

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT
LOCOCO, D. EDWARDS and SHORE JJ.

BETWEEN:)
)
Dr. Muhammad A. Saeed) *Valerie Wise*, for the Applicant
)
Applicant)
)
- and -)
)
College of Physicians and Surgeons of) *Ruth Ainsworth*, for the Respondent
Ontario)
)
Respondent)
)
) **HEARD:** May 26, 2025

2025 ONSC 6485 (CanLII)

REASONS FOR JUDGMENT

SHORE J.

- [1] This is an Application for Judicial Review of a decision of the Inquiries, Complaints, and Reports Committee ("ICRC") of the College of Physicians and Surgeons of Ontario (the "College") dated July 5, 2024. The ICRC determined that the Applicant shall attend a Specified Continuing Education and Remediation Program ("SCERP"), which requires clinical supervision and practice reassessment, and notification to the Applicant's employers.
- [2] The Applicant asks that the decision be set aside because the decision was not reasonable, and the process of rendering that decision was not fair.
- [3] For the reasons below, the application is dismissed.

Factual Background:

- [4] The Applicant, Dr. Muhammad A. Saeed, practices as a general practice anaesthesiologist at the London Scoping Centre (the "Clinic"), an out-of-hospital premises ("OHP")

outpatient clinic that offers upper gastrointestinal and colorectal procedures. Dr. Saeed also serves as the Clinic's Medical Director.

- [5] The College is a self-governing body for the medical profession in Ontario. Its mandate is to serve and protect the public interest by governing the medical profession. The ICRC is a statutory committee of the College. Its role is to screen complaints and reports of the Registrar's investigation, to determine whether any further action is necessary. The ICRC has broad discretion in the action it can take, including referring matters to the Discipline Tribunal, or requiring physicians to attend for a caution or to complete a remedial program. Information about cautions or requirements to complete education programs is posted on the College's public register.
- [6] On October 28, 2022, the College received an adverse event report from the Clinic, relating to patient LL. Complications arose during LL's colonoscopy. Emergency medical services were called to transport the patient from the clinic to the hospital, where they were admitted into intensive care.
- [7] On November 6, 2022, the College received another adverse event report from the clinic, relating to patient MV.
- [8] Additional adverse event reports were received on February 2, 2023, for patient ZM, May 15, 2023, for patients AD, and July 26, 2023, for patient JF.
- [9] On February 22, 2023, the Registrar of the College appointed Dr. Teddy Lim, a specialist in anesthesiology, as the assessor in this matter ("Assessor"), to investigate the Applicant's practice, including his anesthesia practice at an OHP as a result of the first two adverse event reports. Two of the subsequent adverse reports were added to the investigation.
- [10] On March 6, 2023, the applicant received notice from the College that they were commencing an investigation. The Applicant's counsel stated their objection to the Assessor as an appropriate assessor. The College responds that they are proceeding with the appointed Assessor, but the Applicant's concerns will be before the ICRC when they review the matter.
- [11] The College requested the Clinic's charts relating to the last three Adverse Event Reports, and the last seven American Society of Anesthesiologists Physical Status Class III ("ASA III") patients. ASA III patients are the highest risk patients eligible for care at an OHP endoscopy clinic. The Applicant provided the documentation.
- [12] The College provided the Assessor with the ten clinic charts it had obtained from the Applicant. After the Applicant's interview with the Assessor, the College submitted the two additional charts to the Assessor, also for patients who had been the subject of adverse event reports. In total, the Assessor reviewed 12 charts.

- [13] The Assessor provided his original assessment report on December 18, 2023. The Assessor opined that:
- (a) The Applicant failed to meet the standard of practice in ten out of 12 patient charts;
 - (b) The Applicant displayed a lack of knowledge, skill, or judgment in seven out of 12 patient charts; and
 - (c) The Applicant's clinical practice, behaviour or conduct exposed or was likely to expose his patients to harm or injury in seven out of 12 patient charts.
- [14] The Assessor raised concerns about the Applicant's medical record keeping, triaging of patients for procedures at the OHP, delegation of responsibility to an Anesthetic Assistant, and clinical care and judgment.
- [15] On January 8, 2024, a copy of the report was provided to the Applicant and the Applicant was given an opportunity to provide responding written submissions.
- [16] On March 1, 2024, the Applicant provided a detailed written response to the Assessment Report, addressing each patient's chart reviewed and responding to the Assessor's criticisms. In his response, the Applicant acknowledged concerns with his record keeping, that his documentation was lacking, and that with respect to a specific patient, there were legitimate concerns about his judgment to proceed with the patient in the OHP.
- [17] On March 10, 2024, the Assessor provided an addendum report. In the addendum report the Assessor advised that he had not appreciated that the ASA III patient charts reviewed by him were an aberration since these cases were selected by the College and did not accurately reflect the patient population usually cared for in the Clinic.
- [18] The Assessor concluded that he was satisfied with the efforts the Applicant made and continues to make in improving his record keeping, and his diligence in following exclusion criteria when triaging patients for the Clinic.
- [19] On March 19, 2024, the Applicant's lawyer submitted a further response, detailing procedural fairness concerns, including an alleged bias demonstrated by the Assessor in his initial report. In addition, the Applicant filed a report from his own a third-party assessor, Dr. Cino. Dr. Cino agreed that in a significant number of cases, the medical records did not contain enough information to permit anyone to assess the Applicant's standard of care.
- [20] On July 5, 2024, the ICRC, a panel of three physicians and one public member, considered the results of the investigation. It issued a 13-page decision, which is the subject of this review.

[21] The ICRC addressed the Assessor's report, Dr. Cino's report and the record before them. The ICRC concluded that it had concerns about the Applicant's clinical care provided to the one patient, and the Applicant's record keeping. The ICRC concluded:

[T]he Committee remains concerned about [Dr. Saeed's] clinical care and judgment, which may be putting his patients at risk. In a number of cases reviewed, [Dr. Saeed] did not safely manage the patients ... While [Dr. Saeed's] initiative to proactively address his record keeping issues is encouraging, the Committee is of the view that it is not sufficient to reassure the Committee that [Dr. Saeed] will be adequately prepared to consistently handle patient emergencies in an efficient and skillful manner.

[22] The ICRC concluded that the Applicant is to complete a SCERP, that includes low-level remediation consisting of three meetings with a clinical supervisor over the course of three months, professional education involving self-study, and a reassessment. The College required the applicant bear the cost of the SCERP as well as notify any employer about the requirements.

[23] The Applicant is asking the Court to set aside this decision of the ICRC.

Jurisdiction:

[24] There is no statutory right of appeal of a decision made by the ICRC pursuant to a registrar's investigation under s. 75(1)(a) of the *Health Professions Procedural Code*, being Sched. 2 of the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18 (the "Act"). However, an ICRC decision arising from a registrar's investigation is subject to judicial review pursuant to s. 2(1) of the *Judicial Review Procedures Act*, R.S.O. 1990, c. J.1 (the "JRPA"). Under s. 6(1) of the JRPA, an application for judicial review shall be made to the Divisional Court.

Standard of Review:

[25] The parties agree that the standard of review with respect to the ICRC's decision is reasonableness. In *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, the Supreme Court provided guidance on whether an administrative decision is reasonable. A reasonableness review is concerned with the presence of justification, transparency and intelligibility in the decision-making process. A decision is unreasonable if it is internally incoherent or if it is untenable having regard to the relevant factual and legal constraints.

[26] The applicant has the burden of showing that a decision is unreasonable. Minor flaws or peripheral shortcomings are not sufficient; rather, any flaws or shortcomings must be sufficiently central or significant to the merits of the decision to support a finding of unreasonableness.

[27] The role of a reviewing court is to review the decision, not to re-weigh the evidence or to decide the issue afresh. Absent exceptional circumstances, a reviewing court should not

interfere with a tribunal's factual findings: *Matheson v. College of Physicians and Surgeons of Ontario*, 2021 ONSC 7597 (Div. Ct.), at para. 31; *Vavilov* at paras. 99-101, 125.

- [28] This Court has long recognized that the ICRC has expertise in determining standards in the medical profession. The Court owes significant deference to the expertise of the ICRC and the College.
- [29] An administrative decision maker is required to conduct their proceedings fairly. Upon judicial review, this Court must determine whether the required level of procedural fairness has been accorded by reference to all the circumstances of the case, including the factors set out in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at paras. 21-28; see also *Vavilov*, at para. 77. Where procedural fairness or natural justice has been denied, the decision must be quashed or set aside.

Issues under review:

- [30] The Applicant submits that there was a lack of procedural fairness because:
- (a) The College's chart selection skewed the assessment of his practice;
 - (b) The original assessment was unfair and biased; and
 - (c) The Assessor was not qualified to comment on the Applicant's practice.
- [31] The Applicant submits the decision was unreasonable because:
- (a) The reasons were not justified, transparent and intelligible based on the evidence in the record;
 - (b) They failed to consider relevant evidence;
 - (c) The ICRC misrepresented the Applicant's history; and
 - (d) They failed to address the skewed sampling and the alleged bias of the Assessor.

[32] I will address each of these issues below.

The applicant was not denied procedural fairness:

- [33] The Applicant seeks judicial review of the decision of the ICRC on the basis of an alleged denial of procedural fairness.
- [34] As set out in *Baker*, at paras. 21-28, the content of the duty of procedural fairness is context specific. It can be determined by taking into account relevant factors, including the nature of the decision; the statutory scheme; the importance of the decision to the affected individual; legitimate expectations of the person challenging the decision; and the

administrative body's own choice of procedures, particularly where it has expertise regarding the appropriate procedure.

- [35] The ICRC is a screening committee. It does not make findings of fact or of professional misconduct. This Court has repeatedly held that the degree of procedural fairness owed by the ICRC to a member during an investigation is relatively low, including cases where the individual under investigation is required to undergo remediation: see *Silverthorne v. Ontario College of Social Workers and Social Service Workers* (2006), 264 D.L.R. (4th) 175, (Ont. Div. Ct.), at para. 14; *Gill v. Ontario (Health Professions Appeal and Review Board)*, 2024 ONSC 2588, 563 C.R.R. (2d) 202 (Div. Ct.), at para. 61, leave to appeal refused, 2024 S.C.C.A No. 474; *Maini v. College of Physicians and Surgeons of Ontario*, 2022 ONSC 3326 (Div. Ct.), at para. 25.
- [36] With respect to the statutory scheme, the College's governing legislation dictates the complaint and investigation process. Here, the Act contemplates a level of procedural fairness in the screening process, in that the member is entitled to notice of the complaint's substance and is given an opportunity to respond.
- [37] Notice was provided to the Applicant and the Applicant was provided an opportunity to respond. The Applicant provided responses and submissions, which were all before the ICRC in making its decision. The College met its obligation of procedural fairness under the legislation.

The chart selection did not skew the decision

- [38] The Applicant submits that the chart selection skewed the assessment of his practice and denied him a procedurally fair investigation. The College requested the records of the most difficult/complex cases, that constitute only a small part of Dr. Saeed's practice.
- [39] The ICRC has wide discretion in choosing what documents to review when disposing of an investigation. An assessor is not required to include a randomized practice assessment. The only statutory requirement is that the ICRC makes its decision after "considering a report, considering the submissions of the member and making reasonable efforts to consider all records and documents it considers relevant ... to the report." The reference in the statute to "reasonable efforts" and documents the ICRC "considers relevant" makes clear that the ICRC should be given broad latitude in determining the materials it chooses to review.
- [40] In this case, the concern was with respect to the care of an ASA III patient that arose as a result of an adverse event report. The decision to review only the files of ASA III patients was reasonable and relevant.
- [41] The Applicant advised at the outset that the vast majority of his patients are ASA 1 and ASA II, and the ASA III patients are the exception. The Applicant advised the Assessor that the College specifically requested ASA III patient charts, and this was addressed in the Assessor's addendum report. Further, the ICRC was aware of and addressed this

concern raised by the Applicant. As addressed below, this did not create sufficient grounds to find a reasonable apprehension of bias.

No reasonable apprehension of bias

- [42] The Applicant submits that the Assessor displayed bias against the Applicant in both his demeanor and in his comments in the original report and that the College relied on this report.
- [43] An assessment of reasonable apprehension of bias of an administrative decision-maker is viewed from the perspective of the "reasonably informed bystander." As this Court has stated, "there is a strong presumption of impartiality for administrative decision-makers discharging their statutory duties. To overcome the presumption, the party alleging a reasonable apprehension of bias must establish the presence of "serious grounds": see *Durham (Regional) Police Service v. Ontario Civilian Police Commission*, 2021 ONSC 2065 (Div. Ct), at paras. 73-74.
- [44] The Applicant focussed his argument on the Assessor. However, as set out above, the ICRC is the decision maker in this instance, not the Assessor and not the Assessor's report. It would be up to the ICRC to determine the weight to give to the report, in light of any concerns. The mere fact that the ICRC relied on the Assessor's report which the Applicant alleges was biased cannot establish a reasonable apprehension of bias on the part of the ICRC.
- [45] There is no dispute that the Assessor made some errors in his original report. The ICRC was alive to these concerns and specifically notes that "the Assessor made several unnecessary extrapolations based on the conclusion of inadequate documentation. The Committee disregarded those comments.": see p. 8 of the Report.
- [46] The ICRC was also aware of the incorrect assumption the Assessor made based on the chart composition: the Assessor noted this correction in his addendum. Errors in the report do not equate to bias, but in any event, the ICRC was the decision maker and was alive to the issues and shortcomings of the report. The ICRC was correct to note that it is entitled to accept some, all or none of the Assessor's opinion.
- [47] The ICRC's reasons demonstrate that it considered the Applicant's objections, including his allegations of bias.

The Assessor was qualified

- [48] The Applicant submits that the Assessor was not qualified to comment on the Applicant's practice because the Assessor had specialized qualifications, rather than qualifications similar to those of the Applicant.
- [49] It is within the discretion of the College to appoint and choose an assessor to investigate. There is no procedural right to a particular assessor. The ICRC and the College are in the

best position to determine whether an assessor has sufficient expertise to evaluate the complaint.

- [50] Further, the ICRC is not bound to an assessor's report. There was no suggestion that the members of the ICRC or the College did not have the requisite qualifications. The ICRC was aware that they were not bound by the Assessor's report and stated as follows:

At the outset, the Committee confirms that the purpose of obtaining an opinion from an Assessor is to assist the Committee. However, ultimately an assessor's opinion is only part of the material the Committee considers in reaching a decision. The Committee does not delegate its decision-making power to the Assessor, rather, it considers and evaluates the opinion, but it remains free to accept it or not accept it in whole or in part. While the Committee considered the Assessor's report carefully, it also studied the case materials and the medical records closely and made its own conclusions.

- [51] The ICRC addressed and rejected the Applicant's concerns regarding the Assessor's qualifications:

On May 8, 2023, the Respondent, through his counsel, disputed that the Assessor (who is a Royal College of Physicians and Surgeons of Canada specialist in Anesthesiology) was suitable to comment on the standard of practice expected of the Respondent, who is a General Practice Anesthesiologist.

The Committee notes that this issue has been raised on several occasions in the Respondent's subsequent submissions. In the Committee's view, the standard of care for sedation at an OHP for endoscopic procedures remains the same, irrespective of training of the anesthesiologist. The anesthesiologist is responsible for quickly assessing and managing any unexpected and/or sudden complications that can arise at any time to ensure that the patient remains safe and receives appropriate care (including safe transfer to the nearest ED). Regardless of the anesthesiologist's training, this is a basic requirement of care that is expected to be provided to each and every patient.

- [52] There is no basis for this Court to interfere with their conclusion. It is within the ICRC's discretion and expertise, especially when the decision-maker is an expert medical panel.

The Decision was reasonable:

- [53] The Applicant submits that the ICRC's decision was unreasonable because the reasons were not justified, transparent and intelligible based on the evidence in the record; the ICRC misrepresented the applicant's history; they failed to address the skewed sampling and the alleged bias of the Assessor; and they failed to consider relevant evidence.

- [54] The onus is on the Applicant to show that the decision is unreasonable. The application is not a line-by-line hunt for error. A decision is reasonable if it is based on internally coherent reasoning and does not have fatal flaws in its overarching logic: *Vavilov*, at para. 102.
- [55] In *Vavilov*, the Supreme Court said the following about the role of a court that is judicially reviewing an administrative tribunal's factual findings:

[93] An administrative decision maker may demonstrate through its reasons that a given decision was made by bringing that institutional expertise and experience to bear. In conducting reasonableness review, judges should be attentive to the application by decision makers of specialized knowledge, as demonstrated by their reasons. Respectful attention to a decision maker's demonstrated expertise may reveal to a reviewing court that an outcome that might be puzzling or counterintuitive on its face nevertheless accords with the purposes and practical realities of the relevant administrative regime and represents a reasonable approach given the consequences and operational impact of the decision. This demonstrated experience and expertise may also explain why a given issue is treated in less detail. [Citations omitted].

...

[125] It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker." [...]

[126] [...] The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it...

The decision was justified, transparent and intelligible, and the ICRC has broad discretion to review documents

- [56] The Applicant submits that the reasons were not justified, transparent and intelligible based on the evidence in the record. Specifically, the Applicant asserts that the ICRC misapprehended the evidence and failed to review the medical records for all the patients considered by the Assessor and the videotaped interview of the Applicant. The Applicant submits that the ICRC only had the medical records for two of the 12 patients' charts the Assessor reviewed, being that of Patient LL and Patient MM and that without the records from all 12 patients, the ICRC could not properly assess the report.
- [57] The ICRC is entitled to significant deference with respect to the assessment of the degree of concern regarding the doctor's practice and the selection of an appropriate response. It

is squarely within the expertise of the ICRC to determine the degree of its concerns, considering the assessor's report and the Applicant's responses. As set out above, as a screening committee, the ICRC is not required to give highly detailed reasons. This was not a discipline hearing.

- [58] Further, the ICRC has broad discretion regarding the documents it chooses to review in disposing of an investigation. The ICRC's decision need not detail its finding on all 12 patient files reviewed. It is sufficient that they determined whether a discipline referral was warranted, and if not, whether there were any concerns that should be addressed through remedial measures. They do not make findings of professional misconduct or binding factual conclusions. In this context, reasonableness simply requires that there be a logical basis in the record for the ICRC's decision to order remediation.
- [59] The ICRC advised that it "considered the Assessor's report carefully, it also studied the case materials and the medical records closely and made its own conclusions." It then specifically discussed the case of LL, one of the records before them.
- [60] Even if the ICRC relied on just one patient's records (that of LL), there was sufficient evidence to conclude that the case represented a significant instance of poor clinical care, which exposed the patient to an unacceptable risk of morbidity and mortality. The ICRC noted that the Applicant did not intubate a hypoxic patient and instead left this task to less qualified EMS responders, which the ICRC found "very concerning". The Applicant himself acknowledged that in hindsight he should have intubated more promptly.
- [61] Further, there was no dispute that there were deficiencies in the Applicant's record keeping. The Assessor, Dr. Cino and the Applicant identified deficiencies in the Applicant's records. The Applicant acknowledged his shortcomings in record keeping in his response to the Assessor's Report, dated March 1, 2024, part of which he alleges were as a result of a transition in trying to modernize his practice by switching to electronic records, but some of which were simply a result of poor or unclear record keeping: see for example the Applicant's comments on Patient MV, ZM, JZ, MAM, RI, SM, VR, AM and JF.
- [62] Even if the ICRC's finding was just with respect to insufficient record keeping, the Court has previously agreed that the two aspects of a doctor's medical practice, clinical care and record-keeping, are inextricably linked and that good medical record keeping is part of providing good medical care: see *Beitel v. College of Physicians and Surgeons*, 2013 ONSC 4658, 311 O.A.C. 35 (Div. Ct.); *Al-Kazely v. College of Physicians and Surgeons of Ontario*, 2022 ONSC 44, 3 Admin. L.R. (7th) 281 (Div. Ct.).
- [63] The ICRC found there was ample documentation to support the Assessor's concern that the Applicant's record keeping was deficient, incomplete and sometimes confused. This led the ICRC to express the following concerns:

The Committee is concerned about the Respondent's poor documentation, or lack thereof, as this makes it impossible to properly assess and monitor his competence through the care he

provided. The IMO appears to agree with this by stating: "In some cases, the medical record does not contain enough information for me to make a definitive assessment of [the Respondent's] clinical care. [...] In anesthesiology, recording the vital signs is a fundamental component of safe patient care. [...] Additionally, in the Committee's view, the cases of severe adverse events requiring hospital transfer would necessitate raising the level of documentation in those instances.

- [64] The ICRC has broad discretion in the documents it reviews, and I find there was ample documentation before them to arrive at their decision. I find there is a clear line between the evidence and the record, and the outcome reached. I find the decision reasonable, based on the evidence.

The ICRC misrepresented the Applicant's history

- [65] The Applicant submits the ICRC misrepresented his history by referring to alleged "concerns" of "previous panels".
- [66] Even if this amounts to an error, it does not render the decision unreasonable. If there are mistakes with some individual items, such mistakes do not reach the threshold required for the court to intervene.
- [67] As set out in *Sharma v. College of Physicians and Surgeons of Ontario*, 2023 ONSC 5687, (Div. Ct.), at para. 35:

The ICRC is not held to a standard of perfection. One must give "respectful attention" to the reasons and not parse every word: *Vavilov* at paras. 84 and 92. What matters is whether the Court can "discern the 'why' of the decision from the record and whatever reasons have been given."

- [68] I find that if the ICRC misrepresented the Applicant's history, it would make no difference to the outcome and therefore it does not meet the threshold of being a palpable and overriding error.

The ICRC addressed the alleged errors in the Assessor's Report

- [69] Finally, the Applicant sets out alleged errors in the Assessor's Report, and submits that the ICRC failed to address these errors in its decision. As set out above, the ICRC was the decision maker and was alive to the issues and shortcomings of the report. The ICRC was correct to note that it is entitled to accept some, all or none of the Assessor's opinion.
- [70] For the reasons above, the application is dismissed.

Costs:

[71] The parties agreed to costs on the sum of \$10,000 to the successful party.

Disposition:

[72] The application is dismissed, with costs payable by the Applicant to the Respondent in the sum of \$10,000 inclusive.



Shore J.

I agree _____
Lococo J.

I agree _____
D. Edwards J.

Released: December 01, 2025

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DIVISIONAL COURT FILE NO.: 500/24-JR
DATE: 20251201

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BETWEEN:

Dr. Muhammad A. Saeed

Applicant

– and –

College of Physicians and Surgeons of Ontario

Respondent

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