



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

Citation: *Card v. The College of Physicians and Surgeons of Newfoundland and Labrador*, 2025 NLSC 140

Date: October 16, 2025

Docket: 202401G4526

2025 NLSC 140 (CanLII)

BETWEEN:

ANNIKA CARD

APPELLANT

AND:

**THE COLLEGE OF PHYSICIANS AND
SURGEONS OF NEWFOUNDLAND AND
LABRADOR**

RESPONDENT

Before: Justice Peter A. O'Flaherty

On Appeal From: The Decision of the College of Physicians and Surgeons of Newfoundland and Labrador on the 10th day of July, 2024, to withdraw its acceptance of the application for medical registration of the Appellant.

Place of Hearing: St. John's, Newfoundland and Labrador

Date of Hearing: October 9, 2025

Date of Judgment: October 16, 2025

Summary:

The Appellant appealed from the decision of the College to withdraw its acceptance of an Application for Medical Registration with the College.

Held: The appeal was dismissed.

Appearances:

Ryan M. Belbin	Appearing on behalf of the Appellant
Ruth E. Trask	Appearing on behalf of the Respondent

Authorities Cited:

CASES CONSIDERED: *R. v. Palmer*, [1980] 1 S.C.R. 759; *Barendregt v. Grebliunas*, 2022 SCC 22; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65; *Housen v. Nikolaisen*, 2002 SCC 33; *H.L. v. Canada (Attorney General)*, 2005 SCC 25; *Moreau-Bérubé c. Nouveau-Brunswick*, 2002 SCC 11; *Baker v. Canada (Minister of Citizenship & Immigration)*, 1999 SCC 699; *Seraj v. Memorial University of Newfoundland*, 2022 NLCA 42; *Afolabi v. Law Society of Ontario*, 2025 ONCA 257; *Gulliver v. Law Society of Newfoundland and Labrador*, 2024 NLCA 23

STATUTES CONSIDERED: *Medical Act, 2011*, S.N.L. 2011, c. M-4.02; *Medical Regulations, 2023*, Nfld. Reg 35/23

RULES CONSIDERED: *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D

REASONS FOR JUDGMENT**O'FLAHERTY, J.:****INTRODUCTION**

[1] This is an appeal under section 23 of the *Medical Act, 2011*, S.N.L. 2011, c. M-4.02 (the “Act”).

[2] The Appellant is a physician licensed to practice in Saskatchewan (the “Physician”). The Respondent is the College of Physicians and Surgeons of Newfoundland and Labrador (College).

[3] On April 22, 2024, the Physician made an Application for Medical Registration (Application) with the College through its online web portal.

[4] The appeal is from the decision of the College on July 10, 2024 to withdraw its acceptance of the Application (Decision). The Decision was made by the College under its licensing and registration by-law on the basis that there were reasonable grounds to believe that the Physician provided untruthful, inaccurate or incomplete information to the College about her disciplinary history in Saskatchewan.

[5] The appeal was filed on August 12, 2024. In the Notice of Appeal, the Physician requested an order overturning the finding by the College that there were reasonable grounds to believe that the Physician provided untruthful, inaccurate, or incomplete information to the College, and an order that the Application be discontinued, without prejudice to the Physician’s professional record.

[6] On March 13, 2025, the Physician applied under Rule 58.16 of the *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D, to include additional evidence on the appeal. That application was heard on June 2, 2025, and dismissed.

[7] For the reasons that follow, the appeal must be dismissed.

THE ISSUES

[8] The appeal raises four issues:

1. Should additional evidence be included on the appeal?
2. What standard of review applies to the grounds of appeal raised by the Physician?
3. Did the College err in fact in finding there were reasonable grounds to believe the Physician had provided untruthful, inaccurate, or incomplete information?
4. Did the College fail to follow a fair process in reaching the Decision?

FACTUAL BACKGROUND

The Application

[9] The Physician submitted the Application online on April 22, 2024. The application form included a “Background” section that began with an attestation and was followed by a series of questions about licenses, permits and applications, and questions about the Physician’s disciplinary history, pending or concluded.

[10] The relevant portions of the Application include the following:

ATTESTATION

Do you confirm the information in this section is complete, true, accurate and up to date?

Yes

INFORMATION ABOUT LICENCES, PERMITS AND APPLICATIONS

Have you ever had an application for a medical licence, certificate of registration or permit to practice rejected, refused or denied?	No
Have you ever been refused renewal of a medical licence, certificate of registration or permit to practice?	No
Have you ever had a medical licence, certificate of registration or permit to practice:	
Revoked:	No
Suspended:	No
Restricted in any way:	No
Subjected to conditions of any kind:	Yes
Provide additional information:	Undertaking to withdraw from call due to medical issues
Limited in any way:	No
Subjected to any other adverse action:	No

MEDICAL REGULATORY AUTHORITIES ACTIONS RELATED TO PROFESSIONAL CONDUCT AND COMPETENCE

Are you now the subject of a complaint or request for investigation to a medical licensing or regulatory authority?	Yes
Provide additional Information:	CPSS ongoing. However no restrictions etc.
Have any past complaints resulted in any of the following actions by a medical licencing or regulatory authority. Indicate all that apply.	
A formal investigation:	No
A disciplinary proceeding:	No
A review of your conduct, competence, capacity or fitness to practice:	No
An audit of your practice:	No

An assessment of your practice: No

Are you currently subject to a review of any of the following (whether arising from a complaint or otherwise):

Your conduct (professional, unbecoming or misconduct): No

Your competence: No

Your capacity: No

Your fitness to practice: No

Has there ever been a review of any of the following (whether arising from a complaint or otherwise):

Your conduct: No

Your competence: No

Your capacity: No

Your fitness to practice: No

In connection with any inquiry, investigation or proceeding relating to your professional conduct, competence, capacity, or to any other aspect of your medical practice, have you ever voluntarily:

Restricted your medical licence, certificate of registration or permit to practice? Yes

Provide additional information: Undertaking to withdraw from call

Resigned or surrendered your medical licence, certificate of registration or permit to practice? No

Withdrawn from your practice of medicine? Yes

Provide additional information: For medical reasons starting Jan 2023.
Fit to return at this time

Entered a plea of “no contest”? No

Have your privileges or legal authority to purchase, prescribe, possess, or dispense narcotic or other restricted drugs ever been:

Restricted: No

Reduced: No

Withdrawn: No

Voluntarily surrendered: No

[11] On the application form, the Physician declared that all the information she provided to the College in connection with the Application, including all the answers

given to the questions on the application form, all the information inserted in the application form, and all the information in other documents she had provided to the College was true, complete, and given without intent to mislead.

The Correspondence of April 24-25, 2024

[12] The Physician had not been previously licensed in Newfoundland and Labrador. On April 24, 2024, the College acknowledged receipt of the Application and requested the further documentation and information it required.

[13] On April 25, 2024, the Physician emailed the College and provided some of the requested documentation and information including a Form 3: Addendum to First Time and Resident License Application.

The Certificate dated May 22, 2024

[14] In the April 24, 2024 letter from the College, the Physician was informed that an updated Certificate of Professional Conduct was also required from the College of Physicians and Surgeons of Saskatchewan (the “Certificate”).

[15] On May 17, 2024, the Physician requested the College of Physicians and Surgeons of Saskatchewan (CPSS) to provide the Certificate to the College.

[16] The Certificate was sent to the College by the College of Physicians and Surgeons of Saskatchewan on May 22, 2024, along with an attached letter from its legal counsel dated May 22, 2024, that formed part of the Certificate. The attached letter in turn had a number of attachments.

[17] The Certificate certified that the conduct of the Physician has been the subject of an investigation by the College of Physicians and Surgeons of Saskatchewan and further certified that the Physician has not been the subject of a disciplinary proceeding.

[18] The letter reported the disciplinary history of the complaints that were currently open or pending against the Physician, including the undertakings given to the College of Physicians and Surgeons of Saskatchewan since February 23, 2022.

[19] The letter reported that commencing in the spring of 2021, more than 60 specific patient-related concerns were received by the College of Physicians and Surgeons of Saskatchewan from colleagues of the Physician, of which 47 were provided to the Physician with 29 prioritized for response. In addition, there were patient complaints received over the same time period with five being received in late 2022. These matters were being addressed as possible unprofessional conduct.

[20] The letter reported that given the volume of concerns and the time taken to properly review them, the Physician had entered into five undertakings to date.

[21] The letter reported that in April 2024 the Executive Committee of the College of Physicians and Surgeons of Saskatchewan met to review many of the complaints.

[22] On April 24, 2024¹, the Executive Committee decided that three charges of unprofessional conduct should be laid against the Physician, that preliminary inquiry committees would be appointed to investigate possible unprofessional conduct by the Physician in relation to fifteen complaints, and other complaints were dismissed because the information did not provide reasonable grounds to believe the Physician may be guilty of professional misconduct.

¹ The date of April 24, 2024 is found in the letter dated May 23, 2024, from the Physician's counsel to the College.

[23] The letter reported that as of December 28, 2022, the Physician’s request for reappointment to the Saskatchewan Health Authority was denied and, as a result, the Physician had not held hospital privileges with the health authority since that time.

[24] The letter attached three of the five undertakings entered into by the Physician and reported on the status of the Physician’s compliance with the most recent undertaking of January 31, 2024. At the date of the letter, the Physician had partly complied with the most recent undertaking, however the requirements to meet with the Registrar and take a record-keeping course were only a requirement if she returned to practice, which had not occurred.

The May 23, 2024 Letter from the Physician’s Counsel

[25] On May 23, 2024, counsel for the Physician in Saskatchewan wrote to the College to forward expert opinions relating to the merits of the ongoing complaints against the Physician “as supporting documents relevant to her Application.”

[26] The letter from counsel also enclosed an undated copy of the decision of the Executive Committee, which the letter referenced as dated April 24, 2024.

The July 3, 2024 Letter from the College to the Physician

[27] On July 3, 2024, the College sent a letter to the Physician regarding the answers provided by the Physician in the Application and the information provided by the College of Physicians and Surgeons of Saskatchewan in the Certificate.

[28] The letter from the College dated July 3, 2024, is reproduced below:

We write to advise that the College of Physicians and Surgeons of Newfoundland and Labrador (“CPSNL”) recently received a Certificate of Professional Conduct from the

College of Physicians and Surgeons of Saskatchewan (CPSS). Upon review of this document, it was noted that you are subject to three current undertakings relating to your practice of medicine. It was also noted that the Executive Committee of the CPSS resolved that 3 complaints filed against you should be addressed by charges of professional misconduct without an investigation by a preliminary inquiry committee and that the information on file with the CPSS in relation to 15 additional complaints filed against you justified appointing preliminary inquiry committees to investigate possible unprofessional conduct.

In your Application for Registration with the CPSNL, you answered as follows:

Have you ever had a medical licence, certificate of registration or permit to practice:

Revoked:	No
Suspended:	No
Restricted in any way:	No
Subjected to conditions of any kind:	Yes
Provide additional information:	Undertaking to withdraw from call due to medical issues
Limited in any way:	No
Subjected to any other adverse action:	No

Have any past complaints resulted in any of the following actions by a medical licencing or regulatory authority. Indicate all that apply.

A formal investigation:	No
A disciplinary proceeding:	No
A review of your conduct, competence, capacity or fitness to practice:	No
An audit of your practice:	No
An assessment of your practice:	No

Are you currently subject to a review of any of the following (whether arising from a complaint or otherwise):

Your conduct (professional, unbecoming or misconduct):	No
Your competence:	No
Your capacity:	No
Your fitness to practice:	No

Has there ever been a review of any of the following (whether arising from a complaint or otherwise):

Your conduct:	No
Your competence:	No
Your capacity:	No
Your fitness to practice:	No

In connection with any inquiry, investigation or proceeding relating to your professional conduct, competence, capacity, or to any other aspect of your medical practice, have you ever voluntarily:

Restricted your medical licence, certificate of registration or permit to practice? Provide additional information:	Yes Undertaking to withdraw from call
Resigned or surrendered your medical licence, certificate of registration or permit to practice? Withdrawn from your practice of medicine? Provide additional information:	No Yes For medical reasons starting Jan 2023. Fit to return at this time
Entered a plea of “no contest”?	No

We write at this time to provide you with an opportunity to explain the inconsistencies between the answers you provided on your Application for Registration and the information provided by CPSS relating to your professional conduct in that jurisdiction.

Please note that the CPSNL reserves the right to deny or withdraw acceptance of an application for registration or licence, if the CPSNL has reason to believe that the medical practitioner provided information that is untruthful, inaccurate, or incomplete.

The July 8, 2024, Email of the Physician

[29] The Physician responded to the July 3, 2024, letter with an email on July 8, 2024. The Physician’s email is reproduced below:

Thank you for providing more information on the delay of licensing. I appreciate Dr. Carroll taking the time to clarify what the concerns and delays are.

I submitted the online application document on April 22 as the first step in this process, and completed it with the information I knew at the time.

I have fully disclosed all activities at CPSS, and provided multiple updates on progress as soon as I had them (or requested CPSS to send them). As noted by CPSS, I have a full and unrestricted license. This letter was supposedly provided to you from CPSS (attached below). This process has been ongoing for over two years and is expected to continue for some time.

I am not a lawyer and my legal team did not review the application documents. I had completed that form to the best of my ability based on my understanding of some of the terms, and within the constraints of the form (15 letter limitation for some answers). I also submitted additional info providing more context around the complaints and undertakings, but I'm not sure if this was passed on to the registration committee as it was not a requested document.

I am happy to answer any questions [*sic*] and expand on the undertakings, the complaints, and the long standing intradivisional personal conflicts.

I assume the inconsistencies mentioned are related to a formal investigation. At the time I filled in the form there were no PICs requested. I notified CPSNL as soon as I had that information. My legal team is currently in discussions with CPSS regarding resolving all issues prior to the PICs being initiated.

I have been completely open regarding the ongoing complaint process at CPSS and have provided detailed responses and updates from CPSS as soon as they are available. If you have been provided with information from CPSS that I do not have that appears to conflict with the info I have provided, please advise.

I am available to be involved directly with your review committee to answer any questions and attempt to expedite this process. My goal is to come and help out in NFLD during a serious time of need. This is not intended to be a long term position. As you should have seen from my reference letters there are no concerns about my competency or ability to practice. Everything that has been shared with you from CPSS relates to Divisional conflicts which have been ongoing for over 2 years and will take even longer to resolve.

[30] The attachment referred to in the Physician's email of July 8, 2024, was a letter from the College of Physicians and Surgeons of Saskatchewan to the College of Physicians and Surgeons of Ontario, dated March 28, 2024. In turn, that letter attached a Certificate of Professional Conduct dated March 28, 2024, certifying, *inter alia*, that the conduct of the Physician has been the subject of an investigation.

The Decision of the College

[31] The Decision was given in a letter dated July 10, 2024, reproduced below:

We write to advise that the College is unsatisfied with the explanation you provided as to the significant inconsistencies in the information you provided in your Application for Registration and the information received from the College of Physicians and Surgeons of Saskatchewan regarding your professional conduct history in that jurisdiction.

In accordance with the College's By-Law 4: Licensing and Registration, s. 5(1), the College has withdrawn acceptance of your Application for Registration on the basis that there are reasonable grounds to believe that you provided untruthful, inaccurate, or incomplete information.

[32] The Physician's appeal was filed with this Court on August 12, 2024.

ANALYSIS

The Right of Appeal

[33] The authority of the Court to hear this appeal is statutory. Section 23(1) of the *Act* provides that an appeal lies to a judge of this Court from a decision of the council under section 22.1.

[34] The Physician did not appeal to the council from the Decision, however the College did not object to the Physician proceeding with a direct appeal to this Court. I am satisfied to proceed in this fashion.

The Application to File Additional Evidence on the Appeal

[35] An interlocutory application for an order under Rule 58.16 to include additional evidence on appeal was filed March 13, 2025. I dismissed the application on June 2, 2025, with brief reasons to follow. The following are those reasons.

[36] The application states that neither the Record nor the Supplemental Record contain a “fact which is crucial to one of (the Appellant’s) grounds of appeal.” The additional facts are that counsel in Saskatchewan did not receive the decision of the Executive Committee of the College of Physicians and Surgeons of Saskatchewan regarding the professional conduct complaints in that jurisdiction until April 24, 2024, and counsel did not communicate the outcome of the decision to the Physician until April 26, 2024.

[37] These facts are relied upon to show that the Physician was unaware of the findings of the Executive Committee until April 26, 2024, and therefore did not know of them when the Application was made on April 22, 2024.

[38] The Appellant argues that it would be unfair not to allow the additional evidence to be entered because in making the July 10, 2024, Decision, the College proceeded on the erroneous assumption that the Appellant knew there were “formal referrals” against her practice when she submitted her Application on April 22, 2024.

[39] I would pause here to observe that in the Record there is already evidence that the date of the decision of the Executive Committee is April 24, 2024, and that fact is not disputed by the College. It is therefore undisputed that the Physician was unaware of the Executive Committee decision when she made the Application on April 22, 2024, because it did not yet exist.

[40] The other additional evidence the Physician seeks to include on the appeal is the fact that her counsel did not communicate the outcome of the decision of the Executive Committee to the Physician until April 26, 2024.

[41] The applicable Rule is Rule 58.16, in particular sub-Rules 58.16(3) and (4) which provide as follows:

58.16(3) An application under subrule (1) must be accompanied by an affidavit setting out

- (a) the general nature of the additional evidence sought to be introduced;
- (b) the way in which the additional evidence satisfies the criteria set out in subrule (4); and
- (c) why the additional evidence was not introduced in the proceeding before the decision-making authority appealed from.

58.16(4) In determining the application, the judge must consider

- (a) whether, by due diligence, the evidence could have been tendered in the proceeding appealed from;
- (b) the relevance of the evidence in the sense that it bears upon a decisive or potentially decisive issue in the appeal;
- (c) the reliability of the evidence;
- (d) whether the evidence, if believed, could reasonably have affected the result; and
- (e) any other relevant factor.

[42] In effect, Rule 58.16(4) outlines the common law test for the admission of additional evidence, whether fresh evidence or new evidence, on an appeal. That test, set out in *R. v. Palmer*, [1980] 1 S.C.R. 759, has four criteria and ensures that the admission of additional evidence on an appeal will be rare.

[43] As the Supreme Court explained in *Barendregt v. Grebliunas*, 2022 SCC 22, at para. 29, the four criteria in *Palmer* are the following:

1. The evidence could not, by the exercise of due diligence, have been obtained for the trial (provided that this general principle will not be applied as strictly in a criminal case as in civil cases);
2. The evidence is relevant in that it bears upon a decisive or potentially decisive issue;
3. The evidence is credible in the sense that it is reasonably capable of belief; and,
4. The evidence is such that, if believed, it could have affected the result at trial.

[44] At paragraph 32 of *Barendregt*, the Supreme Court explained that the first criterion seeks to preserve finality and order by excluding evidence that could have been considered by the decision-maker at first instance, had the party exercised due diligence. The remaining criteria are concerned with reaching a just result.

[45] The application to introduce fresh evidence runs aground on the first criterion.

[46] The evidence that her legal counsel forwarded her the Decision on April 26, 2024, was known to the Physician when she received the decision of the Executive Committee on April 26, 2024. The reason that the College did not have the information at the time it made the Decision on July 10, 2024, was because the Physician did not provide the College with the information in a timely manner.

[47] Applying the due diligence criterion in the *Palmer* test, I find I must decline to admit the fresh evidence in these circumstances because the party seeking to adduce the fresh evidence on appeal failed to act with due diligence.

[48] The interlocutory application was therefore dismissed for these reasons.

The Grounds of Appeal

[49] The Physician raises three grounds of appeal:

- 1) The College erred by failing to consider the entirety of the Physician's Application, and was thereby incorrect that there was any failure to disclose;
- 2) The College erred by treating a formal investigation arising after the filing of the Physician's Application as being a fact that ought to have been disclosed by the Physician to the College from the outset;
- 3) In the alternative, the College acted unfairly by having a deficient application form, by failing to provide adequate notice of the alleged issues with the Appellant's Application for Registration, thereby denying her an opportunity to explain, and failing to provide a hearing contrary to section 14(6) of the *Medical Regulations, 2023*, Nfld. Reg 35/23.

The Standard of Review

[50] This is an appeal of a decision under s. 23 of the *Act*, which provides for a statutory appeal from such a decision. In such circumstances, the court hearing the appeal is to apply appellate standards of review to the decision: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 37.

[51] The standard of review applied on a pure question of law is correctness: *Housen v. Nikolaisen*, 2002 SCC 33, at paras. 8 and 9.

[52] The standard of "correctness" permits the appeal court to substitute legal findings for those of the original decision-maker if the court decides the latter was mistaken about the law. In plain terms, this Court is free to replace the opinion of the College with its own on a question of law.

[53] The standard of review applied on questions of fact, or mixed questions of fact and law where the legal principle is not readily extricable, is palpable and overriding error: *Housen* at paras. 10, 19 and 26-37. The parties agree that the first two grounds would be subject to the palpable and overriding error standard.

[54] The standard of “palpable and overriding error” imports a high level of appellate deference. In plain terms, this Court will not reverse a finding of fact unless it can be shown that the decision-maker made a clear and obvious error in its assessment of the facts in a way that affected the outcome: *H.L. v. Canada (Attorney General)*, 2005 SCC 25, at paras. 55-56.

[55] The third ground does not engage a standard of review analysis. Instead, it requires an inquiry into the nature and extent of the duty of fairness required in the particular situation of an applicant for medical registration with the College, and whether it was adequately met by the College: *Moreau-Bérubé c. Nouveau-Brunswick*, 2002 SCC 11, at para. 74.

[56] It is helpful to address the third ground of appeal at the outset.

The Denial of Procedural Fairness

[57] To determine whether the duty of procedural fairness has been met by an administrative decision-maker involves a context-specific analysis. On this appeal the context is a decision by the College to withdraw its acceptance of an application for medical registration with the College.

The Applicable Law

[58] The relevant registration provisions of the *Act* are sections 8, 15(1)(i.2) and (l) and 19.1(1) and (2):

8(1) The college is authorized to regulate the practice of medicine and the medical profession in the public interest.

8(2) The objects of the college include

- (a) the promotion of
 - (i) high standards of practice, and
 - (ii) continuing competence and quality improvement through continuing medical education;
- (b) the administration of a quality assurance program; and
- (c) the enforcement of standards of conduct.

15(1) The council may make by-laws

- (i.2) establishing standards governing the practice of medicine, including standards of professional competence and of capacity and fitness to practise
- (l) respecting the information and verification of information required of applicants for registration or licensing;

19.1(1) A person who

- (a) holds a medical degree granted by a medical school or an osteopathic medical school approved by the council;
- (b) has completed the post-graduate education and training approved by the council as qualifying a person for registration on the provisional register; and
- (c) possesses the other qualifications and meets the other requirements that may be prescribed in the regulations as qualifying a person for registration on the provisional register

is entitled to be registered on the provisional register upon payment of the fee for registration set by the council.

19.1(2) In addition to a person referred to in subsection (1), a person who

(a) holds a medical degree granted by a medical school or an osteopathic medical school prescribed in the regulations or located in a jurisdiction prescribed in the regulations;

(b) is licensed to practice medicine in a jurisdiction prescribed in the regulations; and

(c) possesses the other qualifications and meets the other requirements that may be prescribed in the regulations as qualifying a person for registration on the provisional register

is entitled to be registered on the provisional register upon payment of the fee for registration set by the council.

[59] To determine the nature and extent of the duty of procedural fairness required in a particular administrative context, the parties agree that the starting point is the non-exhaustive list of factors outlined in *Baker v. Canada (Minister of Citizenship & Immigration)*, 1999 SCC 699, at paras. 21-28.

[60] In *Vavilov*, the Supreme Court identified and confirmed the non-exhaustive list of *Baker* factors relevant to the analysis of the duty of procedural fairness:

[77] ...Where a particular administrative decision-making context gives rise to a duty of procedural fairness, the specific procedural requirements that the duty imposes are determined with reference to all of the circumstances: *Baker*, at para. 21. In *Baker*, this Court set out a non-exhaustive list of factors that inform the content of the duty of procedural fairness in a particular case, one aspect of which is whether written reasons are required. Those factors include: (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: *Baker*, at paras. 23-27; see also *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, 2004 SCC 48, [2004] 2 S.C.R. 650, at para. 5.

[61] The Court of Appeal of Newfoundland and Labrador has confirmed the applicability of the *Baker* analysis in determining whether the duty of procedural fairness

has been met in an administrative decision-making context in this province: *Seraj v. Memorial University of Newfoundland*, 2022 NLCA 42, at paras. 63-68.

The Positions of the Parties

[62] In her factum, the Physician submitted that the degree of procedural fairness owed to the Physician was “relatively high” because the medical registration decision was of utmost paramountcy to the Physician, and because she had a legitimate expectation of a more involved participation in the process beyond the limited opportunity provided by the College on July 3, 2024, to respond in writing.

[63] The Physician submits the duty of procedural fairness owed was not met because the College used a deficient application form, it provided insufficient particulars of the significant inconsistencies, and it failed to provide the Physician with a face-to-face meeting or an opportunity for additional detailed follow-up.

[64] The College submits that the level of procedural fairness owed to the Physician is not high or relatively high, it is a level of procedural fairness similar to the process approved by the Ontario Court of Appeal, in *Afolabi v. Law Society of Ontario*, 2025 ONCA 257, as “fair in all the circumstances.”

[65] The College submits that the process it followed was fair in all the circumstances, and it met the duty of procedural fairness owed to the Physician.

Discussion on the Third Ground of Appeal

[66] For the reasons that follow, I would dismiss the third ground of appeal.

[67] In considering the first *Baker* factor, the nature of the medical registration decision, and the process followed in making it, I am directed to examine the administrative decision-making process to see how close it is to a judicial process. The closer it is to judicial decision-making, the greater the procedural protections that should be provided to the person affected by the decision: *Baker*, at para. 23.

[68] I find that the medical registration decision is administrative in nature flowing from the College's mandate to regulate the practice of medicine in the public interest.

[69] The process followed to decide whether a candidate is eligible for medical registration involves the completion by the candidate of a standard online application form with both the candidate and third parties providing all documentation required by the College for verification of the information provided in the application.

[70] In considering the second factor, the nature of the statutory scheme, the College was specifically authorized by the statute to make by-laws establishing the standards of professional competence and of capacity and fitness to practise it required, and respecting the information and verification of information it required of applicants for registration or licensing.

[71] In the exercise of its statutory mandate, the College passed By-law 4: Licensing and Registration (By-law), which puts the onus squarely on an applicant for medical registration to provide truthful, accurate, and complete information to the College about an applicant's disciplinary history, both pending and concluded.

[72] In section 2(1) of the By-law, it is provided that an applicant must provide information about complaints made to, proceedings before, or actions taken by other regulatory authorities and hospitals in respect of the applicant.

[73] In section 2(2), it is provided that a question to be answered or an information field to be completed on an application shall be considered a request for the information necessary to provide a truthful, accurate, and complete response to that question or answer

to that information field. In section 2(3), it is provided that failure to provide any information requested shall be grounds for denial of an application.

[74] In section 5(1), the College reserves the right to deny or withdraw an application for registration, if the College has reason to believe that the applicant has provided information that is untruthful, inaccurate, or incomplete.

[75] There was no requirement in the By-law that an oral hearing be held before the College decided to deny or withdraw acceptance of an application for medical registration nor was there any evidence that there was any practice that procedural protections found in the judicial process would be provided to an applicant in such circumstances.

[76] On the third factor, I find that the decision whether or not to register the Physician on the medical register of the College was of significant importance to the Physician. While the Physician was only planning to move to this province to practice on a short-term locum, her ability to work here as a physician wholly depended on the outcome of the decision.

[77] On the fourth factor, I find there was no evidence of a legitimate expectation to any particular process or hearing based on the words or conduct of the College.

[78] The College made no promise to hold an oral hearing when it wrote to the Physician on July 3, 2024, to provide an opportunity to address the College's stated concerns. Instead, it specifically reserved the right to deny or withdraw acceptance of the Application for Registration if the College has reason to believe that the Physician had provided information that is untruthful, inaccurate, or incomplete.

[79] Counsel referred me to the written responses of the Physician and argued these showed the Physician had a legitimate expectation of more involved participation. In my view, the law is clear that a legitimate expectation of a procedural protection must be based on the words and conduct of the College, not the Physician.

[80] On the fifth factor, the College chose to follow an online process for applications for medical registration requiring applicants to submit specific digital information, which undergoes verification by the College through the provision of required documentation. The process appears consistent with the process used in Saskatchewan and other jurisdictions. It is unsurprising in today's digital-information environment that professional regulatory bodies follow such a process.

[81] I find that the College did not breach the Physician's right to procedural fairness in any of the three ways that were argued by counsel for the Physician.

[82] I am not persuaded that the College acted unfairly by having a deficient application form. While the information fields may limit the number of digital characters that can be entered, a paper form would have posed the same limitation issue for an applicant like the Physician with a complex disciplinary history.

[83] There was nothing preventing the Physician from entering a response stating, "See attached additional information," and no limitation was placed on the amount of information that could have been provided when the Physician completed the Application to amplify her responses to the questions on the application form.

[84] I am further not persuaded that the College failed to provide the Physician with adequate particulars of the alleged issues with the Application, thereby denying her procedural fairness.

[85] On July 3, 2024, the College identified inconsistencies between certain answers provided by the Physician in her Application and the information provided by CPSS relating to her professional conduct in that jurisdiction.

[86] I am satisfied that adequate particulars of the inconsistencies were provided to enable the Physician to explain the inconsistencies, and I am further satisfied that she was informed by the College of the potential outcome of any failure to do so.

[87] The main thrust of the Physician's oral argument on this ground of appeal was that after the Physician responded in writing on July 8, 2024, the duty of procedural fairness required that she be provided by the College with a face-to-face meeting or an opportunity for additional detailed follow-up.

[88] Applying the *Baker* analysis to the legislative and factual context, I find that the process followed by the College in considering an application for medical registration was neither adversarial nor close to a judicial process. It follows from this finding that the type of procedural protections that were owed to an applicant were not close to those afforded to a party in a judicial decision-making process: *Baker*, at para. 23.

[89] Under the statutory scheme, the Physician was responsible for the truthfulness, accuracy, and completeness of all the information contained in the Application. The By-law makes it clear that the requirement for completeness and candour by an applicant continues throughout the application process.

[90] The By-law did not require that the College have a face-to-face meeting with the Physician before deciding to deny or withdraw acceptance of her Application for medical registration. There was no promise to hold such a meeting and there was no evidence that such a practice is followed by the College or that there is such a practice followed in any other jurisdiction.

[91] As to the failure to provide an opportunity for additional detailed follow-up, the context is important. The record shows there had been communications between the Physician and the College during which information that was necessary for the Application to be reviewed and verified, including the updated Certificate, was requested by the College, and additional information was accepted from the Physician including a letter with attachments from her counsel on May 23, 2024.

[92] As noted above, the College disclosed the inconsistencies between the answers provided by the Physician in her Application and the information provided by CPSS relating to her professional conduct in that jurisdiction. It provided the Physician with an opportunity to explain the inconsistencies and informed her of the potential outcome of not doing so.

[93] On July 8, 2024, the Physician responded in writing, and there was no requirement for a further opportunity to respond before the College applied the standard set out in section 5(1) of the By-law and decided to withdraw acceptance of the Application because there were reasonable grounds to believe the Physician had provided untruthful, inaccurate, or incomplete information in the Application.

[94] Applying the *Baker* analysis, I find that the process followed was fair in all the circumstances, and it met the duty of procedural fairness owed to the Physician.

[95] Whether the College made a palpable and overriding error on the facts will be considered next.

Did the College Make a Clear Error on the Facts Affecting the Decision?

[96] For the reasons which follow, I would dismiss the first and second grounds of appeal.

The Applicable Law

[97] In *H.L. v. Canada (Attorney General)*, at para. 55, the Supreme Court synthesized the “palpable and overriding error” standard with the formulation and expression of the governing standard for review of inferences of fact in *Housen*:

[55] “Palpable and overriding error” is at once an elegant and expressive description of the entrenched and generally applicable standard of appellate review of the findings of fact at trial. But it should not be thought to displace alternative formulations of the governing standard. In *Housen*, for example, the majority (at para. 22) and the minority (at para. 103) agreed that inferences of fact at trial may be set aside on appeal if they are “clearly wrong” Both expressions encapsulate the same principle: an appellate court will not interfere with the trial judge’s findings of fact unless it can plainly identify the imputed error, and that error is shown to have affected the result. [Emphasis added]

The Positions of the Parties

[98] The Physician submits that the College made a palpable and overriding error on the facts when it failed to consider the entirety of the Application and, in particular, the additional information in her April 25, 2024, email with attachments, and in the letter from her counsel with attachments dated May 23, 2024.

[99] The Physician concedes that she does not have direct evidence that the College failed to consider the entirety of the Application, but she submits that a review of all the documents provided by the Physician shows the College must have either not considered them or misinterpreted them in reasonably concluding the Physician was untruthful, inaccurate, or incomplete.

[100] The Physician further submits that the College made a palpable and overriding error on the facts when it wrongly assumed that when she made her Application on April 22, 2024, the Physician was aware of the findings of the Executive Committee.

[101] The Physician did not provide any direct evidence that the College wrongly assumed that the Physician was aware of findings of the Executive Committee at the time she made her Application on April 22, 2024, but she submits that a plain reading of the July 3, 2024, letter from the College supports this assertion.

[102] The College submits that there is no evidence to ground either the assertion that the College failed to consider the entirety of her Application or the assertion that the College wrongly assumed that the Physician was aware of findings of the Executive Committee when the Application was made on April 22, 2024.

[103] The College submits that a review of the record shows the College's finding that there were reasonable grounds to believe the Physician provided untruthful, inaccurate, or incomplete information in her Application was grounded in the record.

Discussion on First and Second Grounds of Appeal

[104] It is important to recall that the Decision under appeal is the following:

We write to advise that the College is unsatisfied with the explanation you provided as to the significant inconsistencies in the information you provided in your Application for Registration and the information received from the College of Physicians and Surgeons of Saskatchewan regarding your professional conduct history in that jurisdiction.

In accordance with the College's By-Law 4: Licensing and Registration, s. 5(1), the College has withdrawn acceptance of your Application for Registration on the basis that there are reasonable grounds to believe that you provided untruthful, inaccurate, or incomplete information.

[Emphasis added]

[105] The Decision is straightforward. Based on inconsistencies in the information the Physician provided in the Application and the information received from the College of Physicians and Surgeons of Saskatchewan regarding her professional conduct history, under By-law 4, section 5(1), the College decided to withdraw its acceptance of the Application on the basis that there were reasonable grounds to believe the Physician provided untruthful, inaccurate, or incomplete information.

[106] By-law 4, section 5(1) provides that the College reserves the right to deny or withdraw acceptance of an application for medical registration, if the College has “reason to believe” that in an application for medical registration the applicant has provided information that is untruthful, inaccurate, or incomplete.

[107] In determining whether it had “reason to believe” that the Physician provided information that was untruthful, inaccurate, or incomplete, the College was required to assess the Application and the other information it received and formulate an opinion that amounted to “something more than mere suspicion, but less than (a finding on) the standard applicable in civil matters of proof on the balance of probabilities” that the Physician had provided information in the Application that was untruthful, inaccurate, or

incomplete: *Gulliver v. Law Society of Newfoundland and Labrador*, 2024 NLCA 23, at paras. 19 and 20.

[108] Much of the argument of the Physician was focused on the wording of the letter of July 3, 2024, which counsel submitted showed on its plain wording that the College treated the existence of preliminary inquiry committee investigations directed by the Executive Committee of the College of Physicians and Surgeons of Saskatchewan on April 24, 2024, as a fact that was not disclosed by the Physician on April 22, 2024.

[109] I am not persuaded that the letter of July 3, 2024, carries the plain meaning suggested by counsel. In my view the letter of July 3, 2024, does not show, either by direct evidence or by reasonable inference, that the College committed a clear and obvious factual error, either by wrongly assuming that the Physician was aware of findings of the Executive Committee when the Application was made on April 22, 2024, or by failing to consider the entirety of her Application on July 10, 2024.

[110] When asked to explain the inconsistencies between her Application and the information in the Certificate relating to her professional conduct in Saskatchewan, on July 8, 2024, the Physician explained she assumed the inconsistencies related to a formal investigation, and on April 22, 2024, there were no preliminary inquiry committees requested by the Executive Committee. I can see no clear and obvious factual error in the conclusion that the Physician's explanation was unsatisfactory.

[111] Even if the Physician had persuaded me that the College made such an error, the question of whether it amounted to an overriding error requires me to consider the Application in light of the overall record and the legal standard the College was applying to that record in deciding to withdraw its acceptance of the Application.

[112] On the application form submitted online on April 22, 2024, the Physician confirmed to the College that her medical licence had been subject to conditions. In the information field requesting further information, she stated, "*Undertaking to withdraw from call due to medical issues.*"

[113] The Physician also confirmed to the College that she was the subject of a complaint or request for investigation to the College of Physicians and Surgeons of Saskatchewan.

In the information field requesting further information she stated, “*CPPS ongoing. However no restrictions etc.*”

[114] The Physician confirmed to the College that there was no current review underway of her conduct, competence, capacity, or fitness to practice, whether as a result of a pending complaint or otherwise, and there had never been any past review of her conduct, competence, capacity, or fitness to practice.

[115] The Physician confirmed to the College that in connection with an inquiry, investigation or proceeding relating to her professional conduct, competence or capacity, she had voluntarily restricted her medical licence. In the information field requesting further information she stated, “*Undertaking to withdraw from call.*”

[116] The Physician confirmed to the College that in connection with an inquiry, investigation, or proceeding relating to her professional conduct, competence or capacity, she had voluntarily withdrawn from the practice of medicine. In the information field requesting further information she stated, “*For medical reasons starting Jan 2023. Fit to return at this time.*”

[117] On the application form, the Physician declared that all the information she provided to the College in connection with the Application, including all the answers given to the questions on the application form, all the information inserted in the application form, and all the information in other documents she had provided to the College was true, complete and given without intent to mislead.

[118] I accept that in the application form, the Physician did disclose information confirming the existence of an ongoing complaint or request for investigation to the College of Physicians and Surgeons of Saskatchewan, and she also disclosed information confirming the existence of a voluntary undertaking to withdraw from call and from her medical practice, which she related to medical issues.

[119] The record however shows that when the Application was made, the Physician was the subject of dozens of complaints or requests for investigation to the College of

Physicians and Surgeons of Saskatchewan; she was the subject of three undertakings related to both professional conduct and medical issues; and an updated certificate had been issued on March 28, 2024, confirming she had been the subject of an investigation by the College of Physicians and Surgeons of Saskatchewan.

[120] The record also shows that when the Application was made, all the outstanding disciplinary proceedings against the Physician were brought before the Executive Committee of the College of Physicians and Surgeons of Saskatchewan on April 8 and 15, 2024, and a decision of the Executive Committee was pending.

[121] On April 24, 2024, two days after the Application was filed with the College, the Executive Committee decided to proceed with three charges of unprofessional conduct arising from complaints against the Physician, and preliminary inquiry committees were appointed to investigate possible unprofessional conduct by the Physician in relation to fifteen other complaints. Other complaints were dismissed.

[122] Based on the foregoing record I find that the College made no palpable and overriding error on the facts in deciding to withdraw its acceptance of the Application on July 10, 2024. The first and second grounds of appeal are dismissed.

Costs of the Appeal

[123] The College is entitled to its costs and disbursements on the appeal, to be taxed pursuant to Rule 55, Appendix 1, Scale of Costs, on Column 3, with the exception of the interlocutory application under Rule 58.16, on which no costs were ordered.

DISPOSITION

[124] The Physician's appeal is dismissed.

[125] The College is entitled to its taxed costs and disbursements, on Column 3, with the exception of its costs on the interlocutory application under Rule 58.16.

[126] Order accordingly.

PETER A. O'FLAHERTY
Justice