DECISION NO. 2012-HPA-220(a)

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 COMPLAINANT
AND: The College of Psychologists of BC COLLEGE
AND: A Psychologist REGISTRANT
BEFORE: Herbert S. Silber, Panel Chair REVIEW BOARD

DATE: Conducted by way of written submissions concluding on February 8, 2013

APPEARING: For the Complainant: Self-represented
For the College: Jason Herbert, Counsel
For the Registrant: Self-represented

EXTENSION OF TIME DECISION

I DECISION

[1] Upon considering the application made by the Complainant under section 50.61(4) of the Act to extend the time for filing an Application for Review, it is my decision that the application is denied.

II INTRODUCTION

[2] The Act requires a Complainant to file with the Review Board an Application for Review of a College Disposition within 30 days of the date the Complainant received the Disposition from the College: Act s.50.6(2).

[3] If a Complainant misses the deadline, as happened in this case, the Act provides that the Review Board has the discretion to extend the time for filing an Application for Review if the Review Board “is satisfied that special circumstances exist”.

III BACKGROUND

[4] The Complainant filed a complaint with the College on November 3, 2011 concerning psychologist services provided by the Registrant. His complaint consisted of a large number of allegations detailed in an 83 page document providing a point by point detailing of the allegations and examples in support.

[5] The Complainant and the Registrant and their families had a long history with each other. According to the complaint, the Complainant was a client of the Registrant over a period of approximately six months in 2005.

[6] The complaints were broadly based touching nearly every aspect of the professional relationship between the parties. The complaint allegations included the failure of the Registrant to provide a treatment plan despite being requested to do so, failure to provide informed consent for testing or treatment, lack of competency and objectivity, breach of confidentiality, misrepresentation of his credentials, exercising coercion and abuse of power and "abandoning" the Complainant.

[7] A consideration of the Disposition letter from the College dated August 7, 2012 ("Disposition Letter") reveals that the Inquiry Committee’s review was extensive and thorough, and detailed in a 23 page report. The Inquiry Committee reviewed the complaint and documents submitted by the Complainant. The Inquiry Committee reviewed twelve allegations, including examples of the alleged conduct set out by the Complainant, and requested detailed information from the Registrant in response to each allegation, including dates of all contacts, a chronology of events, copies of the Complainant’s case summary and treatment plans, his process in obtaining informed consent, his methodology to deal with issues of objectivity, and his processes for continuity of care and termination of care.

[8] In its investigation, the Inquiry Committee reviewed each allegation and all documents provided by the Complainant and the Registrant including the Registrant’s practice records and other information and considered the standards, bylaws and Code of Conduct provisions of the College in place at the relevant time.

[9] The result of the investigation by the College’s Inquiry Committee was a request and consent by the Registrant to a Resolution Agreement, in which the Registrant agreed to review with a senior registered psychologist selected by the College a number of the processes that were either identified in the Complainant’s complaint or arose out of it, including note and record keeping, obtaining and documenting fully informed consent from clients, processes to deal with management of complex/or challenging clients, processes for communicating with clients in a timely and professional manner and in compliance with the College’s Code of Conduct, and a specific review of the Complainant’s file as an instructive tool for the future. Accordingly, the disposition of the Complainant’s complaint by the College was the Resolution Agreement as noted in the Disposition Letter, which represented an undertaking from the Registrant pursuant to section 33(6)(c) of the Act.

[10] The August 7, 2012 Disposition Letter to the Complainant contained information that there was a 30 day time limit to be met for filing an Application for Review. The Disposition Letter supplied the following information:
Under the Act, the complainant may, if dissatisfied with this decision, apply to the Health Professions Review Board for a review of the Inquiry Committee’s decision. Any application must be made within 30 days of the day on which this notice is delivered to the complainant.


[12] The Complainant did not inform the College or the Registrant of his October 10th Application for Review as required by the Act (s. 50.6(3)). These parties received notification of the Application from the Review Board after October 25, 2012.

[13] On November 15, 2012, the Review Board wrote the Complainant to advise him that his Application for Review was incomplete. Specifically that letter stated:

Your application is being returned as it is missing required information for the Review Board to accept your application and begin the review process.

Section 50.61 of the *Health Professions Act* (the “Act”) states that an Application for Review must:

(a) be in writing;
(b) identify the decision or investigation or disposition for which a review is being requested;
(c) state the relief being sought, and in the case of a decision or disposition, why the decision or disposition should be changed;
(d) contain the name, address and telephone number of the applicant, and if the applicant has an agent to act on the applicant’s behalf in respect of the review, the name of the agent and the telephone number at which the agent may be reached during regular business hours;
(e) include an address for service for the purpose of delivery of any notices in respect of the review, and
(f) be signed by the applicant or the applicant’s agent.

The Act contains timelines for filing a request for review about complaint dispositions of health professions colleges. The Act states that an application for review must be made within 30 days of the day on which written notice of the complaint disposition (decision) was delivered to the Complainant.

Your application is incomplete as follows:

1. A contact telephone number is required to complete your application.

Upon review, it appears from your letter that your application for review is outside of the required timeframe of within 30 days of receipt of the College’s decision.

Before we can proceed further, you must request an extension of time to file your application.

An application for extension of time may be done by delivering a written request to the Review Board that explains:
- the reasons why the application was not received within the required time;
- the reasons why an extension of the time is required;
- what special circumstances exist that justify the Review Board granting an extension of time;
- and any supporting documentation relating to the request to extend the time.

In addition to filing your application for review with the Review Board, you also have a legal obligation under the Act to deliver a copy of the application, and any request for an extension of time, to both the College and the registrant (Doctor) who is the subject of the complaint.

3. It is not clear from your application whether you have delivered a copy of your application to the College and the Registrant. Therefore, before we can proceed further you must also provide us with written confirmation that you have done so.

Please review your application for completeness and return it with the missing information to the Review Board no later than November 29, 2012.


[15] The Complainant then responded by a letter dated December 2, 2012 (after the deadline for a response set out in the November 15th letter), received by the Review Board on December 6, 2012, requesting an extension of time to file his Application for Review.

[16] The Complainant submitted initially in his December 2nd letter that he had not seen the Disposition Letter until at “least late September.” Later however, he stated: “I do not recall nor did I record the date of receipt of the College’s response [Disposition Letter].” The Complainant went on to indicate that his delay in responding was attributable to his “continuing medical condition” without further explanation. The Complainant stated he did not deliver a copy of the application to the Registrant because the Registrant had moved with no forwarding address. No explanation was given as to why the College was not copied.

[17] The College opposes the request for an extension of time on the basis that the Complainant has failed to establish that special circumstances exist to warrant acceptance of his Application to Review.

[18] The Registrant also opposes the extension of time, stating, *inter alia*, that it would be unfair to re-open the matter after so much time has passed since he last saw the Complainant as a patient in 2005 and that it would be in everyone’s best interests to “…finally put this matter to rest by closing this file.”

[19] The Registrant says that he was readily accessible; his address for service was the address of his practice still listed by the College. There is no indication that the Complainant tried to deliver the Application for Review or any other documents to this address.
IV ISSUE

[20] The issue to be determined is whether special circumstances exist to justify permitting an extension of the time for filing the Application for Review.

V DISCUSSION AND ANALYSIS

[21] The relevant provisions of the Act related to an application of this kind are set out in sections 50.6(1)-(3) and 50.61(4) of the Act which read as follows:

50.6 (1) A complainant may apply to the review board for a review of a disposition described in section 50.53(1)(c).

(2) An application under subsection (1) must be made within 30 days of the day on which written notice of the disposition is delivered to the complainant.

(3) A complainant under subsection (1) must, within the time period set out in subsection (2), deliver a copy of the application to the college and the registrant who is the subject of the complaint.

…

50.61 (1) On application, the review board may extend the time for filing an application for review under this Part, even if the time for filing an application has expired, if the review board is satisfied that special circumstances exist.

[22] Previous Review Board decisions have provided guidance with respect to extension of time applications. Review Board Decision No. 2009-HPA-0001(a) – 0004(a) at paragraphs [55]-[56] states that:

[55] The reference to “special circumstances” reflects that generally speaking, parties are entitled to the finality and certainty of knowing they can get on with their lives if a challenge has not been filed within stated statutory time limits. At the same time, the phrase also acknowledges that circumstances do arise where it would be unjust not to extend the time. While the circumstances of each case are different, the law has over time identified several factors that are properly taken into account in determining whether to extend the time to appeal. Those factors were described this way in the British Columbia Court of Appeal’s decision in Clock Holdings Ltd. v. Braich Estate, [2009] B.C.J. No. 2464 (C.A.) at paras. 15 and 24:

‘On an application to extend the time for taking a step necessary in the prosecution of an appeal, the following questions, with the necessary modifications, will generally be considered: (1) was there a bona fide intention to appeal? (2) when were the respondents informed of the intention? (3) would the respondents be unduly prejudiced by an extension? (4) is there merit in the appeal? (5) is it in the interest of justice that an extension be granted? The fifth question is the most important as it encompasses the other four questions and states the decisive question…’

[56] In our opinion, these factors are properly adopted by the Review Board in determining whether special circumstances exist to warrant extending the time to file an application for review. They provide a useful and time-test structure for deciding such applications, while emphasizing at the same time that each case must be decided on its facts. Focused as they are on the interest of justice, these factors cannot be applied mechanistically, and in some cases one or more of the factors may be conclusive. The onus is on the person asserting special circumstances to satisfy the Review Board that such circumstances exist.
These same factors were also identified and further described in Review Board Decision No. 2009-HPA-0006(a) at paragraphs [32] and [33]:

What factors should be considered on an application for an extension of time to appeal when determining whether special circumstances exists were described by Craig J.A. in Flair Construction Ltd. (Trustee of) v. Bank of Montreal [1981] B.C.J. 914 at page 2, as follows:

‘The governing principle upon which this Court acts on applications to extend time for doing an act is that the applicant must establish special circumstances. I think that the same principle governs an application under s.s. 49(1) of the Bankruptcy Rules. In considering whether there are special circumstances, this Court has always considered such factors as whether (1) the applicant had a bona fide intention to appeal before the expiration date appeal period, (2) he informed the respondent, either expressly or impliedly, of his intention, (3) the respondent would be unduly prejudiced by an extension of time, (4) there is merit in the appeal in the sense that there is a reasonably arguable ground, (5) it is in the interest of justice, i.e., the interest of the parties, that an extension be granted. How much weight will be given to any of these factors in determining whether there are special circumstances will depend on the circumstances of each case.’

This Panel is of the view that factors such as those described by Craig, J.A., quoted above, should be considered when determining whether special circumstances exist on an application pursuant to section 50.61 of the Act with such modifications as are necessary to make them relevant to an application for review before the Review Board.

I will examine the relevant factors individually:

A. Intention to File

The Complainant failed to demonstrate there was an intention to file a request for review within the time required - which I find would have been no later than September 15, 2013.

B. Notice of Intention

The Complainant failed to inform the College or the Registrant of his intention to request a review of the Inquiry Committee’s disposition of his complaint. In fact, it does not appear that the Complainant at any time has directly informed either the College or the Registrant of his Application to Review or his request for an Extension as he was told he was required to do in the November 15th letter from the Review Board.

C. Undue Prejudice

On the issue of undue prejudice I refer to the Decision of the Review Board in Decision No. 2011-HPA-113(a), February 3, 1012, observed (at para. [15]):

In assessing whether the Registrant could be unduly prejudiced by an extension of time, I find the panel comments particularly useful in 2009-HPA-0001(a) –0004(a) [supra] whereby they state that ‘special circumstances reflects that generally speaking, parties are entitled to the finality and certainty of knowing they can get on with their lives if a challenge has not been filed within stated statutory time limits.’ I find this to be the case here.
The Registrant’s position that given the last contact he had with the Complainant was in 2005 is persuasive when he states that it is in everyone’s best interests to “…firmly and finally put this matter to rest.” The Registrant does not appear to be practicing any longer in B.C. Moreover, as Counsel for the College submits:

In these circumstances, the prejudice to the Registrant is apparent. The Registrant has already agreed to address the practice concerns identified by the Inquiry Committee as arising from the complaint through the remediative measures specified in the Resolution Agreement requested by the Committee (see below). The Registrant is entitled to the finality and certainty of that Agreement, and it would be unfair to subject the Registrant now to a further process before the Review Board, after the statutory time limit for the Complainant to apply for a review has already expired.

D. Merit in the Request for Review

The test as to what constitutes merit was articulated in Review Board Decision No. 2010-HPA-0055(a), paragraph [29] as follows:

What is the test?

The test for determining whether there is merit to an application for review is whether it is ‘bound to fail’. To make a finding that the Application is bound to fail, I must be able to conclude that the review, if conducted, is bound to result in a confirmation of the original decision.

As to whether there is merit to the request for review, the Submission by the College sets out the following at page 5:

(a) the Inquiry Committee reviewed the 113-page package of materials provided by the Complainant with his complaint form, including an 83-page document providing a point by point detailing of the Complainant’s allegations against the Registrant (Complaint Investigation Report, p. 3);

(b) based on that review, the Committee identified and summarized twelve general allegations arising from the complaint warranting further investigation (Complaint Investigation Report, pp. 3-6);

(c) the Committee asked the Registrant to provide copies of his practice records relating to this matter (Complaint Investigation Report, p. 8), and requested additional information from the Registrant in response to each of the twelve general allegations identified by the Committee (Complaint Investigation Report, p. 6);

(d) the additional information requested by the Committee included eleven specific requests for detailed information, as itemized on pp. 6-7 of the Complaint Investigation Report, to enable the Committee to evaluate the Complainant’s allegations; and

(e) the College also invited the Complainant to meet by telephone to discuss the College’s complaint investigation process, the Complainant’s concerns, and the range of possible outcomes from the complaint investigation process; however, the Complainant chose to decline that invitation (Complaint Investigation Report, p. 8).

The College goes on to point out that:
In this case, the Resolution Agreement signed to by the Registrant ... incorporates a series of concrete measures designed to address the practice concerns identified by the Inquiry Committee as arising from the Complainant's complaint, by subjecting the Registrant's professional practices and procedures to a thorough review by a registered psychologist selected by the College, and requiring the Registrant to engage in at least five and up to twenty consultation sessions (as determined by the consultant) aimed at remediating any practice concerns.

[32] It also appears to me from the Application for Review that the Complainant is seeking to have the Review Board step into the shoes of the Inquiry Committee, which is not its mandate under Section 50.6(5)(b) of the Act.

[33] In my view, the material before me shows that the Inquiry Committee took the necessary steps to conduct a thorough and adequate investigation and, their disposition was reasonable. Just as importantly, the Complainant has provided no evidence or argument that would on the face of it raise doubts as to whether the Inquiry Committee had fulfilled its statutory duty. I would conclude, therefore, that the Application for Review is bound to fail.

E. Interests of Justice

[34] Even if I was unable to conclude that the Application for Review was bound to fail, I nevertheless find that the interests of justice do not favour granting the extension of time to file the Application for Review. Cumulatively, I consider that my findings with respect to the five factors set out above cause me to conclude that special circumstances justifying an extension of time to file an application do not exist, notwithstanding the seriousness of the Complainant's complaint.

VI CONCLUSION

[35] In making this decision, I have considered all of the information and submissions before me, whether or not they are specifically referred to in these reasons.

[36] For all the reasons set out above, I find the Complainant's application for an extension of time did not provide sufficient evidence to satisfy any of the five factors necessary to determine the existence of special circumstances. An extension of time will not be granted and the Application for Review is refused.

"Herbert S. Silber"

Herbert S. Silber, Panel Chair
Health Professions Review Board

March 22, 2013