

Ontario (College of Chiropodists of Ontario) v De Leon, 2024 ONCOCOO 7 (CanLII) Motion Denied to Disqualify Legal Counsel For A Conflict of Interest

Conflict of Interest | Health | Health Law | Litigation | Litigation & Dispute Resolution | Motion

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In this recent, novel case before the Discipline Committee of the College of Chiropodists of Ontario (CCO), the majority of the Panel rejected the CCO's motion to have legal counsel for the chiropodist disqualified due to a conflict of interest, namely because he had previously provided legal services to the CCO while working at another law firm.

It was the position of the CCO that the lawyer was privy to confidential information about the CCO as a result of his former role as a prosecutor for the CCO and counsel to its Inquiries, Complaints and Reports Committee (which is a gatekeeper committee that reviews complaints about chiropodists). Specifically, the CCO believed that the lawyer was privy to matters falling within the CCO's jurisdiction to regulate the practice of chiropody in Ontario and had privileged communications with CCO staff.

In the Decision of the majority, the Panel re-stated the law in this area and confirmed that in seeking to disqualify counsel for a conflict of interest arising out of a previous relationship, the following two-part test is applied to determine whether the new matter will place the lawyer in a conflict of interest:

1. Did the lawyer receive confidential information attributable to a solicitor and client relationship relevant to the matter at hand?
2. Is there a risk that it will be used to the prejudice of that client?

The Panel went on to note that in order to meet the above test, the CCO must be able to prove that either (a) that confidential information relevant to the current matter was shared with the lawyer in the prior solicitor-client relationship; or (b) that the new retainer is "sufficiently related" to the prior retainer. In respect of the latter, the Panel also clarified that a bald assertion would not suffice and there must be clear and cogent evidence of the connection.

The Panel concluded that the CCO did not meet the test for disqualifying the lawyer, as it failed to sufficiently describe or provide an outline of the nature of the confidential information that the lawyer possessed; and was unable to demonstrate that the lawyer's current retainer was sufficiently related to his previous retainer with the CCO.

This is certainly an interesting case for any health law or administrative law lawyer, as it is not uncommon for a lawyer to act as a prosecutor or independent legal counsel for a regulator, and later switch to being defence counsel (especially when a lawyer changes law firms).

The key takeaway is that it is certainly possible to disqualify a lawyer due to a conflict of interest, but the party seeking the disqualification must be able to clearly identify the confidential information at issue and demonstrate that there is a sufficient connection between the current and previous retainers, based on clear and cogent evidence. A PDF version is available to download [here](#).

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About the Author

Lad Kucis is certified by the Law Society of Ontario as a specialist in health law and provides advice and representation to regulated health professionals in respect of all types of regulatory matters, including complaint and disciplinary matters before their regulatory colleges.

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

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