

**CITATION:** Ilic v. Canadore College, 2025 ONSC 4611  
**DIVISIONAL COURT FILE NO.:** 2222/24 (Sudbury)  
**DATE:** 20250813

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
DIVISIONAL COURT**

**MacLeod RSJ, McGee and Lococo JJ.**

**BETWEEN:** )  
)  
DAMJAN ILIC ) *Bay Ryley*, for the Applicant  
)  
Applicant )  
– and – )  
)  
)  
CANADORE COLLEGE and DR. VIVIAN ) *Thomas J. Davis*, for the Respondents  
PAPAIZ )  
)  
Respondents )  
)  
)  
) **HEARD at Sudbury:** April 15, 2025, some  
) participants by video conference

2025 ONSC 4611 (CanLII)

**REASONS FOR JUDGMENT**

**BY THE COURT**

**I. Introduction**

[1] The applicant Damjan Ilic seeks judicial review of the decision of the respondent Canador College (the “College”) dated April 26, 2024 (the “Decision”), refusing to allow Mr. Ilic to complete the College’s program in respiratory therapy. The respondent Dr. Vivian Papaiz (the Associate Dean of the College’s School of Health Sciences) notified Mr. Ilic of the Decision after he received an unsuccessful rating in a clinical placement in the final semester prior to his expected completion of the program. Mr. Ilic also challenges the College’s failure to accept his attempt to appeal the Decision under the College’s internal academic appeal policy and procedures.

[2] Mr. Ilic submits that the College’s conduct was unreasonable and procedurally unfair. The College denies acting unreasonably or unfairly and also asks the court to dismiss the application

for delay. Mr. Ilic seeks to extend the time for requesting judicial review beyond the statutory 30-day filing period, if required.

[3] For the reasons below, the application is dismissed without costs.

## II. Factual background

[4] Canador College is a publicly funded college of applied arts and technology established under the *Ontario Colleges of Applied Arts and Technology Act, 2002*, S.O. 2002, c. 8, Sched. F. The College offers a three-year Respiratory Therapy Program (the “RT Program” or the “program”) for students seeking to become a health professional as a registered respiratory therapist. The RT Program is governed by the *National Competency Framework for Respiratory Therapy* established by the National Alliance of Respiratory Therapy Regulatory Bodies, which promotes national standards for respiratory therapists. The College’s program includes College academic courses as well as clinical placements with health facilities in the program’s final year. The program requires mastery of core competencies and a minimum passing grade in all courses to complete the program.

[5] After graduating from secondary school in 2017, Mr. Ilic commenced the College’s RT Program in September 2018. He was 19 years old when he began the program. Since 2007, he had received accommodation for learning disabilities under an Individual Education Plan. Upon enrolling, he provided the College with his Individual Education Plan and registered with the College’s Student Resource Centre as a student with learning issues in need of accommodation.

[6] Mr. Ilic completed his first year of the RT Program in May 2019. In his affidavit, Mr. Ilic states that he then proceeded to the program’s second year, which he successfully completed during the following two academic years ended in Spring 2021.<sup>1</sup> In her affidavit, Dr. Papaiz refers to course-related difficulties that Mr. Ilic encountered during that period. He received an academic alert in October 2019 that he failed to achieve the minimum grade of 60 percent in one course (which he dropped). In May 2021, he was placed on academic probation for the next semester for failure to pass a course, which is reflected on his Transcript of Academic Record (issued by the College in October 2024).

[7] In August 2021, Mr. Ilic’s twin brother was in a serious, life-altering motorcycle accident, following which Mr. Ilic received psychiatric and psychological treatment. Mr. Ilic says that due to the accident and its impact on his mental health, he was unable to continue his studies in Fall 2021. His Transcript of Academic Record indicates that he was again in good standing in May 2022 after completing two courses in the Winter 2022 (January to April) semester.

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<sup>1</sup> Certain aspects of the factual background are set out in affidavits sworn by Mr. Ilic, Dr. Papaiz and Professor Darren Brownrigg. In these reasons, where Mr. Ilic, Dr. Papaiz or Professor Brownrigg (or their affidavit) is stated to be the source of certain information, it does not mean that the other party would necessarily agree the information is accurate in all respects. It also does not mean that the information constitutes a finding of fact by this court, unless otherwise indicated.

[8] Mr. Ilic began a clinical placement in Sudbury in September 2022, which would have been the start of his final year of the RT Program. As explained further below, Mr. Ilic's affidavit states that after starting that clinical placement, he was unable to continue because of ongoing mental health issues and was granted a one-year medical leave of absence (with non-active student status) until Fall 2023.

[9] Dr. Papaiz's affidavit provides additional information regarding the Fall 2022 clinical placement. Mr. Ilic was notified by email dated September 14, 2022 from Sandra Walsh (clinical coordinator) and Professor Darren Brownrigg (academic advisor) that he was unsuccessful in the Core Knowledge Orientation Test, which was intended to measure his preparedness for the clinical placement. Mr. Ilic received a failing test score of 43 percent (70 percent being the minimum pass mark). He was required to submit a plan for improvement and was asked to virtually meet with Ms. Walsh and Professor Brownrigg to discuss his progress. That virtual meeting occurred on September 20, 2022. Ms. Walsh provided Mr. Ilic with a study guide to assist him in preparing an updated study plan.

[10] Dr. Papaiz's affidavit also states that the College continued to monitor Mr Ilic's performance in the clinical placement by reviewing his daily evaluations. Mr. Ilic had online access to his daily evaluations and was required to monitor them to ensure he was obtaining the necessary competencies and ratings. Dr. Papaiz says that it was clear from the daily evaluations that Mr. Ilic was unable to meet the required standard even with assistance. By email dated September 26, 2022, Ms. Walsh advised Mr. Ilic that his progress was being monitored closely, that the daily evaluations indicated that he was significantly behind where he should be, and that there was a significant risk he would not be able to achieve the competencies required for that rotation.

[11] By email dated September 30, 2022, Mr. Saiiol (Mr. Ilic' clinical placement instructor) advised Mr. Ilic that as of that time he had not successfully completed the rotation, and also advised him of the required competencies that he failed to meet. Dr. Papaiz states that following the failure of that rotation, Ms. Walsh implemented a learning plan for Mr. Ilic dated October 3, 2022, to assist him in meeting his educational goals, as provided for in the College's "Student Success Guide", referred to further later in these reasons.

[12] By further letter to Mr. Ilic dated October 6, 2022, Mr. Saiiol summarized his discussions with Mr. Ilic during his clinical placement, including the difficulties Mr. Ilic was having in meeting his objectives. Mr. Saiiol confirmed that Mr. Ilic had not successfully completed the rotation and outlined the concerns that led to that conclusion. He also notified Mr. Ilic that he had been placed on clinical probation and advised him of the improvements he needed to make.

[13] In her affidavit, Dr. Papaiz notes that this was the second time Mr. Ilic had been placed on probation and provides further information about the required competencies he failed to demonstrate. She further states that these failures justified that Mr. Ilic be withdrawn from the RT Program. She also states, however, that in an effort to accommodate him, she permitted him to withdraw from the clinical placement and allowed him one further year (as a "last chance") to complete the RT Program.

[14] From Mr. Ilic's perspective, he states in his affidavit that he was unable to continue the clinical placement in Sudbury in Fall 2022 because of ongoing mental health issues related to the psychological effect of his brother's accident. In early October, he approached the College's Mental Health Department to ask for help and returned to his parents' home in Brampton a short time later. Mr. Ilic states that on the advice of his psychiatrist, he applied for a one-year leave from the RT Program to assist in his recovery and advised Ms. Walsh of the situation.

[15] On October 7, 2022, Mr. Ilic received an email from Ms. Walsh, in which she acknowledged that Mr. Ilic was back home with his family and expressed the wish that Mr. Ilic would be able to get some much-needed rest, recognizing that the previous five weeks had been very stressful for him. She also acknowledged his success in completing the first two years of the RT program despite his struggles with anxiety, noting that he required four years to complete the two-year curriculum. However, she expressed concern about his ability to perform safely in a clinical environment, which resulted in an unmanageable amount of anxiety for him. She provided several examples of how his anxiety interfered with his performance during his recent unsuccessful clinical placement. She went on to state that she did not feel that a career in respiratory therapy was the right fit for him. She addressed the possibility he had raised about returning in Fall 2023 to reattempt the clinical placement but stated that the faculty would advise against it, although the ultimate decision was that of Dr. Papaiz. Ms. Walsh also stated that she was very concerned about the state of his mental health and believed he owed it to himself to withdraw from the program and take time to focus on his health and well-being. She also said that she would be happy to meet with Mr. Ilic and his parents if they have any questions.

[16] In his affidavit, Mr. Ilic expresses his total shock at receiving Mr. Walsh's email, stating that he was deeply hurt and offended by her the email and her recommendation that he quit the RT Program "due to concerns over the effect of [his] disabilities in 'the clinical environmnet'". On October 20, 2022, Mr. Ilic and his parents drove to North Bay for a meeting with Dr. Papaiz and Ms. Walsh, also attended by the College's mental health coordinator at Mr. Ilic's request. At that meeting, Mr. Ilic says that his parents advised Dr. Papaiz that they had consulted a lawyer and that they would seek legal redress for violation of Mr. Ilic's human rights if they expelled him from the RT Program. Mr. Ilic states that Dr. Papaiz eventually agreed to permit him to continue his studies the following year.

[17] Mr. Ilic says that he was then on medical leave with a non-active student status. He was to return as an active student in Fall 2023 for his final year. In the interim, he audited College classes during the Winter 2023 term (January to April) to maintain familiarity with the curriculum. His Transcript of Academic Record indicates that he audited six courses during that period, which included a course in pediatric critical care. Mr. Ilic says that Professor Brownrigg and Dr. Papaiz criticized him for failing to write examinations while auditing those courses, which Mr. Ilic says would be inconsistent with College policy. In his affidavit, Professor Brownrigg states that Mr. Ilic was encouraged to participate in quizzes while auditing classes to help him assess what, if anything, he needed to focus on to ensure he was able and ready to return to the RT Program.

[18] In Dr. Papaiz's affidavit relating to that period, she states that in April 2023, Mr. Ilic was unsuccessful in achieving competency for pediatric transport during simulation. Dr. Papaiz says

that as a result, Professor Brownrigg advised Mr. Ilic that he was required to attain that competency during his pediatric clinical rotation the following year in order to pass that rotation.

[19] Mr. Ilic moved to Thunder Bay (with his mother for support) in Fall 2023 to start his final year in the RT Program with a clinical placement at Thunder Bay Regional Health Centre. Mr. Ilic says that he successfully completed that placement, which is reflected in his Transcript of Academic Record. He also provided an email from Professor Brownrigg dated December 16, 2023, which commended him (“Good Fall semester of your clinical year”) and urged him to “Be well prepared for the SickKids placement” in the next semester.

[20] In Dr. Papaiz’s affidavit relating to the same period, she states that on September 15, 2023, Mr. Ilic was unsuccessful in his Core Knowledge Orientation Test, with a score 58 percent (the minimum pass score being 70 percent), indicating a lack of preparedness for the clinical rotation. She also states that in November 2023, Mr. Ilic failed his Wards rotation post-test, with a score of 50 percent (60 percent being a pass), and did not attempt the supplemental post-test, causing him to fail his Wards rotation.

[21] In January 2024, Mr. Ilic started his final semester with a clinical placement in Thunder Bay in adult intensive care unit (ICU) in January and February. That placement was followed by a rotation in Toronto in neonatal ICU and pediatric ICU (also referred to together as the “NICU/PICU” rotation) at Hospital for Sick Children (SickKids) and Holland Bloorview Hospital from late February to April. After that rotation, Mr. Ilic was to return to Thunder Bay to complete the adult ICU rotation. In his affidavit, Mr. Ilic states that during his placement in Thunder Bay that semester, he had excellent feedback from his clinical instructor and by April 2024 had successfully completed all other core courses in the curriculum. In her affidavit relating to the same period, Dr. Papaiz highlights unfavourable comments Mr. Ilic received in daily evaluations in February and March 2024 (to which he had constant online access), calling into question his problem-solving skills, his ability to multi-task and his professionalism.

[22] In his affidavit, Mr. Ilic says that the only concern he was made aware of was during the neonatal ICU clinical placement at SickKids. On April 10, 2024, he received an email from his clinical instructor, advising him that because of ongoing problems with his communication skills during that rotation (including in his neonatal case study presentation), she had no choice but to give him a rating of unsatisfactory for communications in his neonatal rotation summative evaluation, resulting in an overall rating of unsatisfactory. The email also states that there was not enough improvement during the rotation to suggest that his communication difficulties will not pose a risk to patients. In her affidavit, Dr. Papaiz states that unfavourable comments about Mr. Ilic’s communication skills during the neonatal rotation were also included in daily evaluations in late March 2024.

[23] Dr. Papaiz says that because Mr. Ilic was rated unsatisfactory in the neonatal summative evaluation, he was put on academic probation for the third time and began his rotation in pediatric ICU with that status. She also states that in the pediatric rotation summative evaluation, Mr. Ilic’s pediatrics clinical instructor rated his competencies in communication and analysis/problem-solving as unsatisfactory, resulting in an overall rating of unsatisfactory. The clinical instructor identified safety issues, of particular concern given infants’ vulnerable demographics. Dr. Papaiz

further states that because Mr. Ilic failed to achieve 80 percent attainment of clinical competencies (required for each patient population, being adult, neonatal and pediatric), he could not pass the course and could not graduate. She also says that since Mr. Ilic had registered a subsequent failure while on academic probation, he was subject to involuntary withdrawal from the RT Program.

### III. The College's Decision

[24] On April 21, 2024, Mr. Ilic received emails from Professor Brownrigg, asking Mr. Ilic to attend a virtual meeting with Dr. Papaiz and Professor Brownrigg to discuss Mr. Ilic's current clinical year standing, given his unsuccessful neonatal and pediatric rotations.

[25] Mr. Ilic and his mother met virtually with Dr. Papaiz and Professor Brownrigg on April 26, 2024. At that meeting, Dr. Papaiz informed Mr. Ilic of the Decision, advising that as a result of his failure to achieve the minimum requirements for the neonatal and pediatric clinical rotations, he would not be permitted to complete the clinical placement or to graduate from the RT Program. In an email to Mr. Ilic the same day, Dr. Papaiz confirmed the Decision and provided a written explanation, as set out further below.

[26] Also on April 26, 2024 (after the virtual meeting but before Dr. Papaiz's confirmation email), Mr. Ilic's mother sent an email to Professor Brownrigg, advising that they had decided to proceed with a legal action against the College and a complaint under the *Human Rights Code*, R.S.O. 1990, c. H.19, and asking whether Mr. Ilic could continue with the final three weeks of the semester and the final examination. Dr. Papaiz responded in a separate email to Mr. Ilic (sent before her email later that day confirming the Decision), advising that Mr. Ilic did not need to continue with the final three weeks and was not required to take the final examination. The email also stated that her confirmation email would follow shortly and would provide further options for Mr. Ilic.

[27] In the email to Mr. Ilic later that day confirming the Decision, Dr. Papaiz set out a summary of the requirements for neonatal and pediatric ICU rotations (referred to together as "RTT385") and an explanation of why the requirements were not met in this case. The email stated in part:

We met today to discuss your most recent clinical evaluation in RTT 385. For your convenience, a summary of the requirements for the course is listed below along with the status of the final evaluation received from your preceptors and faculty.

Summary of requirements that are not met for a satisfactory evaluation in RTT385 Evaluations

A successful Neonatal Rotation Summative Evaluation and a successful Pediatric Rotation Summative Evaluation are required to be successful in RTT385 and meet Respiratory Therapy Entry to Practice Standards.

**- Damjan received an Unsuccessful Neonatal Rotation Summative Evaluation with Unsatisfactory ratings in Communication.**

**- Damjan received an Unsuccessful Pediatric Rotation Summative Evaluation with Unsatisfactory ratings in Communication and Analysis and Problem Solving.**

Competency attainment

*The minimum expectation for a satisfactory evaluation in RTT385 is 80% attainment of the clinical competencies, within each patient population (adult, neonatal and pediatric), “signed off” at the benchmark rating.*

Rating Scale: *In supervising this student, the preceptor rates student ability and participation in the task:*

1. “I did it”...Student required complete guidance or was unprepared; I had to do most of the work myself, observation only. **Concerned**
2. “I talked them through it”... Student was able to perform some tasks but required direction to ensure safe practice. **Developing**
3. “I directed them from time to time”...Student demonstrated some independence and only required intermittent prompting; maintains safe practice. **Proficient**
4. “I was available just in case”... Student functioned safely and independently, only needed oversight if complex or high risk situation. **Advanced**

[Emphasis in original.]

[28] Using that rating scale, Mr. Ilic’s competency completion standing was calculated for each patient population, arriving at an overall standing of 66.67 percent. The email continued:

Unfortunately, this evaluation does not support a successful completion of the program. Students at this point in their clinical rotation must consistently maintain scores of 3 or 4 (Proficient or Advanced) with no scores of 1 (Concerned). I know that you have reviewed your evaluations with your preceptors in these areas and are familiar with the rating system and what is required of students. In all of the competency areas, you continued to receive scores of 1 and 2 that demonstrate areas of concern and areas where you are still developing. Please note that students must achieve a minimum of 80% of proficient or advanced scores in all patient population areas to be successful in the program. This information is well defined in your program handbook (attached). This was not achieved in the areas of Neonatal Intensive Care and Pediatrics upon completion of these rotations. As a result, you were not able to successfully pass this semester and cannot graduate at this time.

Should you wish to appeal this decision, I have provided for you the policy and procedure below. Please be advised that the appeal process is time limited.

[29] Attached to the confirmation email was the Academic Appeal Policy set out in the College’s Operational Policy Manual (the “Appeal Policy”) and the Academic Appeal Procedures set out in the College’s Procedures Manual (the “Appeal Procedures”, and together with the Appeal Policy, the “Appeal Policy and Procedures”), referred to further below.

#### **IV. The parties’ post-Decision communications and initiation of court proceedings**

[30] Mr. Ilic retained counsel to challenge the Decision and there was extensive communication between the parties, directly and through counsel. In large measure, those communications addressed the College’s internal process relating to academic appeals as set out in the Appeal Policy and Procedures. For context, the College’s internal process for initiating an academic appeal is outlined below.

#### *A. Academic appeal process*

[31] Under the Appeal Policy, students have “the right to formally appeal a final grade that impacts their academic standing or prevents progression through a program of study”: Appeal Policy, para. 4.1. The procedure for doing so is set out in the Appeal Procedures.

[32] The Appeal Policy provides that students who believe they have a basis for appealing shall first attempt to resolve the matter through contact with the professor, referred to in the first section of the Appeal Procedures as **Stage 1: Student and Professor**. To initiate a Stage 1 appeal, the student provides “written notice of concern to the professor regarding the final grade” within three working days of receiving written notice of the final grade: Appeal Procedures, s. 1.1. The professor must then contact the student to schedule a meeting to discuss the matter. Following the meeting, the professor is required to promptly notify the student of the professor’s decision.

[33] If the matter is not resolved at Stage 1, the student may elect to proceed to the next stage, referred to in the second section of the Appeal Procedures as **Stage 2: Student, Professor and Dean**. To initiate a Stage 2 appeal, the student provides written notice of concern to the Dean within two days of receiving the Stage 1 decision. In that notice, the student requests a meeting with the Dean and the professor to review the professor’s decision. The Dean comes to a decision based on information from the student and the professor and notifies the student, the professor and the Registrar’s office in writing of the decision.

[34] If the Stage 2 decision is not acceptable to the student, the student may elect to proceed to the next stage, referred to in the third section of the Appeal Procedures as **Stage 3: Appeal Committee**. A Stage 3 appeal is heard by an Appeal Committee established by the Vice President Academic’s Office in a process set out in the Appeal Procedures. Section 3.1.1 of the Appeals Procedures provides:

3.1.1 Within 2 working days of receiving the Stage 2 decision from the Dean, the student obtains and complete[s] two forms from the Registrar’s Office and submits the completed forms to the Registrar’s Office along with the appeal fee:

- an Appeal Application form (see Appendix 2); and
- an Authorization for Release of Student Information form (Appendix 3).

Failure to meet his timeline results in the student being unable to proceed with Stage 3, and the Stage 2 decision stands. [Emphasis added.]

[35] If the Stage 3 decision is not acceptable to the student, the student may elect in limited circumstances to proceed to the final internal appeal stage, referred to in the fourth section of the Appeal Procedures as **Stage 4: Appeal Review**. A Stage 4 appeal is heard by an Appeal Review

Panel established by the Vice President Academics Office in accordance with the fourth section of the Appeal Procedures.

***B. Post-Decision communications between the parties and their counsel***

[36] By letter to Dr. Papaiz dated May 3, 2024, Mr. Ilic's counsel advised that she had been retained to represent Mr. Ilic, stating that the immediate priority was to provide him with a path forward to graduation, the date of which being 28 days away. She asked the College to (i) follow the requirements of his IPE and accommodate Mr. Ilic's disabilities, and (ii) return him to his clinical placement with accommodations and a learning plan. She noted the College's legal duty to properly accommodate Mr. Ilic's disabilities and alleged that the College had failed to do so. She stated that Mr. Ilic and his family were shocked and devastated after being informed that he would not pass or graduate, a decision that "came out of nowhere".

[37] In her letter, Mr. Ilic's counsel also noted that Dr. Papaiz's confirmation email referred to a "time limited" appeal process. She stated that since Mr. Ilic had not completed his placement, there was no "final grade" from which to appeal, alleging that to be a breach of procedural fairness. She also stated that Mr. Ilic reserved the right to seek civil damages, as well as the right to access the College's academic appeal process. She also asked Dr. Papaiz to indicate the appropriate appeal procedure, given the absence of a final grade.

[38] By email to Mr. Ilic on May 6, 2024, Dr. Papaiz advised that if he was contesting his grade, he had "the option to proceed to the next stage (3) of the appeal process." She also reminded him that "the appeal process is time limited" and again provided the "policy and guidelines ... included in the previous email". In response to that email the same day, Mr. Ilic's counsel again asked for clarification of the appeal procedure, stating that "there does not appear to be a right to appeal ... unless it's from a final grade – whether it's a Stage 1, 2, 3 etc."

[39] By letter dated May 8, 2024, the College's outside counsel responded to the May 3 letter from Mr. Ilic's counsel. He stated that the College denied any discrimination and reiterated that Mr. Ilic enjoyed the benefit of the College's appeal process, which complies with the principles of fundamental justice. His letter continued:

For your information, your client is unable to graduate because he failed his final course; RTT385. This was determined upon receipt of Mr. Ilic's final evaluation from his preceptor (someone independent from the College). More specifically, your client was unsuccessful in passing his Neonatal Rotation Summative Evaluation and his Pediatric Rotation Summative Evaluation. This was all explained to your client in an April 26<sup>th</sup>, 2024, meeting with College staff. A respiratory therapist fulfills a role that can result in the life or death of a person. Simply put, your client failed to show sufficient competence to graduate and become someone with that level of skill and capability in that particular field. Not only did our client act in accordance with all rules, regulations and legislation, but it also exercised due diligence and reasonableness throughout this process thereby upholding its obligations and responsibilities to all involved and the people of this

community, as our client has a responsibility to ensure that it graduates competent professionals into such ‘life and death’ roles.

[40] By letter dated May 9, 2024, Mr. Ilic’s counsel wrote to the College’s Registrar (care of the Vice President Academic), advising that Mr. Ilic was attempting to file a notice of appeal with the Registrar’s office. The letter sought guidance about how to do so, asking where the appeal forms should be directed. The letter also expressed confusion about why Mr. Ilic had been advised to proceed right to a Stage 3 appeal, given that he had not had a Stage 1 or Stage 2 appeal.

[41] Mr. Ilic’s counsel also sought clarification of the applicable appeal process in an email to the College’s counsel dated May 10, 2024 and a follow up email dated May 14, 2024, seeking a response to the May 10 email. In the May 10 email, Mr. Ilic’s counsel stated that their letter and forms sent the previous night were intended to be Mr. Ilic’s academic appeal.<sup>2</sup> She again stated that none of the three appeal steps had been taken and that she did not have contact information for the Registrar’s office.

[42] The College’s counsel responded to Mr. Ilic’s counsel by email dated May 15, 2024, stating that the process and forms for Mr. Ilic’s academic appeal are set out in the Appeal Policy and Procedures. That email also provided links to those documents as well as the Registrar’s contact information.

[43] By email to Professor Brownrigg dated May 16, 2024, Mr. Ilic’s counsel noted that under the Appeal Procedures, a student was required to provide “written notice to the professor regarding the final grade” in order to initiate a Stage 1 appeal. Counsel requested that the email be accepted as that notice, even though Mr. Ilic had not been provided with a “final grade”. The email also stated that she would be providing a letter with more information.

[44] By letter to Professor Brownrigg dated May 17, 2024, Mr. Ilic’s counsel confirmed that Mr. Ilic was appealing his RTT385 “final grade”, noting again that he had not in fact received a final grade. The letter also set out various bases for the appeal and provided a chronology of events. In the letter, Mr. Ilic’s counsel submits, among other things, that the College failed to follow the College’s Student Success Guide, which sets out the course of action to follow when a student’s performance falls below acceptable standards (which Mr. Ilic denies).

[45] By letter dated May 24, 2024, the College’s counsel again asked Mr. Ilic’s counsel to refrain from contacting the College directly, noting Mr. Ilic’s threat of litigation against the College. The letter also stated:

If your client intends on availing himself of Canadore’s Appeal Process/Policy please ensure he does so by May 31<sup>st</sup>, being his deadline to do so. Initiation of the

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<sup>2</sup> Mr. Ilic’s Supplementary Application Record contained the affidavit of a legal assistant of Mr. Ilic’s counsel, in which the affiant listed (and attached as exhibits) 19 items of documents and correspondence that she said related to the respondents’ refusal to accept Mr. Ilic’s appeal. The attached exhibits included the following documents dated May 9, 2024, signed by Mr. Ilic’s counsel on his behalf: (i) as Exhibit L, “Appeal Form” (being the form in Appendix 2 of the Appeal Procedures), and (ii) as Exhibit M, “Consent to Release of Personal Information Form” (being the form in Appendix 3 of the Appeal Procedures).

appeal process must be done in compliance with Canadore's guidelines provided to you on a prior occasion. Your client is not entitled to special treatment simply because he is represented by a lawyer and has threatened legal proceedings. He must follow the same process as everybody else.

You may contact Canador only to submit the necessary documentation/notice initiating the appeal process so long as I am copied on that correspondence and for no other reason.

[Emphasis added.]

[46] By email dated May 24, 2024, Mr. Ilic's counsel responded to the College's May 24 letter, stating that Mr. Ilic's appeal had been provided one week previously (addressed to Professor Brownrigg), in accordance with the directions provided by the College's counsel. Mr. Ilic's appeal materials were also attached to the May 24 email.

[47] By letter dated June 5, 2024, the College's counsel advised Mr. Ilic's counsel as follows:

Unfortunately, Mr. Ilic failed to submit the necessary Appeal Application form and Authorization for Release of Student Information form in accordance with the Academic Appeal Procedure rules (PA-1 Procedures: Academic Appeal Policy). Per the same policy "Failure to meet this timeline results in the student being unable to proceed with Stage 3, and the Stage 2 decision stands." Given the aforementioned, Mr. Ilic's appeal has been concluded.

### ***C. Initiation of court proceedings***

[48] By Statement of Claim in the Superior Court of Justice dated June 20, 2024, Mr. Ilic commenced a civil action against the College and Dr. Papaiz, relating to his dismissal from the RT Program. As of the judicial review hearing date, Mr. Ilic's civil action was ongoing.

[49] On September 10, 2024, Mr. Ilic filed a Notice of Application for Judicial Review, challenging the Decision. However, in error, the document was filed in the online portal for a Notice of Action in the Superior Court of Justice.

[50] On November 29, 2024, Mr. Ilic filed his Notice of Application for Judicial Review with the Divisional Court office.

### **V. Judicial review application**

[51] In his judicial review application, Mr. Ilic seeks an order (i) setting aside the Decision, (ii) requiring Mr. Ilic's reinstatement in the RT Program, (iii) permitting him to complete the neonatal and pediatric clinical placement, with appropriate accommodations for his disabilities, and (iv) extending the time to seek judicial review, if necessary. In the alternative, he seeks an order requiring the respondents to allow him to file an appeal of the Decision under the Appeal Policy and Procedures. Among other things, he also seeks an order prohibiting Dr. Papaiz from taking

any part in (i) his remediation pathway toward graduation, or in the alternative, (ii) the appeal of the Decision.

[52] In the context of this judicial review, the respondents bring a motion to dismiss the application for delay, alleging that the application was brought well beyond the 30-day filing period in s. 5(1) of the *JRPA*. In their dismissal notice of motion, the respondents request in the alternative that the judicial review application be merged or consolidated with Mr. Ilic’s civil action against them. However, in their factum and oral argument, the respondents did not pursue nor provide any basis for that alternative relief.

#### A. *Jurisdiction and standard of review*

[53] The Divisional Court has jurisdiction under ss. 2 and 6(1) of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1 (the “*JRPA*”) to hear an application for judicial review of academic decisions relating to students of public colleges and universities: *Filippova v. Whyte*, 2024 ONSC 497 (Div. Ct.), at para. 40; see also *Dickson v. Canadore College* (2007), 287 D.L.R. (4th) 570 (Ont. Div. Ct.); *Kahsay v. Humber College Institute of Technology*, 2012 ONSC 138, 289 O.A.C. 1 (Div. Ct.).

[54] Judicial review is a discretionary and extraordinary remedy. The reviewing court has an overriding discretion to refuse to undertake judicial review or to grant any relief, even if the applicant makes out a case for review on the merits: see *Strickland v. Canada (Attorney General)*, 2015 SCC 37, [2015] 2 S.C.R. 713, at para. 37; *JRPA*, s. 2(5). The court’s exercise of that discretion is entitled to deference on appeal: *Strickland*, at para. 39. The discretionary basis for refusing to undertake judicial review includes (but is not restricted) the existence of an adequate alternative: *Strickland*, at para. 40.

[55] Upon judicial review of an administrative decision, there is a presumption that the standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 23. The parties agree that the reasonableness standard of review applies in this case in this case, consistent with previous caselaw: see *Kahsay*, at para. 4; *Filippova*, at para. 41.

[56] An administrative decision maker is required to conduct their proceedings fairly. The degree of procedural fairness required is determined by reference to all the circumstances of the case, including the following factors: (i) the nature of the decision being made, and the process followed in making it; (ii) the nature of the statutory scheme; (iii) the importance of the decision to the individual or individuals affected; (iv) the legitimate expectations of the person challenging the decision; and (v) the choices of procedure made by the administrative decision maker itself: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at paras. 21-28; see also *Vavilov*, at para. 77.

[57] Reviewing courts are reluctant to interfere with the academic decisions of public colleges and universities unless there has been “manifest unfairness” in the procedure adopted, or the decision is unreasonable: see *AlGhaithy v. University of Ottawa*, 2012 ONSC 142, 289 O.A.C. 382

(Div. Ct.), at para. 31, leave to appeal to C.A. and S.C.C. denied, [2012] S.C.C.A No. 504; *Filippova*, at para. 43.

[58] Reasonableness review “finds its starting point in the principle of judicial restraint” but remains “a robust form of review” rather than “a ‘rubber-stamping’ process or a means of sheltering administrative decision makers from accountability”: *Vavilov*, at para. 13. A reasonable decision is one that is based on an internally coherent and rational chain of analysis that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires a reviewing court to defer to such a decision: *Vavilov*, at para. 85. The relative expertise of administrative decision makers with respect to the questions before them is a relevant consideration in conducting reasonableness review: *Vavilov*, at paras. 31, 92-93.

[59] The burden is on the party challenging the decision to show that it is unreasonable. Before a decision can be set aside on that 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”: *Vavilov*, at para. 100. Two types of errors (referred to as fundamental flaws) that may render a decision unreasonable are (a) a failure of rationality internal to the reasoning process, and (b) the untenability of the decision in light of the relevant factual and legal constraints that bear on it: *Vavilov*, at para. 101.

### ***B. Parties’ positions and issues to be determined***

[60] Mr. Ilic submits that the respondents acted unreasonably and breached procedural fairness in making the Decision to refuse to allow him to complete the RT Program. Mr. Ilic also challenges as unreasonable and unfair the College’s failure to accept his attempt to appeal the Decision under the Appeal Policy and Procedures.

[61] Mr. Ilic also submits that he should be granted an extension of time to seek judicial review, if necessary, arguing that there are apparent grounds for relief that granting an extension would cause no substantial prejudice or hardship: see *JRPA*, s. 5(2).

[62] The respondents deny that they were unreasonable or procedurally unfair in making the Decision, which they say is the only decision that is subject to judicial review in this application. In any case, the respondents deny unreasonably or unfairly failing to allow Mr. Ilic to pursue an internal appeal of the Decision, stating that he did not properly initiate an appeal within the mandatory timeline in the Appeal Procedures.

[63] The respondents also seek dismissal of the judicial review application for delay, alleging that the application was brought seven months after the Decision, well beyond the 30-day filing period. They also note that Mr. Ilic did not bring a motion requesting an extension and submit that he has not established that such an extension should be granted.

[64] Based on the foregoing, the issues are:

- a. College’s Decision: Has Mr. Ilic established that the respondents acted unreasonably or breached procedural fairness in making the Decision?

- b. Failure to accept attempt to appeal: Has Mr. Ilic established that the respondents acted unreasonably or breached procedural fairness by failing to accept his attempt to appeal the Decision?
- c. Dismissal for delay: Should Mr. Ilic's time to bring a judicial review application be extended to avoid the application's dismissal for delay?

[65] As set out below, we conclude that Mr. Ilic has not established that the respondents acted unreasonably or failed to afford him procedural fairness. Therefore, it is unnecessary to decide whether the application should be dismissed for delay.

**VI. College's Decision: *Mr. Ilic has not established that the respondents acted unreasonably or breached procedural fairness in making the Decision.***

**A. *Mr. Ilic's submissions***

[66] Mr. Ilic submits that the Decision not to permit him to complete the RT Program was unreasonable because it did not meet the standard of justification, transparency and intelligibility set out by the Supreme Court in *Vavilov*, nor can it be justified in relation to the relevant factual and legal constraints that bear on it: see *Vavilov*, at para. 85. Mr. Ilic says that the legal restraints bearing on the Decision include the contractual rights and obligations set out in the College's policies and procedures and his statutory rights under the *Human Rights Code* as a person with a disability.

[67] Mr. Ilic argues that in making the Decision, the respondents failed to honour their contractual obligations to support students enrolled in the RT Program, as set out in the College's Student Success Guide (the "Guide"). He also submits that they ignored their obligations to accommodate Mr. Ilic under College policies and the *Human Rights Code*.

[68] Mr. Ilic says the respondents failed to follow requirements in the Guide relating to clinical placements, including the following:

- a. The only basis for summarily dismissing a student from a clinical placement is "if they are determined to be unsafe to patients and/or staff, are guilty of unethical practices, or breach of confidentiality": Guide, p. 14. As well, the only basis for involuntarily withdrawing a student from the RT Program is failure of a course while on academic probation or the failure of two or more courses in a semester; or if a student receives a second unsatisfactory NICU/PICU Rotation Summative Evaluation: Guide, p. 12.
- b. A clinical site may also elect to place a student on "Hospital Based Probation" after "repeated documentation of clinical errors, unsafe practice or unprofessional behavior", in which case the student will be provided with the details and criteria for the probation, and an opportunity to demonstrate improvement in the areas identified in the probation document. Only if the student's clinical instructor determines that there has been inadequate improvement in the identified areas can

the student be withdrawn from the clinical site and clinical placement: Guide, p. 24.

- c. In circumstances where a student is unsuccessful with the NICU/PICU Rotation Summative Evaluation, the Guide stipulates that the student will be placed on academic probation, and a “learning plan” will be initiated. The learning plan may “stipulate that the rotation is repeated in full or only a portion is repeated”; and that “[u]pon completion of a previously unsuccessful rotation, the student will receive another Rotation Summative Evaluation”: Guide, p. 18. The Guide sets out a comprehensive procedure for developing and implementing a learning plan involving a collaboration between the clinical instructor, faculty and student.

[69] Mr. Ilic submits that the respondents failed to follow the above procedures and policies in addressing his unsatisfactory NICU/PICU evaluations and clinical competencies in RTT385. He was not placed on probation nor was a learning plan initiated for him. There was no investigation into whether his mental health issues were adversely affecting his clinical performance in the NICU/PICU rotations and whether accommodations “to meet program and course requirements” could be offered under College policies or as required under the *Human Rights Code*. Instead, the respondents involuntarily withdrew him from the program. Mr. Ilic says they did so without informing him beforehand or giving him an opportunity to respond.

[70] Mr. Ilic submits that tainted by the violation of his contractual and statutory rights (as well as his procedural rights, as discussed below), the Decision was fundamentally flawed and thus unreasonable.

[71] Mr. Ilic also argues that in making the Decision, the respondents failed to afford him procedural fairness.

[72] Mr. Ilic submits that post-secondary institutions owe a high degree of procedural fairness to students in academic proceedings due to the actual and potential impacts on the student’s career and livelihood. Mr. Ilic says that this is particularly true in proceedings involving involuntary withdrawal or expulsion: see *Ford v. University of Ottawa*, 2022 ONSC 6828 (Div. Ct.), at para. 55; *Kahsay*, at para. 2; and *Filippova*, at para. 74; see also *Kane v. University of British Columbia*, [1980] 1 S.C.R. 1105, at p. 1113. Mr. Ilic argues that those rights include notice of the allegations made, an opportunity to respond to the allegations, and reasons justifying the decision: *Baker*, at paras. 23-27.

[73] Mr. Ilic says that before the respondents made the Decision, they gave him no notice or warning that he was at risk of being removed from the clinical placement or involuntarily withdrawn from the RT Program as a result of his performance in the NICU/PICU rotation. He states that the only notice he received was Professor Brownrigg’s April 21, 2024 email, stating that the purpose of the meeting “is to discuss your clinical year standing, as a result of your unsuccessful neonatal and pediatric rotations”. Mr. Ilic says that the Decision was presented to him as a *fait accompli*; he was given no opportunity to respond to the respondents’ concerns and no opportunity to assert his rights, including his accommodation rights, and the right to be placed

on probation and a learning plan, prior to any decision resulting in removal from RTT385 and involuntary withdrawal from the RT Program.

[74] Accordingly, Mr. Ilic submits that his procedural rights were denied.

### ***B. Analysis and conclusion***

[75] We conclude that Mr. Ilic has not established that in making the Decision, the respondents acted unreasonably or failed to accord him procedural fairness.

[76] Contrary to Mr. Ilic's submissions, we see no basis for concluding that the Decision was fundamentally flawed or otherwise failed to meet the standard of justification, transparency and intelligibility set out in *Vavilov*. As set out in the confirmation email provided to Mr Ilic the day the Decision was communicated to him, Dr. Papaiz provided cogent reasons for the Decision that explained how the College reached the conclusion that he failed to successfully complete the NICU/PICU clinical rotation, justifying his involuntary withdrawal from the program, with specific reference to the requirements the needed to be met. While the explanation provided was at times technical in nature, the language employed does not indicate "an unreasonable decision" but instead is "indicative of a decision maker's strength within its particular and specialized domain": see *Vavilov*, at para. 92.

[77] As the respondents emphasize in their submissions, reviewing courts are reluctant to interfere with the academic decisions of public colleges and universities with respect to their students unless has been "manifest unfairness" in the procedure adopted or the decision is unreasonable: *AlGhaithy*, at para. 31. The degree of deference is particularly notable in cases relating to aspiring health professionals (including the recent Divisional Court decision in *Filippova*), where patient safety is a relevant consideration as part of the College's public interest obligations.

[78] Applying those principles in this case, the respondents' submissions highlight patient safety and related concerns referred to in Dr. Papaiz's affidavit, including as set out in the daily evaluations of Mr. Ilic's performance during the RT Program. Mr. Ilic had online access to those daily evaluations and was required to monitor them to ensure he was obtaining the necessary competencies and ratings. It is not credible to suggest that the concerns that were expressed in the daily evaluations came as a surprise to Mr. Ilic or that he had no opportunity to address them. With respect to the NICU/PICU clinical placement in the program's third year, the concerns expressed included issues relating to (i) Mr. Ilic's communication skills during the neonatal clinical rotation, and (ii) his communication and analysis/problem skills during his pediatric clinical rotation. In both cases, the resulting safety concerns led to unsatisfactory ratings for those rotations. As a result, he failed that course, which led to his involuntary withdrawal from the program.

[79] We also agree with the respondents that the Decision to refuse to allow Mr. Ilic to complete the program should be considered in light of Mr. Ilic's prior history of difficulties in completing the academic courses during the first two years of the program. Contrary to the narrative of success in Mr. Ilic's affidavit, he completed the first two years of the curriculum over an extended period of time, during which he was placed on academic probation on multiple occasions, as previously

outlined. Contrary to Mr. Ilic's submissions, the respondents provided him with ongoing accommodations to address his learning disabilities and mental health issues, which enabled him to continue in the program to that stage. However, his performance in clinical placements in the third year of the curriculum gave rise to a justifiable concern that the clinical work was more than he was able to handle in a way that was consistent with the safety of the vulnerable neonatal and pediatric patient populations. In these circumstances, on the record before the court, Mr. Ilic has not established that the respondents failed to provide Mr. Ilic with the accommodations required by the College's policies and the *Human Rights Code*.

[80] Accordingly, we conclude that Mr. Ilic has not met his onus of establishing that the respondents acted unreasonably or with manifest unfairness in refusing to allow Mr. Ilic to complete the RT Program.

**VII. Failure to accept attempt to appeal: *Mr. Ilic has not established that the respondents acted unreasonably or breached procedural fairness by failing to accept his attempt to appeal the Decision***

**A. *Mr. Ilic's submissions***

[81] Mr. Ilic submits that by failing to accept his attempt to appeal the Decision, the respondents acted unreasonably and failed to afford him procedural fairness.

[82] Mr. Ilic says that pursuant to the Appeal Policy and Procedures, he has a contractual right to appeal any "final grade" impacting his academic standing or progression within a program, in accordance with the four stages set out in the Appeal Procedures. He submits that the respondents effectively bypassed Stage 1, unilaterally deemed the Decision to be a Stage 2 decision, and then unjustifiably denied him the right to initiate a Stage 3 appeal on the grounds that he had failed to submit the required appeal forms within the required timelines.

[83] Mr. Ilic states that after unsuccessfully trying to clarify the appeal process for the Decision in the absence of a "final grade", his counsel submitted a letter setting out the grounds of appeal and provided the appeal forms well before the May 31, 2024 deadline that respondents' counsel identified in his letter dated May 24, 2024. Mr. Ilic submits that even though the respondents provided him with timely notice of his right to appeal the Decision, they unreasonably and unfairly failed to accept his appeal based on alleged defects in the appeal documents, without identifying those defects and giving him an opportunity to cure them before the appeal deadline.

[84] Mr. Ilic also says that in any event, even if his attempts to initiate an appeal were in some way procedurally defective (which he denies), the respondents and their legal counsel were fully aware of his good faith efforts to initiate an appeal of the Decision well before the May 31 deadline.

[85] Mr. Ilic submits that under the Appeal Policy, the respondents were required to treat him in a fair and consistent manner regarding all matters that relate to his academic performance progress, including a timely process to appeal final grades: see Appeal Policy, s. 2.2.2. Mr. Ilic says that by failing to accept his appeal, the Respondents did not treat him fairly, particularly given the significant impact on his academic standing and progression (and ultimately his career

prospects) of both the Decision and their failure to accept his appeal. On that basis, Mr. Ilic submits that the refusal to accept the appeal was unreasonable and breached procedural fairness.

### ***B. The respondents' submissions***

[86] The respondents submit that they were justified in declining to entertain Mr. Ilic's attempt to appeal the Decision since Mr. Ilic did not properly initiate an appeal within the mandatory timeline in the Appeal Procedures. They dispute that the reference to the right to appeal a "final grade" in the Appeal Policy and Procedures caused any ambiguity about the required timeline in this case, noting that clinical courses are assessed on a pass/fail (satisfactory/unsatisfactory) basis rather than being assigned a particular grade.

[87] The respondents submit that they correctly treated the Decision as a "Stage 2 decision" of the "Dean" (Dr. Papaiz, the Associate Dean of the College's School of Health Sciences) under the second section of the Appeal Procedures (being **Stage 2: Student, Professor and Dean**), which Dr. Papaiz provided at the virtual meeting with Mr. Ilic, his mother and Professor Brownrigg on April 26, 2024 (confirmed the same day in writing).

[88] As previously noted, if a student wishes to challenge a Stage 2 decision by appealing to the Appeal Committee, the student must do so within two working days of receiving the Stage 2 decision. If the student does not do so within this timeline, the Stage 2 decision stands.

[89] In oral argument, the respondents confirm their position (stated in their factum) that the deadline for Mr. Ilic to appeal the Decision (as set out in s. 3.1.1) was May 1, 2024, being two business days after the Decision was provided on April 26, 2024 (being a Friday). The respondents note that it is clear from the terms of s. 3.1.1 that the opportunity to invoke the internal appeal process was subject to strict timing constraints, "failing which the Stage 2 decision stands." In the confirmation email following the virtual meeting on April 26, 2024, Dr. Papaiz advised Mr. Ilic that "the appeal process is time limited" and provided him with the Appeal Policy and Procedures. There was no contact from Mr. Ilic's counsel until May 3, 2024, and there is no suggestion that appeal documentation was provided until later that month. The respondents also note that at no time did Mr. Ilic (who had the benefit of counsel) request an extension of the time for appealing, either before or after the May 1 deadline.

[90] The respondents further submit that in addition to (or instead of) a timely appeal of the Decision, it was open to Mr. Ilic to apply to the College to return the following academic year to repeat the clinical placements that he failed to successfully complete. However, he did not follow that path. Instead, he threatened to sue the respondents for damages in civil court (which he is pursuing), threatened to make a discrimination complaint under the *Human Rights Code*, and ultimately brought an untimely judicial review application to challenge the Decision.

[91] As previously noted, the respondents submit that in declining to entertain Mr. Ilic's attempt to appeal the Decision, they were not making a decision that was subject to review in this application. The respondents note that in Mr. Ilic's Notice of Application for Judicial Review, he asks the court to set aside the Decision, reinstate him in the RT Program and permit him to complete the neonatal and pediatric clinical placement, with appropriate accommodations. In his

Notice of Application, he does not ask the court to set aside a decision relating to College’s internal appeal process. Rather, he seeks access to an internal appeal only as an alternative remedy if he succeeds in his challenge to the Decision.

[92] In any case, the respondents dispute that they acted unreasonably or breached procedural fairness in declining to entertain his attempt to appeal the Decision. Once again, the respondents emphasize the degree of deference that reviewing courts afford to academic decisions of public colleges and universities, with particular reference to the additional patient safety concerns that the College is required to consider in the public interest. The respondents’ review of previous caselaw includes consideration of the various factors set out by the Supreme Court in *Baker*, agreeing with Mr. Ilic that post secondary institutions owe a high degree of procedural fairness to students in making academic decisions due to the actual and potential impacts on the student’s career and livelihood: see *Baker*, at para. 25. However, the respondents submit that in this case, they did not act unreasonably or with manifest unfairness, noting (among other things) the need to respect the choices of procedure made by the decision maker itself: *Baker*, at para. 27.

### *C. Analysis and conclusion*

[93] We conclude that Mr. Ilic has not established that the respondents acted unreasonably or breached procedural fairness by not accepting his attempt to appeal the Decision.

[94] We agree with the respondents that it was not unreasonable or unfair for the respondents to treat the Decision as a Stage 2 decision of Associate Dean Papaiz under the second section of the Appeal Procedures, which she provided to Mr. Ilic at the virtual meeting on April 26, 2024. While there was no prior “Stage 1” decision of the Professor, we see no prejudice to Mr. Ilic, since an unfavourable Stage 1 decision was subject to review by the “Dean” at Stage 2, which effectively occurred in this case. Accordingly, we do not consider it unreasonable for the respondents to conclude that the deadline was May 1, 2024 for a Stage 3 appeal of the Decision to the Appeals Committee under the third section of the Appeal Procedures. However, the issue is less straightforward as a matter of procedural fairness.

[95] As previously noted, subsequent correspondence from Dr. Papaiz (on May 7, 2024) and respondent’s counsel (on May 8) referred to Mr. Ilic’s having the benefit of the College’s appeal process. As well, by email dated May 15, 2024, respondents’ counsel again provided Mr. Ilic’s counsel with links to the Appeal Policy and Procedures, stating that the process and forms for Mr. Ilic’s appeal were set out in those documents. While Dr. Papaiz referred to the appeal process as “time limited”, there was no express statement that the appeal deadline had already passed. However, it still would have been open to Mr. Ilic (who was represented by counsel) to seek an extension of the filing deadline if an extension was required.

[96] Of greater concern, by subsequent letter dated May 24, 2024, respondents’ counsel advised Mr. Ilic’s counsel that if Mr. Ilic intended to pursue an academic appeal, he should do so “by May 31<sup>st</sup>, being his deadline to do so.” Respondents’ counsel now advises that the reference to May 31 was a “transcription error”, that it was meant to say May 1. However, in the context of that letter and other correspondence, that explanation appears to make little sense. As well, while we realize that the responses to inquiries from Mr. Ilic’s counsel were made under threat of litigation, we are

concerned by the tendency of respondents' counsel to respond in generalities (by referring counsel to the Appeal Policy and Procedures in general), rather than providing specific answers to the questions asked.

[97] Despite those reservations, we have concluded that that Mr. Ilic has not met his burden of establishing that the respondents acted unreasonably or with manifest procedural unfairness in failing to entertain Mr. Ilic's attempt to appeal the Decision. We accept the respondents' submission that in the particular circumstances of this case, they were justified in (i) treating May 1, 2024 as the deadline for initiating the appeal. and (ii) taking the position that the Decision stands as a result of the failure to meet the deadline. In doing so, we are respecting the College's procedural choices: *Baker*, at para. 25.

[98] In reaching that conclusion, we considered whether Mr. Ilic was misled by the May 24 letter from respondents' counsel (stating May 31 was the appeal deadline) and whether that would have justified extending the time to appeal. However, in her responding May 24 letter, Mr. Ilic's counsel advised that the appeal documents had already been provided to the College a week ago, on May 17, which was after the already expired May 1 deadline. Therefore, we see no prejudice to Mr. Ilic arising from the May 24 letter from respondents' counsel.

[99] That being said, a note of caution is order when considering whether it is appropriate for an administrative decision maker to strictly enforce its filing deadlines.

[100] For academic decisions affecting a student's career and livelihood, it is in the interest of both the student and the institution, from the viewpoint of both efficiency and fairness, that the institution have appropriate procedures regarding academic appeals that include defined timelines to institute an appeal. In the case before us, the Appeal Procedures include a clear statement of the consequences of failing to meet the deadline – the decision stands. While that statement provides appropriate clarity, it in no way derogates from the institution's duty of procedural fairness, which may require the institution to extend the deadline in a particular case if it is reasonable and fair to do so. While we have decided that the respondents did not breach procedural fairness in this case, it should not be considered as suggesting that an institution is justified in enforcing its filing deadlines regardless of the circumstances or in granting an extension only as a rare exception to its rules. Due consideration of the legitimate interests of all affected parties is required.

[101] In the matter before us, it is also relevant to note that even though Mr. Ilic was not able to pursue an internal appeal, the Decision itself was the subject of judicial review by this court. Therefore, Mr. Ilic was not constrained from challenging the Decision on a fulsome record. He has also brought a civil action against the respondents and had the option of pursuing a complaint before the Human Rights Tribunal of Ontario under the *Human Rights Code*, had he wished to do so.

[102] We also note that as previously stated, the court has an overriding discretion to refuse to grant relief upon judicial review, even if the applicant makes out a case for review on the merits: *Strickland*, at para. 37; *JRPA*, s. 2(5). Mr. Ilic commenced his studies at the College in 2018, when he was 19. He is now 26. Even if he was immediately reinstated in the program, he would not be able to reattempt completion of the NICU/PICU clinical rotation until 2026 or later. As well, given

that Mr. Ilic has been absent from the program for more than a year following the Decision, it may be that additional time would be required to confirm his mastery of the core competencies to complete the program's clinical phase. In these circumstances, we would see little or no utility in granting Mr. Ilic the relief has requested.

### **VIII. Disposition and costs**

[103] Accordingly, the application for judicial review is dismissed.

[104] As the successful parties, the respondents are presumptively entitled to their costs. However, we are persuaded that a costs order is not appropriate in this case, considering (among other things) the reservations we expressed about the respondents' communications with the applicant regarding his attempt to appeal the Decision, albeit falling short of manifest unfairness. Accordingly, there will be no costs order.

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C. MacLeod RSJ.

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McGee J.

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Lococo J.

**Date:** August 13, 2025

**CITATION:** Ilic v. Canadore College, 2025 ONSC 4611  
**DIVISIONAL COURT FILE NO.:** 2222/24 (Sudbury)  
**DATE:** 20250813

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
DIVISIONAL COURT**

**MacLeod RSJ, McGee and Lococo JJ.**

**BETWEEN:**

DAMJAN ILIC

Applicant

– and –

CANADORE COLLEGE and DR. VIVIAN  
PAPAIZ

Respondents

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**REASONS FOR JUDGMENT**

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**BY THE COURT**

**Date:** August 13, 2025