DECISION NO. 2013-HPA-057(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

AND: The College of Physicians and Surgeons of BC

AND: A Physician

BEFORE: J. Thomas English, Q.C., Chair

COMPLAINANT

COLLEGE

REGISTRANT

REVIEW BOARD

DATE: Conducted by way of written submissions concluding on May 28, 2013

APPEARING: For the Complainant: Murray Clemens, Q.C., Counsel

For the College: Herbert Isherwood, Counsel

For the Registrant: Geoffrey Cowper, Q.C., Counsel

I BACKGROUND

[1] By letter dated February 28, 2013 the College, in a letter signed by its President, terminated the employment of the Complainant in the following manner:

The College determined that your allegation that the [Registrant] acted in a manner unbecoming a member of the profession was unfounded and irreparably damaged your employment relationship with the College. As a result, the College decided to terminate your employment.

[2] On March 18, 2013, Counsel for the Complainant filed on her behalf an application for review of what he asserted was an Inquiry Committee disposition decision, seeking the following relief:

That the College’s determination that the [Complainant’s] “allegation that the [Registrant] acted in a manner unbecoming a member of the profession was unfounded” be set aside.
II RELEVANT STATUTORY PROVISIONS

[3] The application rises a fundamental jurisdictional issue in respect of which the relevant legislation under the Act and the Administrative Tribunals Act (the “ATA”) is as follows:

A. Under the Act:

50.53 (1) The review board has the following powers and duties:

(a) On application by a complaint under section 50.6, to review a disposition of a complaint made by the inquiry committee under section 32 (3), 33 (6) (a) to (c) or 37.1;

. . .

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

. . .

32 (1) A person who wishes to make a complaint against a registrant must deliver the complaint in writing to the registrar.

(2) As soon as practicable after receiving a complaint, the registrar must deliver to the inquiry committee a copy of the complaint, an assessment of the complaint and any recommendations of the registrar for the disposition of the complaint.

(3) Despite subsection (2), the registrar, if authorized by the board, may dismiss a complaint or request that the registrant act as described in section 36 (1) without reference to the inquiry committee if the registrar determines that the complaint

(a) is trivial, frivolous, vexatious, or made in bad faith,

(b) does not contain allegations that, if admitted or proven, would constitute a matter subject to investigation by the inquiry committee under section 33 (4), or

(c) contains allegations that, if admitted or proven, would constitute a matter, other than a serious matter, subject to investigation by the inquiry committee under section 33 (4).

(4) If a complaint is disposed of under subsection (3) the registrar must deliver a written report to the inquiry committee about the circumstances of the disposition.

(5) A disposition under subsection (3) is considered to be a disposition by the inquiry committee unless the inquiry committee gives the registrar written direction to proceed under subsection (2).

. . .

33 (6) After considering any information provided by the registrant, the inquiry committee may

(a) take no further action if the inquiry committee is of the view that the matter is trivial, frivolous, vexatious or made in bad faith or that the competence to which the matter relates is satisfactory under the ATA:
(b) in the case of an investigation respecting a complaint, take any action it considers appropriate to resolve the matter between the complainant and the registrant,  
(c) act under section 36, or  
(d) direct the registrar to issue a citation under section 37.

B. Under the ATA:

31 (1) At any time after an application is filed, the tribunal may dismiss all or part of it if the tribunal determines that any of the following apply:

(a) The application is not within the jurisdiction of the tribunal

III ISSUE

[4] The process to lodge a complaint against a registrant is set forth in s.32(1) of the Act – the complainant must deliver a complaint in writing to the Registrar. This will ultimately result in an inquiry committee disposition under s.33(6) or s.32(3), which by operation of s.32(5) is considered to be a disposition by the inquiry committee. The Review Board’s jurisdiction is limited to hearing dispositions from inquiry committees, s.50.53(1).

[5] On April 24, 2013, I wrote to all parties as follows:

I am writing to request submissions from all parties regarding the issue of whether the Health Professions Review Board (the “Review Board”) has jurisdiction to review this matter under section 31(1)(a) of the Administrative Tribunals Act (the “ATA”).

The documents that have been submitted for review do not appear to constitute an Inquiry Committee decision. If no Inquiry Committee decision has been made, there is nothing within the jurisdiction of the Review Board to review, and the Review Board will proceed to dismiss the matter under the above-noted section of the ATA.

We wish to hear from all parties as to how the Review Board could entertain this application, under section 31(1)(a) of the ATA and section 50.53(1)(c) of the Health Professions Act. The relevant excerpts of both Acts are enclosed for your reference.

IV SUBMISSIONS OF COUNSEL

[6] Counsel for the College submits that the Complainant never made a complaint, and only threatened to proceed with a complaint in a letter from her counsel dated June 26, 2012. The College did not treat that letter as a complaint and as a result the matter never proceeded to an Inquiry Committee decision. Further the decision that was made was by the College and it was to terminate the employment of the Complainant; it did not deal with a complaint against the Registrant. Accordingly, as no Inquiry Committee decision was made under the Act there was no jurisdiction upon which the Review Board could act.

[7] Counsel for the Registrant submits that the application should be dismissed under s.31(1)(a) of the ATA because there was no Inquiry Committee decision to review and because the interaction between the Complainant and Registrant was in connection with an employer/employee relationship.
Counsel for the Complainant acknowledges that although there never was an inquiry committee disposition when the College concluded in its letter of February 28, 2013 that “your allegation that the [Registrant] acted in a manner unbefitting a member of the profession was unfounded.” The College, according to Complainant’s counsel, was usurping a function that was reserved to its Inquiry Committee and as a result the Review Board should deem it to be a s.32(3) disposition under the Act and assume jurisdiction.

V ANALYSIS

The Act is clear that if one wants to allege professional misconduct or unprofessional conduct against a registrant, s.33(4)(c), the process to be followed is to deliver the complaint in writing to the registrar, s.32(1). In this matter that process never occurred and therefore a necessary condition precedent did not occur. As a result the Review Board has no jurisdiction to entertain this Application for Review.

It seems clear to me that the letter of the College dated February 28, 2013 to the Complainant was in substance a letter regarding the termination of employment of the Complainant. From the material available to me, in particular a letter dated June 26, 2012 from counsel for the Complainant to the College, there is no question that there were ongoing employment issues between the Complainant and the Registrant.

VI CONCLUSION

As the Review Board does not have jurisdiction to review this matter, for the reasons given above I dismiss the application pursuant to s.31(1)(a) of the ATA.

“J. Thomas English”

J. Thomas English, Q.C., Chair
Health Professions Review Board

July 10, 2013