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CASE SUMMARY: A PROFESSIONAL REGULATORY BODY ERRED IN ITS APPLICATION OF THE LAW WHEN ASSESSING WHETHER COLLATERAL POLICE EVIDENCE WAS ADMISSIBLE

Administrative law – Decisions reviewed – College of Veterinarians – Judicial review – Appeals – Evidence – admissibility – Standard of review – Correctness – Veterinarians – Disciplinary proceedings

College of Veterinarians of Ontario v. Choong, [2019] O.J. No. 837, 2019 ONSC 946, Ontario Superior Court of Justice, February 20, 2019, G.B. Morawetz R.S.J., C.J. Horkins and W.M. Matheson JJ.

The College of Veterinarians of Ontario (the “College”) appealed a decision of the College’s Discipline Committee that held evidence from a collateral police investigation was inadmissible (the “Decision”).

The respondent was investigated by the police for an allegation that he accessed, possessed, made available and/or distributed child pornography. Following the investigation, the respondent was criminally charged. These charges were subsequently withdrawn after the Crown concluded that the respondent’s section 8 Charter rights were violated and therefore the evidence obtained during the investigation would be inadmissible.

The College was notified of the criminal proceedings against the respondent and, after the charges were withdrawn, the College obtained the evidence obtained by the police during its investigation. The Discipline Committee held a hearing to determine whether the respondent’s conduct constituted professional misconduct. The respondent brought a motion to exclude the police evidence.

After reviewing the three factors espoused in *R. v. Grant*, 2009 SCC 32, a majority of the Discipline Committee held that the police evidence was inadmissible. The Discipline Committee concluded that the seriousness of the Charter infringement and the impact of the Charter breach favoured exclusion. Finally, the Discipline Committee was not convinced that there was a greater societal interest in the professional disciplinary hearing than a criminal prosecution, which also favoured exclusion of the evidence.

On judicial review, the parties disagreed on the standard of review. The Court held that the applicable standard was reasonableness given that the College’s decision involved the application of the Charter, not whether legislation violates the Charter, and would be reviewed on a correctness standard (*Doré v. Barreau du Québec*, 2012 SCC 12).

The Court held that the Decision was unreasonable for two reasons. First, the Discipline Committee incorrectly applied the law relating to an application for a search warrant in the context of extradition proceedings that “unreasonably infected the Grant analysis”. Second, the unreasonableness of the Decision was heightened when it concluded that there was not a greater societal interest in the professional disciplinary hearing than a criminal prosecution when the Discipline Committee could not know how the Crown balanced the Grant factors given that the charges were withdrawn and any information relating to the Crown’s determination was not publicly available.

The Court allowed the appeal and set aside the Decision. The matter was remitted back to the Discipline Committee to conduct a new analysis of the Grant factors.

This case was digested by [Jackson C. Doyle](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Jackson C. Doyle at jdoyle@harpergrey.com.