

**CITATION:** Partap Law Medicine Professional Corporation (formerly Di-Med Services Limited) v. Minister of Health, 2025 ONSC 3351  
**DIVISIONAL COURT FILE NO.:** 436/24  
**DATE:** 20250612

**SUPERIOR COURT OF JUSTICE - ONTARIO  
DIVISIONAL COURT**

**RE:** PARTAP LAW MEDICINE PROFESSIONAL CORPORATION (formerly DI-MED SERVICES LIMITED), Appellant

**AND**

MINISTER OF HEALTH, Respondent

**BEFORE:** Faieta J.

**COUNSEL:** Sujit Choudry, for the Appellant  
No one appearing for the Respondent  
Steven G. Bosnick, for the Health Services Appeal and Review Board

**HEARD:** June 3, 2025

**ENDORSEMENT**

[1] The Health Services Appeal and Review Board (“Board”) brings this motion for leave to intervene on this appeal for the purpose of making submissions on whether its jurisdiction under s. 24.9(1)2 of the *Independent Health Facilities Act*, R.S.O. 1990, c. 13 (“Act”), to conduct a hearing to “review a decision” of the Minister of Health contemplates a hearing *de novo*.

**BACKGROUND**

[2] Section 24.3(1) of the Act provides that the Minister may refuse to pay for the service rendered by an independent health facility under any of the following circumstances:

1. If the Minister is of the opinion that any or all of the following apply:
  - i. all or part of the service was not in fact rendered,
  - ii. the service has not been rendered in accordance with a requirement under this Act, or
  - iii. there is an absence of a record described in section 24.1.
2. If the Minister is of the opinion that the nature of the service is misrepresented, whether deliberately or inadvertently.

3. If the Minister is of the opinion that all or part of the service was not provided in accordance with prescribed quality and standards or, in the absence of regulations, not provided in accordance with generally accepted quality and standards for the facility and the service or services to be provided in the facility.
4. In such other circumstances as may be prescribed.

[3] The Appellant operates several independent health facilities that offer medical diagnostic services. Following an audit the Minister, by letter dated August 11, 2022, requested reimbursement from the Appellant in the amount of \$294,692.25 pursuant to s. 24.3(1)1(i) of the Act on the grounds that services submitted for payment pursuant to fee code J163 (limited pelvic ultrasound) were not in fact rendered.

[4] On August 18, 2022, pursuant to s. 24.9(1)2 of the Act, the Appellant requested a hearing to review the Minister's decision. At the hearing, the uncontroverted evidence showed that the services had been rendered. In its decision dated June 19, 2024, the Board affirmed the Minister's decision to require reimbursement. The Board found that the Appellant had failed to maintain records, as required by s. 24.1(5) of the Act, to show that the limited pelvic ultrasounds. Accordingly, the Appellant was required to reimburse the Minister pursuant to s. 24.3(1)1(iii) of the Act rather than under s. 24.3(1)1(i), as referenced in the Minister's letter.

[5] At this hearing, the Appellant submitted that the hearing was not a hearing *de novo*. The Board stated at para. 61:

The Appellant submitted that this is a "review" of the Minister's decisions (section 24.9(1)), not a hearing *de novo*. The Appellant submitted that the Minister's Opinion Letters must be read and defended as they were written and the Minister cannot "bootstrap" those letters, factually or legally, by now purporting to broaden the factual or legal basis for her decision. The Appellant submitted that the sole basis for the Minister's opinion in the letters was that the service had not been rendered, not that the Appellant had failed to document medical necessity.

[6] The Board concluded that a hearing under s. 24.9(1) of the Act was a hearing *de novo* for the following reasons:

106. The Appellant argued that this is not a hearing *de novo* but a review similar to a judicial review. The Appeal Board finds that this is not supported by the wording of the Act which refers, for example, to the "transcript of evidence" from the hearing in section 24.11(2).

107. As set out in section 24.9(1), it is a "review" of the Minister's decision but it is a review by way of a hearing and the Appeal Board is given the authority to order the Minister to take such action as the Appeal Board considers the Minister should take in accordance with the Act and the regulations (section 24.10(1)). Therefore, the Appeal Board may hear new evidence and arguments, as it did from both parties, at the hearing, and make its own decision in accordance with the Act.

108. The Appellant argued that the Respondent improperly expanded the legal basis of its decision beyond that set out in its Minister's Opinion Letters. The Appeal Board has examined the letters and does not agree with the Appellant that the issue of inadequate documentation of medical necessity was not raised in the letters. As stated on page one of the letters, "[f]urther details of the ministry's review findings which are the basis for the Minister's opinions, including how the overpayment amounts were determined, and relevant section so the IHFA and [SOFF], are included in the Supplementary Information section at the end of this letter." On page one of the Supplementary Information section, paragraph 6 of the General Preamble to the SOFF is quoted in full and under "Details of Minister's Review and Findings", it states, among other things, "[t]here was no documentation as to why an additional pelvic ultrasound was medically necessary".

[7] In its Notice of Appeal to the Divisional Court dated July 19, 2024, the Appellant advances the following grounds of appeal:

1. The HSARB erred in law by making findings of fact regarding the alleged rates at which the Appellant and the average independent health facility performed limited pelvic ultrasounds with complete abdominal ultrasounds for the same patient on the same day, without any such statistics having been put into evidence.
2. The HSARB erred in law by failing to find that the Minister had acted unlawfully by determining under section 24.3(1)1(i) of the IHFA that in each case in the audit sample, a limited pelvic ultrasound "was not in fact rendered" by the Appellant, when in fact the essential requirements of a limited pelvic ultrasound had been met.
3. The HSARB erred in law by misconstruing its authority under section 24.9(1) of the IHFA to "review a decision of the Minister" as authority to conduct a hearing de novo, in which the Minister is free to put forward new arguments and evidence to support her decision, which the Board is free to consider and adopt. In fact, a "review" proceeding rests on the premise that the Minister is functus officio and must defend her written decision on the reasons set out therein and the record that was before her when she made that decision, and the Board's role is limited to determining the lawfulness of the Minister's decision based on those reasons and that record alone.
4. The Minister breached her duty of procedural fairness and/or engaged in bootstrapping, by improperly expanding the legal basis of her written decisions to argue that the medical necessity of the limited pelvic ultrasounds had not been documented, as required by sections 24.1(3) and 24.3(1)1(iii) of the IHFA and the Schedule of Facility Fees ("SOFF").
5. The HSARB erred in law by failing to hold that the Minister breached her duty of procedural fairness and/or engaged in bootstrapping by making the new argument that the limited pelvic ultrasounds had not been documented, and the Board misconstrued the scope of its "review" power and violated its own duty of procedural fairness in accepting this argument.

6. In the alternative to paragraphs 4 and 5, the HSARB erred because the medical necessity of the limited pelvic ultrasounds had in fact been documented.
7. The Minister breached her duty of procedural fairness and/or engaged in bootstrapping, by improperly expanding the legal basis of her written decisions to argue that the IHFA and the SOFF prohibit the Appellant from charging for limited pelvic ultrasounds performed by a sonographer pursuant to a medical directive, despite Regulation 107/96 of the Regulated Health Professions Act, SO 1991, c 18, which authorizes the use of medical directives for the performance of “controlled acts” such as limited pelvic ultrasounds.
8. The HSARB erred in law by failing to hold that the Minister breached her duty of procedural fairness and/or engaged in bootstrapping by making the new argument regarding the medical directive, and the Board misconstrued the scope of its “review” power and violated its own duty of procedural fairness in accepting this argument.

[8] The Board brings this motion for leave to intervene as an added party pursuant to Rule 13.03(1) of the *Rules of Civil Procedure*, or alternatively, for leave to intervene as a friend of the Court pursuant to Rule 13.02. The Board also seeks leave to file a factum not to exceed 15 pages, as well as to make oral submissions not to exceed 15 minutes, to address the scope of a hearing before the Board under s. 24.9(1)2 of the Act and the interpretation of that section. The Board also seeks an order that its intervention will be on the basis that it will neither seek costs nor be subject to costs in these proceedings. At the hearing of this motion, the Board advised that, despite the language in its Notice of Motion, it is not seeking to intervene to do anything more than make submissions on the meaning of the phrase “hearing to review a decision of the Minister” found in s. 24.9(1)2 of Act.

## ANALYSIS

[9] In *Northwestern Utilities Limited et al. v. City of Edmonton*, [1979] 1 S.C.R. 684, Estey J. stated that, on an appeal, a tribunal could not present arguments in support of the merits of its decision and would be limited to making arguments on jurisdiction:

- (a) Unless its enabling legislation otherwise provides, a tribunal has a limited right of participation in an appeal from its own decision. Accordingly, a tribunal’s standing before an appeal court is in the nature of an *amicus curiae* rather than as a party: *Northwestern*, paras. 49, 50.
- (b) Where a tribunal’s home statute is silent as to its role on an appeal or on an application for judicial review, the tribunal’s role is limited to the issue of its jurisdiction to make the order in question in order to avoid the spectacle of a tribunal attempting to show that it has acted in accordance with the principles of natural justice or otherwise justify its action: *Northwestern*, paras. 54, 55.
- (c) Permitting a tribunal to present arguments in favour of the merits of its decision “... can have no other effect than to discredit the impartiality of an administrative tribunal

either in the case where the matter is referred back to it, or in future proceedings involving similar interests and issues or the same parties”: *Northwestern*, para. 51.

[10] The test for determining whether a tribunal may appear on an appeal in defence of its decision has evolved. In *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44, the Court took a more permissive approach to determining whether a tribunal should participate on an appeal or application for judicial review from its decision. Rothstein J. stated, at para. 52, that a discretionary, rather than rule based approach “... provides the best means of ensuring that the principles of finality and impartiality are respected without sacrificing the ability of reviewing courts to hear useful and important information and analysis.”. Such participation would go beyond jurisdictional issues and delve into the merits of the tribunal’s decision.

[11] The principle of finality addresses the concern that a tribunal should not be permitted to “bootstrap” its reasons for decision. In *Canada (Attorney General) v. Quadrini*, 2010 FCA 246, Stratas J.A. stated, at para. 16:

... Once a tribunal has decided the issues before it and has provided reasons for decision, absent a power to vary its decision or rehear the matter, it has spoken finally on the matter and its job is done: *Chandler v. Alberta Association of Architects*, [1989] 2 S.C.R. 848. A judicial review is not an opportunity for the tribunal to amend, vary, qualify or supplement its reasons. Accordingly, attempts by the tribunal to speak further by making submissions in the judicial review have to be carefully regulated.

[12] The principle of impartiality relates to the concern that the tribunal’s participation on an appeal will undermine confidence in the administration of justice. In *Quadrini*, Stratas J.A. explained the concern as follows, at para. 16:

Submissions by the tribunal in a judicial review proceeding that descend too far, too intensely, or too aggressively into the merits of the matter before the tribunal may disable the tribunal from conducting an impartial redetermination of the merits later. Further, such submissions by the tribunal can erode the tribunal’s reputation for evenhandedness and decrease public confidence in the fairness of our system of administrative justice. In the classic words of the Supreme Court of Canada in *Northwestern Utilities Ltd. et al. v. City of Edmonton*, [1979] 1 S.C.R. 684, at page 709:

Such active and even aggressive participation can have no other effect than to discredit the impartiality of an administrative tri-bunal either in the case where the matter is referred back to it, or in future proceedings involving similar interests and issues or the same parties. The Board is given a clear opportunity to make its point in its reasons for its decision, and it abuses one’s notion of propriety to countenance its participation as a full-fledged litigant in this Court, in complete adversarial confrontation with one of the principals in the contest before the Board itself in the first instance.

[13] In deciding whether to allow a tribunal to intervene as a friend of the court on an appeal from its own decision, the court is required to balance the need for fully informed adjudication

against the importance of maintaining tribunal impartiality: *Ontario (Energy Board)*, at para. 59. In exercising this discretion, the Court should consider the following non-exhaustive list of factors:

- (1) If an appeal or review were to be otherwise unopposed, a reviewing court may benefit by exercising its discretion to grant tribunal standing.
- (2) If there are other parties available to oppose an appeal or review, and those parties have the necessary knowledge and expertise to fully make and respond to arguments on appeal or review, tribunal standing may be less important in ensuring just outcomes.
- (3) Whether the tribunal adjudicates individual conflicts between two adversarial parties, or whether it instead serves a policy-making, regulatory or investigative role, or acts on behalf of the public interest, bears on the degree to which impartiality concerns are raised. Such concerns may weigh more heavily where the tribunal served an adjudicatory function in the proceeding that is the subject of the appeal, while a proceeding in which the tribunal adopts a more regulatory role may not raise such concerns: see *Ontario (Energy Board)*, at para. 59.

[14] In applying the above principles, the Appellant submits that:

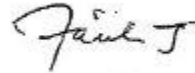
- (1) The appeal is opposed by the Minister. At the Board hearing, the Minister submitted that the Board's review hearing was a hearing *de novo* and there is no reason to believe that it will not do so again on this appeal.
- (2) The Minister has the necessary knowledge and expertise to full make and respond to the Appellant's arguments. The Appellant notes that the Minister is responsible for the administration of the Act and was a respondent 93% of the 2,005 cases heard by the Board since 2002.
- (3) The hearing before the Board is adversarial in nature and not a regulatory, policy-making or investigative hearing. As such, there is a heightened concern about preserving the impartiality of the Board.

[15] The Appellant submits that the principle of finality has become a more significant consideration in determining whether to allow a tribunal to participate on the appeal from its own decision given that the Court in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 directed a "reasons first" approach to judicial review on reasonableness which focuses on "... the decision actually made, including the justifications offered for it": at paras. 15, 84.

[16] However, on this appeal, the Divisional Court will not be conducting a reasonableness review in respect of the jurisdictional issue but rather a correctness review which focuses on the conclusion that the court itself would have made in the Board's place. As a result, the finality and impartiality concerns expressed by the Appellant are muted. While this appeal is opposed by the Minister, I agree with the Board's submission that the Board has expertise in respect of its home statute and that the Court should have the benefit of the Board's unique perspective and analysis in determining the proper interpretation of s. s. 24.9(1)2 of the Act.

**ORDER**

[17] Order to go as follows: The Board is granted leave to intervene as a friend of the court on the issue of whether a hearing under s. 24.9(1)2 of the Act is a hearing *de novo*. It may advance any argument in support of its position on this jurisdictional issue regardless of whether those arguments are found in the Board's decision. The Board shall file a factum, within 60 days, not to exceed 15 pages and may make oral submissions not to exceed 15 minutes. The Board will neither seek costs nor be subject to costs in these proceedings. There shall be no costs of this motion.



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Faieta J.

**RELEASED:** June 12, 2025