

**CITATION:** Tenn-Lyn v. Trillium Health Partners et al, 2026 ONSC 795  
**COURT FILE NO.:** CV-18-00604404-0000  
**DATE:** 20260210

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** NICOLE TENN-LYN, Plaintiff

**AND:**

TRILLIUM HEALTH PARTNERS; EDWARD EVERSON, AKA TED  
EVERSON; ERIC LETOVSKY; DANTE MORRA, Defendants

**BEFORE:** Justice Parghi

**COUNSEL:** *Jared B. Schwartz*, for the Plaintiff

*Laura M. Wagner and Roya Shidfar*, for the Defendants

**HEARD:** January 15, 2026

**ENDORSEMENT**

- [1] Dr. Nicole Tenn-Lyn held physician privileges to practice in the emergency department at Trillium Health Partners (“Trillium”) beginning in July 2006. In March 2017, Trillium did not reappoint her to its professional staff and suspended her privileges to practice there, on the basis that she had failed to demonstrate an ability to communicate and work with others in a professional and courteous manner, and failed to improve despite receiving feedback and coaching in relation to the concerns raised.
- [2] Dr. Tenn-Lyn challenged Trillium’s decision through the various procedures available to her under the *Public Hospitals Act*, R.S.O. 1990, c. P. 40 (the “*PHA*”). She first contested the decision before the Medical Advisory Committee of Trillium’s board of directors, then before its full board, then before the Health Professions Appeal and Review Board, and eventually before the Divisional Court. At each stage, she was unsuccessful.
- [3] She has now commenced this action against Trillium and three of its physician administrators. The allegations in the action pertain to how the defendants investigated and managed complaints and issues involving Dr. Tenn-Lyn when she held privileges at Trillium, how they managed the suspension and revocation of her privileges, and whether and how Trillium breached its express and implied agreement with her as a physician appointed to its staff. Dr. Tenn-Lyn alleges breach of contract, honest contractual performance, negligence, and conspiracy. She seeks damages for mental suffering and for breach of the *Human Rights Code*, R.S.O. 1990, c. H. 19, in addition to aggravated and/or punitive damages.

- [4] The defendants bring this motion to permanently stay or dismiss Dr. Tenn-Lyn's action as vexatious and an abuse of process, pursuant to rule 21.01(3)(d) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. They say that the issues in the action were considered in full during the proceedings before Trillium's Medical Advisory Committee, its board, the Health Professionals Appeal and Review Board, and the Divisional Court, to which I will refer collectively as the "*PHA* proceedings. The defendants submit that at the *PHA* proceedings, Dr. Tenn-Lynn had the opportunity to raise all the allegations she now seeks to advance in this action, and to call evidence and make submissions on them. In the result, she is improperly attempting to relitigate issues before this court in an abuse of process.
- [5] The defendants further state, in the alternative, that the Amended Statement of Claim in this action should be struck in whole or in part without leave to amend under rules 25.11(b) and (c), because it is vexatious and/or otherwise an abuse of process of this court.
- [6] For the reasons below, I grant the defendants' motion to dismiss this action as an abuse of process under rule 21.01(3)(d). I therefore need not consider whether the action is vexatious under rule 21.01(3)(d) or the defendants' alternative requests for relief under rules 25.11(b) and (c).

### **Procedural History**

- [7] The procedural history of Dr. Tenn-Lyn's privileges dispute with Trillium is lengthy but generally uncontested. It is as follows.
- [8] Dr. Tenn-Lyn joined Trillium's professional staff and was given privileges to practice in the emergency department in July 2006. She was granted her privileges pursuant to Trillium's *Professional Staff By-Law* and section 36 of the *PHA*, which provides that the board of a hospital may appoint physicians to its medical staff and determine the hospital privileges to attach to a staff member's appointment.
- [9] In 2011, Trillium began receiving what it calls "a significant volume of" complaints regarding Dr. Tenn-Lyn's ability to work with others cooperatively and professionally. These are detailed in the decision of the Health Professions Appeal and Review Board ("HPARB") and I need not describe them here.
- [10] In March 2016, Trillium decided not to reappoint her and to suspend her privileges. It did so under section 36 of the *PHA*, which grants the hospital board authority to revoke or suspend an appointment of, or refuse to reappoint, a medical staff member.
- [11] In September 2016, the Medical Advisory Committee of Trillium's board of directors (the "MAC") convened a special meeting to consider Dr. Tenn-Lyn's privileges. During the meeting, a presentation was made to the MAC by Trillium's then-Chief of Staff, the defendant Dr. Dante Morra, and its then-Chief and Medical Director of the Emergency Department, the defendant Dr. Eric Letovsky. Dr. Morra brought forward motions that the MAC recommend that Dr. Tenn-Lyn not be approved for reappointment to the professional staff for the following year and that her privileges be suspended for the balance of the current year. The MAC made both recommendations.

- [12] The MAC gave written reasons for its recommendations. While I will not discuss them in full here, they touched on Dr. Tenn-Lyn's "propensity to be untruthful," the untruthfulness of some of her comments to the MAC and answers to its members' questions, her "lack of insight" into the "fundamental problem with the way that she conducts herself, and works with others, in a clinical setting", and the "overwhelming evidence suggesting" a "persistent and unresolved inability" on her part "to reliably conduct herself with integrity, professionalism, courtesy and self-awareness".
- [13] Dr. Tenn-Lyn requested a hearing before a panel of Trillium's board of directors, pursuant to sections 37(6) and (7) of the *PHA* and Trillium's *Professional Staff By-Law*. A hearing was conducted.
- [14] By decision dated March 2017, the board accepted the MAC's recommendation in respect of Dr. Tenn-Lyn's privileges. In its reasons, the board found that Dr. Tenn-Lyn displayed "no trend toward improvement" and had "consistently" been "unable to communicate and behave in accordance with" the requirements of Trillium's Code of Conduct, policies, and by-laws. It took the view that her "communication failures were serious" and that there was "clear evidence of a pattern of inappropriate behaviour". It rejected her claims that Trillium had failed to corroborate allegations against her and that her relationship with most of her colleagues was productive and mutually respectful.
- [15] Dr. Tenn-Lynn appealed the decision of Trillium's board to HPARB, which, pursuant to section 41 of the *PHA*, conducted a 12-day *de novo* hearing in October 2017 and May 2018. At the hearing, Dr. Tenn-Lyn also advanced allegations that the defendant Dr. Ted Everson, then Trillium's Physician Site Lead, had verbally and physically abused and threatened her when they were colleagues at University Health Network, before they both moved to Trillium. Dr. Tenn-Lyn took the position that Trillium had a pattern of treating her unfairly in its handling of complaints against her, including by not bringing some of the complaints to her attention, not investigating complaints, and ignoring concerns that she raised; that the emergency department was a high stress and sometimes toxic and negative work environment; and that she had positive working relationships with most colleagues and the complaints against her were brought by a small number of nurses.
- [16] In its February 2020 decision, HPARB dismissed Dr. Tenn-Lyn's appeal and confirmed the decision of the Trillium board to refuse her application for reappointment and suspend her privileges immediately. It did so for three reasons: Dr. Tenn-Lyn's "failure to meet the criteria for reappointment by her inability to communicate, work with and relate to her colleagues, patients, patient family members in a cooperative and professional manner as required by the Hospital's Code of Conduct, By-laws and policies"; her "inability to collaborate with other" emergency department staff, "which created a risk to patient safety and the delivery of patient care"; and her "demonstrated failure to improve."
- [17] The HPARB decision is lengthy and I will not attempt to summarize it here. I note, however, that HPARB observed that Dr. Tenn-Lyn had offered "contradictory evidence" regarding meetings held to discuss different specific incidents, that Dr. Tenn-Lynn's communications coach and Trillium's administrators had made "many unsuccessful

attempts” to help Dr. Tenn-Lyn improve her behaviour, and that Dr. Tenn-Lyn’s failure to improve “undermined efforts at teamwork” in the emergency department and “jeopardized the delivery of patient care”. HPARB further held that it preferred Dr. Everson’s evidence that the alleged incidents of harassment and threats had not occurred.

- [18] Dr. Tenn-Lyn exercised her right under sections 43(1) and 43(3) of the *PHA* to appeal HPARB’s decision to the Divisional Court. The hearing took place in November 2021. In lengthy reasons issued in November 2022, the Court dismissed her appeal. It held that the “overwhelming evidence” before HPARB was that Dr. Tenn-Lyn had “serious professionalism issues related to her relations with others in the workplace”, that her treatment of others was “[s]eriously disruptive to the workplace”, and that her position that her colleagues were lying and her superiors were acting in reprisal against her was “a failing strategy”. Further, the Divisional Court rejected her claim that HPARB erred in not finding that Dr. Everson had engaged in reprisal against her at Trillium for her complaints regarding his conduct at University Health Network.
- [19] After losing before the Divisional Court, Dr. Tenn-Lyn did not seek leave to appeal to the Court of Appeal for Ontario. As such, the *PHA* proceedings drew to a close.
- [20] In August 2018, after the HPARB hearing had occurred but before HPARB had released its decision, Dr. Tenn-Lyn issued the Notice of Action in this proceeding. The Statement of Claim was issued in October 2018 and amended in April 2024. Trillium provided its consent to the filing of the proposed Amended Statement of Claim without prejudice to its right to bring this motion.

### **The Amended Statement of Claim**

- [21] The Amended Statement of Claim discusses Dr. Tenn-Lyn’s successful applications for reappointment to Trillium’s physician staff each year from the time she joined in 2006 until 2013; her January 2016 submission of her application to renew her privileges; Dr. Everson’s initial approval of her reapplication in April 2016; a May 2016 meeting regarding a “false” complaint made against her after the initial reappointment approval; additional meetings held in June and July 2016, during which Dr. Tenn-Lyn discussed her allegations that Dr. Everson had bullied and mistreated her in 2008; and the August 2016 meeting at which Dr. Morra told her he would be recommending to the MAC that she not be reappointed and her privileges be suspended. It goes on to describe the various *PHA* proceedings.
- [22] It asserts that after Dr. Everson became Physician Site Lead in 2013, Dr. Tenn-Lyn “began to be treated unfairly and was singled out by Dr. Everson and the Trillium administration for unjustified reasons.” In particular:
- a. “[U]nfounded and false” complaints were made against her and then “relied on by Trillium to cause” her to lose her hospital privileges. The defendants “created” and “solicited” these false and “fabricated” complaints “to create inaccurate, unfounded and/or unwarranted reasons in order to justify recommending against” Dr. Tenn-

Lyn's appointment. Trillium administration "knowingly relied on false and unjustified complaints" against her "in order to negatively impact her privileges."

- b. The defendants ignored Dr. Tenn-Lyn's own concerns about the conduct of nurses, including her allegations that they were bullying and harassing her.
- c. The two third party investigators Trillium engaged to investigate both the complaints against her and her own complaints against Dr. Everson lacked the training, qualifications, and expertise to conduct the investigations. Their findings (that two of the four complaints against Dr. Tenn-Lyn were substantiated and two were not, and that her allegations against Dr. Everson were not substantiated) were "inaccurate, unfounded and/or unwarranted". The defendants and others at Trillium provided the investigators "with information which they knew was inaccurate, unfounded and/or unwarranted. This conduct was done in bad faith and with the intent of creating false, unjustified and unwarranted reasons to have Dr. Tenn-Lyn lose her privileges and harming Dr. Tenn-Lyn's professional reputation."

[23] The causes of action asserted in the Amended Statement of Claim are as follows:

- a. Bad faith in contractual performance: The defendants "acted in bad faith in the evaluation, investigation and decision making process", through the conduct described above, and by threatening her and forcing her to file a formal complaint against Dr. Everson, and creating "inaccurate, unfounded and/or unwarranted reasons" to justify suspending and not renewing her privileges.
- b. Breach of contract: The defendants breached the express and implied terms of the agreement between Dr. Tenn-Lyn and Trillium, including by inadequately training staff on Trillium policies, failing to ensure staff compliance with Trillium policies, failing to provide Dr. Tenn-Lyn "with an unbiased investigation free of actual or potential conflicts of interest", and allowing the board and the MAC "to rely upon inaccurate, unfounded and/or unwarranted information for the purpose of causing" her to lose her privileges.
- c. Negligence: The defendants breached their duty of care to Dr. Tenn-Lyn through the same conduct that constituted a breach of contract. The individual defendants breached their duty of care to her by inadequately overseeing and supervising physicians and improperly handling and investigating her complaints.
- d. Conspiracy: The individual defendants "planned, agree and conspired to injure" Dr. Tenn-Lyn's "professional reputation and livelihood ... by causing her to lose her privileges at Trillium." The conspiracy included much of the conduct enumerated above, including the physicians' "intentiona[1]" failure to properly investigate complaints, failure to tell her about the complaints so that she could have an opportunity to respond to them, failure to investigate the bullying and harassment she faced, and bad faith conduct in relation to the third party investigations.

- e. Discrimination: The defendants treated Dr. Tenn-Lyn in a discriminatory way based on her race and gender, contrary to the *Ontario Human Rights Code*.

- [24] Dr. Tenn-Lyn claims damages as a result of the defendants' conduct, including loss of past and future income, loss of opportunities, emotional and mental distress, and professional and reputational damage. She seeks damages for breach of contract and honest contractual performance, negligence, and conspiracy of \$10 million, aggravated and/or punitive damages of \$1 million, damages for mental suffering of \$1 million, and damages for breach of the *Ontario Human Rights Code* of \$1 million. The damages claim pleads, "The loss of Dr. Tenn-Lyn's privileges has significantly restricted and reduced her medical practice. As a result, [her] career and reputation [have] been irreparably harmed."
- [25] There are certain facts and allegations pleaded in the Amended Statement of Claim that are not in the original Statement of Claim. These include, in respect of the claim of bad faith, negligence, and conspiracy by the individual defendants, that those defendants "knew of and participated in widespread bullying, disruptive, exclusionary behaviour, and inconsistent application and enforcement of Department and Hospital rules within the Emergency Department, and took steps to withhold this information from" investigators.
- [26] Additionally, the Amended Statement of Claim pleads that a review of the Emergency Department was performed by an independent third party, Anne Grant. It pleads that Trillium retained Ms. Grant "to investigate workplace concerns raised by staff in the" emergency department, and that Ms. Grant's report, about which Dr. Tenn-Lyn became aware in 2022, found evidence of "significant workplace issues and concerns" in the emergency department, including an extremely negative atmosphere, malicious gossip, exclusionary and disrespectful behaviour, bullying, and disruptive behaviour. Trillium "took active steps to ensure that Ms. Grant's" findings were kept confidential and not shared with her or other investigators or decision makers at Trillium.
- [27] It also pleads that a report was prepared regarding Trillium by a Ministry of Health-appointed independent third party, Dr. Jeffrey Turnbull, in fall 2022. It pleads that in December 2021, a group of physicians from Trillium's emergency department sent a joint letter to the Ministry criticizing Trillium's administration, including the defendants Dr. Morra and Dr. Letovsky. The physicians alleged that the administration had abused its power, harassed and intimidated them, and interfered with statutory process and procedural fairness, including by interfering with hospital investigations, creating a toxic culture, not conducting unbiased and transparent investigations, improperly suspending or threatening to suspend or revoke physicians' privileges, threatening to report physicians to the College of Physicians and Surgeons of Ontario, and publicly shaming physicians. In May 2022, a second group of physicians from six different departments at Trillium sent a letter to the Ministry of Health, echoing the concerns voiced in the December 2021 letter.
- [28] The Amended Statement of Claim pleads that the Ontario government appointed an inspector under section 18 of the *PHA*. Dr. Turnbull delivered his report in fall 2022 and it was released in February or March 2023. The report included recommendations that searches begin to replace Dr. Morra and Dr. Letovsky; that, moving forward, quality of

care concerns be raised collaboratively and constructively and without fear of retaliation; that there be a formal process to assess culture and morale in response to issues regarding physician staff disengagement and low morale; and that Trillium’s Professional Staff Code of Conduct, Policies, and Procedures be reviewed. Dr. Turnbull was unable to make findings because he obtained inadequate information during his investigation, in part because concerned physicians declined to speak with him due to fear of retaliation and reprisal.

### **The Law**

- [29] Rule 21.01(3)(d) provides that a defendant may move to have an action stayed or dismissed on the ground that the action is frivolous, vexatious, or otherwise an abuse of the process of the court. The defendants state that Dr. Tenn-Lyn’s action is an abuse of the process of the court. For the reasons below, I accept this submission.
- [30] The doctrine of abuse of process is a flexible one, intended to preclude proceedings that are “unfair to the point that they are contrary to the interests of justice” (*Toronto (City) v. Canadian Union of Public Employees (C.U.P.E.), Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77, at para. 35; *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26, [2013] 2 S.C.R. 227, at paras. 39-40). Judges “have an inherent and residual discretion to prevent an abuse of the court’s process” (*Asa v. University Health Network*, 2019 ONSC 7441, at para. 25) and may assess the case before them and determine whether allowing it to proceed would bring the administration of justice into disrepute (*Behn*, at para. 40).
- [31] An abuse of process may arise where a claim effectively seeks to “reopen or relitigate factual findings” that have already been made (*Regan v. Esterbauer et al*, 2023 ONSC 2905, at para. 75; *Saskatchewan (Environment) v. Metis Nation – Saskatchewan*, 2025 SCC 4, 500 D.L.R. (4th) 279, at para. 35), or a claim arises “from the same relationships and subject matter that have already been dealt with” (*Winter v. Sherman Estate*, 2018 ONCA 703, 42 E.T.R. (4th) 181, at para. 8). “Relitigation” here is to be understood as something broader than issue estoppel or *res judicata*, although it engages the same underlying principles, including judicial economy, consistency, finality and the integrity of the administration of justice (*C.U.P.E.*, at paras. 37-38),
- [32] Abuse of process concerns may attach not only where the same issues were determined in an earlier proceeding, but also where those issues *could* have been determined in a prior proceeding (*Winter*, at para. 7).
- [33] Not all instances of seemingly duplicative litigation will necessarily engage the doctrine of abuse of process. The Supreme Court of Canada has held that an exception to the general rule against relitigation may arise where “the circumstances dictate that relitigation is in fact necessary to enhance the credibility and the effectiveness of the adjudicative process as a whole”. This may arise where, for example, “the first proceeding is tainted by fraud or dishonesty”, fresh evidence that was “previously unavailable ... conclusively impeaches the original results”, or fairness dictates that the original result not be binding in the new

context (*C.U.P.E.*, per Arbour J. at para. 52, citing *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 S.C.R. 460, at para. 80).

### **Abuse of process in physician reappointment disputes**

- [34] Section 36 of the *PHA* provides that the board of a hospital may appoint physicians to its medical staff, determine the hospital privileges to attach to a staff member’s appointment, and revoke or suspend an appointment of, or refuse to reappoint, a medical staff member. Section 41(1) provides that appeals of physician privileging decisions at hospitals are within the jurisdiction of HPARB. The *PHA* has been held to establish a “complete code” in respect of such appeals (*Talwar v. Grand River Hospital*, 2025 ONSC 6304 (Div. Ct.), at para. 10, citing *Beiko v. Hotel Dieu Hospital St. Catharines*, 2007 CanLII 1912 (Ont. S.C.), *aff’d* 2007 ONCA 860).
- [35] Because the *PHA* serves as a “complete code”, the courts have consistently held that civil claims that are collateral attacks on HPARB decisions on physician privileges are precluded by issue estoppel and/or the doctrine of abuse of process. In *Talwar*, a physician contested the decisions of two hospitals not to renew his hospital privileges. In accordance with the process set forth in the *PHA*, he had a hearing before HPARB, which concluded that if his privileges at the hospital were to continue, patient safety and wellbeing would be placed at risk. Dr. Talwar appealed the HPARB decision to Divisional Court and also commenced other civil proceedings to challenge the hospitals’ decisions.
- [36] The Divisional Court held that HPARB’s decision that continuing Dr. Talwar’s privileges would endanger patient safety and wellbeing was a “complete answer to his civil proceedings” (*Talwar*, at para. 11) and “preclude[d] any claims that are inconsistent with it” (at para. 62). The court concluded, “The issue of whether Dr. Talwar should have privileges at the Hospitals has been authoritatively decided against Dr. Talwar in proceedings in which he was a party. The doctrine of abuse of process precludes him from contesting that finding in any legal proceedings” (at para. 76; see also *Kamalanathan v. CAMH*, 2019 ONSC 56, at paras 5, 68-70, 103, which likewise held that a civil proceeding that is a collateral attack on the final disposition of an HPARB proceeding is an abuse of process).
- [37] A civil claim might co-exist with an HPARB proceeding where the latter has been resolved in favour of the physician, with the result that the physician then becomes entitled to seek damages by way of civil action (*Talwar*, at para. 73; *Beiko*, at para. 54). However, if the hospital’s revocation of the physician’s privileges is upheld by HPARB, the physician’s civil action will be “doomed to fail” (*Talwar*, at paras. 49, 73-74). The contrary approach “would result in a system whereby a dissatisfied party would be able to bypass the specialized tribunal, a result that ... is not permitted” under the *PHA* (*Beiko*, at para. 54).
- [38] The principle that abuse of process concerns may arise where issues could have been raised in the previous proceedings, but were not, has been held to apply in the context of *PHA* proceedings. Thus, the court in *Talwar* held that any complaints Dr. Talwar had that were “part of a continuum of events that culminated in the decision not to renew” his privileges

were matters that “pertained to and had to be raised in connection with” his proceeding under the *PHA*. This included the conduct and events leading to the decision not to renew his privileges (*Talwar*, at para. 62, citing *Smyth v. Perth and Smiths Falls District Hospital*, 2008 ONCA 794, 92 O.R. (3d) 656, at paras. 19-20; see also *Asa*, at para. 8., which refers to facts and allegations in a civil proceeding that “have been, or could have been, litigated in the related administrative proceedings”).

- [39] The case law is also clear that the ultimate question is whether the potentially duplicative civil proceeding “raises the same factual and substantive issues” or “address[es] the same underlying factual matrix. If “a few new facts” are added to the Statement of Claim but the “overall thrust of the claim” remains unchanged, there will be “nothing significantly new and different ... that would justify allowing” the same issues to be relitigated (*Asa*, at paras. 6, 17; see also *Aba-Alkhail v. University of Ottawa*, 2013 ONSC 2127, at para. 30).

### Analysis

- [40] I find that the Amended Statement of Claim is an improper attempt to relitigate the HPARB decision, and accordingly, based on *Talwar* and *Kamalanathan*, is an abuse of process.
- [41] As the above summary reflects, the Amended Statement of Claim is rooted entirely in Dr. Tenn-Lyn’s complaints about Trillium’s decision to suspend and not renew her hospital privileges. The facts asserted and allegations advanced in the Amended Statement of Claim arise from, or are inextricably linked with, that decision. The damages claim pleads past and future loss of income and states expressly that her loss of privileges “significantly restricted and reduced her medical practice”, resulting in irreparable harm to her career and reputation. It is clear that the facts, allegations, and prayer for relief all squarely pertain to Trillium’s decision regarding Dr. Tenn-Lyn’s privileges. That is the very decision that Dr. Tenn-Lyn contested, without success, in each of the *PHA* proceedings, including by way of a *de novo* hearing before HPARB.
- [42] HPARB found, *inter alia*, that Dr. Tenn-Lyn had failed to meet the criteria for reappointment. Per *Talwar*, this finding provides “a complete answer to” Dr. Tenn-Lyn’s civil proceedings and “precludes any claims that are inconsistent with it”. The issue of whether she should have privileges at Trillium “has been authoritatively decided against” her. She should not be permitted to relitigate it.
- [43] As discussed below, a granular reading of the Amended Statement of Claim demonstrates that the various allegations and issues it advances either were raised in the *PHA* proceedings or could and should have been raised in those proceedings. As such, it is an abuse of process for them to be raised in this action. Further, to the extent that specific facts are pleaded in the Amended Statement of Claim and were not advanced in the *PHA* proceedings, those pleaded facts do not change the overall thrust of the claim or the underlying factual matrix. As such, based on *Asa* and *Aba-Alkhail*, the pleaded facts do not warrant a departure from the general rule against relitigation.

**The Amended Statement of Claim seeks to relitigate allegations that were previously advanced in the PHA proceedings**

*Allegations of fabricated reasons to terminate privileges, improper investigations of complaints against Dr. Tenn-Lyn and by Dr. Tenn-Lyn against others*

- [44] The Amended Statement of Claim alleges that the defendants fabricated reasons to terminate or suspend Dr. Tenn-Lyn’s privileges. The Amended Statement of Claim asserts that the defendants did this in bad faith and in breach of their duty of care to her, that Trillium was negligent and breached its agreement with her by allowing the MAC and board to rely on inaccurate or unfounded information, and that Trillium did so to cause her to lose her privileges. It cites various examples of such allegedly false and unfounded complaints against her, including what it describes as unfair concerns raised by Dr. Everson regarding her late closure of Trillium’s Q site, unreasonable criticism levelled at her when she arrived late to work during a snowstorm, a false complaint made against her by Dr. Everson, and a false complaint filed regarding comments she made to a student.
- [45] Notably, Dr. Tenn-Lyn specifically addressed all these incidents in her closing submissions before HPARB.
- [46] Relatedly, the Amended Statement of Claim alleges that the defendants did not investigate complaints made against Dr. Tenn-Lyn properly, in good faith, or in an unbiased manner. It pleads these facts in support of her claims of breach of contract, bad faith, negligence, and conspiracy.
- [47] Dr. Tenn-Lyn also advanced this allegation before HPARB.
- [48] The Amended Statement of Claim pleads that Dr. Tenn-Lyn’s concerns about Nurses Dundas, Nichols, and Pabla were not properly responded to or investigated, her concerns that nurses were acting unprofessionally towards her were not addressed, and her concerns that the nurses were bullying and harassing her were not investigated.
- [49] She raised each of these allegations before HPARB.
- [50] HPARB did not accept any of these allegations advanced by Dr. Tenn-Lyn. To the contrary, by upholding the decision of Trillium’s board, and finding that Dr. Tenn-Lyn’s inability to collaborate with others created a risk to patient safety and patient care delivery, HPARB vindicated Trillium’s position, and in doing so implicitly but unequivocally rejected these allegations.
- [51] Indeed, HPARB found that there was “overwhelming evidence” before it of a “significant volume of complaints” against Dr. Tenn-Lyn “demonstrating her inability to work with others in a cooperative and professional manner”; that the record demonstrated that Dr. Tenn-Lyn had not improved her behaviour despite interventions and attempts at coaching; and that Dr. Tenn-Lyn admitted that over 50 complaints had been made against her in the course of ten years and admitted to improperly handling stressful situations. It held that it preferred the evidence of Trillium administrators about their meetings with her at which

they discussed the incidents at issue “and her failures to work with others in a collaborative manner”.

***Allegation of differential treatment due to race and gender***

- [52] The Amended Statement of Claim asserts that the defendants have treated Dr. Tenn-Lyn differentially and unfairly due to her race and gender, including by singling her out for no reason and failing to investigate her complaints of bullying and harassment.
- [53] This allegation largely mirrors the complaints of unfair treatment and reprisal that she advanced before the Divisional Court. The Court rejected those complaints, observing that there was “overwhelming evidence” to contradict them. As such, this claim, too, has been previously litigated, and should not be litigated once more.
- [54] I acknowledge that there is a new element to the complaint that was not raised before the Divisional Court: one of racial and/or gender-based discrimination. However, it is settled law that there is no independent cause of action for discrimination at common law (*Bhadauria v. Seneca College of Applied Arts & Technology*, [1981] 2 S.C.R. 181 at p. 188). A breach of the *Human Rights Code* may be alleged in a civil action only where the pleading is properly before the court – *i.e.*, it discloses a reasonable cause of action other than the alleged breach of the *Human Rights Code*. As it is my view that the remaining claims against the defendants are an abuse of process, this claim cannot survive as a standalone claim.
- [55] In any event, HPARB, in vindicating Trillium’s position, rejected the claim that Dr. Tenn-Lyn was treated unfairly, whether due to her race or gender or at all.

***Allegation of threats and pressure to file a complaint against Dr. Everson, improper investigation of incidents involving Dr. Everson***

- [56] The Amended Statement of Claim further alleges that the defendants threatened Dr. Tenn-Lyn and forced her to file a complaint against Dr. Everson and investigated the 2008 incidents involving Dr. Everson in bad faith and as a result of a conflict of interest with her.
- [57] The alleged incidents with Dr. Everson were argued before, and rejected by, HPARB, which held that it preferred Dr. Everson’s evidence that the alleged incidents did not occur. HPARB’s findings to this effect were upheld by the Divisional Court.

**The Amended Statement of Claim seeks to relitigate allegations that could and should have been advanced during the PHA proceedings**

- [58] Additionally, the Amended Statement of Claim asserts that Dr. Tenn-Lyn did not advance during the PHA proceedings, but could have. It would be an abuse of process for her to now be allowed to litigate these claims. The court in *Talwar* was clear that any complaints Dr. Tenn-Lyn had that were “part of a continuum of events that culminated in the decision not to renew” her privileges “had to be raised” in the PHA proceedings.

[59] For example, the Amended Statement of Claim asserts that Trillium breached its duty of care to her by hiring investigators who lacked the required training, qualifications, or expertise, and that some of the defendants, and Trillium nurses, provided the investigators with information that they knew was inaccurate or unfounded, in bad faith.

[60] Dr. Tenn-Lyn made submissions about the two independent investigations at the HPARB proceeding. She had the opportunity at that time to level whatever criticisms she wished to about those experts. The doctrine of abuse of process operates to preclude her from advancing those criticisms now.

**Any additional facts pleaded in the Amended Statement of Claim do not change the underlying factual matrix or thrust of the claim and do not warrant permitting relitigation**

[61] Finally, to the extent that there are facts pleaded in the Amended Statement of Claim that were not advanced in the *PHA* proceedings, they are, in my assessment, not facts that change the underlying factual matrix or overall thrust of the claim. They therefore do not justify departing from the general principle against allowing relitigation.

[62] For example, the Amended Statement of Claim refers to the emergency department environmental scan conducted by Ms. Grant and the report she subsequently prepared. Dr. Tenn-Lyn states that Ms. Grant's report is, in effect, a game changer, because it corroborates the allegations that Dr. Tenn-Lyn had been advancing through the *PHA* proceedings about workplace problems in Trillium's emergency department and problems with Trillium's administrative leadership generally.

[63] Trillium points out that Dr. Tenn-Lyn's counsel knew about the existence of Ms. Grant's report before the board meeting where her privileges were discussed. He asked for the report, but Trillium refused to provide it on the basis that it was irrelevant to the privileges issues between Trillium and Dr. Tenn-Lyn. Dr. Tenn-Lyn did not bring a motion to pursue the production issue. Trillium states that because Dr. Tenn-Lyn chose at that time not to pursue production of Ms. Grant's report, she should not be permitted to raise the issue now.

[64] I need not make any finding on Dr. Tenn-Lyn's decision not to bring a motion for production of Ms. Grant's report, because in my view, Ms. Grant's report does not raise any relevant new facts that are sufficient to change the "overall thrust of the claim" or its "underlying factual matrix", as the case law requires. As such, whether the report was truly unavailable to Dr. Tenn-Lyn, as she claims, does not matter, because the report does not assist to dislodge the presumption against relitigation.

[65] Ms. Grant's report was based on an environmental scan that was intended to identify any workplace issues among unit coordination assistants – non-clinicians – in the emergency department. The environmental scan gathered input from the unit coordination assistants on topics specific to their roles and experiences. Nursing and physician staff did not participate in the environmental scan. They were not consulted for it. It was not by, for, or about them, notwithstanding that some of the unit coordination assistants who participated

in the environmental scan commented about members of the emergency department team generally. More crucially, the report did not address Dr. Tenn-Lyn in particular or emergency room physicians in general. It did not make any findings about, or even refer to, any incidents involving Dr. Tenn-Lyn. It did not mention any specific incidents at all.

- [66] By contrast, the factual matrix underlying the *PHA* proceedings and this action is specific to Dr. Tenn-Lyn. It involves her own interactions with physician administrators at Trillium over many years, commencing in 2011 when Trillium began receiving what it calls “a significant volume of” complaints regarding Dr. Tenn-Lyn’s ability to work with others cooperatively and professionally. The factual matrix involves her own interactions with patients, patients’ family members, nursing staff, physicians, and non-clinicians and the complaints that arose in connection with some of those interactions. It involves her conduct, and her conduct alone.
- [67] To the extent that the report touches on issues of workplace culture or environment, it may be relevant to Dr. Tenn-Lyn’s experiences, but Dr. Tenn-Lyn raised the issue of her work environment, including complaints that she was being bullied and harassed and the victim of workplace reprisal, in the *PHA* proceedings. By vindicating Trillium’s decision, the *PHA* proceeding rejected her allegations. I am reinforced in this view by the fact that HPARB found that Dr. Tenn-Lyn had a pattern of blaming others, and the Divisional Court observed that Dr. Tenn-Lyn “[seems] to lack insight into her problems”. Put simply, the *PHA* proceedings did not accept Dr. Tenn-Lyn’s repeated attempts to blame her work environment and those around her for her conduct.
- [68] Dr. Tenn-Lyn urges me to view Ms. Grant’s report as new information that, based on Arbour J.’s reasoning in *C.U.P.E.*, renders this an exceptional case in which “relitigation is in fact necessary to enhance the credibility and the effectiveness of the adjudicative process as a whole.” Dr. Tenn-Lyn does not suggest that the report is fresh evidence that conclusively impeaches the results of the *PHA* proceedings – one of the categories of cases in which Arbour J. suggests that presumption against relitigation may not be appropriate. However, Dr. Tenn-Lyn states that the categories of cases in which the general rule against relitigation may be set aside are not closed. Here, fairness demands that this action be allowed to proceed in the face of the discovery of Ms. Grant’s report.
- [69] I am unable to agree. The report is not new information that changes the overall thrust of Dr. Tenn-Lyn’s claim – which is by necessity focused on Dr. Tenn-Lyn’s own conduct and Trillium’s responses to it – or the underlying factual matrix. To the extent that it is relevant to Dr. Tenn-Lyn’s experiences insofar as it touches on issues of workplace culture in the emergency department, those issues are ones that Dr. Tenn-Lyn advanced, without success, in the *PHA* proceedings. The report therefore does not warrant a departure from the presumptive rule against allowing relitigation.
- [70] I make the same finding in respect of Dr. Turnbull’s inspection report. Dr. Turnbull conducted his inspection over five years after Dr. Tenn-Lyn left Trillium. He carried it out in response to complaints levelled by unnamed Trillium physicians regarding Trillium administration and physicians generally. The issue in the *PHA* proceedings was Trillium’s

decision to not renew the privileges of Dr. Tenn-Lyn alone, having regard to her conduct and her interactions with others. Moreover, Dr. Turnbull's report was unable to substantiate any of the allegations made by the anonymous physicians. Like Ms. Grant's report, it contains no findings about Dr. Tenn-Lyn or her interactions with colleagues. Indeed, it contains no findings at all. It is therefore difficult to see how the report could shift the factual matrix underlying Dr. Tenn-Lyn's complaints.

- [71] At its highest, Dr. Turnbull's report might reveal that unnamed physicians shared some of the same concerns that Dr. Tenn-Lyn did, for instance about Trillium's conduct of investigations and the procedural fairness it afforded physicians. Yet this is an allegation Dr. Tenn-Lyn already advanced, without success, in the *PHA* proceedings. Moreover, it is not an allegation that Dr. Turnbull substantiated. It therefore could not change the overall thrust of Dr. Tenn-Lyn's claim, which, of necessity, is focused on her own experiences at Trillium, and her own complaints about Trillium, not those of other unnamed physicians.

### **Additional abuse of process considerations**

- [72] I also observe that the evidence that would need to be tendered in a trial of this action would be largely, indeed almost entirely, identical to the evidence tendered in the *PHA* proceedings. Most or all of the documentary evidence would be identical. Most or all of the same witnesses would be called to testify on the same issues. The duplication of proceedings would not just be theoretical: there would be a real duplication of time, effort, and money. There would also be a risk of inconsistent findings, given the overlap in issues and evidence.
- [73] The *PHA* sets forth a thorough and exhaustive process for the handling of physician appointment disputes. Dr. Tenn-Lyn availed herself of that process. It has run its course. She is bound by its determinations. It would be counter to the integrity of law, and undermine the long-established procedures enshrined in the *PHA*, to allow this action to proceed.

### **Conclusion**

- [74] For the reasons above, I grant the defendants' motion to dismiss this action as an abuse of process under rule 21.01(3)(d). I therefore need not consider the defendants' claim that the action is vexatious under rule 21.01(3)(d) or their alternative requests for relief under rules 25.11(b) and (c).

### **Costs**

- [75] The parties are to work together to resolve costs. If they are unable to do so within 30 days, they may advise my judicial assistant, and I will set a timetable for each of the parties to provide brief submissions on costs of no longer than 5 pages. The parties have already provided their respective Costs Outlines; the submissions may refer as needed to the Costs Outlines without repeating their contents.

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Judge

**Date:** February 10, 2026