



Canadian College counts claims



**By Dale Atkinson, Partner,
Atkinson & Atkinson**

Dale Atkinson is a partner with the Illinois law firm that is counsel to ASWB. He is also executive director of the Federation of Associations of Regulatory Boards (FARB).

Social work boards are statutorily created to regulate the profession in the interest of public protection. In order to effectively fulfill the public protection mission, boards are provided with certain protections from liability. Immunity principles can be set in law and/or evolve through judicial decisions; they are essential to allow the board to undertake its responsibilities free of intimidation and threat of liability. In short, regulatory boards undertaking disciplinary actions are treated like judges when legal challenges to such actions are asserted. As with the judiciary, where an appeal process protects litigants when mistakes are made, administrative decisions are also subject to appeal and judicial scrutiny. At times, administrative decisions may be subject to reversal and/or remand based on decisions not supported in law. However, any such challenges should not dissuade boards from fulfilling their public protection mission. Consider the following.

An Ontario social worker was the subject of a disciplinary action resulting in the revocation of her registration by the College of Social Workers and Social Service Workers. The administrative actions were stimulated by complaints, and the College followed its disciplinary procedures

and hearing processes before rendering

its final decision. The College has a Council composed of a board of directors that manages the affairs of the organization. The Council appoints the registrar, who maintains the registration of social workers, including revocations, cancellations, and suspensions of registrants' certificates. The Council is required to establish five committees, two of which are the Complaints Committee and the Discipline Committee.

The Complaints Committee processes complaints and interacts with the registrant, including providing the registrant with notice and an opportunity to respond to the allegations. Thereafter, the Complaints Committee can, among other options, refer the matter to the Discipline Committee. If not resolved through consent, the Discipline Committee can schedule a hearing where facts are established and decisions made.

In the current case, the social worker participated in a hearing involving witnesses, testimony, and attorneys. After hearing all evidence and deliberating, the Discipline Committee found against the social worker and revoked her certificate. In the

Counsel's
Column

ordinary course of business, the disciplinary action was posted on the College website.

Thereafter, the social worker filed a civil complaint against the College, its attorney, the complainant, and the witnesses who testified. In a scattered complaint, she alleged malicious prosecution, breach of duty of care, breach of privacy, negligence, defamation, libel, injurious falsehood, and unlawful interference with economic relations against the various defendants. She sought damage claims ranging from \$400,000 in punitive damages to \$1 million in general damages. The defendants motioned for dismissal of the complaint based on its failure to allege reasonable claims for a variety of reasons related to immunity and failure to plead necessary facts. The court agreed with the dismissal motions in rendering its decision.

After outlining the Social Work and Social Services Work Act of 1998, the court turned its attention to the merits of the motion to dismiss. It first noted that the Act provides for immunity from damages for the College, Council, committees, or any officer, employee, agent, or appointee so long as the actions are undertaken in good faith or in the exercise of power under the Act. Without pleading malice or bad faith, immunity shall prevail. Based upon these immunity principles, the court granted the motion to dismiss regarding the negligence, slander, and defamation claims, as well as claims against the attorney as an agent of the College.

Under the doctrine of absolute immunity, the court recognized its application in quasi-judicial proceedings. Thus, the court dismissed the counts alleged

against the College attorneys, the complainant, and the witnesses, finding that their activities related to the administrative prosecution are protected from liability.

Regarding the allegations of malicious prosecution, the court noted that a plaintiff must allege that the prosecution was terminated in his/her favor. In this case, the social worker was disciplined by revocation of her certificate of registration. Thus, she could not prevail on an allegation of malicious prosecution.

Next, the court addressed the social worker's allegations of negligence and breach of duty. In disposing of this count of the complaint, the court addressed issues related to whom a duty is owed. It held that the legislature did not intend to create a duty relationship between the College and its members; thus, any such cause of action is precluded. The court also dismissed the breach of duty count alleged against the attorney for the College, finding that a lawyer does not owe a duty to the opposite party in litigation.

Finally, the court turned its attention to the breach of privacy count. Because the College publicized the revocation order on its website, the social worker alleged damages based on a breach of privacy. The court rejected this claim, finding that the College has statutory authority to publish final orders.

In short, the court dismissed all counts alleged by the social worker against the College, its staff, the attorney, complainant, and witnesses. It noted that the social worker appeared to be seeking judicial review of the administrative proceeding while seeking damages

at the same time. Some of the counts dismissed were with prejudice (meaning the social worker is precluded from re-alleging the same counts). Other counts were dismissed without prejudice (meaning the social worker can amend the complaint and re-allege certain counts). Regardless, this case presents an example of how immunity principles protect not only the College, but staff, attorneys, complainants, and witnesses.

Singh-Boutilier v. Ontario College of Social Workers, 2015 ONSC 5297