IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Szezepaniak v. Interior Health Authority,* 2025 BCSC 1516

Date: 20250807
Docket: S139361
Registry: Kelowna

Between:

Dr. Theresa Szezepaniak

Petitioner

And

The Interior Health Authority and The Hospital Appeal Board

Respondents

Before: The Honourable Justice Wilson

On judicial review from: An order of the Hospital Appeal Board, dated November 11, 2023.

Reasons for Judgment

Counsel for the Petitioner:	L. Turner B. Knopf
Counsel for the Respondent, Interior Health Authority:	J.A. Kerr M. Perry
Counsel for the Respondent, Hospital Appeal Board:	R.J.B. Gage
Place and Date of Hearing:	Kelowna, B.C. June 17 and 18, 2025
Place and Date of Judgment:	Kelowna, B.C. August 7, 2025

Background

[1] This is the petitioner's application for judicial review of a decision by the Hospital Appeal Board. The petitioner is a medical doctor who worked as a hospitalist at the Royal Inland Hospital (the “Hospital”) in Kamloops, which is a part of the Interior Health Authority (the “IHA”).

[2] On October 14, 2021, British Columbia’s Provincial Health Officer issued an order titled *Hospital and Community (Health Care and Other Services) Covid-19 Vaccination Status Information and Preventative Measures*. As a result of this public health order (the “PHO”), all doctors and nurses working in hospitals were required to be vaccinated against COVID-19. Under the PHO, employers, which included the IHA, were not permitted to allow unvaccinated staff members to work in a hospital or facility after October 25, 2021, unless they had been vaccinated by a certain date, or unless they had been granted an “exemption”, until the order was either rescinded or amended. The deadline was later extended to November 15, 2021.

[3] The petitioner declined to be vaccinated and, as a result, was not able to practice in the Hospital. She was given various options:

a) resign her privileges;

b) get vaccinated; or

c) run the risk of being subject to discipline.

[4] The petitioner was unwilling to resign and as a result, disciplinary proceedings were initiated through the IHA. The IHA body with the jurisdiction to discipline is the Interior Health Authority Board (the “IHA Board”). The IHA Board determined that the petitioner would be terminated.

[5] The petitioner appealed to the Hospital Appeal Board (the “HAB”) who in large part agreed with the conclusions of the IHA Board, but concluded that the sanction of termination was too harsh. Instead, the HAB ordered that the petitioner be suspended effective on the date of the IHA Board's decision to terminate, and went on to conclude

that because the petitioner would have been statutorily unable to perform services, her contract would not be renewed when it came up for annual renewal.

[6] The petitioner argues that her decision not to be vaccinated was one she was entitled to make, and because the PHO precluded her from working at the Hospital, she ought not to have been disciplined at all. The consequence of her having been disciplined is that she has a “black mark” on her record, something she must disclose each and every time she applies for different positions.

[7] The petitioner argues that s. 7 of the *Charter* is engaged because the right to life, liberty and security of the person includes the right to earn an income to support oneself and family. The petitioner argues that once the *Charter* is engaged, and once there has been restriction or limitation of a person's rights, a balancing is required.

[8] The petitioner further says that if a balancing process is undertaken in this case, the only possible outcome is that the HAB decision be set aside because the only rationale offered for the need to suspend or terminate was to allow IHA to fill the petitioner's position as a hospitalist, but the HAB did not accept that explanation on behalf of IHA because there were five vacancies for hospitalists and IHA was only actively looking to fill two of them. As such, because there was no need to suspend or terminate based upon the legislative purpose, the balancing exercise can only result in a finding that the breach cannot be justified.

[9] The petitioner seeks the following relief pursuant to this petition:

a) relief in the nature of certiorari from the decision, quashing and setting aside the HAB decision, and to have the court substitute its own decision;

b) an order declaring that remitting the matter to the IHA Board or the HAB would serve no useful purpose;

c) an order declaring that the IHA was not permitted to discipline the petitioner under Article 11.1.1 of the Bylaws as a result of her decision to refuse a medical treatment;

d) in the alternative, a direction to the HAB to reconsider its decision; and

e) costs of the petition, payable by the IHA to the petitioner.

[10] It is helpful to identify certain matters that are not before the court on this application for judicial review. This case is not about the validity or advisability of the PHO, nor is it about the efficacy of the COVID-19 vaccine.

[11] This application is also not about whether the petitioner ought to have been permitted to practice in the Hospital notwithstanding her not being vaccinated.

[12] Because the hearing before the HAB was a hearing *de novo*, the procedures before the IHA Board and the conclusions of the IHA Board are not at issue on this judicial review. Thus, this hearing is also not about procedural fairness – which is often the thrust of an argument relating to s. 7 of the *Charter* – the hearing before the HAB included both written and oral evidence, and the parties were both represented by counsel who made oral submissions to the HAB.

[13] The disciplinary proceedings initiated against the petitioner related solely to her not being vaccinated and the resulting statutory inability to work as a doctor in the Hospital. Her competence and her skills as a medical practitioner have never been in issue.

[14] Finally, this case is not about whether the petitioner could be compelled to be vaccinated. Rather, the focus is on the consequences that flow from her decision to decline the vaccine.

[15] For the reasons that follow, I conclude that the *Charter* does not apply to the HAB, section 7 of the *Charter* is not engaged, and the petition is dismissed.

Facts

The Petitioner

[16] The petitioner has been practicing medicine for 23 years, and has received awards for excellence in teaching. She has been a clinical instructor with UBC for

approximately 15 years, teaching medical students, first, second and third-year resident doctors and international medical graduates.

[17] She is the primary earner in her family. Following the loss of her privileges at the Hospital, she relocated and took a position in 100 Mile House in British Columbia.

IHA

[18] The IHA is one of several health authorities in British Columbia. The IHA is a regional health authority governed by the IHA Board. The IHA Board is constituted pursuant to ss. 4 and 5 of the *Health Authorities Act*, R.S.B.C. 1996, c. 180.

[19] Section 5 of the *Health Authorities Act* sets out the purpose of a board, which includes responsibility for regional service planning, developing and maintaining standards for the delivery of health services, general operations, and management of resources.

Medical staff and hospital privileges

[20] Physicians must be members of the medical staff in order to be granted hospital privileges. The Interior Health Medical Staff Bylaws govern the medical staff of the IHA (the "Bylaws"). Medical staff is defined in Article 1:

> ***Medical Staff*** – The physicians, dentists, midwives and nurse practitioners who have been granted privileges by the Board to practice in the facilities and programs owned or operated by the Interior Health Authority.

[21] "Privileges" is defined on the next page:

> ***Privileges*** – A permit to practice medicine, dentistry, midwifery, or nursing as a nurse practitioner in the facilities and programs operated by the Interior Health Authority and granted by the Interior Health Authority to a member of the medical staff, as set forth in the *Hospital Act* and its *Regulations*. Privileges describe and define the scope and limits of each practitioner's permit to practice in the facilities and programs of the Interior Health Authority.

[22] The executive of the medical staff organization is the Health Authority Medical Advisory Committee, known as the "HAMAC". The role of the HAMAC includes the following, starting at Article 2.2.6:

2.2.6 To make recommendations to the Board of Directors concerning the appointment of physicians, dentists midwives and nurse practitioners to the medical staff and the granting of privileges to medical staff members.

2.2.7 To make recommendations to the Board of Directors concerning the maintenance of privileges of members of the medical staff based upon regular review and evaluation of each practitioner's performance.

2.2.8 To make recommendations to the Board of Directors and the CEO concerning medical staff human resource needs.

2.2.9 To supervise and ensure compliance with the Bylaws, Rules and policies of the Board of Directors and medicals staff.

[23] To become a member of the medical staff, a practitioner must be licensed to practice medicine and a member of the College of Physicians and Surgeons in good standing:

3.2.1 Only an applicant licensed to practice medicine and a member in good standing of the College of Physicians and Surgeons of B.C., or licensed to practice dentistry and a member in good standing of the College of Dental Surgeons of B.C., or licensed to practice midwifery and a registrant in good standing of the College of Midwives of B.C., or licensed to practice nursing as a nurse practitioner and a registrant in good standing of the College of Registered Nurses of B.C. is eligible to be a member of and appointed to the medical staff.

[24] The appointment process involves an application by the physician for appointment. The Interior Health Board of Directors does the appointment process, which is set out at Article 4.1:

4.1.1 Applicants who express in writing the intention to apply for appointment to the medical staff must be provided with a copy of the *Hospital Act* and the *Regulations* and a copy of the Medical Staff Bylaws and Rules.

4.1.2 Applicants for appointment to the medical staff must submit to the office of the CEO one original written application on a specified form together with the documents and information detailed in section 4.1.3.

4.1.3 Each completed application must contain:

1. a statement that the applicant has read the *Hospital Act* and the *Regulations*, and the Bylaws and Rules of the medical staff;
2. an undertaking that, if appointed to the medical staff, the applicant will be governed in accordance with the requirements set out in the Bylaws, Rules and policies of the medical staff, as established by the Board of Directors and the Health Authority Medical Advisory Committee from time to time;

3. an undertaking that, if appointed to the medical staff, the applicant will participate in the discharge of medical staff obligations applicable to the membership category to which he/she is assigned;
4. an agreement to accept committee assignments and such other reasonable duties and responsibilities as shall be assigned to the member;

[25] The application must be accompanied by a signed consent which authorizes the Board of Directors to obtain the information identified at Article 4.1.3.11:

> 4.1.3 11. a signed consent authorizing the Board of Directors to obtain:
>
> - a Certificate of Professional Conduct from the College of Physicians and Surgeons of B.C., the College of Dental Surgeons of B.C., the College of Midwives of B.C., or the College of Registered Nurses of B.C.;
> - in the case of an applicant from outside B.C., a Certificate of Professional Conduct from the licensing body under whose jurisdiction the applicant was practicing and a letter from the appropriate B.C. College confirming eligibility for a license;
> - reports on any action taken by a College disciplinary committee;
> - reports on privileges that have been curtailed or cancelled by any medical, dental, midwifery, or nursing licensing authority or by any hospital or facility because of incompetence, negligence or any act of professional misconduct.

[26] Pursuant to Article 4.4.1, members of the medical staff have their appointments and privileges reviewed annually by the Board of Directors. The review process is set out at Article 4.5, and includes the following:

> 4.5.1 Notification of the review process and accompanying documentation must be mailed to each member of the medical staff under review at least 90 days prior to the dale on which the review is to be completed.
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> 4.5.2 The Credentials Committee, and or such other committee as described in Medical Staff Rules, together with the appropriate Department Head, shall consider information provided by each member, and information on the manner in which the member has fulfilled the duties and obligations as a member of the medical staff; and shall report its recommendations to the HAMAC, which in turn shall notify the Board of Directors of its recommendations regarding the review.
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> 4.5.3 If the HAMAC recommends continued medical staff membership, the HAMAC must specify the privileges it recommends for the member.
>
> 4.5.4 If the HAMAC recommends changes in medical staff membership or privileges, the HAMAC must specify the membership category and privileges it recommends for the member and notify the member of that recommendation.

> 4.5.5 The Board of Directors shall consider the recommendations made by the HAMAC, and shall make a decision regarding continued membership on the medical staff, and shall notify the member in writing of its decision.

[27] If a member of the medical staff fails to abide with the Bylaws, there is a disciplinary process found at 4.7.2:

> 4.7.2 Failure to abide by these Bylaws and with the Rules of the medical staff may result in referral to the HAMAC for investigation and possible recommendation for disciplinary action.

[28] Members of the medical staff who are active members, which was the petitioner's status prior to this process, are required to participate in fulfilling the organizational and service responsibilities of the Interior Health Authority:

> 6.2.4 Unless specifically exempted by the Interior Health Authority, members of the active staff are required to participate in fulfilling the organizational and service responsibilities, including on-call responsibilities, of the Department to which the member is assigned, as determined by the Interior Health Authority and described in Medical Staff Rules.

[29] The *Hospital Act*, R.S.B.C. 1996, c. 200, governs hospital care in British Columbia and sets out requirements of hospitals. The *Hospital Act* requires a hospital to have bylaws or rules for the administration and management of the hospital's affairs, including medical staff bylaws, which must be approved by the Minister (ss. 2(1)(c) and 2(2)).

[30] The *Hospital Act Regulation*, BC Reg 121/97, provides further that a hospital board must organize a medical staff of which every practitioner regularly practicing at the hospital must be a member (s.4(1)). Section 6 of the *Hospital Act Regulation* provides that:

> **6** A hospital's board may exclude a person from the hospital and prohibit that person from attending, treating or rendering health care services to patients in the hospital, if the person refuses or neglects to comply with any provision of the following after due notice in writing:
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> a) the Act;
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> b) this regulation;
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> c) the hospital's medical staff bylaws;

> d) any other Act that pertains to the hospital and the members of its medical staff.
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> [Emphasis added.]

[31] Pursuant to Article 11.4.5, and s. 46 of the *Hospital Act*, a practitioner may appeal to the HAB if: (a) the practitioner is dissatisfied with the decision of the Board regarding that member's privileges; or (b) if the Board fails to notify the practitioner of its decision within the time prescribed under this section.

[32] There was evidence before the HAB that the IHA would consider reappointing the petitioner to the medical staff, and as the petitioner acknowledged during her cross-examination, it would be subject to a review regarding competencies and the like.

Discipline under the Medical Staff Bylaws for Interior Health Authority

[33] Article 11.1 of the Bylaws addresses disciplinary matters:

> 11.1.1 Unprofessional or unethical conduct or breach of professional ethics codes, or violation of the requirements set out in legislation, Bylaws, Rules and policies of the Ministry of Health and the Board of Directors, or a finding of professional negligence by a court of law, by a member of the medical staff may be grounds for cancellation, suspension, restriction or non-renewal of privileges, in accordance with established medical staff disciplinary procedures, as set out in section 6 of the *Regulations.*

Appeal to HAB

[34] The HAB is a quasi-judicial administrative tribunal created by s. 46 of the *Hospital Act*, which provides the following:

> The Hospital Appeal Board … is continued for the purpose of providing practitioners appeals from:
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> (a) a decision of a board of management that modifies, refuses, suspends, revokes or fails to renew a practitioner's permit to practise in a hospital, or
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> (b) the failure or refusal of a board of management to consider and decide on an application for a permit.

[35] An appeal to the HAB is considered a new hearing (s. 46(2.3)). The HAB may affirm, vary, reverse, or substitute its own decision for that of the Board on the terms and considerations it considers appropriate (s. 46(2)). The petitioner's hearing was

conducted as a hearing *de novo;* as such, any procedural concerns regarding matters before the IHA Board are not of concern and procedural fairness is not at issue on this review.

The HAB Decision

[36] On August 18, 2022, the IHA Board adopted the following resolution:

> The Interior Health Board of Directors cancels the Interior Health Medical Staff appointment and hospital privileges for Dr. Theresa Szezepaniak as a result of Dr. Theresa Szezepaniak being unvaccinated for COVID-19 without a valid exemption, and therefore not permitted to work at Interior Health pursuant to the terms of the Order of the Provincial Health Officer: Hospital and Community (Health Care and Other Services) COVID-19 Vaccination Status Information and Preventative Measures.

[37] The petitioner appealed to the HAB, and it is the HAB's decision that is the subject of this review.

[38] The HAB upheld the IHA Board's decision to discipline the petitioner, concluding that she was in breach of Article 6.2.4 of the Medical Staff Bylaws, which required her to meet service requirements, and as a result of the breach, was subject to discipline under Article 11.1.1.

[39] In reaching its decision, the HAB rejected the petitioner's argument that the *Charter* applied to the decision to cancel her hospital privileges. It acknowledged that the petitioner was free to make the decision to remain unvaccinated, but concluded that discipline was nonetheless the consequence of that decision. On the applicability of the *Charter*, the HAB stated as follows:

> [74] The Appellant asserts that the Board of Directors should have considered her *Charter* rights when making its decision to cancel her hospital privileges.
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> [75] The *Charter* applies to the executive and legislative actions of the federal and provincial governments. Not all actions by entities associated with government, such as hospitals, are within government control such that the application of the *Charter* is warranted. Stated very simply, a distinction is drawn between those actions or matters which are ''ultimate or extraordinary" and within government control, versus daily operational matters which are considered "routine or regular" and within the control of another entity *(Stoffman v. Vancouver General Hospital,* [1990] 3 SCR 483). Where an entity is found to be

> implementing a specific government policy or program the *Charter* will apply *(Eldridge v. British Columbia (Attorney General),* [1997] 3 SCR 624).
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> [76] In *Stoffman* the Court considered the adoption of a mandatory retirement policy for physicians and consequent non-renewal of hospital privileges, and held that responsibility for such matters rested with the hospital board. As such the board's actions in adopting the policy did not fall within the ambit of the *Charter.* In *Eldridge* the Court considered the failure of the provincial government to fund sign language interpreters for deaf persons accessing health care services. A distinction was drawn with *Stoffman,* in that provision of the services was not simply a matter of internal hospital management, but the expression of a specific government policy regarding health care services. In that case the *Charter* did apply, and the government could not evade its obligation to provide services without discrimination.

[40] The HAB then addressed the petitioner's two arguments regarding why the *Charter* applied. The first argument was that the IHA in implementing the PHO was implementing a governmental order and as such, the *Charter* applied. The petitioner's second argument was that s. 6 of the *Hospital Act Regulation* itself represents an expression of governmental policy such that the section is subject to review under the *Charter*.

[41] The HAB addressed the first argument at paras. 78 and 79:

> [78] The requirement in the Order that unvaccinated staff were not permitted to work in hospitals clearly had an impact on hospital staffing. This was an operational matter which IH was required to address. The Order itself did not include any provisions or create any requirements regarding the employment or contractual relationship between hospital staff and health authorities, or provide any direction regarding implementation of the Order.
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> [79] The Panel is of the view that the Board of Director's decision regarding hospital privileges was a "routine or regular" operational decision. While made in response to the effects of the Order it did not constitute application or implementation of government policy.

[42] The second argument was rejected by the HAB at paras. 81 and 82:

> [81] Section 6 of the *Hospital Act Regulations* creates the authority for a hospital board to make decisions regarding hospital privileges. Despite the language in Bylaw Article 11.1.1 regarding procedures set out in section 6, that section does not delineate a specific process or procedure. In the Panel's view section 6 does not constitute government policy. Disciplinary processes undertaken by a health authority are therefore not implementation of such policy.
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> [82] The Panel is of the view that this matter is analogous to the scenario in *Stoffman,* and not *Eldridge,* and that the decision regarding the Appellant's

> hospital privileges was a routine, operational matter within the control of the IH Board of Directors. As such it did not fall within the ambit of the *Charter* and the Board of Directors was not required to consider the Appellant's *Charter* rights when making its decision to cancel her hospital privileges.

[43] The final aspect of the HAB's decision was the penalty or sanction, wherein it substituted its own decision for that of the IHA Board. The HAB concluded that cancellation of hospital privileges and medical staff appointment was not necessary, and instead concluded that the petitioner should be suspended, but if she remained ineligible to work at the time of her annual renewal, her privileges would not be renewed.

Issues

[44] Flowing from the petition and arguments raised by the petitioner, the issues to be determined in this judicial review are:

a) was the HAB bound by the *Charter* in disciplining the petitioner through operation of Articles 6.2.4 and 11.1.1 of the Bylaws;

b) if the HAB was bound by the *Charter*, was s. 7 of the *Charter* engaged; and

c) if s. 7 of the *Charter* was engaged, does the balancing exercise required under the *Doré/Loyola* framework lead to an inevitable conclusion such that this Court should not refer the matter back to the HAB for a fulsome *Charter* analysis.

Standard of Review

[45] The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*] established a presumption that the standard of review for all substantive matters is reasonableness. However, the presumption is rebutted where the legislature has prescribed a different standard or where the rule of law requires a correctness review.

[46] The HAB is subject to the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 [*ATA*], as set out in s. 46(4.2) of the *Hospital Act*, which contains a privative clause (s. 46(3.1)). The *ATA*'s significance to this matter is in ss. 44 and 58 of the *ATA*.

[47] Section 44 of the *ATA* provides that "the tribunal does not have jurisdiction over constitutional questions, which, according to s. 1 of the *ATA*, is "any question that requires notice to be given under s. 8 of the *Constitutional Question Act*". That includes any proceeding in which a constitutional remedy under s. 24(1) of the *Charter* is sought, or where the constitutional validity or applicability of any law is challenged.

[48] Section 58 of the *ATA* prescribes the standard of review that applies to the tribunal's decision. It provides that findings of fact and law or exercises of discretion over which the tribunal has exclusive jurisdiction must not be interfered with unless they are patently unreasonable, that questions of procedural fairness must be decided with regard to whether, in all the circumstances, the tribunal acted fairly, and all other questions are to be reviewed on the standard of correctness. Section 58 provides the following:

> **58** (1) If the Act under which the application arises contains or incorporates a privative clause, relative to the courts the tribunal must be considered to be an expert tribunal in relation to all matters over which it has exclusive jurisdiction.
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> (2) In a judicial review proceeding relating to expert tribunals under subsection (1)
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> a. a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable,
>
> b. questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly, and
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> c. for all matters other than those identified in paragraphs (a) and (b), the standard of review to be applied to the tribunal's decision is correctness.
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> (3) For the purposes of subsection (2) (a), a discretionary decision is patently unreasonable if the discretion
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> a. is exercised arbitrarily or in bad faith,
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> b. is exercised for an improper purpose,
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> c. is based entirely or predominantly on irrelevant factors, or
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> d. fails to take statutory requirements into account.

[49] The standard of patent unreasonableness is the most deferential standard of review and is distinct from the standard of reasonableness. *Vavilov* did not alter the patent unreasonableness standard, and its meaning remains unchanged. For a decision to be patently unreasonable, it must be "openly, clearly, evidently unreasonable", "clearly irrational", "almost borders on the absurd", or "so obviously flawed that no amount of curial deference can justify letting it stand": *Provincial Health Services Authority v. Campbell,* 2021 BCSC 823, at paras. 59 – 62.

[50] Where constitutional questions are raised, such as the standard of review on the applicability of the *Charter*, the standard of review is correctness. The reviewing court may find the tribunal's reasoning persuasive and adopt it, but ultimately the reviewing court must come to its own conclusion on the question: *Vavilov* at paras. 53 – 56. The parties agree that the standard of review on the applicability of the *Charter* in this case is correctness.

[51] The parties diverge as to whether the tribunal's analysis of *Charter* issues is reviewed on a standard of correctness or reasonableness. The petitioner argues that the recent Supreme Court of Canada decision in *York Region District School Board v. Elementary Teachers' Federation of Ontario*, 2024 SCC 22, prescribes a standard of correctness. However, the British Columbia Court of Appeal in *Vabuolas (Information and Privacy Commissioner) v. British Columbia*, 2025 BCCA 83, suggested the matter has further nuance (at para. 117).

[52] Importantly on this review, the HAB concluded that the *Charter* did not apply and as such there is no analysis to review. Further, the Court of Appeal in *Vabuolas*, without deciding the issue, suggests *York Region* establishes a bifurcated standard of review where correctness applies to the preliminary question as to whether the *Charter* applies (which includes the scope of the *Charter* protection and the appropriate framework of analysis) and reasonableness to the proportionate balancing that occurs at the second stage of the analysis under the *Doré/Loyola* framework: *Vabuolas* at para. 96. I note that these reasons do not extend beyond the first stage of the *Doré/Loyola* framework, and therefore the correctness standard applies throughout.

HAB Submissions

[53] The Court had the benefit of submissions on behalf of the HAB. Counsel for the HAB outlined the role of the HAB within the framework of the hospital system and the role of health regions, including the statutory framework.

[54] Counsel for the HAB pointed me to the *Charter* analysis and arguments before the HAB. She says these were very limited.

[55] The HAB outlined that if the court decides that the *Charter* applies, that question would not be referred back to the HAB. However, the HAB is equipped to undertake a *Charter* analysis if required and these matters were not fully canvassed before the HAB.

[56] The HAB acknowledges that it does have the jurisdiction to undertake the *Doré/Loyola* analysis, but did not do in its decision because they did not find that the *Charter* rights were engaged.

Discussion

Issue 1 – Application of the *Charter* to the HAB

[57] The petitioner says the HAB erred by concluding that the *Charter* did not apply to the IHA Board's decision to cancel her hospital privileges.

[58] The petitioner argues that the HAB was engaged in governmental action and therefore falls within the second branch of *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624, 1997 CanLII 327. The petitioner argues that the HAB was exercising a statutory power of compulsion through the vehicle of s. 6 of the *Hospital Act Regulation* when it disciplined her, and that the *Charter* is engaged based on the statutory power of compulsion.

[59] The petitioner says the HAB's finding that the question of the petitioner's hospital privileges was more in the nature of an operational matter, aligned with *Stoffman v. Vancouver General Hospital* [1990] 3 SCR 483, as opposed to *Eldridge*, was incorrect.

[60] The IHA agrees that the first question for the court to consider is whether the HAB was correct in concluding that the *Charter* did not apply. On the question of whether the *Charter* applies based on a delegated statutory power of compulsion, the IHA says that there is no compulsion in s. 6 of the *Hospital Act Regulation* and the principle has no application here.

[61] Regarding who the *Charter* applies to, s. 32 of the *Charter* provides as follows:

> Application of Charter
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> 32 (1) This Charter applies
>
> (a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and
>
> (b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

[62] In *Eldridge*, the Court concluded that an entity could be found to be subject to the *Charter* in two ways. In its recent decision in *Dickson v. Vuntut Gwitchin First Nation*, 2024 SCC 10, the Court confirmed that the analysis in *Eldridge* was still applicable:

> [61] More than a quarter century ago, La Forest J. for the Court in *Eldridge* distilled the jurisprudence and clarified the law. He held that an entity may be subject to the Charter in one of two ways. First, an entity may be found to be "government" for the purpose of s. 32(1) if it can be characterized as government by its very nature or because of the degree of governmental control exercised over it. In such a case, all the entity's activities are subject to the Charter. Second, even if an entity is not itself "government" for s. 32(1) purposes, it will be subject to the Charter with respect to particular activities that can be ascribed to government because they are "'governmental' in nature" (para. 44; see also *Greater Vancouver Transportation Authority*, at para. 16; *Lokan and Fenrick*, at §§ 2:21-2:23; *Régimbald and Newman*, at §18.15).

[63] In *Dickson*, the issue was the enforceability of a rule that required anyone who was elected as a band councillor to take up residence on settlement land within 14 days of having been elected. The Court concluded that the Vuntut Gwitchin First Nation was government by its nature and therefore the *Charter* applied under the first branch of *Eldridge*, but went on to find that the enforcement of the residency requirement was a 'governmental activity' under the second branch.

[64] The Court in *Dickson* discussed the power of compulsion as a relevant factor in determining whether or not the *Charter* applies under the second branch of the *Eldridge* framework at paras. 67 and 68, referring to the work of Professors Hogg and Wright:

> [67] Professors Hogg and Wright have explained why action taken under statutory authority involving a power of compulsion is a relevant factor when considering the application of the Charter. They note that even if an entity is otherwise independent of the federal and provincial governments, the presence of a delegated statutory power of compulsion means that the entity has a "coercive power of governance" that is not possessed by private individuals, corporations, or organizations (§ 37:8). As they explain, "it is the exercise of a power of compulsion that makes the Charter applicable to bodies exercising statutory authority" (§ 37:8). We agree.
>
> [68] As Professors Hogg and Wright note, the presence of a delegated statutory power of compulsion helps explain the Court's decision that the Charter applied to the Human Rights Commission in *Blencoe*, as well as its earlier decisions that the Charter applied to an arbitrator exercising powers conferred by statute (*Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038); a municipal by-law made under statutory authority that prohibited postering on public property (*Ramsden v. Peterborough (City)*, [1993] 2 S.C.R.1084); the rules of a law society restricting entry to the legal profession by out-of-province law firms (*Black v. Law Society of Alberta*, [1989] 1 S.C.R. 591); and the terms of an insurance policy stipulated by statute (*Miron v. Trudel*, [1995] 2 S.C.R. 418). See also Brun, Tremblay and Brouillet, at pp. 972-73 2024 SCC 10 (CanLII) ([TRANSLATION] "The word 'government' in section 32 receives a functional interpretation . . . . The Canadian Charter therefore applies to all paragovernmental authorities in the public administration when they perform a government function, that is, when they exercise public authority under the law, by unilaterally compelling human behaviour").
>
> [Emphasis added.]

[65] The petitioner points to the underlined portion above, and argues that the HAB is using its authority to discipline under s. 6 of the *Hospital Act Regulation*, to compel the petitioner to behave in a certain manner, presumably to become vaccinated, against her wishes and contrary to her right to refuse the unwanted medical treatment.

[66] In *York Region*, the Supreme Court of Canada stated the following:

> [83] The purpose of the *Eldridge* framework is to interpret s. 32(1) so as to ensure that the federal and provincial governments do not evade their constitutional responsibilities under the *Charter* by delegating governmental functions to nongovernmental entities, for example private enterprises.

[67] In *York Region*, the question before the Supreme Court of Canada was whether the *Charter* applies to the Ontario public school boards such that the affected teachers' s. 8 rights were engaged. In *York Region*, a school principal had accessed a teacher's computer, and had relied on the results of the search to initiate disciplinary proceedings. When considering whether the teacher's *Charter* rights were engaged, the Court endorsed the two-branch framework it had previously established in its 1997 ruling in *Eldridge*:

> [73] In this regard, the landmark ruling is *Eldridge*, in which this Court established a two-branch framework:
>
> > First, it may be determined that the entity is itself "government" for the purposes of s. 32. This involves an inquiry into whether the entity whose actions have given rise to the alleged Charter breach can, either by its very nature or in virtue of the degree of governmental control exercised over it, properly be characterized as "government" within the meaning of s. 32(1). In such cases, all of the activities of the entity will be subject to the Charter, regardless of whether the activity in which it is engaged could, if performed by a non-governmental actor, correctly be described as "private". Second, an entity may be found to attract Charter scrutiny with respect to a particular activity that can be ascribed to government. This demands an investigation not into the nature of the entity whose activity is impugned but rather into the nature of the activity itself. In such cases, in other words, one must scrutinize the quality of the act at issue, rather than the quality of the actor. [para. 44]

[68] I do not accept that a hospital board's ability to exclude a practitioner from the hospital for failing to comply with the Bylaws is a decision that is governmental in nature. The decision to require all healthcare workers including physicians to be vaccinated in order to practice in hospitals was made by the public health officer by way of the PHO. However, the decision regarding how to discipline the hospital medical staff for their breach of the PHO was not subject to governmental control under the *Hospital Act*, as the responsibility for adopting disciplinary measures for governmental policies rests with the IHA Board.

[69] In *Stoffman v. Vancouver General Hospital*, [1990] 3 S.C.R. 483, the Supreme Court of Canada examined the nature of a hospital regulation requiring doctors with hospital admitting privileges to retire at the age of 65 by way of automatic non-renewal of their appointment and privileges. The Court considered whether the hospital board,

which was enforcing the mandatory retirement regulation was in the nature of an administrative branch of government, and whether the decision to not renew Dr. Stoffman's hospital privileges was in effect the act of the executive branch of government.

[70] LaForest J. held the following at page 513:

> In sum, it is crucial in assessing the statutory framework summarized by the Court of Appeal to bear in mind the difference between ultimate or extraordinary, and routine or regular control. While it is indisputable that the fate of Vancouver General is ultimately in the hands of the Government of British Columbia, I do not think it can be said that the *Hospital Act* makes the daily or routine aspects of the hospital's operation, such as the adoption of policy with respect to the renewal of the admitting privileges of medical staff, subject to government control. On the contrary, it implies that the responsibility for such matters will, barring some extraordinary development, rest with the Vancouver General's Board of Trustees. It could in fact be said to contain an explicit recognition to this effect, in that it defines "board of management" as "the directors, managers, trustee or other body of persons having the control and management of a hospital" (s. 1).
>
> [Emphasis added.]

[71] The Court concluded in *Stoffman* that the hospital was not 'government' for the purposes of s. 32 of the *Charter*, finding that it was 'adopting and administering' the impugned regulation.

[72] The Supreme Court of Canada referred to and explained its decision in *Stoffman* when formulating the test for whether the *Charter* applied in its subsequent decision in *Eldridge*.

[73] In *Eldridge*, at issue was whether a failure by the Medical Services Plan and hospitals to provide sign language interpreters for hearing-impaired patients in relation to clinical services that were insured under the *Hospital Insurance Act* constituted discrimination under s. 15 of the *Charter*. The Supreme Court of Canada concluded as follows at paras. 50 and 51:

> [50] The structure of the Hospital Insurance Act reveals, that in providing medically necessary services, hospitals carry out a specific governmental objective. The Act is not, as the respondents contend, simply a mechanism to prevent hospitals from charging for their services. Rather, it provides for the delivery of a comprehensive social program. Hospitals are merely the vehicles the legislature has chosen to deliver this program. It is true that hospitals existed

> long before the statute, and have historically provided a full range of medical services. In recent decades, however, health care, including that generally provided by hospitals, has become a keystone tenet of governmental policy. The interlocking federal-provincial medicare system I have described entitles all Canadians to essential medical services without charge. Although this system has retained some of the trappings o the private insurance model from which it derived, it has come to resemble more closely a government service than an insurance scheme….
>
> [51] Unlike *Stoffman*, then, in the present case there is a "direct and … precisely defined connection" between a specific government policy and the hospital's impugned conduct. The alleged discrimination – the failure to provide sign language interpretation – is intimately connected to the medical service delivery system instituted by the legislation. The provision of these services is not simply a matter of internal hospital management; it is an expression of government policy. Thus, while hospitals may be autonomous in their day-to-day operations, they act as agents for the government in providing the specific medical services set out in the Act.

[74] This case is closer to *Stoffman* than it is to *Eldridge*. The decision in issue in both was a medical practitioner's hospital privileges - in *Stoffman*, whether they should be renewed and, in this case, whether those privileges should be terminated or suspended – but in both cases, the underlying rule had been made by government, and the decision maker was simply adopting and implementing that policy.

[75] Although established and empowered by statute and providing a public service, the IHA Board did not exercise a statutory power of compulsion through s. 6 of the *Hospital Act Regulation* in disciplining the petitioner and it was not controlled by government. Like in *Stoffman*, the current *Hospital Act* does not make the routine aspects of the Hospital's operation, such as the adoption of policy with respect to the suspension and non-renewal of the medical staff, subject to government control. The responsibility for discipline procedures related to the privileges of the medical staff rests with the IHA Board. I conclude that the HAB was correct when it concluded that the circumstances in this case were more analogous to those in *Stoffman* than *Eldridge*.

[76] It follows that I conclude that the *Charter* does not apply to the circumstances in this case.

Issue 2 – Engagement of Section 7 of the *Charter*

[77] As I have already concluded that the HAB was correct in its decision to conclude that the *Charter* did not apply to the IHA Board's decision to cancel the petitioner's hospital privileges, it is not necessary to consider whether the HAB's decision engaged the petitioner's s. 7 rights to life, liberty, and security of the person. However, I will consider this further argument raised by the petitioner for the sake of completeness and in the event my conclusion on the first issue is incorrect.

[78] For the reasons that follow, I conclude that s. 7 of the *Charter* was not engaged, and the petition may also be dismissed on this basis.

[79] The petitioner says the HAB erred in concluding that the *Charter* did not apply, and had it not so erred, the HAB would have been obligated to undertake the analysis prescribed in the Supreme Court of Canada's decisions in *Doré v. Barreau*, 2012 SCC 12 and *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12 [*Loyola*]. The required analysis would have involved a determination of whether the limitation of the *Charter* right, in this case the petitioner's s. 7 right to life, liberty, and security of the person, is proportionate in light of the state's objective and therefore justified as a reasonable measure in a free and democratic society under s. 1 of the *Charter*.

[80] Under the framework established in *Doré/Loyola*, the preliminary question is whether the administrative decision engages the *Charter* by limiting its protections. If a limitation occurs, the question becomes whether the decision reflects a proportionate balancing of *Charter* protections in light of statutory objectives: *Vabuolas* at para. 90.

[81] The petitioner argues that the HAB's decision to impose a disciplinary sanction for declining to be vaccinated impacts her s. 7 rights because the right to life, liberty and security of the person includes the ability to earn an income and provide for one's family.

[82] The petitioner argues that she has suffered severe consequences as a result of being prevented from exercising her privileges and working as a hospitalist and teaching physician at the Hospital. She testified before the HAB that she suffered

significant emotional and financial consequences. She was the breadwinner for her family and has been so since she started her medical career. After she was unemployed for two months following the IHA Board decision, she had to sell her home in Kamloops and move her husband and four children to 100 Mile House to work as a family physician. She found the experience humiliating on a personal and professional level, having to explain why she was no longer a hospitalist, why she was working in 100 Mile House as a family physician, why she could not work in the emergency room, and why she was not teaching any longer. She argues that there is a 'black mark' against her as a result of having been subject to discipline, something she must disclose each and every time she applies for different positions.

[83] The petitioner concedes that the primary concern is the 'black mark' against her name and the effect on her reputation. That is, she acknowledges her loss of income and subsequent relocation to find other work was a consequence of the PHO, and not the disciplinary proceeding.

[84] The petitioner argues there was no compelling state objective to justify the state's interference with her s. 7 right, as the HAB found it was not necessary to discipline the petitioner to comply with the PHO, nor was there a compelling administrative or operational reason for the discipline. The petitioner says her decision not to be vaccinated was one she was entitled to make and because the PHO prevented her from working at the Hospital, which she did not do, she ought not to have been disciplined at all.

[85] The IHA argues that the petitioner's inability to provide services under her contract warranted a disciplinary response. The IHA says the HAB did not reject recruitment as a legitimate basis for discipline, nor was recruitment in issue as a matter of balancing the statutory objectives. Rather, recruitment was argued with regard to the question of the appropriate disciplinary response or penalty. What the HAB found at paras. 104-108 was not that the petitioner could not be terminated, but rather it was not necessary to do so at that point in time. There were five vacancies, including the petitioner's position, and the IHA was actively recruiting for two positions. As such, it

was not necessary to terminate the petitioner's position to create a vacancy when there was no immediate likelihood that it was going to be filled. However, at paras. 108-109, the suspension would be in effect only until the IHA needed to fill the position.

[86] The IHA says the HAB was correct in holding that s. 7 of the *Charter* was not engaged and refers to this Court's decision in *Hoogerbrug v. British Columbia,* 2024 BCSC 794, as persuasive, if not determinative, on this point.

[87] I find this Court's recent decision in *Hoogerbrug* determinative of this issue. In *Hoogerbrug*, the petitioners were various healthcare workers who lost their jobs because they were unvaccinated against COVID-19. The petitioners challenged the PHOs that required vaccination in order to work in healthcare facilities in British Columbia. The arguments advanced were fourfold, and are summarized as follows:

> [4] . . . First, they say that, by October 2023, COVID-19 was no longer "an immediate and significant risk" to public health in British Columbia, and therefore the statutory preconditions for the continued use of the PHO's emergency powers no longer applied.
>
> [5] Second, they say the scientific record no longer indicated that unvaccinated healthcare workers posed any greater risk to vulnerable patients, or the healthcare system generally, than vaccinated workers.
>
> [6] Third, those Petitioners who worked remotely or held purely administrative positions argue that their inclusion in the orders was unreasonable, given their lack of contact with vulnerable patients or the frontline healthcare workers who care for them.
>
> [7] Fourth, some Petitioners challenge the Orders on constitutional grounds under the *Canadian Charter of Rights and Freedoms*. They argue that, by forcing them to choose between adherence to their fundamental religious and personal beliefs about vaccination, or keeping their jobs in their chosen professions, the Orders infringed their s. 2(a) right to freedom of conscience and religion, and their s. 7 right to liberty and security of the person.

[88] In the result, Justice Coval concluded that the PHOs were reasonable in the circumstances and found in favour of the Province on all matters with one exception, which was that there was no justification to terminate workers who either were able to work remotely or did not come into contact with others.

[89] The Court engaged in an analysis of s. 2(a) of the *Charter* which protects religious freedoms and concluded that the PHOs limited the religious petitioners' s. 2(a)

rights, but found that the petitioners who had relied on freedom of conscience had failed to establish an infringement of a *Charter* right.

[90] Importantly for this judicial review, Coval J. concluded that s. 7 of the *Charter* was not engaged. The Court concluded that the PHOs did not compel the petitioners to accept unwanted medical treatment and therefore their medical self-determination or concerns regarding bodily integrity were not affected.

[91] Turning to the Court's analysis of s. 7, which is germane to this application, the Court rejected the petitioners' arguments that the PHOs infringed their right to liberty by interfering with medical self-determination, and their right to security of the person had been infringed by any resulting psychological stress and harm as a consequence.

[92] The Court's conclusions on whether the PHOs limited the petitioners' s. 7 rights is found starting at para. 276. First, the Court accepted that the PHOs compelled none of the petitioners to accept unwanted medical treatment and therefore their rights associated with bodily integrity and medical self-determination were not engaged (para. 276). The Court concluded at para. 277 that the petitioners lost their jobs as a consequence of the decision they made to remain unvaccinated, which is an analogous situation to this case. Of note, Justice Coval stated the following at para. 277:

> [277] . . . In my view, this loss did not engage their s. 7 right to liberty because of the well-established principle that s. 7 does not protect the right to work in any specific employment or particular profession, particularly when the job-loss arises from non-compliance with its governing rules and regulations. This is not a constitutionally-protected fundamental life choice.

[93] Also germane to this application, the Court rejected the argument that the security of the person rights were engaged as a result of the impact of the consequences that flowed from their personal choices:

> [278] In my view, their s. 7 security of the person rights were also not engaged. The fact that they experienced serious consequences, including stress and hardship, from choosing to follow their personal convictions about vaccination does not make the Orders a state interference with their physical or psychological integrity. In effect, their position amounts to security of the person being engaged unless vaccination were a matter of free choice without any serious state-imposed consequences for refusal. As stated in by Chief Justice Lamer in *J.G.* at para. 59*:*

> … It is clear that the right to security of the person does not protect the individual from the ordinary stresses and anxieties that a person of reasonable sensibility would suffer as a result of government action. If the right were interpreted with such broad sweep, countless government initiatives could be challenged on the ground that they infringe the right to security of the person, massively expanding the scope of judicial review, and, in the process, trivializing what it means for a right to be constitutionally protected …
>
> [Emphasis in original.]

[94] As such, the Court in *Hoogerbrug* rejected the suggestion that any stigma or embarrassment, or in the petitioner's words, the "black mark" on her record, were sufficient to engage the rights protected under s. 7 of the *Charter*.

[95] In paras. 284 to 294, Coval J. considered a number of decisions, both from British Columbia and elsewhere, regarding psychological concerns in the context of a s. 7 analysis, and concluded that the psychological issues were the consequence of following their personal convictions, and s. 7 was not engaged. At paras. 293 and 294, the Court stated the following:

> [293] In *Lewis*, Ms. Lewis risked dying if she did not receive an organ transplant. She was ineligible for the transplant program, however, because she was unvaccinated against COVID-19. She argued that this ineligibility violated her s. 7 rights to life and security of the person. The Alberta Court of Appeal held that the anguish of her situation was not state-imposed. Rather, her serious psychological stress was caused by her personal views about vaccination, and the consequences of the decisions she made as a result:
>
> > [60] … The consequences of Ms Lewis' refusal have caused her anguish but s 7 of the *Charter* only protects against serious psychological stress which is "state-imposed": *Blencoe* at para 57, citing *Morgentaler* at 56. We are not persuaded the COVID-19 vaccine requirement, deemed medically necessary to protect Ms Lewis and others in the transplant context, amounts to serious state-imposed psychological stress.
>
> [294] Based on the analysis above, I respectfully depart from the finding in *United Steelworkers* that the vaccine mandate engaged the Petitioners' s. 7 rights. The stress and difficulties they have endured from following their personal convictions about the vaccine do not engage s. 7 rights of liberty or security of the person.

[96] In summary, the Court in *Hoogerbrug* found that s. 7 does not protect the right to work in any particular job or position, and while there may be consequences, both financial and psychological, that arise from declining to be vaccinated, those

consequences flow from persons exercising the right not to be vaccinated and not from any interference with a *Charter*-protected right. In the result, the Court in *Hoogerbrug* concluded that s. 7 rights were not engaged in circumstances where healthcare workers chose not to be vaccinated.

[97] The *Hoogerbrug* matter involved the hearing of three petitions. Some of the petitioners, including those who had advanced the s. 7 arguments before this Court, appealed and the Court of Appeal's decision is *Tatlock v. British Columbia (Attorney General)*, 2025 BCCA 181. By the time the appeal was heard, the PHOs had been lifted and, as a result, the Court of Appeal declined to hear the matter because it was moot. However, starting at para. 36, the Court of Appeal made some observations regarding the constitutional issues raised, including those with regard to s. 7. The Court of Appeal summarized the positions of the parties at paras. 38 and 39.

[98] At para. 38 in *Tatlock*, the Court of Appeal referred to authorities that state-imposed limitations on employment or on an occupation do not normally engage the constitutionally protected right to liberty:

> [38] With respect to s. 7 of the *Charter*, the judge relied on a well-known line of authorities holding that state-imposed limitations on employment or the practice of an occupation do not engage the constitutionally protected right to liberty: see *Siemens v. Manitoba (Attorney General),* 2003 SCC 3; *Walker v. Prince Edward Island,* [1995] 2 S.C.R. 407; *Green v. Law Society of Manitoba,* 2017 SCC 20; *B.C. Teachers' Federation v. School District No. 39 (Vancouver),* 2003 BCCA 100 (Prowse J.A. dissenting); *Tanase v. College of Dental Hygienists of Ontario,* 2021 ONCA 482; *Mussani v. College of Physicians and Surgeons of Ontario* (2004), 248 D.L.R. (4th) 632 (ONCA); *Maddock v. British Columbia,* 2022 BCSC 1605, appeal dismissed as moot in *Kassian* 2023. The weight of authority certainly favours that view.

[99] The Court went on to say at para. 39 that even if s. 7 were engaged, the remainder of the analysis, which requires the balancing under the *Doré* framework, would be case specific:

> [39] . . . We prefer to leave any discussion of the merits of this argument to a case that is not otherwise moot. We say this because even if the appellants were successful in establishing that their s. 7 rights were engaged, the remainder of the s. 7 analysis, and any subsequent balancing of rights and interests under the *Doré* framework, would once again be necessarily case-specific. The outcome would be of no legal relevance to anyone going forward.

[100] The Court then went on to further clarify at paras. 40 to 42 as follows:

> [40] We wish to make one further comment. This decision, restricted as it is to an application to quash this appeal as moot, should not be taken to stand for the proposition that s. 7 rights, be they those of healthcare workers or others, can never be infringed by public health orders, including those relating to employment, in a public health emergency. As it concerns s. 7, the effect of this Court's decision is only to defer consideration of such issues—including those raised by the appellants relating to the proper characterisation of theirs and similar claims under s. 7—to a future case, should one arise.
>
> [41] As this Court stated in *Warner,* discussing the "right to roam" under s. 7:
>
> > [49] Mr. Warner submits that the effect of the Chief Justice's decision is to find that freedom of movement and "the right to roam" can never result in a finding of a s. 7 breach in the context of public health orders such as those at issue here. We disagree…
> >
> > [51] We also recognize that due to their broad nature and scope, certain features of the Impugned Orders could, at least in theory, raise questions which could impact s. 7. For example, in a broad sense, we can accept s. 7 could be engaged if a person were arbitrarily prevented from attending an event or a particular location when others were not. Having said that, we observe, respectfully, that counsel had difficulty in identifying the features of any test which could assist in deciding if the section were to be engaged.
> >
> > [Emphasis added.]
>
> [42] It bears emphasizing that whether s. 7 or other *Charter* rights have been infringed is case-specific.

[101] The petitioner argues that *Hoogerbrug* cannot be determinative of the s. 7 claims as the Court of Appeal in *Tatlock* left the s. 7 arguments for another day. She also argues that the alleged limit imposed on the right (loss of employment in *Hoogerbrug* vs. disciplinary action here) and the impugned act (the PHO vs. the Bylaws) distinguish *Hoogerbrug* in these circumstances.

[102] In *R. v. Sullivan*, 2022 SCC 19, the Supreme Court of Canada confirmed that horizontal *stare decisis* applies to courts of coordinate jurisdiction within a province.

[103] The questions before this Court are not identical to those that were before the Court in *Hoogerbrug*; however, I am not aware of any principled reason to depart from or otherwise distinguish this Court's conclusions on the applicability of s. 7. Indeed, the petitioner in our case seeks only the removal of the perceived stigma that arises from a disciplinary proceeding. She did not lose her job, and the evidence before the HAB was

that she could reapply once the PHOs were lifted. Arguably then, the impact of the decision under review on the petitioner is less significant than the impacts on the parties in the *Hoogerbrug* decision.

[104] Consequently, the perceived stigma and psychological stress the petitioner endured from following her personal convictions to not be vaccinated do not engage s. 7 of the *Charter* as it did not limit its protection on the rights of liberty and security of the person in the circumstances of this case.

[105] As the HAB's decision did not engage s. 7 of the *Charter*, it is not necessary to consider whether it reflects a proportionate balancing of *Charter* protections in light of statutory objectives under the second stage of the *Doré/Loyola* framework.

Issue 3 – Remittance to the HAB

[106] The petitioner further says that had the HAB undertaken the balancing exercise as required under the *Doré*/*Loyola* framework, the outcome is inevitable such that the court should undertake its own analysis rather than referring the matter back to the tribunal. As a result of my findings that the HAB was correct in finding that the IHA Board was not required to consider the petitioner's *Charter* rights when making its decision to cancel her hospital privileges and that the HAB's decision did not engage s. 7 of the *Charter*, I need not address the issue of remedy.

Conclusion

[107] I conclude that the *Charter* does not apply to the circumstances in this case. Even were the HAB required to consider the petitioner's *Charter* rights, I conclude that the petitioner's s. 7 rights were not engaged. Accordingly, the petition is dismissed, with costs to the IHA.

"Wilson J."