
Court of Appeal for Saskatchewan

Docket: CACV2544

**Citation: *Sydiaha v Saskatchewan College
of Psychologists, 2015 SKCA 113***

Date: 2015-11-04

Between:

Daniel Sydiaha

*Appellant
(Appellant)*

And

Saskatchewan College of Psychologists

*Respondent
(Respondent)*

Before: Ottenbreit, Herauf and Whitmore JJ.A.

Disposition: Appeal dismissed

Written reasons by: The Honourable Mr. Justice Ottenbreit
In concurrence: The Honourable Mr. Justice Herauf
The Honourable Mr. Justice Whitmore

On Appeal From: 2014 SKQB 112
Heard: September 25, 2015

Counsel: Jay D. Watson for the Appellant
Karen M.T. Prisciak, Q.C., for the Respondent

Ottenbreit J.A.

[1] Daniel Sydiaha [Dr. Sydiaha], a psychologist, was found guilty of professional misconduct by the Discipline Committee [Committee] of the Saskatchewan College of Psychologists [College] under ss. 25 and 26 of *The Psychologists Act, 1997*, SS 1997, c P-36.01 [Act]. Dr. Sydiaha ultimately appealed that decision to the Court of Queen's Bench, which dismissed the appeal. He now appeals to this Court. The appeal of Dr. Sydiaha is dismissed for the reasons set forth below.

[2] After a hearing before the Committee at which Dr. Sydiaha did not testify, Dr. Sydiaha was found guilty of professional misconduct in respect of two counts (i) that he had failed to use the term “non-practising” after the title of psychologist in advertising, and (ii) in advertising himself in that manner in the Saskatoon phonebook he had held himself out as being entitled to practice as a psychologist. The Committee concluded that the actions of Dr. Sydiaha contravened s. 11 of *The Saskatchewan College of Psychologists Regulatory Bylaws, 2004* [Bylaws].

[3] Dr. Sydiaha's appeal, although it was a statutory appeal, proceeded in the same manner as a judicial review. The Chambers judge applied *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, and determined that the standard of review of the Committee's decision was reasonableness. He found that the Committee's interpretation that s. 11 of the *Bylaws* prohibited Dr. Sydiaha from using the title “psychologist” by itself without the words “non-practising” and that such interpretation was consistent with the purpose of the *Act* was reasonable. The Chambers judge also determined that the Committee's decision that Dr. Sydiaha, by advertising himself as a “psychologist” only, had held himself out as being entitled to practice in contravention of the *Bylaws* was reasonable. The Chambers judge found that both decisions of the Committee were justifiable, transparent and intelligible, and fell within a range of possible acceptable outcomes.

[4] In this Court, the College argued that the standard of review to be applied to the decision of the Chambers judge was reasonableness because the Chambers judge's decision was not based on matters of jurisdiction or law. This argument is without merit. There is no basis for such an assertion and no appellate authority was proffered by the College for such an argument. The applicable standard of review of the decision of a Chambers judge sitting on judicial review was

explained in *Professional Conduct Committee of the Saskatchewan College of Paramedics v Bodnarchuk*, 2015 SKCA 81, as follows:

23 The role of the secondary appellate court is set out in *Dr. Q v College of Physicians and Surgeons of British Columbia*, 2003 SCC 19 at para 43, [2003] 1 SCR 226:

43 ... The role of the Court of Appeal was to determine whether the reviewing judge had chosen and applied the correct standard of review, and in the event she had not, to assess the administrative body's decision in light of the correct standard of review, reasonableness. At this stage in the analysis, the Court of Appeal is dealing with appellate review of a subordinate court, not judicial review of an administrative decision. As such, the normal rules of appellate review of lower courts as articulated in *Housen*, [*Housen v Nikolaisen*, 2002 SCC 33, [2002] 2 SCR 235], apply. The question of the right standard to select and apply is one of law and, therefore, must be answered correctly by a reviewing judge.

24 If the lower court applied the wrong standard of review, the duty of this Court is to apply the appropriate standard of administrative review to the decision. Whether the Chambers judge identified and applied the appropriate standard of review is a question of law reviewable on the standard of correctness. If the Chambers judge did err in either the identification of the appropriate standard or of the application of the appropriate standard, it is then up to this Court to identify and apply the appropriate standard of review to the Committee's decision.

[5] Before this Court, Dr. Sydiaha argues that the Chambers judge erred by determining that the Committee's interpretation of the *Act* and *Bylaws* and its determination that he had held himself out as entitled to practice was reasonable. He argues that s. 24(1) of the *Act* does not prohibit him from identifying himself as a psychologist and entitles him to use that title without a qualifier, and that s. 11(2) of the *Bylaws*, which sets out the entitlements to use "psychologist (non-practising)", is merely permissive and devoid of any words indicating that such words are mandatory.

[6] Dr. Sydiaha also argues that the Committee's interpretation of the *Act* and *Bylaws* ignores the context within which s. 11 of the *Bylaws* is found. He points to s. 24(3) of the *Act*, which allows even a non-member to use the title "psychologist" under certain circumstances; therefore suggesting use of the title "psychologist" *per se* is not prohibited. Dr. Sydiaha submits that the interpretation by the Committee of the *Act* and *Bylaws* adds requirements for using the title "psychologist" that were not enacted by the Legislature and therefore the Committee has improperly usurped the Legislature's role.

[7] After a consideration of these submissions, I conclude that none of these arguments have merit for essentially the reasons given by the Chambers judge. However, given the nature of Dr. Sydiaha's arguments before this Court, some further explanation is necessary.

[8] I turn first to the relevant portions of the *Act* and *Bylaws*. Sections 24(1) and (3) of the *Act* read as follows:

24(1) Subject to subsection (3), no person other than a member shall use the title "psychologist" or any word, title or designation, abbreviated or otherwise, to imply that the person is a member.

...

(3) A person who is not a member and who is employed as a psychologist at The University of Regina, the University of Saskatchewan, Saskatchewan Indian Federated College or the Saskatchewan Polytechnic may use the title "psychologist" provided that that person is not providing or directing the provision of counselling, clinical psychology or psychological assessment.

[9] Sections 8(1), 11(1), (2), and (3) of the *Bylaws* read as follows:

8(1) Membership in the college consists of the following categories:

- (a) full practising membership;
- (b) provisional practising membership; and
- (c) non-practising membership.

...

11(1) Non-practising membership in the college is available to an applicant who:

- (a) is eligible for registration as a practising member in accordance with the Act and the bylaws;
- (b) was in good standing when last registered with the college (if applicable);
- (c) is not currently practising as a psychologist in Saskatchewan.

(2) Non-practising membership entitles a person to the following privileges:

- (a) to use the title "Psychologist (non-practising)" or "Doctoral Psychologist (non-practising)";
- (b) to have a voice, but no vote at annual and special meetings of the college;
- (c) to be appointed to committees of the college;
- (d) to receive a copy of college documents appropriate for distribution; and
- (e) to receive the publications of the college.

(3) Persons who are registered as non-practising members may not practise as psychologists or hold themselves out as being entitled to practise as psychologists.

[10] These provisions of the *Act* and the *Bylaws* set forth above must be read as a whole in accordance with the modern principles of statutory interpretation. A court must give effect to the plain and ordinary meaning of the words used in a statute when they are read in their entire

context and in their grammatical and ordinary sense harmoniously with the scheme of the statute, the object of the statute, and the intention of the Legislature (see *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 SCR 27 at para 21). These principles apply not only to statutes but regulations or bylaws made thereunder: *Abouabdallah v College of Dental Surgeons of Saskatchewan*, 2011 SKCA 99, [2012] 3 WWR 81. In my view, the Chambers judge used this approach in determining the proper interpretation of the relevant portions of the *Act* and *Bylaws* as considered by the Committee.

[11] As an initial observation, there is no dispute that the object of the *Act* and *Bylaws* is the protection of the public and the statute and *Bylaws* must be interpreted in that context. The starting point for textual analysis is s. 24(1). Both s. 24(1) of the *Act* and s. 11 of the *Bylaws* govern the use of the title “psychologist”. Section 24(1) restricts the right to use the title “psychologist” to members and states that no person other than a member shall use the title to imply the person is a member. The right to use the title “psychologist” is subject to the *Act* and *Bylaws*. However, the use of the title “psychologist” requires an examination of what kind of membership is implied by its use. One must look to the *Bylaws* on that issue.

[12] The *Act* allows the passing of bylaws touching on the rights and privileges of membership. Sections 15(2)(j) and (m) of the *Act* read as follows:

15(2) Subject to this Act, regulatory bylaws may be made pursuant to section 14 for the following purposes:

...

(j) prescribing special categories of practice and the requirements for admission to each of those categories;

...

(m) establishing categories of membership in the college and prescribing the rights and privileges of each category;

Sections 8 and 11 of the *Bylaws* are passed in accordance with these sections.

[13] Section 8 of the *Bylaws* lists the three types of membership through which, by virtue of s. 24(1), members can avail themselves of the right to use the title “psychologist”: full practising membership, provisional practising membership, and non-practising membership. Of note is that there is a distinction between the three types based on the right to practice. This is not without significance. There is no dispute that Dr. Sydiaha had a non-practising membership.

[14] The *Bylaws* in s. 11 specifically set out the conditions, terms, rights and privileges of membership for non-practising members much like the preceding ss. 9 and 10 of the *Bylaws* deal with the conditions, terms, rights and privileges of the other two categories of membership.

[15] The use of the title “psychologist” permitted by s. 24(1) is regulated and the privileges associated with such use are also regulated. Put another way, use of the title “psychologist” is restricted by the *Bylaws* to the types of members set forth in s. 8, which creates a distinction between the categories of membership based, in part, on the right to practice. Section 11 of the *Bylaws* must be interpreted as specifying the parameters and extent of the use of that title by a non-practising member.

[16] Therefore, registration as a non-practising psychologist in accordance with the *Act* and *Bylaws* means that the title “psychologist” can be used only to the extent that the privileges attached to “non-practising” membership by the *Bylaws* allow. That is set forth by s. 11(2)(a) of the *Bylaws* and specifically conditions the *use* of “psychologist” with the term “non-practising”. This is underscored by s. 11(3) of the *Bylaws* which, like s. 8, makes clear that the distinction between a psychologist and a non-practising member is the entitlement to practice. Moreover, a review of ss. 9 and 10 of the *Bylaws* shows that in the case of full practising membership there is no restriction on the use of the title “psychologist”, whereas in the case of provisional practising membership, the use of the title is conditioned just as in the case of non-practising membership.

[17] Therefore, it matters not that s. 11 is not written in mandatory language. Under the scheme of the *Act*, it is a privilege and right to use the title “psychologist” but not without parameters. The *Act* and *Bylaws*, properly interpreted, condition the use of the title “psychologist” by non-practising members with use of the term “non-practising”.

[18] Section 24(3) of the *Act* provides an exception to the use of the term “psychologist” for employees of the University of Saskatchewan and others where those employees are essentially non-practising. The existence of this section when read with the *Act* as a whole also does not suggest that the College cannot regulate the use of the title “psychologist” as indicated above. It does not apply to Dr. Sydiaha in any event.

[19] In view of the foregoing, the enactment of s. 11 of the *Bylaws* also does not usurp the Legislature's role, but rather properly allows the College to specify any restrictions that run concurrently with the use of the title "psychologist", as the case may be.

[20] The analysis of the Chambers judge respecting the reasonableness of the Committee's interpretation of the *Act* and *Bylaws* with respect to the use of the title psychologist is, therefore, not in error.

[21] Moreover, the Chambers judge also did not err in determining that the Committee's decision that Dr. Sydiaha was holding himself out as being entitled to practice psychology by using only the title "psychologist" and that he was therefore in contravention of the *Bylaws* was reasonable. I accept the analysis of the Chambers judge on this issue.

CONCLUSION

[22] The Chambers judge used the correct standard of review of the Committee's decision. He was correct in his analysis. The appeal is dismissed.

[23] There is one additional matter to be dealt with. The College earlier made an application to this Court challenging its jurisdiction to hear the matter. The application was heard by the Court and dismissed (see 2014 SKCA 116). Costs of that application were left to this panel to deal with. Accordingly, Dr. Sydiaha having been successful on that application shall have his costs thereof. The College shall have the costs of the appeal.

"Ottenbreit J.A."

Ottenbreit J.A.

I concur.

"Herauf J.A."

Herauf J.A.

I concur.

"Whitmore J.A."

Whitmore J.A.