IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Fadaei v. The National Dental Examining Board of Canada,* 2025 BCSC 1527

Date: 20250808
Docket: S250767
Registry: Vancouver

Between:

Ehsan Fadaei

Petitioner

And:

The National Dental Examining Board of Canada

Respondent

On judicial review from: A decision of the National Dental Examining Board of Canada dated October 9, 2024 under NDEB ID No. 530523

Before: The Honourable Justice G.C. Weatherill

Reasons for Judgment

Counsel for the Petitioner:	C. Haghighi
Counsel for the Respondent:	B. Trickett T. Nichini
Place and Date of Hearing:	Vancouver, B.C. July 7, 2025
Place and Date of Judgment:	Vancouver, B.C. August 8, 2025

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Introduction

[1] The petitioner challenges, by way of judicial review, the decision of the respondent, The National Dental Examining Board of Canada, dated October 9, 2024 (the "Decision"). The Decision found that the petitioner had failed the Provisional Crown Restoration component of his National Dental Examination of Clinical Competence ("NDECC").

[2] The petitioner seeks the following orders:

a) that the Decision be quashed;

b) the respondent has 30 days to re-evaluate the Decision; and

c) costs of this proceeding at Scale C.

[3] The petitioner challenges the Decision on two grounds:

a) Procedural Fairness; and

b) Unreasonableness.

Background

[4] The petitioner completed his Doctor of Dental Medicine degree in the Philippines in 2017 from an institution that is not accredited in Canada. Shortly thereafter, he moved to British Columbia and began the process necessary to obtain certification from the respondent that would entitle him to practice dentistry in British Columbia.

[5] To obtain accreditation, a candidate must complete either:

a) a program offered by university-based dental institutions accredited by the Commission on Dental Accreditation of Canada;

b) a qualifying and degree program offered by dentistry faculty in Canada that updates the skills of graduates of non-accredited programs to meet the requirements of dental practice in Canada; or

c) the respondent's equivalency process (the "Equivalency Process).

[6] The petitioner pursued the Equivalency Process.

[7] The respondent is a not-for-profit private corporation created in 1952 by a private Act of Parliament, the *National Dental Examining Board Act*, S.C. 1952, c. 69, as amended by S.C. 1973, c. 55 [*Act*]. It does not teach or educate dentists. Rather it:

a) establishes the qualifying conditions for a national standard of dental competence for general practitioners;

b) establishes and maintains an examination facility to test to this national standard of dental competence, and

c) issues Certificates of Qualification to dentists who successfully meet this national standard.

[8] There is no statutory right of appeal and no privative clause in the *Act*.

[9] The testing and grading criteria for the competency assessments are publicised by the respondent. A candidate's assessment results are reported to the candidate as a "pass" or a "fail". No reasons are provided to a candidate for a "fail" grade.

[10] One of the several competency assessments conducted by the respondent is the NDECC, a two-day examination during which a candidate performs eight clinical skills modules and completes the "Situational Judgement" component comprising ten modules (the "Clinical Skills component"). The eight clinical skills modules within the Clinical Skills component include a "Provisional Crown Restoration" component, a restoration procedure used to protect and restore a tooth while a permanent restoration is being fabricated.

[11] With respect to the Provisional Crown Restoration component of the NDECC, there are 14 categories of errors that result in a failing grade. One of the categories has four sub-categories (the "Failing Errors").

[12] Although the petitioner attempted to pass the Clinical Skills component of the NDECC three previous times, he failed for various reasons. On each of the previous occasions, he passed the skills requirement of the Provisional Crown Restoration component, but failed others.

[13] The petitioner's fourth attempt to pass the Clinical Skills component occurred on July 3, 2024. He passed all of the criteria except the skills requirement of the Provisional Crown Restoration component because he made "one or more of the Failing Errors", resulting in a failure of the NDECC. The results were delivered to the petitioner on October 9, 2024.

[14] As he was entitled to do, the petitioner requested a verification of his examination score. His score was manually recalculated by the respondent. On November 12, 2024, the respondent communicated to him that the recalculation resulted in the same fail result.

[15] On January 21, 2025, the respondent's executive director explained to the petitioner's counsel that the petitioner made "one or more of the [Failing Errors] to fail the provisional crown requirement" and that the respondent "is not a teaching institution and does not provide additional explanation for the result of each requirement".

[16] Although there is no longer an appeal process available to the petitioner under the respondent's currently bylaws, he is entitled to take the NDECC any number of times within 60 months.

[17] While not the subject of this judicial review, it is important to note that the petitioner took the NDECC again in April 2025. Since the hearing of this petition, I have been informed that he failed the examination for the fifth time, having been unsuccessful in three clinical skills requirements, including the Provisional Crown Restoration component.

Analysis

Procedural Fairness

[18] The petitioner submits that the respondent breached its common law duty of procedural fairness by failing to provide written reasons for its Decision.

[19] The petitioner also submits that the respondent breached a statutory duty of fairness. In particular, the petitioner points to s. 6(c) of the *Act*, which reads:

> **6.** The purposes of the Board shall be
>
> […]
>
> (b) to ensure that the rules and regulations governing examinations will be acceptable to all participating licensing bodies and provide for the conducting of examinations in a manner fair and equitable for all concerned;
>
> […]
>
> [Emphasis added.]

[20] This argument was not particularly well developed, nor was I provided with any authority in support of the proposition that this creates a particular statutory duty above and beyond the common law duty of fairness. In any event, I am not satisfied that a statutory duty to release written reasons exists solely on the basis of this provision.

Standard of Review

[21] The standard of review on questions of procedural fairness is correctness, sometimes termed "fairness": *R.N.L. Investments Ltd. v. British Columbia (Agricultural Land Commission)*, 2021 BCCA 67 at para. 56 [*RNL*]; see also *Mission Institution v. Khela*, 2014 SCC 24 at para. 79.

[22] The process undertaken by an administrative decision maker either complies with the duty of fairness or it does not. The court on judicial review owes no deference to the decision maker on procedural fairness issues: *RNL* at para. 56, citing *Murray Purcha & Son Ltd. v. Barriere (District)*, 2019 BCCA 4 at para. 23.

Legal Framework

[23] An administrative tribunal owes a duty of fairness where its decisions affect the "rights, privileges or interests of an individual": *Cardinal v. Director of Kent Institution,* [1985] 2 S.C.R. 643 at 653, 1985 CanLII 23 (S.C.C.). Absent clear statutory language to the contrary, the duty of fairness exists at common law regardless of the specific procedures imposed by a tribunal's enabling statute;

however, the existence of a duty of fairness does not determine its specific requirements: *RNL* at para. 58.

[24] The duty of procedural fairness in administrative law is "'eminently variable', inherently flexible and context-specific": *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 77 [*Vavilov*]. Where a particular decision-making context gives rise to the duty of procedural fairness, the specific contents of that duty will be determined with reference to all of the circumstances: *Vavilov* at para. 77, citing *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at para. 21, 1999 CanLII 699 (S.C.C.).

[25] The Supreme Court of Canada in *Baker* at paras. 23–27 set out the following non-exhaustive list of factors that inform the content of the duty of procedural fairness in a particular case, including whether written reasons are required:

1) the nature of the decision being made and the process followed in making it;
2) the nature of the statutory scheme;
3) the importance of the decision to the individual or individuals affected;
4) the legitimate expectations of the person challenging the decision; and
5) the choices of procedure made by the administrative decision maker itself.

[26] As explained by the Supreme Court of Canada in *Vavilov*, written reasons tend to be required in cases such as "those in which the decision-making process gives the parties participatory rights, an adverse decision would have a significant impact on an individual or there is a right of appeal": para. 77, citing *Baker* at para. 43.

Was the Respondent's Refusal to Provide an Explanation a Breach of its Duty of Procedural Fairness?

[27] The petitioner takes no issue with any aspect of the process by which his competency was assessed by the respondent. He does not allege that the

examination processes are procedurally unfair. Rather, the petitioner challenges the refusal by the respondent to provide him with the reason for why he failed the skills requirement of the Provisional Crown Restoration component.

[28] Counsel for the petitioner relies on the decision of the Ontario Superior Court of Justice in *Daneshvar v. Canada (National Dental Examining Board*), [2002] O.J. No. 2487 (S. Ct. J. – Div. Ct.), 2002 CarswellOnt 2067. In that case, a judicial review was brought against the same respondent as in the case at bar. The applicant, Ms. Daneshvar, had received a failing grade on one component of her Clinical III examination, such that she failed the examination. At that time, the respondent had established in its bylaws an appeal process for unsuccessful candidates. Ms. Daneshvar appealed her failure to the Appeal Committee and her appeal was rejected with no explanation.

[29] The Ontario Superior Court of Justice in *Daneshvar* concluded that, despite the increased workload for the Appeal Committee, the lack of reasons was “a serious flaw in the present system”. The Court stated that there was no need to deplete the forests of Canada with the issuance of lengthy written reasons—rather the heart of the matter was the need for some kind of an explanation: para. 18.

[30] At the time of the decision in *Daneshvar*, there was an appeal process established by the respondent, which the Court concluded required some explanation to be given. In 2022, the respondent amended its bylaws, *inter alia*, by eliminating the appeal process. It did so:

> […] in response to a clear line of Court precedents wherein the [respondent] and its examination procedures were consistently upheld by superior and appellate courts in Ontario and in British Columbia. The change reduces the administrative burden faced by the [respondent] in providing reasons and responding to a large number of substantive appeals.

[31] The duty of procedural fairness does not require decision makers to provide reasons for every decision made in an administrative context. Cases in which written reasons tend to be required include those in which the decision-making process

gives the parties participatory rights, an adverse decision would have a significant impact on an individual or there is a right of appeal: *RNL*, at para. 64.

[32] To determine whether the respondent breached its duty of procedural fairness, I turn to the *Baker* factors.

1) Decision and Process

[33] The first *Baker* factor is the nature of the decision being made and the process followed in making it. The more closely an administrative process mirrors the judicial process, “the more likely it is that procedural protections closer to the trial model will be required by the duty of fairness”: *Baker* at para. 23.

[34] Counsel for the respondent submits that the Decision is “simply the pass or fail result of a requirement in a dental clinical competency examination”, with no consideration of submissions by the petitioner or broad exercise of discretion on part of the examiners.

[35] In this case, the process does not resemble judicial decision making. The examination process is not adversarial in nature, nor does it impact the petitioner’s participatory rights. I agree with the respondent that the Decision is simply a pass or fail result in respect of one anonymized examination in a series. Therefore, the duty of fairness owed in this case was not as rigorous as it would have been in an adversarial or quasi-judicial process: *Taseko Mines Ltd. v. Canada (Environment)*, 2017 FC 1100 at para. 61, aff’d 2019 FCA 320.

2) Nature of Statutory Scheme

[36] The second *Baker* factor is the nature of the statutory scheme. The role of the particular decision within the statutory scheme is relevant, and greater procedural protections will be required when there is no appeal procedure, or the decision is determinative of the issue and further requests cannot be submitted: *Baker* at para. 24.

[37] Counsel for the petitioner submits that the respondent's process now lacks any substantive appeal mechanism, relying on the Ontario Superior Court of Justice's comment in *Daneshvar* that where there is no hearing, "the role of a written explanation for the summary dismissal [of the appeal] is all the more important": para. 17.

[38] The respondent's bylaws provide a limited appeal mechanism if a candidate has compassionate reasons for appeal or believes there to be irregularities or inconsistencies in the conduct of the examination; as noted, the petitioner did not appeal the Decision through this process. Rather, the petitioner requested a manual recalculation of the results of his examination, as he was entitled to do. The petitioner may also retake the NDECC any number of times within the 60-month timeframe, or he may follow one of two different pathways to qualify for the certification examination offered by the respondent, namely, completing a program from an accredited institution or completing a qualifying and degree completion program.

[39] While the lack of a substantive appeal mechanism may support the imposition of greater procedural protections, there are other aspects of the statutory scheme which provide mechanisms for review or reconsideration, albeit not in the nature of a substantive appeal. The fact that the petitioner may take the NDECC again—as he has—suggests that the Decision is not "determinative of the issue" or preventative of further requests in the same way as if the petitioner was limited in how many times he could take the NDECC. This is distinguishable from *Daneshvar*, in which the petitioner would only be allowed "one final attempt" to pass the examination under the bylaw structure at that time: para. 16.

3) Importance of the Decision

[40] The third *Baker* factor is the importance of the decision to the individual or individuals affected. The greater the impact on the person affected by the decision, the greater the procedural protections that will be required: *Baker* at para. 25.

[41] Counsel for the petitioner submits that the “decision is ‘profoundly important’, affecting Mr. Fadaei’s ability to practice his chosen profession after a seven-year, $90,000 effort”. The respondent’s decision to issue the petitioner a failing grade in respect of the skills requirement of the Provisional Crown Restoration component obviously had an impact on him.

[42] The Ontario Superior Court of Justice in *Daneshvar* emphasized that the ability to pursue one’s chosen profession “goes to the heart of who we are as persons and has “huge economic consequences”: para. 16. The Supreme Court of Canada has also held that a “high standard of justice is required when the right to continue in one’s profession or employment is at stake”: *Kane v. Board of Governors of the University of British Columbia*, [1980] 1 S.C.R. 1105 at 1113, 1980 CanLII 10 (S.C.C.), cited with approval in *Baker* at para. 25.

[43] I recognize that the Decision has great personal and economic importance to the petitioner, and that he has spent significant time and money towards his accreditation. This factor, therefore, favours greater procedural protections. However, as discussed above, the petitioner is entitled to re-take the NDECC any number of times within 60 months or pursue alternate pathways to accreditation. While the Decision affects the petitioner’s ability to pursue his chosen profession, it does not represent a singular opportunity or denial to do so. In my view, while this is an important decision and as such requires a certain measure of procedural fairness, the general significance of vocational decision-making is somewhat tempered in the circumstances.

4) Legitimate Expectations

[44] The fourth *Baker* factor is the legitimate expectations of the person challenging the decision. This is based on the principle that the circumstances affecting procedural fairness take into account the promises or regular practices of administrative decision-makers: *Baker* at para. 26.

[45] The petitioner submits that, given the high stakes and "statutory duty of fairness", there is a legitimate expectation for a process that is not arbitrary. The petitioner asserts that a "decision without a reason is the very definition of arbitrary".

[46] The respondent's assessment processes and protocols, including the grading criteria for each clinical skills requirement, were published. The respondent applied those processes and protocols to the petitioner's assessment. It provided to the petitioner the results of the assessment, the specific skill that he failed, and the grading criteria required to achieve a pass. The petitioner had no reasonable basis for an expectation that he would receive anything other than a pass/fail grade.

5) Tribunal's Choices of Procedure

[47] The fifth *Baker* factor is the choices of procedure made by the administrative decision maker itself. This factor recognizes that the procedures imposed by the duty of fairness should take into account and respect the choices of procedure made by the decision maker, particularly when the enabling statute provides the decision maker the ability to choose its own procedures, or when the decision maker has expertise in determining what procedures are appropriate in the circumstances: *Baker* at para. 27.

[48] One of the enumerated purposes of the respondent is to provide for the conducting of examinations in a manner fair and equitable for all involved. The *Act* provides the respondent with significant latitude to choose its own procedures, including those pertaining to accreditation and examination: see for example s. 7 [powers of the Board] and s. 8 [enactment of bylaws and regulations] of the *Act*.

[49] I must give important weight to the choice of procedures made by the respondent and its institutional constraints, as well as the respondent's expertise in conducting dental clinical competency examinations and selecting the appropriate procedures for doing so: *Baker* at para. 27.

Conclusion

[50] The duty of procedural fairness does not require decision makers to provide written reasons for every administrative decision. As explained by the Court of Appeal in *RNL* at para. 64, when determining the content of the duty of fairness, "considerations of administrative efficiency and the burden associated with providing reasons are, among others, relevant factors and an appropriate balance must be struck". The respondent's "choice of procedures, as well as its institutional constraints, are entitled to respect in the judicial review context": *RNL* at para. 109.

[51] In my view, while the respondent did owe a duty of procedural fairness to the petitioner, the contents of this duty ought not be particularly onerous having regard to the *Baker* factors discussed above.

[52] The petitioner has failed to satisfy me that the respondent's application of its procedures was incorrect or in breach of its duty of procedural fairness.

Reasonableness

[53] The petitioner also challenges the Decision as substantively unreasonable. As I understand it, the crux of the petitioner's argument in this regard is that the lack of reasons for the Decision renders the Decision unreasonable.

[54] The parties agree that the standard of review to be applied to the merits of this administrative decision is that of reasonableness: see for example *RNL* at para. 57, *Vavilov* at paras. 15–16.

[55] In *Vavilov*, the Supreme Court of Canada stated:

> [15] In conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified. What distinguishes reasonableness review from correctness review is that the court conducting a reasonableness review must focus on the decision the administrative decision maker actually made, including the justification offered for it, and not on the conclusion the court itself would have reached in the administrative decision maker's place.

[56] A reviewing court ought to give respectful attention to a decision maker's experience and expertise and must review the decision in light of the history and context of the proceedings. For example, the reviewing court may consider publicly available policies or guidelines that informed the decision maker's reasoning: *Vavilov* at paras. 93–94.

[57] Ultimately, a reasonable decision is one that is based on internally coherent reasoning and is justified in light of the legal and factual constraints that bear on the decision. The Supreme Court of Canada in *Vavilov* held that the burden is on the challenging party to show that a decision is unreasonable:

> [99] A reviewing court must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision: *Dunsmuir* [*v. New Brunswick,* 2008 SCC 9], at paras. 47 and 74; *Catalyst* [*Paper Corp. v. North Cowichan (District),* 2012 SCC 2], at para. 13.
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> [100] The burden is on the party challenging the decision to show that it is unreasonable. Before a decision can be set aside on this basis, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. It would be improper for a reviewing court to overturn an administrative decision simply because its reasoning exhibits a minor misstep. Instead, the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable.

[58] The Court in *Vavilov* acknowledged that, in certain circumstances, neither the duty of procedural fairness nor the statutory scheme require formal reasons to be given at all: para. 136. In such circumstances, the reviewing court is to review the reasonableness of the outcome rather than the decision maker's reasoning process:

> [137] Admittedly, applying an approach to judicial review that prioritizes the decision maker's justification for its decisions can be challenging in cases in which formal reasons have not been provided. This will often occur where the decision-making process does not easily lend itself to producing a single set of reasons, for example, where a municipality passes a bylaw or a law society renders a decision by holding a vote: see, e.g., *Catalyst*; *Green* [*v. Law Society of Manitoba,* 2017 SCC 20]; [*Law Society of British Columbia v.*

> *Trinity Western University,* 2018 SCC 32]. However, even in such circumstances, the reasoning process that underlies the decision will not usually be opaque. It is important to recall that a reviewing court must look to the record as a whole to understand the decision, and that in doing so, the court will often uncover a clear rationale for the decision: *Baker*, at para. 44. For example, as McLachlin C.J. noted in *Catalyst*, "[t]he reasons for a municipal bylaw are traditionally deduced from the debate, deliberations and the statements of policy that give rise to the bylaw": para. 29. In that case, not only were "the reasons [in the sense of rationale] for the bylaw . . . clear to everyone", they had also been laid out in a five-year plan: para. 33. Conversely, even without reasons, it is possible for the record and the context to reveal that a decision was made on the basis of an improper motive or for another impermissible reason, as, for example, in *Roncarelli*. [*v. Duplessis*, [1959] S.C.R. 121
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> [138] There will nonetheless be situations in which no reasons have been provided and neither the record nor the larger context sheds light on the basis for the decision. In such a case, the reviewing court must still examine the decision in light of the relevant constraints on the decision maker in order to determine whether the decision is reasonable. But it is perhaps inevitable that without reasons, the analysis will then focus on the outcome rather than on the decision maker's reasoning process. This does not mean that reasonableness review is less robust in such circumstances, only that it takes a different shape.

[59] Here, the respondent administrative decision maker issued the petitioner a failing grade in respect of the clinical skills requirement of the Provisional Crown Restoration component. While the petitioner was informed which of the eight clinical skills requirements he had failed, he was not given formal reasons for the Decision. The petitioner argues that the respondent's failure to do so was unreasonable as it makes the Decision opaque and unreviewable.

[60] Aside from the lack of written reasons, the petitioner's argument with respect to the Decision being unreasonable is not particularly well developed. The petitioner cites two decisions involving the respondent in which the respondent had provided written reasons on appeal, under the previous bylaw structure: *Wan v. The National Dental Examining Board of Canada*, 2019 BCSC 32; and *Chauhan v. The National Dental Examining Board of Canada*, 2021 BCSC 1538. The petitioner argues that the Court was able to assess the reasonableness of these decisions because reasons had been issued, but that the lack of reasons in the Decision at issue here renders it unreviewable.

[61] I have dealt with the petitioner's submissions pertaining to the asserted need for written reasons above, in the context of procedural fairness. The Supreme Court of Canada in *Vavilov* made clear that, in many cases, neither the duty of procedural fairness nor the statutory scheme will require that formal reasons be given, and that administrative decisions are reviewable on a reasonableness standard with or without formal written reasons: *Vavilov* at paras. 136–138.

[62] In the absence of written reasons, I have considered the record as a whole and the context in which the Decision was made to understand the Decision and conduct a reasonableness review: *Vavilov* at paras. 137–138.

[63] According to the respondent's submissions, the respondent "establishes a single national standard for dental competence and the qualifying conditions for that standard", including the Equivalency Process, which ensures that "graduates from Non-Accredited Programs meet the national standard for dental competence". The NDECC, a component of the Equivalency Process, "sets the standards for clinical skills and situational judgment of beginning general practitioner dentists".

[64] The respondent establishes detailed grading criteria for each clinical skills requirement, which are updated regularly and published publicly in the NDECC Protocol. As noted, there are 14 categories of Failing Errors for the Provisional Crown Restoration component, one of which includes four sub-categories. Such publicly available policies or guidelines that inform a decision maker's work is an example of the context that a reviewing court may consider, and which may explain an aspect of the decision maker's reasoning process that is not apparent: *Vavilov* at para. 94.

[65] Despite the fact that the petitioner was not provided with written reasons for his failure of the Provisional Crown Restoration component of the NDECC, I am satisfied that the Decision was reasonable. Having respectful regard to the decision-making process established by the respondent, including the detailed grading criteria and the expertise of the respondent, I am unable to conclude that the Decision lacks internally coherent reasoning or is unjustifiable: *Vavilov* at paras. 93–94. Nor is there

anything in the record and context to suggest that the Decision was made on the basis of an improper motive or for another impermissible reason: *Vavilov* at para. 137.

Conclusion

[66] In light of the foregoing, I find that the respondent has complied with its duty of procedural fairness to the petitioner and the Decision is reasonable.

[67] Accordingly, the petition for judicial review is dismissed.

Costs

[68] The parties may address the issue of costs if they wish by contacting Supreme Court Scheduling within 30 days of these reasons to schedule a hearing before me.

"G.C. Weatherill J."