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## CASE SUMMARY: INTERIM PRACTICE CONDITIONS ORDERED BY COLLEGE OF MESSAGE THERAPISTS WERE UPHELD DESPITE COMPLAINANT'S UNSUBSTANTIATED ALLEGATIONS

Administrative law – Decisions of administrative tribunals – College of Massage Therapists; Investigations – Professional governance and discipline – Professional misconduct / conduct unbecoming – Supervision – Public interest; Judicial review – Compliance with legislation – Evidence – Inquiry committee decisions – Jurisdiction of committee

*Scott v. College of Massage Therapists of British Columbia*

After a client reported sexual misconduct by a massage therapist, which the registrant denied, the inquiry committee at the college ordered that he be required to have a chaperone present during all treatments of female patients while the committee investigated the allegations. The registrant sought judicial review of this decision, arguing in part that there was insufficient evidence before the committee warranting such action under s. 35 of the Health Professions Act (“HPA”). The Court of Appeal found the committee’s decision was reasonable.

[2016] B.C.J. No. 814

2016 BCCA 180

British Columbia Court of Appeal

April 25, 2016

R.J. Bauman C.J.B.C., N.J. Garson and L. Fenlon J.J.A.

This case concerns the role of a health college’s inquiry committee when making a determination under s. 35 of the HPA. Section 35 empowers the inquiry committee to take “necessary action” to protect the public during the investigation of a registrant or pending a disciplinary hearing. In this case, the College of Massage Therapists was investigating a registrant whose client had reported to police that in the course of massaging her he was masturbating with one hand and also placed his penis on her wrist. As the client had kept her eyes closed, she did not actually see the registrant masturbate or see his penis on her wrist, but she was confident from the sounds and feelings that this is what transpired. The registrant denied the allegations, and said he massaged her with only one hand at times to apply light pressure. He had no previous complaints or criminal charges. The inquiry committee conducted an ex parte hearing and decided, pursuant to s. 35 of the HPA, to issue an order requiring the registrant to have a chaperone present during any treatments of female patients while the investigation into the allegations continued.

The registrant sought judicial review of the committee's decision to place these conditions on his practice. The judge agreed there was insufficient evidence to establish that the registrant was actually masturbating, and found that the committee accepted the client's allegations without any assessment of the plausibility of her account. The judge quashed the committee's order.

The Court of Appeal allowed the college's appeal, finding that it was not the committee's job when making a decision under s. 35 of the HPA to weigh the evidence to determine if it was sufficient to establish that the registrant had engaged in sexual misconduct. Rather, the committee's job in the context of s. 35 is to make a "provisional assessment of the facts" to consider the reliability of the evidence, its internal and external consistency, the plausibility of the complaint, and motivation. The Court added that while the committee should consider any evidence lead by the registrant to establish that the allegation is manifestly unfounded or manifestly exaggerated, the committee is not otherwise required to consider the registrant's evidence as to whether or not the substantive allegations against him or her are well founded. The committee's decision was therefore found to be reasonable.

This case was digested by [Kara Hill](#) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact her directly at [khill@harpergrey.com](mailto:khill@harpergrey.com) or review her biography at <http://www.harpergrey.com>.