Court Affirms College of Teachers' Ability to Caution Teacher Conduct When Acting as a Parent

October 22, 2019

On November 22, 2018, the Ontario Divisional Court dismissed Ahmed Bouragba's application for judicial review in *Bouragba v. Ontario College of Teachers*,[1] thereby affirming the Ontario College of Teachers' ability to issue a caution to a teacher based on the teacher's conduct while acting as a parent.

Background

As a teacher at a school board in Ontario, Mr. Bouragba was a member of the Ontario College of Teachers (the College). The complaint to the College was filed by the principal of his son's high school, Diane Lamoureux. She alleged that Mr. Bouragba acted in a manner that was offensive, degrading, and threatening in his communications with her after Mr. Bouragba's son received a suspension.

Following an investigation, the Investigation Committee of the College decided not to refer the complaint to the Discipline Committee, given the divergent nature of the information about what had occurred. However, the College issued a written caution to Mr. Bouragba pursuant to s. 26(5)(d) of the *Ontario College of Teachers Act* because of concerns about how Mr. Bouragba had expressed himself and the tone of his communications with Ms. Lamoureux.

Judicial Review

In response to the College's written caution, Mr. Bouragba sought a judicial review from Ontario's Divisional Court. Mr. Bouragba argued that he was denied procedural fairness, and that the Investigation Committee's decision was unreasonable, particularly because it imposed a caution upon him when he was acting in his role as a parent, defending his son's interests.

With respect to the merits of the College's decision, the court applied the reasonableness standard of review. The court cited the Supreme Court of Canada's decision in *Dunsmuir v. New Brunswick*,[2] and noted that its task on judicial review was

"…not to substitute [its] view as to the appropriate disposition of the complaint. Rather, it is to determine whether the Committee's decision falls within a range of possible, acceptable outcomes, based on the facts and the law."[3]

Within this legal framework, the court held that there was no merit to Mr. Bouragba's allegation that he was denied procedural fairness. On the contrary, the court noted that, "[t]he Committee followed the procedure set out in the [*Ontario College of Teachers Act*]. The Applicant was aware of the allegations against him, given ample opportunity to respond, and provided with written reasons for the decision."[4]

The court also dismissed Mr. Bouragba's allegation that the Investigation Committee should not have dealt with the complaint since he was acting as a parent, not a teacher. The court held:

…the [*Ontario College of Teachers Act*] allows for complaints against teachers because of behaviour outside of the work setting. In this case, the Committee had conducted a screening hearing in accordance with s. 26(2) and determined that the allegations, if proven, would constitute professional misconduct, incompetence or incapacity.[5]

The court added that:

Pursuant to s. 26(5)(d), a Committee may take such action as it considers appropriate in the circumstances, including issuing a caution, reminder, advice or admonishment. A caution is not a disciplinary action, and is not made public. It is not based on any finding of wrongdoing. Rather, it is meant to express the Committee's concern about conduct and to provide guidance for the future.[6]

Mr. Bouragba also suggested that the caution imposed a reprisal, because he had filed a complaint against three other members of the College, and that a double standard had been applied in the outcomes of the two matters before the College. The court found no evidence to support a claim for reprisal and concluded that "[t]he caution was imposed by a panel of the Committee based on the panel members' review of the record before them."[7]

In closing, the court reiterated that deference is owed to the decisions by regulatory bodies, and concluded that the written caution to Mr. Bouragba fell within the range of reasonable outcomes. Accordingly, the court dismissed Mr. Bouragba's application for judicial review and awarded the College $3,500 in legal costs.

Lessons for Educators

This decision is a reminder to educators that the conduct of teachers outside the work setting is subject to investigation, caution and discipline by the College, even when the teacher is acting as a parent. While another panel of the Investigation Committee might have come to a different conclusion as to the utility of issuing a caution to Mr. Bouragba, the Divisional Court affirmed that deference is owed to a decision of the College where that decision falls within a range of reasonable outcomes.

[1] 2018 ONSC 6935 (Ont. Div. Ct.).

[2] [2008] 1 S.C.R. 190 (S.C.C.)

[3] *Ibid* at para. 13.

[4] *Ibid* at para. 5.

[5] *Ibid* at para. 6.

[6] *Ibid* at para. 12.

[7] *Ibid* at para. 10.

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