

CITATION: Drake v. HPARB, 2025 ONSC 5261  
DIVISIONAL COURT FILE NO.: 25/25  
DATE: 20250917

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

**RE:** DR. THOMAS GLEN DRAKE Applicant

**AND:**

HEALTH PROFESSIONS APPEAL AND REVIEW BOARD, ROYAL  
COLLEGE OF DENTAL SURGEONS OF ONTARIO and DARRIN  
MUELLER Respondents

**BEFORE:** Backhouse, Nakatsuru, and O'Brien JJ.

**COUNSEL:** *Gary Srebrolow and Zarin Zahra* for the Applicant

*David P. Jacobs and Amna Farooqi*, for the Respondent Health Professions  
Appeal and Review Board

*Ahmad Mozaffari* for the Royal College of Dental Surgeons of Ontario

**HEARD at Toronto:** September 11, 2025

**ENDORSEMENT**

[1] The applicant seeks judicial review of the decision of the Health Professions Appeal and Review Board (“HPARB”) dated January 16, 2025. The HPARB confirmed the disposition of the Inquiries, Complaints and Reports Committee (“ICRC”) of the College of Physicians and Surgeons of Ontario (the “College”) dated October 13, 2022 (collectively the “Decisions”).

[2] Following an investigation of a complaint about patient privacy involving video cameras in his dental office, the ICRC ordered the applicant to complete a specified continuing education or remediation program (“SCERP”) on informed consent focused on patient privacy and the use of video cameras in the dental office to be followed by practice monitoring by the College for 24 months.

[3] The College proceedings arose from a complaint by Darrin Mueller who the applicant had contracted with in July 2019 to provide IT support and replace older cameras in the applicant’s dental offices with 14 video cameras. Mr. Mueller was also a patient and rented office space for his business from the applicant. The applicant alleged that Mr. Mueller was motivated by revenge after he was told he would be evicted if rent arrears were not paid or he proved that cameras he had agreed to order had been ordered and were up and running.

[4] In September or October 2019, Mr. Mueller replaced an older system of cameras with four new video cameras which had the capacity to record both video and audio in four operatories and installed a new camera in the employee lounge. The College investigators inspected the practice in January 2020. The older cameras were non-operational (although one camera remained in the waiting room from the old system) and no new cameras were present.

[5] In response to the complaint, the applicant advised: 1) that he was led to believe by Mr. Mueller that at all material times the video camera system installation was not complete and not operational but instead was in the testing phase and was not recording video and audio; 2) that as a result of a dispute between Mr. Mueller and a staff member, the new cameras had been taken down and the applicant had contracted for another company to install a new system; 3) that he was very aware that signage was needed and had signage up indicating to patients that the premises was monitored; and 4) that when patients come to the office for initial visits they fill out the appropriate paperwork and a consent form which informs patients that the office is under video surveillance which consent form he produced to the investigator.

[6] In this court, the applicant focused on his main submission: that the ICRC and the HPARB's decisions should be quashed because they erroneously concluded that the cameras in the clinic were operational and recording patient interaction. The applicant submits that there has to be a factual basis for ordering a SCERP. While a SCERP is educational, it still must be based on a finding of non-compliance with required conduct. The applicant submits that the Decisions are based on an intention to operate a new video camera system and not non-compliance with the guidance document "*Advice on the use of video cameras*". There were no recordings of patients and therefore there was no issue regarding patient consent. Updating the signage and patient consent forms was not necessary because the cameras were still in the testing stage and would have been completed once the system was operational.

[7] It is raised for the first time in the College's factum that an inference can be drawn that the ICRC and the HPARB relied on prior video cameras having been operational and not used in accordance with the guidance document. The applicant submits that there were no findings of when, where and how the prior video cameras were used and it is impermissible to add an interpretation not set out in the Decisions.

[8] The application is dismissed for the following reasons.

[9] 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.

[10] For issues of procedural fairness, there is no standard of review: *Afolabi v. Law Society of Ontario*, 2025 ONCA 257, at para. 60. The court must apply the factors outlined in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817.

[11] There was no misapprehension by the ICRC or the HPARB that the cameras were operational at the time of the investigator's attendance at the applicant's dental office. This is clear when the Decisions are read in their entirety. Both decisions note this fact from the investigator's report.

[12] In his response to the Complaint, the applicant referred to the sufficiency of signage in the dental office and of the consent forms he provides to patients which he said addressed the issue of consent. He also made it clear that he intended to install a new system of cameras. HPARB noted this in its Decision, stating that there was "no information in the Record to support that (the applicant) informed the Committee that he would not be using cameras going forward."

[13] While the applicant submitted on this application that updating the signage and patient consent forms would have been completed once the new video camera system was operational, he did not state this in his response to the Complaint. Rather, the information that he provided to the College's investigator was that he had cameras in one office and signage up there indicating to patients that the premises is monitored. He produced the consent forms which he advised patients fill out and sign when they come for initial visits which informs them that the office is under video surveillance. The applicant had previously installed cameras in his office, had installed 4 new cameras months before the Complaint was made (and then removed them) and had retained another company to install further cameras. It was a reasonable inference that the applicant intended to rely upon the same consent forms when the new video cameras he had contracted for were installed. There was no evidence that the applicant had taken any steps to ensure that the information that was to be recorded would be retained in patient charts.

[14] The ICRC noted in its Decision that the applicant's patient consent form says "I know that your office has video and audio recording devices" and has no more information about the use of cameras. The Decision goes on to note that neither the signage nor the patient consent form covers what is required by the guidance document. In these circumstances there is nothing unreasonable about the ICRC finding that it had "moderate concern that the Dentist is using video cameras in his office without obtaining appropriate patient consent and ensuring he meets his obligations to protect and retain personal health information" and that the applicant would benefit from additional remedial education.

[15] In accordance with its usual practice, the ICRC did not focus on the complainant or the circumstances under which the complaint arose. The HPARB found that the ICRC's disposition of the complaint was directly related to concerns identified by the ICRC about the applicant's practice and there was nothing unreasonable about that.

[16] Although the applicant submitted in his factum that the College's investigation was inadequate, it is noted in the HPARB's Decision that the applicant had no submissions with respect to the adequacy of the investigation.

[17] In short, HPARB reasonably concluded: 1) that the Record supported the ICRC's conclusion; 2) the ICRC considered the appropriate factors in reaching its decision; and 3) the

[18] disposition of a SCERP and 24 months of monitoring would provide additional remedial support and protection to the public and were reasonable.

[19] We would not interfere in this conclusion. The court will show significant deference to the ICRC's choice of remedy, as will the HPARB on review: *Haddad, supra* at para.46. In this case, given the ICRC's concern about the applicant in relation to video cameras and patient privacy, it was reasonable for the HPARB to uphold the disposition of a SCERP and monitoring.

[20] The application is therefore dismissed. The HPARB does not seek costs of the application and none are awarded to it. In accordance with the agreement of the parties, the College is entitled to costs in the all-inclusive amount of \$10,000.

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Backhouse J.

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Nakatsuru J.

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O'Brien J.

**Released:** September 17, 2025