DECISION NO. 2011-HPA-138(b)

In the matter of an application under section 50.6 of the Health Professions Act, R.S.B.C. 1996, c. 183, as amended, (the “Act”) for review of a complaint disposition made by an inquiry committee

BETWEEN: The Complainant

AND: The College of Psychologists of BC

AND: A Psychologist

BEFORE: Herbert S. Silber, Panel Chair

COMPLAINANT

COLLEGE

REGISTRANT

REVIEW BOARD

DATE: Conducted by way of written submissions concluding on November 26, 2012

APPEARING: For the Complainant: Self-represented

For the College: Jason Herbert, Counsel

For the Registrant: William S. Clark, Counsel

HEARING DECISION

I DECISION

[1] Upon considering the application made by the Complainant under section 50.6 of the Act, I confirm the disposition of the Inquiry Committee of the College.

II INTRODUCTION

[2] The Application for Review by the Complainant concerns a complaint filed with the College by letter on December 9, 2010 and supplemented by a further letter dated December 21, 2010 (collectively “the Complaint”).

[3] At the relevant time, (2008), the Complainant was incarcerated at a maximum security Federal Detention centre in the Province of British Columbia. He had previously been incarcerated in the United States for 22 years.
The Registrant was at the relevant time a Regional Psychologist employed by the Correctional Service of Canada, Pacific Region (the “CSC”).

The Complainant’s Complaint relates to a Psychological Assessment Report (the “Report”) dated October 2, 2008 completed by the Registrant following a psychological assessment of the Complainant.

The Report was apparently prepared in accordance with a CSC policy relating to a psychological risk assessment of inmates who enter the federal correctional system and meet certain criteria.

The Complainant’s complaints to the College may be summarized as follows:

(a) That the Registrant “concluded no faculty impairment” in a single interview consisting of approximately 20 minutes.

(b) That the Registrant provided a “quasi diagnosis” and conducted a limited evaluation and

(c) That the Registrant was “deliberately indifferent to [the Complainant’s] state of being faculty impaired”, that the Registrant’s work was faulty “and that the Registrant has “questionable expertise.”

III ISSUES

The issues I must address in this matter as prescribed by s. 50.6(5) of the Act are two: was the investigation conducted by the College adequate and the disposition reasonable?

IV FACTS

The Inquiry Committee forwarded a copy of the Complaint to the Registrant on May 20, 2011, asking that he provide a written response to each of the allegations set out in the Complaint as noted in paragraph [7] above. The Registrant was specifically asked to “describe the procedure, purposes, and process” [the Registrant] used in the preparation of the Report. Further the Inquiry Committee asked the Registrant to address various sections of the College’s Code of Conduct (the “Code of Conduct”) that might have relevancy to the allegations by the Complainant.

On June 28, 2011 the Registrant provided a detailed response (the “Response”) to the Complaint and the requests in the letter from the Inquiry Committee.

The Inquiry Committee, after reviewing each allegation and all the documents provided by both the Complainant and the Registrant, the response by the Registrant and considering the standards, bylaws and Code of Conduct, concluded that it would take no further action pursuant to s. 33(6)(a) of the Act. This decision was communicated to the Complainant in a letter of disposition from the College dated August 3, 2011 (the “Letter of Disposition”).
[12] The Complainant then filed the Application to review on August 17, 2011.

[13] The Letter of Disposition noted with respect to the allegation at paragraph [7](a) above that as stated in the Report the full examination actually lasted about 1.5 hours. The first part of that examination which related to a Mental Status interview took 20 minutes and was a portion of a broader interview. Additionally, the Letter of Disposition went on to state that the Registrant, in his Response observed:

… that he reviewed some six volumes of the Complainant’s case management file materials, and further sought corroborating information from the Complainant’s previous institution regarding the Complainant’s self-reported psychiatric treatment while incarcerated in the United States. The [Inquiry] Committee also considered the Registrant’s statement that the federal correctional service is not in possession of any record to indicate that the Complainant has a history of major mental illness while incarcerated in Canada or the United States, and further that no staff within the Correctional Service of Canada (CSC) has observed any indication of major mental disorder. The Registrant has further noted that the Complainant has not availed himself of any other opportunities to have his mental status assessed since his incarceration in Canada in 2008. In light of the information above, and its review of the documents before it, the Inquiry Committee did not find any evidence to support this allegation.

[14] As for the allegation at paragraph [7](b) above the Letter of Disposition states:

… the Registrant further noted that the Complainant had stated he understood this discussion and consented to participate in the interview. The [Inquiry] Committee noted that there was no information which contradicted this assertion provided by the Complainant or otherwise before the [Inquiry] Committee. The [Inquiry] Committee also found the Registrant’s description of the purpose of Intake Psychological Risk Assessments as being consistent with widely accepted practices in the field of forensic psychology. The [Inquiry] Committee reviewed a copy of the Complainant’s assessment report, and agreed that the process and results of the Registrant’s assessment of the Complainant appeared to meet the necessary standards, given the referral question and purpose of the report. In light of the information above, and after reviewing the report in question, the Inquiry Committee did not find evidence to support his allegation.

[15] Finally with respect to the allegation at paragraph [7](c) above, the Letter of Disposition states as follows:

… the [Inquiry] Committee accepted the Registrant’s explanation of his general practice to further investigate offenders’ self-declared histories of psychiatric illness, and to provide offenders with an opportunity to raise concerns regarding reports prepared about them. The [Inquiry] Committee was also of the view that the Registrant’s assessment of the Complainant had met the necessary standards required, and also considered that the Registrant’s training, experience, and background appeared to meet the necessary requirements for him to conduct these types of assessment. Accordingly, the [Inquiry] Committee did not find evidence to suggest that the Registrant had breached any Code standard.

[16] In their conclusion the Inquiry Committee stated in the Letter of Disposition that:
With respect to all of the issues, the Inquiry Committee concluded the evidence, taken as a whole, was not sufficient to make out a case of unsatisfactory conduct by the Registrant. Accordingly, the Inquiry Committee concluded the Registrant’s conduct was ‘satisfactory’ within the meaning of s. 33(6)(a) and no further action was warranted.

V DISCUSSION AND ANALYSIS

A. Adequacy of the Investigation

[17] The interpretation as to what constitutes an “adequate investigation” for Review Board purposes was set out in Decision No. 2009-HPA-0001(a) to 0004(a) (at paras. [97] and [98]) and has since been followed by a number of Review Board decisions:

A complainant is not entitled to a perfect investigation, but he or she is entitled to adequate investigation. Whether an investigation is adequate will depend on the facts. An investigation does not need to have been exhaustive in order to be adequate, provided that reasonable steps were taken to obtain the key information that would have affected the Inquiry Committee’s assessment of the complaint.

The degree of diligence expected of the College – what degree of investigation was adequate in the circumstances – may well vary from complaint to complaint. Factors such as the nature of the complaint, the seriousness of the harm alleged, the complexity of the investigation, the availability of evidence and the resources available to the college will all be relevant factors in determining whether an investigation was adequate in the circumstances.

[18] The College investigated this matter by reviewing the Complaint, obtaining specific responses from the Registrant, reviewing the Report and considering the College’s standards, bylaws and Code of Conduct.

[19] I am of the view that the investigation by the College was adequate in all the circumstances. The submissions by the Registrant’s Counsel at paragraphs 29 and 30 of his Statement of Points on behalf of the Registrant set out below is, in my view, apt in this case.

29. The College reviewed sufficient information to carry out its mandate. In the initial complaint and application for review, the Complainant refers to his psychiatric history while incarcerated in the United States in support of his allegations against the Registrant. The CSC has not been able to corroborate the Complainant’s self-reported psychiatric history with any documents. There is no evidence such documents exist. The College was not required to seek out documents to support the Complainant’s allegations and self-reported psychiatric history. In McKee, the Divisional Court of the Ontario Superior Court of Justice held:

‘... The investigation was clearly sufficient to permit it to carry out its screening function. The test is not whether it obtained all information in existence but whether it obtained sufficient information for it to carry out its mandate. It clearly did so. Its disposition was within the range of the reasonable. The Board had no basis to interfere with it. Accordingly the
Board’s decision is unreasonable, and it is set aside and that of the Committee is restored.’

McKee at para. 44

30. The College is not required to pursue every possible investigative avenue or ‘turn every stone’. The Complainant’s assertion that relevant records exist, in the context of the CSC not locating any other relevant or corroborative records, did not require the College to pursue far-reaching investigations at the Complainant’s insistence. The Record demonstrates that the College sought out the pertinent information and reviewed it. The Review Board has recognized that the College’s resources are not limitless. The College must therefore balance the expectations of complainants and the demands of administrative efficiency. A complainant is not entitled to a perfect investigation.

Decision No. 2009-HPA-0034(a) at para. [63]
Decision No. 2009-HPA-0034(a) at paras. [57]-[58], citing Tahmourpou v. Canada (Solicitor General), [2005] S.C.J. No. 543

B. Reasonableness of the Disposition

[20] In the Complainant’s Application for Review he appears to be asking the Review Board to “rehear” his case. This is beyond the mandate of the Review Board as set out in s.50.6(5), (6) and (8) of the Act.

[21] The test of what constitutes “a reasonable disposition” is guided by the standard of judicial reviews set out by the Supreme Court of Canada in Dunsmuir v. New Brunswick, 2008 SCC 9. In Review Board Decision No. 2009-HPA-0001(a) to 0004(a), the panel quoted from paragraph 47 of the Dunsmuir decision and stated the following, which I adopt as the correct approach which should be taken in considering the reasonableness of a disposition:

Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appropriation within the range of acceptable and rational solutions. A court conducting a review of reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[22] I am satisfied based upon the Record before me that the Disposition is defensible both on the facts and the law. It is a justifiable, transparent and intelligible Disposition, and falls within a range of acceptable outcomes.
VI CONCLUSION

[23] Pursuant to s.50.6(8)(a) of the Act, I confirm the disposition of the Inquiry Committee.

[24] In making this decision I have considered all of the evidence and submissions before me, whether or not specifically re-iterated in these reasons.

“Herbert S. Silber”

Herbert S. Silber, Panel Chair
Health Professions Review Board

September 10, 2013