

CITATION: Leigh v. Goldhar, 2025 ONSC 5276
DIVISIONAL COURT FILE NO.: 24/25
DATE: 20250917

**SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT**

RE: JAE HWAL LEIGH Applicant

AND:

SHELDON WILLIAM GOLDHAR, MD and HEALTH PROFESSIONS
APPEAL AND REVIEW BOARD

Respondents

BEFORE: Backhouse, Shore, and Tranquilli JJ.

COUNSEL: Self-represented applicant

Marc Flisfeder for the Respondent, *Sheldon Goldhar* and *Steven Bosnick*, for the
Respondent, Health Professions Appeal and Review Board

HEARD at Toronto: September 15, 2025

ENDORSEMENT

[1] Mr. Leigh seeks judicial review of the Decision of the Health Professions Appeal and Review Board (“HPARB” or the “Board”) dated October 15, 2024, which upheld the March 10, 2023 Decision of the Inquiries, Complaints, and Reports Committee (“ICRC” or the “Committee”) of the College of Physicians and Surgeons of Ontario (the “College”). Mr. Leigh submits that the decisions are unreasonable and should be set aside.

[2] Mr. Leigh filed some materials on Case Center but did not file a factum.

[3] Mr. Leigh was referred to Dr. Goldhar in the summer of 2021 for blurred vision. Dr. Goldhar performed cataract surgeries on Mr. Leigh on October 28, 2021 (right eye), and November 18, 2021 (left eye). Mr. Leigh went back to Dr. Goldhar on November 26, 2021, with complaints about his left eye. Dr. Goldhar diagnosed Mr. Leigh with endophthalmitis, a rare but known complication of cataract surgery and immediately referred him to a retinal specialist who performed surgery on the same day (November 26, 2021).

[4] The retinal specialist referred Mr. Leigh back to Dr. Goldhar (which was noted by the ICRC to be standard practice for a subspecialist) and Mr. Leigh subsequently developed corneal inflammation and a detached retina and Dr. Goldhar referred him to a corneal specialist in February

2022. Mr. Leigh considered surgery, but decided against it as the prognosis for recovery of vision was poor.

[5] Mr. Leigh subsequently complained to the College that Dr. Goldhar:

1. should refrain from curing the illness of serious *de facto* retina damage as a cataract practitioner;
2. made a personal promise of curing his illness completely within one month;
3. made a belated consultation with the corneal specialist about Mr. Leigh's corneal inflammation;
4. made a "maloperation"; and
5. handled the continued complaints of pain with words of "I know, I know", and carelessly.

[6] The ICRC decision addressed the issues raised by Mr. Leigh in his Complaint and made the following findings:

- 1) Mr. Leigh suffered a rare complication from his cataract surgery, but Dr. Goldhar acted diligently and the fact of Mr. Leigh's complication and poor outcome does not indicate any deficiency in Dr. Goldhar's care;
- 2) It is "extremely unlikely" that Dr. Goldhar would have made a promise to cure his illness completely within one month given the "dread that all ophthalmologists have about endophthalmitis";
- 3) Given the timeline, Mr. Leigh's concern that Dr. Goldhar's referral to a corneal specialist was belated "does not seem supported";
- 4) There was no indication of any concerns with the surgery itself. The ICRC also stated that it is a general expectation that discussion of surgical risks be clearly documented in the medical record;
- 5) The medical record revealed that Dr. Goldhar was very accommodating with Mr. Leigh. Overall, the ICRC had no concerns with Dr. Goldhar's management of the case.

[7] Mr. Leigh argued before the HPARB that the ICRC's investigation was inadequate and the decision to take no further action was unreasonable. The HPARB dismissed Mr. Leigh's appeal. It found the ICRC's investigation was adequate and the decision to take no further action was reasonable. It found that the ICRC applied its knowledge and expertise to the information in the record and considered the expected standards of the profession. It made the following findings:

- 1) The ICRC was reasonable in not determining the cause of Mr. Leigh's left eye problems as this is not the role of the ICRC;
- 2) The ICRC reasonably relied on its expertise in finding it unlikely Dr. Goldhar promised to cure Mr. Leigh within one month because ophthalmologists have a "dread" concerning endophthalmitis;
- 3) The ICRC reasonably noted it could not determine what was said during medical encounters and stated its expectations that all patient interactions be sympathetic and respectful;

- 4) The ICRC acted reasonably in concluding that Dr. Goldhar's letter to the corneal specialist about Mr. Leigh's trouble healing did not amount to incompetence; and
- 5) The length of the ICRC investigation did not render its findings unreasonable.

[8] Mr. Leigh suffered a rare but known complication of his cataract surgery which led to the very unfortunate loss of sight in his left eye. He understandably is very distressed. We have, however, determined that there is no basis for this court to intervene in the Decisions which we find reasonable. The application is dismissed for the following reasons.

[9] There is no appeal from a HPARB decision under s. 35 of the *Health Professions Procedural Code*¹(the *Code*) upon the HPARB's review of an ICRC decision. The Divisional Court's jurisdiction is limited to a judicial review application: see *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1, ss. 2, 6(1).

[10] The standard of review of the merits of the HPARB decision is reasonableness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653.) The court may consider the reasonableness of the underlying ICRC Decision to determine the reasonableness of the HPARB Decision subject to judicial review: see e.g. *Haddad v. Health Professions Appeal and Review Board*, 2024 ONSC 6015 at para. 17.

[11] Mr. Leigh seeks to make the same arguments before this court as he did to the HPARB. Mr. Leigh's primary concern at the hearing was his disappointment that neither the College nor HBARB determined liability or the causation for the poor outcome of his surgery. The *Code* sets out the role of the ICRC in conducting an investigation. The Divisional Court has found that section 26(1) of the *Code* requires the ICRC to make "reasonable efforts" to consider the records and documents that it considers relevant to the complaint and the ICRC "is not required to examine all records and documents, conduct interviews, hear testimony, or make findings of credibility." (*Togerson v. Health Professions Appeal and Review Board*, 2021 ONSC 74, para.45).

[12] In regard to Mr. Leigh's concern about liability or causation not having been determined in this matter, the HPARB found:

28. The Board notes that the Committee does not determine liability or causation, and its function is not to punish physicians. Rather, the Committee's mandate is to screen complaints about its members. The Committee considers the information it obtains to determine whether, in all of the circumstances, a referral of specified allegations of professional misconduct to the OPSDT is warranted or if some other remedial action should be taken.

29. For this reason, the Board finds that it was not necessary for the Committee to conduct a further investigation to determine whether the November surgery was the cause of the blindness the Applicant developed in his left eye or to determine who was responsible for the Applicant's unfortunate outcome regarding his left eye.

¹ Schedule 2 of the *Regulated Health Professions Act*, 1991.

[13] This finding is reasonable and there is no basis to intervene.

[14] Mr. Leigh's second concern was that the College did not investigate his complaint. In addition to Mr. Leigh's complaint and his additional submissions, the College obtained and considered Dr. Goldhar's response, his medical records, the hospital records where the surgery took place and the medical records from the two specialists to whom Dr. Goldhar referred Mr. Leigh and who treated him. In addition, the ICRC was a specialized panel and one of the members was an ophthalmologist. The HPARB found that the Committee's investigation was adequate because it was supported by the information and documents obtained as a result of the investigation.

[15] Mr. Leigh also submitted that he did not receive a response to his complaint and did not receive notice of the Board's processes. The record shows that Mr. Leigh received the ICRC's Decision because he requested a review of it and made several written submissions. He also was provided notice of the Board's case conference. Mr. Leigh's concerns are not supported by the record.

[16] The court will show significant deference to the ICRC as will the HPARB on *Haddad v. Health Professions Appeal and Review Board*, 2024 ONSC 6015 at para.17.

[17] We would not interfere with the HPARB's decision that the College's investigation was adequate and that the ICRC's decision was reasonable.

[18] The application is therefore dismissed. The respondents do not seek costs of the application and accordingly, no costs are awarded.

Backhouse J.

Shore J.

Tranquilli J.