

COURT OF APPEAL FOR ONTARIO

CITATION: Johal v. Funeral Services, 2012 ONCA 785

DATE: 20121116

DOCKET: C55358

O'Connor A.C.J.O., Simmons and Cronk JJ.A.

BETWEEN

Prabhjot Kaur Johal

Appellant

and

Board of Funeral Services

Respondent

Leo Klug, for the appellant

Julie A. Maciura and Lisa S. Braverman, for the respondent

Heard and released orally: November 14, 2012

On appeal from the order of Justices J.R.R. Jennings, M.R. Dambrot and A.L. Harvison Young of the Superior Court of Justice, sitting on appeal as the Divisional Court, dated December 16, 2011.

ENDORSEMENT

[1] The appellant, a licensed funeral director, appeals from the decision of the Divisional Court upholding the ruling of the Licence Appeal Tribunal that an appropriate penalty for the appellant's professional misconduct, as found by the Tribunal, was revocation of the appellant's licence.

[2] The appellant accepts that the Divisional Court was correct in reviewing the issues raised on the appeal before that court on a standard of reasonableness.

[3] Before this court, the appellant argues, first, that on the authority of *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 and its progeny, the Tribunal erred by failing to accord deference to the Discipline Committee's decision on penalty. We reject this argument.

[4] The appellant concedes that under the governing legislative scheme, the appeal proceeding before the Tribunal was a *de novo* hearing. Further, by operation of ss. 18(2) and 14(9) of the *Funeral Directors and Establishments Act*, R.S.O. 1990, c. F.36, the Tribunal is empowered on an appeal from the Discipline Committee to "substitute its opinion" for that of the Committee. This language, properly read, constitutes a statutory direction that appeal proceedings before the Tribunal are *de novo*. It also signals a legislative intention that no deference need be accorded by the Tribunal to decisions of the Discipline Committee.

[5] We therefore agree with the Divisional Court that, under this particular statutory regime, the Tribunal was not required to defer to the penalty imposed by the Discipline Committee. This is particularly so where, as here, the Tribunal received different evidence from that admitted by the Discipline Committee.

[6] The appellant next argues that there was no evidentiary foundation for the Tribunal's finding that the appellant's conduct carried the risk of danger to the public. We disagree.

[7] The Tribunal was satisfied on the evidence that the appellant had not only falsified reports to her regulator, she had also knowingly, and falsely, implicated current and former employees in deceitful professional conduct. Based on this evidence, the Tribunal held, "These deceptions and [the appellant's] persistence in them raise legitimate concerns about [the appellant's] ability to conduct her business in accordance with the law and with integrity and honesty" and, further, "[T]here are reasonable grounds to believe that [the appellant] would deceive her customers if it were self-serving for her to do so."

[8] In our view, these findings are firmly anchored in the evidentiary record. We see no basis for appellate interference with them. Indeed, we agree with them.

[9] Finally, we are not persuaded that any prejudice accrued to the appellant by reason of the fact that the liability and penalty phases of the Tribunal's hearing were combined. The appellant was on notice, during the course of the hearing, of the possibility of losing her licence and had an opportunity to deal with and make submissions on the issue. In these circumstances and having regard to the appellant's misconduct, the penalty imposed by the Tribunal was reasonable.

[10] The appeal is dismissed. The respondent is entitled to its costs of the appeal and the motion for leave to appeal to this court, as agreed, in the total amount of \$15,000, inclusive of disbursements and all applicable taxes.

“Dennis O’Connor A.C.J.O.”

“Janet Simmons J.A.”

“E.A. Cronk J.A.”