

CITATION: Constant v. College of Physiotherapists, 2025 ONSC 4034
DIVISIONAL COURT FILE NO.: 317/24
DATE: 20250711

SUPERIOR COURT OF JUSTICE – ONTARIO DIVISIONAL COURT

RE: Jethro G. Constant, Moving Party/Applicant

AND:

College of Physiotherapists of Ontario, Responding Party/Respondent

BEFORE: Justice S. Nakatsuru

COUNSEL: Self-represented, Moving Party/Applicant

Joanna Birenbaum, for the Responding Party/Respondent

HEARD: July 9, 2025, in writing

ENDORSEMENT

[1] Jethro G. Constant (the “Moving Party”), a registered physiotherapist, was ordered to receive a caution by his governing professional body, the College of Physiotherapists of Ontario (the “College”), for not wearing a mask while treating a patient during the COVID-19 pandemic. He seeks to bring an application for judicial review of the decision dated July 14, 2023, of the Inquiries Complaints and Reports Committee (ICRC) of the College that made the order. But he is out of time. Thus, he brings a motion for an extension of time to bring his application.

[2] Section 5(2) of the *JRPA* places a burden on the moving party to satisfy the court that there are “apparent grounds for relief” and that “no substantial prejudice or hardship will result to any person affected by the delay.” As well, the length of the delay and any explanation offered for it, as well as the substantive merits of the application for judicial review are relevant considerations in exercising the court’s discretion: *Unifor and its Local 303 v. Scepter Canada Inc.*, 2022 ONSC 5683, at paras. 10-19, 17-18; *Rowe v. College of Nurse of Ontario*, 2023 ONSC 3735, at paras. 28-29; *Jonker v. Township of West Lincoln*, 2023 ONSC 1948, at para. 35.

[3] It has been observed that prejudice may be presumed: *John Bruce Robinson Construction Limited v. Hamilton (City)*, 2022 ONSC 911, at para. 10. The prejudice faced by professional regulatory bodies lies in the fact that the public has a strong interest in the timely and final resolution of its processes: *Rowe*, at para. 49. I find such prejudice exists in this case.

[4] In addition, there is little merit to the grounds for relief. The Moving Party submits that the ICRC decision should be set aside because it is unreasonable and based on hearsay. Regardless of whether ICRC was entitled to rely on the hearsay account of the patient, ICRC essentially based its finding on the Moving Party's account and conduct. Regarding the reasonableness of the ICRC decision, there is little support for the challenge. It appears intelligible, justified, and transparent and is in keeping with authorities that have recognized and affirmed under the *Regulated Health Professions Act* the ICRC was well within their rights to rely on guidelines from the Ministry of Health (including COVID-19 directives and guidelines) to determine whether a healthcare provider's conduct exposes or is likely to expose a patient to harm and/or injury: *Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario*, 2019 ONCA 393, at paras. 16-17; *Luchkiw v. College of Physicians and Surgeons of Ontario*, 2022 ONSC 5738, at para. 65. Here the Moving Party was unable or unwilling to provide confirmation of a medical exemption.

[5] Finally, the Moving Party falters on the explanation for the 8-month delay. He was advised about the potential route of seeking redress and where to obtain information regarding it. As early as July of 2023, the Moving Party was advised of this and directed to the Divisional Court website. Self-represented litigants are obliged to try and obtain information about the proceeding that they are bringing: *Obita v. Algonquin College*, 2024 ONSC 2320, at para 7. While some allowance can be made to accommodate the known difficulties that self-represented people encounter, that allowance cannot be made at the expense of the proper functioning of the administration of justice: *Belyavsky v. Walsh*, 2022 ONSC 3135, at para. 16. Here the Moving Party was not misled. Nor are there any circumstances justifying the delay. I do not accept the Moving Party's alleged confusion about whether the caution would be on the public register as a justifiable explanation. He was clearly told in a timely fashion it would. I can only conclude that it was simply a lack of diligence that was the reason for the delay.

[6] For all these reasons, the motion is dismissed.

[7] The Responding Party seeks costs in a nominal amount but did not upload a Bill of Costs. In this circumstance, no costs will be awarded.

Justice S. Nakatsuru