

BETWEEN

ITA LONG

APPLICANT

AND

CORU HEALTH AND SOCIAL CARE PROFESSIONALS COUNCIL

RESPONDENT

JUDGMENT of Mr. Justice Allen delivered on the 7th day of November, 2018

1. By originating notice of motion issued on 5th March, 2018 the applicant seeks an extension of time to appeal against a decision of the Appeals Committee of the respondent made on 22nd January, 2018.

2. The respondent has entered a conditional appearance for the purpose of contesting jurisdiction only. In a nutshell, the respondent contends that the decision of the Appeals Committee is not appealable.

3. The respondent was established by the Health and Social Care Professionals Act, 2015 with the object of protecting the public by promoting high standards of professional conduct and professional education and training and competence among registrants of the health and social care professions designated by the Act, including social workers.

4. The Act provides for the establishment of several registration boards, including the Social Workers Registration Board, and for the making of rules by the respondent providing for registration and applications for registration.

5. By s. 37 of the Act, applications for registration as a member of a designated profession are to be made to the Registration Board of that profession.

6. Section 43 (1) of the Act allows an applicant for registration whose application has been refused to apply to the respondent for cancellation of the decision of the registration board.

7. Section 23(1) of the Act allows the respondent to establish committees of the respondent to perform any of its functions or exercise any of its powers under *inter alia* sections 42B or 43. In exercise of that power the respondent established the Appeals Committee to deal with applications under section 43.

8. On hearing such an application or on receipt of appropriate submissions, the Appeals Committee may

(a) if satisfied that the decision of the Registration Board was properly made, confirm that decision or

(b) if not so satisfied, cancel the decision and either

(i) direct the Registration Board to grant registration to the applicant or

(ii) direct the Registration Board to make a new decision, or

(iii) give such other directions to the Registration Board as the Appeals Committee considers appropriate.

9. Section 44 of the Act provides for an appeal to the High Court against a decision made by the Appeals Committee under s. 42B (4) (a) (i), s. 42B (4) (b) (i) or (ii), or s. 43 (3) (a). By s.44(2) any such appeal must be brought within 30 days after receipt of notification of the decision of the Appeals Committee.

10. Section 42B allows applications to the respondent for the cancellation of decisions made by a Registration Board in the performance of its functions under s. 27A of the Act as the competent authority for the designated profession concerned under Directive 2005/36/EC, as defined by regulation 3(1) of the European Union (Recognition of Professional Qualifications) Regulations 2017.

11. Part 9 of the Act made a number of transitional provisions including, in s. 91, provision for the registration of existing practitioners who met the criteria set out and who applied for registration within the transitional period of two years of the establishment of the register of the members of the relevant professions.

12. By s. 9 (6), ss. 43 and 44 were made applicable to any decision made by a Registration Board or by the Appeals Committee concerning an application under s. 91.

13. On 24th May, 2013, within the transitional period, the applicant applied under s. 91 for registration as a social worker. She was then employed by the Health Service Executive but had been suspended from duty as long ago as 12th July, 2007, pending on administrative review.

14. A decision on the applicant's application for registration was deferred pending firstly, the completion of the administrative review and later a Health Service Executive disciplinary process, which was finally completed on 25th May, 2015.

15. On 10th March, 2016 the Registration Board made a decision to refuse the application for registration. The applicant appealed to the Appeals Committee which, for the reasons given in a written determination on 5th September, 2016, cancelled the decision of the Registration Board and directed the Board to make a new decision.

16. Over the following ten months the Board met on a number of occasions and corresponded with the applicant and on 20th July, 2017 again decided to refuse the applicant's application for registration. Again the applicant appealed to the Appeals Committee which

met on 17th October, 2017.

17. The applicant's appeal was heard in private on 17th October, 2017. The Appeals Committee said that it would take time to deliberate.

18. In the course of its deliberations two issues arose on which the committee required legal advice: one of which (the only one that is now relevant) was whether it was open to the committee at that stage to obtain an expert report.

19. The advice required by the committee was given in writing by the legal assessor and copied to the applicant for any observations. The legal advice referenced para. 5.7.5 of the respondent's appeal procedures which provides:

"The Appeals Committee is entitled to seek advice from experts, such as an independent expert from your profession for example, and may decide to adjourn the hearing to facilitate this. Any advice received will be copied to you and you will be given an opportunity to respond."

20. The legal advice to the committee was that since the Appeals Committee had not made a decision in relation to the appeal it was open to it to obtain an expert report.

21. In a letter to the Appeals Committee of 20th November, 2017 the applicant rehearsed the history of her application and appeals and took the position that any expert report should have been sought before or during the hearing in October 2017. The applicant's position was that when the hearing concluded on 17th October, 2017 it was for the purpose of making a decision and that the Appeals Committee was bound to make its decision based on the evidence and submissions before it on 17th October, 2017.

22. The Appeals Committee reconvened on 22nd January, 2018 and, in a minute signed by all three members, recorded that it was of the view that since it had not made a decision in relation to the appeal, it was open to it to seek an expert report and that it was not in a position to make a decision on the appeal without the benefit of a report from an independent expert from the profession.

23. It is against that decision of the Appeals Committee that the applicant would now appeal to the High Court. The applicant acknowledges that time for an appeal had elapsed and seeks an extension of time.

24. The Health and Social Care Professionals Act, 2005 has been amended several times since it was originally enacted and even with the very considerable assistance of the Revised Act issued by the Law Reform Commission requires careful and concentrated navigation but the provision it makes for appeals to the High Court is absolutely clear.

25. The procedure provided by the Act for applications for registration and appeals is a statutory scheme which is exhaustive. There is no right of appeal except as provided for by the Act, and the rights of appeal provided for by the Act are, firstly, a right to appeal from a decision of the Registration Board refusing to grant registration and then a right to appeal from a decision of the Appeals Board confirming such a decision of the Registration Board.

26. In the course of the conduct by the Registration Board of an application for registration, or the conduct by the Appeals Committee of an appeal against a refusal of registration, issues may arise as to the appropriate procedures to be followed and the like, but the applicant is not entitled to appeal against procedural decisions made in the course of the process. Such decisions may be right or wrong and they may or may not have an effect on the ultimate decision on the substance of the application or appeal but any challenge must await the substantive disposal of the application or appeal.

27. Appeals to the High Court take time and are costly. If an appeal of the type which the applicant would bring were permitted, this would disrupt and delay the adjudication by the Appeals Committee on the substance of the application before it. Moreover, however dissatisfied an applicant might be with a procedural decision, that decision might not impact on the disposal on the application for registration. It is not only quite clear but makes perfect sense that the right of appeal should be confined to a decision of the Appeals Board adverse to the applicant.

28. I accept the submission on behalf of the respondent that the court does not have jurisdiction to entertain the appeal the applicant would make. It follows that the court must decline to entertain any application for an extension of time within which to bring it.

29. I add for the sake of completeness that the respondent's challenge to jurisdiction was confined to s.44(1) and that the court was not asked to consider whether, in a case of a decision of the Appeals Committee pursuant to s. 43(3)(a) to confirm a decision refusing to grant registration, the court has jurisdiction to extend the time for an appeal beyond that prescribed by s. 44(2) of the 2005 Act.