before the misconduct hearing commenced, further motions were entertained by the Discipline Committee in the intervening period. The College brought a motion for accommodations for the complainant (which was granted). Mr. Aslam brought a cross motion to cross-examine the complainant on her affidavit-in-support of that motion (which

was dismissed). These motions were decided in August of 2018. Additionally, in July of 2018, the College made further disclosure to Mr. Aslam.

- [23] On September 18, 2018, Mr. Aslam brought a third-party records production motion to produce the entirety of the complainant's medical records. He also requested an adjournment of the merits hearing and that the November hearing dates be converted to hear his third-party records motion. A further pre-hearing conference was conducted on September 21, 2018, and on October 15, 2018. Mr. Aslam's request for an adjournment was granted and the records motion was heard on November 5-6, 2018. The Respondent took the position that this was a novel motion under a relatively new amendment introduced in 2017, s. 42.2 of the *Health Professionals Procedural Code, Schedule 2 to the Regulated Health Professions Act, 1991, S.O. 1991, c. 18*. Mr. Aslam's motion was dismissed on February 27, 2019, with lengthy reasons released on April 23, 2019.
- [24] Although the production motion decision had not yet been released, on January 24, 2019, dates for the misconduct hearing were set in April and May of 2019, for a five-day hearing.
- [25] On April 18, 2019, the Respondent advised that the complainant required a Hungarian interpreter for the hearing. The parties agreed this would extend the length of time for the hearing. Further dates were canvassed for the summer and fall subject to the availability of independent counsel for the Discipline Committee.
- [26] The misconduct hearing commenced on April 25, 2019. It was completed on December 3, 2019. Fourteen days of hearing spread over various dates were required. During this time, additional case management conferences were held. The examination-in-chief of the complainant was completed on the second day of the hearing. Mr. Aslam cross-examined her for five days, significantly longer than the defence's original 3-hour estimate given earlier. The College called the complainant. The defence called six witnesses. A day was lost due to a family emergency of Mr. Aslam's counsel.
- [27] The Discipline Committee reserved its decision. A 62-page decision involving six separate allegations was released on November 18, 2020, almost a year after the hearing ended [we note that this year coincided with the first year of the Covid epidemic in Toronto].
- [28] The Respondent did not attempt to schedule a penalty hearing until April 22, 2021. As Mr. Aslam had filed a notice of appeal of the Discipline Committee's misconduct findings, the Respondent's hearings office erroneously assumed Mr. Aslam was seeking to appeal before his penalty hearing. Penalty hearing dates were then offered for August and September of 2021, but counsel for Mr. Aslam was not available for the second day of the hearing on those dates. Thus, the penalty hearing was set for September 24 and December 1, 2024.
- [29] After the first day of the penalty hearing was completed, on November 26, 2021, Mr. Aslam brought a motion to re-open the misconduct hearing based on "fresh evidence" he had discovered. The Discipline Committee decided to complete the penalty hearing on December 1, 2024, but not to decide the sanction until Mr. Aslam's fresh evidence motion

was heard on February 22, 2022, and determined. The motion was dismissed on July 20, 2022, on the basis that the additional video evidence would not have changed the result of the misconduct findings.

- [30] On August 25, 2022, the penalty decision was released.
- [31] Mr. Aslam then appealed the matter to the Divisional Court. In the Divisional Court, Mr. Aslam requested extensions of time to perfect his appeal. The appeal was heard on April 18, 2023. The decision was released on April 28, 2023, granting the appeal in part, and remitting one allegation of sexual harassment back to the Discipline Committee: *Aslam v. Ontario College of Pharmacists*, 2023 ONSC 2549 (Div. Ct.).
- [32] In our opinion, while certain specific periods of the delay are concerning, when the entire proceeding is assessed contextually and holistically, the most significant portions of the delay were either directly caused by the defence including defence motions, of which there were four, or were a result of the careful respect paid by the Discipline Committee to the fairness of the process. As the Discipline Committee noted, the most concerning aspect of the delay is the year it took the Discipline Committee to render its decision on the merits. However, given the length of the merits hearing and the amount of evidence that needed to be considered we do not find that this delay, taken in context, reaches the threshold required to be classified as “inordinate.”
- [33] With respect to complexity, as set out above, there were a number of issues that the Discipline Committee had to determine at every stage of the proceedings. This made the proceedings far more complex. This included the novel third-party records motion, the number and nature of the allegations, the under-estimation of how long the hearing would take, and a bid to re-open the misconduct findings.
- [34] Given all these factors, we agree with the Discipline Committee that the delay, while lengthy, was not inordinate.

### **Other issues**

- [35] Given our finding that the delay was not inordinate, there is no need to determine the other issues raised.

### **Disposition**

- [36] For these reasons, the application for judicial review is dismissed. Mr. Aslam agrees that the College is entitled to its costs of this application fixed in the amount of \$14,000 but argues that we should order that these costs only be paid if he is found guilty of professional misconduct. We decline to impose this condition on the costs order and, therefore, we order that Mr. Aslam pay the College its costs fixed in the amount of \$14,000.

\_\_\_\_\_  
Justice H. Sachs

I agree \_\_\_\_\_  
Justice R. Reid

I agree \_\_\_\_\_  
Justice S. Nakatsuru

**Released:** July 11, 2025

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