

# KING'S BENCH FOR SASKATCHEWAN

Citation: **2025 SKKB 200**

Date: **2025 11 28**  
File No.: KBG-RG-02641-2022  
Judicial Centre: Regina

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BETWEEN:

SCOTT ANDERSON

APPLICANT

- and -

SASKATCHEWAN COLLEGE OF PHYSICAL THERAPISTS  
RESPONDENT

**Counsel:**

John Williams, Haley Stern  
Merrilee Rasmussen, K.C., Jaime Carlson

for the applicant  
for the respondent

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JUDGMENT  
November 28, 2025

BERGBUSCH J.

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**I. Overview**

[1] The applicant, Scott Anderson, has applied for judicial review of a decision of the professional conduct committee [PCC] of the Saskatchewan College of Physical Therapists [College] to refer a formal complaint to discipline. Mr. Anderson contends that the PCC exceeded its statutory authority by investigating and recommending charges on matters outside the scope of the original complaint.

[2] Mr. Anderson seeks an order quashing or setting aside 12 of 17 charges

[Impugned Charges] recommended by the PCC in its report [Report] to the College's discipline committee. In the alternative, he seeks an order prohibiting the discipline committee from hearing and determining the Impugned Charges. He seeks a declaration that the PCC's investigation of him exceeded the mandate conferred by ss. 25(1) of *The Physical Therapists Act, 1998*, SS 1998, c P-11.11 [Act] and was *ultra vires*. Finally, he seeks a declaration that the Impugned Charges exceed the mandate conferred on the PCC by ss. 25(2) and (3) of the Act and are *ultra vires*. Mr. Anderson contends the PCC unreasonably broadened its investigation of a complaint concerning the assessment, treatment, and billing of one patient to include 30 randomly selected patient files from the same clinic.

[3] The College submits the PCC's investigation was based upon and was sufficiently connected to the initial written complaint and the investigation and resulting Report were reasonable. In the alternative, the College submits that the judicial review application should be dismissed because an adequate alternative remedy is available to the applicant.

[4] This application raises the following issues:

- (a) Are the PCC's investigative steps and its Report to the discipline committee subject to judicial review? If so, what is the applicable standard of review?
- (b) Should charges of professional misconduct arising from the PCC's review of 30 randomly selected patient files from the applicant's clinic be quashed?
- (c) Is the applicant required to exhaust an adequate alternate remedy before seeking judicial review?

[5] This decision should not be read as expressing any view on the merits of any charges in the formal complaint to the discipline committee. This decision deals solely with the reasonableness of the PCC's interpretation of its statutory authority to investigate complaints and refer formal complaints to discipline.

## II. Background

[6] The following summary of facts is drawn from the Certified Record of Proceedings filed by the College in accordance with Rule 3-58 of *The King's Bench Rules*.

[7] Scott Anderson is a physical therapist licensed by and registered as a member of the College. He owns and operates a physiotherapy clinic under the name, Scott Anderson & Associates Physiotherapy [Clinic], in Regina, Saskatchewan.

[8] On August 11 and 21, 2020, a patient who I will refer to as "MW" received physiotherapy treatment at the Clinic.

[9] On about November 23, 2020, Alistair Wilson, a practising physical therapist and member of the College, sent a letter to the College about "a situation which raises concern about the practices of a Regina physical therapy clinic." The letter continued:

I recently provided care to a patient who informed me that they had previously received care at another clinic. When asked who they had been seeing, it became clear that they had been booked to be seen by a physical therapist but were in fact seen by a support member of staff for both Assessment and a subsequent treatment. The support staff member is not a registered member with the SCPT [College]. The patient was subsequently billed by a registered member of the SCPT for their Assessment and treatments. When asked, the patient was clear that they were not at any time seen by the registered member of the SCPT and that

the support person they were seen by had periodically left the room to consult with the registered SCPT member.

[Certified Record of Proceedings, Tab 2]

[10] On the basis of the foregoing, the letter suggested the physical therapist had not acted in the best interests of the public or the members and had acted in a way that might be harmful to the standing of the profession, contrary to ss. 23(a) and (b) of the *Act*. The letter also alleged the physical therapist had contravened provision of the College's regulatory bylaws, code of ethical conduct, and core standards of practice.

[11] The complaint letter stated that no harm was done to the patient in this instance but suggested there was "potential for harm to a member of the public ... if this is a common practice at this clinic." The letter then stated, "Secondly, in private practice we all hope to do business in a fair way and not circumvent practice standards for potential financial gain as this is both unethical and disrespectful to others in the private practice community." The letter continued, "It is hoped that the SCPT [College] will investigate this occurrence to ensure it is not a common practice of this clinic." The letter added that the patient supported the complaint and was willing to provide additional information and to answer any questions.

[12] Enclosed with the letter was a copy of an invoice from Scott Anderson & Associates Physiotherapy to MW dated August 11, 2020, for "Private Physiotherapy – Initial Assessment," listing Scott Anderson as the professional who provided the services.

[13] The College forwarded a copy of the letter of complaint to Mr. Anderson, asking him to respond by December 30, 2020, and to provide a copy of the relevant clinic file and records. Mr. Anderson responded in writing on or about December 27, 2020, and forwarded the requested records.

[14] In response to the complaint, Mr. Anderson said he had seen the patient and conducted the objective physical examination of her. He explained that Mr. Strueby had degrees in kinesiology and physiotherapy and was working under his supervision while he waited to write his physiotherapy practice exams. He explained that Mr. Strueby met initially with the patient to conduct the subjective portion of the examination in order to obtain background information. Following Mr. Anderson's objective examination, Mr. Strueby assisted the patient with exercises that Mr. Anderson and he had discussed. Mr. Anderson had sent a follow-up letter to the patient's physician immediately after the assessment. Mr. Anderson took the position that the complaint was unfounded.

[15] The PCC first dealt with the complaint at its meeting on January 27, 2021. The minutes of the PCC meeting summarize the complaint as follows:

- The main point of the complaint is that the member, a clinic owner, had an unlicensed support staff member provide assessment and treatment services to a patient and subsequently provided a billing invoice in the member's own name.

[Certified Record of Proceedings, Tab 41]

[16] PCC member Lee Hall was appointed the lead investigator and began conducting preliminary inquiries. She interviewed the patient, MW, about her appointment on August 11, 2020, at the Clinic. When MW recounted her initial appointment at the Clinic, a detail that came out was that Mr. Strueby's framed kinesiology and physiotherapy university degrees were displayed on the wall of the assessment room where Mr. Strueby saw MW. Ms. Hall also interviewed Mr. Anderson, who reiterated that he had personally conducted the objective examination of MW and she was mistaken. They discussed various topics, such as how patient appointments were scheduled and who conducted patient assessments at the Clinic. Mr. Anderson confirmed Mr. Strueby's university degrees were posted on the walls of the

assessment room he used and agreed to provide photos of Mr. Strueby's degrees and his contact information.

[17] The PCC received an update of the investigation's progress and findings to date on March 3, 2021. According to the PCC minutes, several questions were raised during the meeting:

- 1) How long has Adam worked at the member's clinic since obtaining his PT degree in Australia?
- 2) How many other times has [*sic*] provided unauthorized PT services while unsupervised?

[Certified Record of Proceedings, Tab 42]

[18] Ms. Hall was to talk to Mr. Strueby to try to confirm whether Mr. Anderson came into the room during the assessment and/or treatment of MW. Ms. Hall was also to contact Mr. Anderson to obtain booking and billing records for the period that Mr. Strueby had been working at the clinic.

[19] On or about March 24, 2021, Ms. Hall conducted a further telephone interview of Mr. Anderson. Mr. Anderson stated that he always went into the treatment room when Mr. Strueby performed physical assessments of patients. Ms. Hall requested booking and billing records from December 2019 to December 2020. Mr. Anderson provided some records to Ms. Hall the next day.

[20] The PCC minutes for April 1, 2021, summarize further findings of the investigation to date regarding Mr. Strueby's employment with the Clinic and his education. Mr. Strueby had been granted a restricted license to practice by the College in December 2020. The minutes record the PCC's decision regarding next steps for the investigation:

- After much discussion PCC members agreed that this complaint will require extensive further investigation and that it would be appropriate to continue with an external professional investigator

[Certified Record of Proceedings, Tab 43]

[21] Sometime in April 2021, Ziggy Bardel with Benard + Associates Inc. was retained by the PCC as its external investigator.

[22] Around mid-April, Mr. Anderson provided to investigators a document showing the number of patients that attended the Clinic per month from December 1, 2019, to November 30, 2020. Mr. Anderson also provided Mr. Strueby's and his appointment records for the period December 2, 2019, to January 2, 2021. Finally, he provided a billing summary for Mr. Strueby, setting out the revenue he had generated for the Clinic from January 1, 2020, to November 30, 2020.

[23] On May 13, 2021, a lawyer acting for the PCC attended the clinic and collected patient records for five patients chosen at random.

[24] According to the PCC's minutes for May 19, 2021, the external investigator had requested 30 patient files from the Clinic:

- 30 files were requested for audit last week. The file related to the complaint and 5 others have been downloaded to date and are being reviewed by the investigator. Analysis of these files will determine if further files are required for review.

[Certified Record of Proceedings, Tab 44]

[25] Between May 26 and June 1, 2021, the investigator was able to interview three of the five patients whose files were in the first batch received from the Clinic. All three confirmed that Mr. Anderson performed their initial assessment and prepared their treatment plan, and subsequent visits occurred with Mr. Anderson or associates working under his supervision.

[26] On June 1 and 14, 2021, the College received three more files from the Clinic for patients who received services from Mr. Anderson. In each case, the clinical notes and invoices confirmed that Mr. Anderson was the treating practitioner. One of the patients was subsequently interviewed. He said that his assessment was completed by a female staff person and he had only a limited interaction with Mr. Anderson; Mr. Anderson was listed as the treating practitioner in the clinical notes and the corresponding invoice.

[27] Also on June 1 and 14, 2021, the investigator received records from the Clinic for eight patients selected at random from Mr. Strueby's appointment records. The clinical notes identified Mr. Anderson as the supervising practitioner for the treatments provided by Mr. Strueby, while the invoices identified Mr. Anderson as the treating practitioner.

[28] On June 7, 2021, Mr. Bardel interviewed MW, the patient involved in the initial complaint. They reviewed in detail MW's August 11, 2020, appointment at the Clinic, which lasted about 90 minutes. Mr. Strueby completed her assessment and performed a transcutaneous electrical nerve stimulation [TENS] treatment on her back. MW said her entire appointment had been with Mr. Strueby and she believed him to be a physiotherapist because of the university degrees on the wall in the treatment room. Because the exercises Mr. Strueby gave her to do were causing her discomfort, she booked a follow-up appointment on August 21, 2020. During the second appointment, which lasted about 45 minutes, Mr. Strueby suggested some new exercises and gave MW another TENS treatment. At the end of each appointment, MW paid the Clinic and received an invoice which listed Mr. Anderson as the practitioner. MW claimed that she did not see Mr. Anderson during either appointment.

[29] The PCC's minutes of June 23, 2021, document further progress of the investigation. The external investigator had received "[c]lient charts and corresponding

financial/invoicing documents for the unlicensed employee as well as the member,” which “included the documents pertaining to the initial complainant.” The external investigator was “in the process of interviewing the clients of [*sic*] the documents that have been collected” (Certified Record of Proceedings, Tab 45).

[30] Five of the patients listed in Mr. Strueby’s appointment records were interviewed. Three confirmed they received services from Mr. Strueby and Mr. Anderson was involved in the initial assessment and some aspects of treatment. A fourth patient said he was not familiar with Mr. Strueby and had been treated by someone named “Sue” and Mr. Anderson. Another patient said he only received services from Mr. Strueby and Meghan Peberdy (a licensed physiotherapist) and claimed never to have met Mr. Anderson, even though Mr. Anderson was identified in the clinical notes as the supervising practitioner and the treating practitioner on the invoices.

[31] In total, Mr. Bardel interviewed nine of the 16 patients whose files were obtained from the Clinic for review.

[32] On July 7, 2021, Mr. Bardel interviewed Mr. Strueby. Among other things, Mr. Strueby stated that MW’s allegation was “absolutely false” and both of her appointments at the Clinic had included a visit from Mr. Anderson.

[33] On August 5, 2021, Mr. Anderson was interviewed by Mr. Bardel at length, in the presence of legal counsel. Mr. Anderson reiterated that he saw MW during her two appointments at the Clinic and described Mr. Strueby’s and his respective roles in assessing and formulating a treatment plan for her. He also answered questions about the Clinic’s invoicing and billing practices.

[34] Five of the patients selected from Mr. Anderson’s appointment records were covered by insurance: four by the Saskatchewan Workers’ Compensation Board

[WCB] and one by Saskatchewan Government Insurance [SGI]. In most cases, separate invoices for each treatment date were not contained in the patient files; instead, there was a printout listing all treatment dates and identifying Mr. Anderson as the treating practitioner.

[35] The final set of PCC minutes included in the Certified Record of Proceedings is dated September 8, 2021. The PCC had received a “1200+ page report” from the external investigator. Investigators had questions about the Clinic’s billings to WCB and planned to follow up with representatives from WCB and SGI. In addition, investigators had concerns about the billing software Mr. Anderson used for invoicing and were following up with the software company.

[36] On September 17, 2021, Mr. Bardel contacted the Clinic to request copies of the pertinent invoices sent to WCB and SGI for physiotherapy services rendered. The Clinic provided these on September 29, 2021.

[37] In late October and early November 2021, investigators made inquiries to WCB and SGI for information about each insurer’s process for how a physiotherapist becomes an accredited service provider, how each insurer was billed for services rendered, and whether one payee number was assigned to a clinic as a whole or whether each practitioner within a clinic had an assigned payee number. The investigators asked WCB and SGI specifically whether the Clinic was an accredited service provider, whether Mr. Strueby was listed as an accredited service provider, and whether a physiotherapist with a restricted license was permitted to treat WCB and SGI plan members.

[38] A representative of SGI provided a written response on November 19, 2021. In summary, SGI expects physiotherapists treating SGI clients to be licensed and in good standing with the College. SGI issues a payee number both to physiotherapists

individually and to physiotherapy clinics. Initially Mr. Anderson was set up as a payee, but a new payee number was set up for the Clinic on August 8, 2019. Physiotherapists with restricted licences are not allowed to treat SGI clients. In a follow-up call, the representative explained that service providers who treat SGI clients are required to submit a progress report detailing the treatment provided, and it is only from this report that SGI is able to see who performed the service.

[39] A WCB representative responded on December 17, 2021. WCB had an approved provider list of accredited physiotherapists. Mr. Anderson had been accredited since March 28, 2019. The Clinic had recently opened a second location and Mr. Anderson had been required to obtain a separate billing/provider number for that location. Mr. Strueby was also accredited by the WCB with a restricted license.

[40] In a follow-up call, the representative confirmed that the WCB had issued separate provider numbers to the Clinic's Rochdale Boulevard and Broadway Avenue locations. Mr. Anderson had been accredited at the Rochdale Boulevard location since March 28, 2019, while Mr. Strueby had been accredited at that location since October 28, 2021. The Broadway Avenue location was accredited on December 6, 2021, and both Mr. Anderson and Mr. Strueby had been able to provide services to WCB clients from that date. Each service provider is required to submit a progress report to WCB, which is the only way that WCB can see who rendered a particular service.

[41] Mr. Bardel produced a lengthy final report dated January 20, 2022. At page 11, he summarized the focus of the investigation as follows:

**Mr. Anderson is alleged to have engaged in professional misconduct in that he failed to act in the best interests of the public or the members and acted in a way that may be harmful to the standing of the profession. Further, Mr. Anderson is alleged to have failed to comply with established standards of practice, assigned tasks that include initial review, assessment and/or reassessment of clients to a**

**support worker, and failed to screen a client prior to being seen by an unregulated health care provider. Finally, Mr. Anderson is alleged to have not acted transparently and with integrity in all professional and business practices including fees and billing; advertising of professional services; and real and/or perceived conflicts of interest, and failed to assess the client to determine appropriateness to receive services from supervisees.**

[Emphasis in original]

[42] On about February 23, 2022, the PCC submitted the Report to the discipline committee. According to the Report, the PCC became concerned about the number of patients Mr. Anderson was seeing each day and his billing practices as a result of information and documentation provided by Mr. Anderson to Ms. Hall. Benard + Associates were retained to assist in the investigation and identified a random list of patient files, which were obtained from the Clinic and analyzed.

[43] At page 2, the Report summarized the PCC's conclusions from the investigation as follows:

1. Adam Strueby began working for the Member [Scott Anderson] in December 2019. He had degrees in kinesiology and physiotherapy but did not apply to become a restricted member of the College until December 2020. He completed at least parts of the initial assessment of the patient MW, communicated the resulting diagnosis and treatment plan to her, and administered the physical therapy treatment.
2. Although not acknowledged by the Member, it is likely that the patient MW is correct that she did not meet with him on either August 11 or August 21, 2021 when she received physical therapy treatment at Anderson & Associates Physiotherapy.
3. The analysis of patient files retrieved by Benard + Associates from the Member indicates several discrepancies between the clinical notes and related invoices for physical therapy services to WCB, SGI and private individuals

wherein the latter showed the Member as the treating practitioner when he was not.

4. As of September 17, 2021, Adam Strueby was not an accredited service provider for WCB nor was the Member's Broadway Avenue Regina clinic location accredited.
5. As of November 19, 2021, Adam Strueby was not listed by SGI as an authorized payee.

[Certified Record of Proceedings, Tab 1]

[44] At pages 2-4, the Report expressed the PCC's opinion that its findings would likely constitute professional misconduct as defined in s. 23 of the *Act*. Accordingly, the PCC recommended that the discipline committee hear and determine a formal complaint against Mr. Anderson. I reproduce the charges recommended by the PCC:

You, Scott Anderson, are alleged to be guilty of professional misconduct contrary to section 23 of *The Physical Therapists Act, 1998*, because it is alleged that you have acted contrary to certain of the *Core Standards of Practice* and/or the Code of Ethical Conduct as approved by the Registrars Committee of The Canadian Alliance of Physiotherapists, compliance with which is required by clause 19(1)(k) and section 20 of *The Saskatchewan College of Physical Therapists Regulatory Bylaws*, and/or that you have failed to comply with certain other provisions of the *Regulatory Bylaws* in the following circumstances:

1. on or about July 3, 2020:

- (a) you failed to comply with Standard 19 of the *Core Standards of Practice* [*sic*], an established standard of practice, contrary to clause 19(1)(k) of *The Saskatchewan College of Physical Therapists Regulatory Bylaws*, by failing to communicate to a new client, TI, the roles, responsibilities, and accountability of supervisees participating in the delivery of physiotherapy services to him; and/or

(b) you assigned the assessment of a new client, TI, to support staff, specifically Adam Strueby who at that time was not a member of the College nor of any other regulated profession in Saskatchewan, contrary to clause 24(2)(a) of *The Saskatchewan College of Physical Therapists Regulatory Bylaws*;

2. on or about August 11, 2020 and/or on or about August 21, 2020:

(a) you failed to comply with Standard 19 of the *Core Standards of Practice [sic]*, an established standard of practice, contrary to clause 19(1)(k) of *The Saskatchewan College of Physical Therapists Regulatory Bylaws*, by failing to communicate to a new client, MW, the roles, responsibilities, and accountability of supervisees participating in the delivery of physiotherapy services to her;

(b) you assigned the assessment of a new client, MW, to support staff, specifically Adam Strueby who at that time was not a member of the College nor of any other regulated profession in Saskatchewan, contrary to clause 24(2)(a) of *The Saskatchewan College of Physical Therapists Regulatory Bylaws*; and/or

(c) as the owner of a physiotherapy clinic known as Anderson & Associates Physiotherapy, you failed to screen a client, MW, known or suspected to have an acute or chronic injury prior to her receiving treatment from an unregulated health care provider employed by you in the clinic, specifically Adam Strueby who at that time was not a member of the College nor of any other regulated profession in Saskatchewan, contrary to section 25 of *The Saskatchewan College of Physical Therapists Regulatory Bylaws*;

3. you failed to act transparently and with integrity in your professional and business practices, contrary to the Code of Ethical Conduct by:

(a) reporting to the Workers' Compensation Board ("WCB") that, on or about December 27, 2019, you provided physiotherapy services to client WD, when in fact those services were provided by Adam Strueby who at that time was not a member of the College nor of any other regulated profession in Saskatchewan and who was not approved by WCB as a provider of physiotherapy services for payment by WCB;

(b) submitting invoices to clients indicating that you had provided physiotherapy services to the client when in fact those services were provided either by Adam Strueby who at that time was not a member of the College nor of any other regulated profession in Saskatchewan or by other unregulated support staff employed by you at your clinic:

(i) with respect to services provided to client RA on or about December 20, 2019;

(ii) with respect to services provided to client LS on or about January 10, 2020;

(iii) with respect to services provided to client LI during the period of January and February 2020;

(iv) with respect to services provided to client JR during the period of February and March 2020;

(v) with respect to services provided to client KD between February and November 2020;

(vi) with respect to services provided to client MR between June and November 2020;

(vii) with respect to services provided to client TI on or about July 3, 2020;

(viii) with respect to services provided to client RD between July and August 2020;

(ix) with respect to services provided to client TJ between July 2020 and May 2021; and/or

(x) with respect to services provided to client MW on or about August 11, 2020 and August 21, 2020; and/or

(c) allowing Adam Strueby, between December 2019 and December 2020, to display his university degrees in kinesiology and physical therapy on the wall of the treatment room he used in the Anderson & Associates Physiotherapy Clinic, when he was not a member of the College nor of any other regulated profession in Saskatchewan.

[Certified Record of Proceedings, Tab 1]

[45] Mr. Anderson made an application for judicial review in reliance on Rules 3-49(1)(g) and 3-56 of *The King's Bench Rules* and the inherent jurisdiction of the Court. Mr. Anderson disputes the PCC's jurisdiction to investigate matters beyond the initial complaint submitted by Mr. Wilson regarding patient MW. He therefore challenges the PCC's authority to investigate and recommend a hearing in relation to charges 1(a), 1(b), 3(a), 3(b)(i), 3(b)(ii), 3(b)(iii), 3(b)(iv), 3(b)(v), 3(b)(vi), 3(b)(vii), 3(b)(viii), and 3(b)(ix) set out in the Report.

### **III. Positions of the Parties**

[46] Mr. Anderson contends the PCC could only investigate the particulars of patient MW's concerns that she was assessed and treated not by a physical therapist but by a non-member and that her invoice was for services by a physical therapist. He submits that the PCC acted unreasonably in undertaking a review of randomly selected patient files of the Clinic rather than restricting its inquiry to MW's two appointments

at the Clinic.

[47] Further, Mr. Anderson submits the PCC's decision to investigate matters outside the initial complaint was an unreasonable assumption of jurisdiction exceeding the statutory grant of authority. He contends that the record as a whole does not reveal a clear or coherent rationale for the PCC's decision. He argues the reasonableness standard of review does not give the decision maker free rein. In this case the enabling statute uses narrow language to define the PCC's authority, and this narrow grant of authority should be construed narrowly. Statutory authority to investigate the complaint does not confer jurisdiction to investigate matters unrelated to the initial complaint. Further, a complete investigation of the initial complaint does not encompass an investigation of matters not specified in the complaint. The PCC's decision regarding its jurisdiction is not an acceptable outcome in light of the constraints on this administrative body.

[48] The College submits that the PCC was authorized to investigate conduct of the nature disclosed by the initial complaint to determine whether it was indicative of a pattern of practice. The respondent suggests the wording of the complaint itself went beyond the particulars of MW's appointments at the Clinic and questioned whether her experience was indicative of a common practice. The College further submits that the purpose of statutory scheme invites a broad interpretation of the PCC's investigative authority and the PCC's decision regarding its authority was reasonable.

[49] In reply to the College's submissions, the applicant submits that the respondent's facts and arguments about the complaint are untethered to the record. The applicant submits that there is no adequate alternative remedy in this case and the Court should exercise its discretion to decide the judicial review application.

#### IV. Availability of Judicial Review and Alternate Remedies

[50] Mr. Anderson contests more than one decision in his judicial review application. He challenges the PCC's decision [Decision], set out in the Report, to recommend that the discipline committee hear and determine numerous charges related to patients other than MW. He submits that the Impugned Charges exceed the statutory authority conferred on the PCC by ss. 25(2) and (3) of the *Act* and should be quashed. Mr. Anderson concedes that the charges pertaining to MW are within the PCC's jurisdiction as they were raised in the initial complaint.

[51] Given the way Mr. Anderson framed his judicial review application, it can also be said that he challenges a decision, or series of decisions, made implicitly by the PCC about its jurisdiction during the course of its investigation of the initial complaint. He asserts that the PCC's conduct of the investigation exceeded the mandate conferred by ss. 25(1) of the *Act*.

[52] Mr. Anderson describes the PCC's investigatory decisions in this way. The PCC received the initial complaint, which it determined at its first meeting on January 27, 2021, was that "a member, a clinic owner, had permitted an unlicensed staff member to provide assessment and treatment services on two occasions in 2020 to a named patient, but billed for it in the member's name": Applicant's Brief of Law at para. 53 [emphasis in original]. Mr. Anderson suggests that the PCC had decided by March 3, 2021, that it believed MW's account and "decided it would now investigate 'how many other times' Adam had provided unauthorized physiotherapy services": Applicant's Brief of Law at para. 54 [emphasis in original]. In furtherance of this inquiry, the PCC decided to seek the Clinic's records for the entire time Mr. Strueby had been employed there. The PCC met a third time on April 1, 2021, and decided to hire an external investigator to conduct an "extensive further investigation." This then led the PCC's external investigator to request "30 other patient files ... for audit":

Applicant's Brief of Law at para. 57 [emphasis in original].

[53] To summarize, Mr. Anderson impugns the PCC's decision to make inquiries and review records beyond the particulars of MW's appointments at the Clinic. Disputed steps in the PCC's inquiry include reviewing a random sampling of 30 patient files to determine whether Mr. Anderson customarily permitted Mr. Strueby, a non-member of the College, to perform physiotherapy assessment and treatment on patients. The inquiry also examined the Clinic's billings for the additional 30 patient files. The PCC did not render a formal "decision" during this process. Rather, it undertook steps in an investigation and its view of the scope of its authority to take those steps must be discerned from the PCC's minutes and the actual inquiries it undertook.

[54] Judicial review is available to challenge the Decision. In *Swanson v Institute of Chartered Accountants of Saskatchewan (Professional Conduct Committee)*, 2007 SKQB 480, 308 Sask R 32 [*Swanson*], the applicant applied for an order quashing the decision of a professional conduct committee to refer a complaint to the discipline committee. He alleged the committee breached its duty of fairness and exceeded its jurisdiction, among other things. In that case, the professional conduct committee had received a complaint about the member's conduct of an audit. The investigators eventually issued a report to the committee that addressed concerns raised in the initial complaint and additional matters arising from investigators' review of the audit: *Swanson* at para 12.

[55] Currie J. concluded that an investigatory body is subject to judicial review if its decision could adversely affect the rights of an individual. It is not necessary that the impugned decision be a final determination on the merits: *Swanson* at paras 24-26. The decision to refer a complaint to discipline can have a significant adverse effect on the member, resulting in damage to the member's professional reputation among

colleagues and potential clients and the prospect of incurring costs to defend the charge: *Swanson* at para 31; *Tanaka v Certified General Accountants' Assn. (Northwest Territories)*, [1996] NWTR 301 (SC) at para 39.

[56] Following *Swanson*, I conclude that the PCC's Decision referring a formal complaint against Mr. Anderson to discipline is reviewable. Here, the PCC made a written report to the discipline committee recommending that the discipline committee hear and determine the formal complaint set out in the Report: s. 25(3)(a). While this is framed as a recommendation, pursuant to s. 28 of the *Act* the discipline committee must hear the formal complaint and determine whether the member is guilty of professional misconduct or professional incompetence.

[57] The PCC's Decision to refer a formal complaint against Mr. Anderson to discipline could have a significant adverse impact on him. The discipline hearing could damage Mr. Anderson's standing among his patients and his peers. Notices of hearing and discipline case summaries are posted on the College's website. Responding to an audit of 30 patient files consumed significantly more of Mr. Anderson's time and effort than simply responding to a complaint about MW's two Clinic appointments. Answering the charges arising out of the audit of those additional patient files will also be time-consuming and costly. The PCC's investigator interviewed many of those patients, undoubtedly raising doubts with them about his professionalism. Judicial review is available to Mr. Anderson to challenge the PCC's jurisdiction to investigate and recommend the Impugned Charges in the Report. However, since the PCC completed its investigation by issuing the Report, it would be an academic exercise to review each step taken in the investigation for excess of jurisdiction. Moreover, in my view judicial review of these investigatory steps should not be encouraged.

[58] Since I am persuaded that judicial review is available in relation to the Decision, I would not give effect to the College's argument that the Court should

decline to hear and determine the application because an adequate alternate remedy exists in the form of the discipline committee hearing. Many of the authorities cited by the College refer to the availability of judicial review when an adequate statutory right of appeal exists: *Arch Transco Ltd. v Regina (City)*, 2002 SKCA 126 at para 1, 227 Sask R 139; *Huerto v Saskatchewan*, 2008 SKCA 107 at para 68, 311 Sask R 288. In *Whatcott v Saskatchewan Assn. of Licensed Practical Nurses*, 2003 SKQB 3, 229 Sask R 182 [*Whatcott*], the member sought an order prohibiting the discipline committee from proceeding with a hearing on the grounds that his rights guaranteed by the *Canadian Charter of Rights and Freedoms* [*Charter*] would be infringed if the committee determined that his picketing activity amounted to professional misconduct. Gunn J. determined that the hearing afforded him an adequate alternate remedy and it would be impossible to determine whether his *Charter* rights would be infringed by a finding of misconduct without a hearing to determine the facts.

[59] Determining whether an alternative remedy is adequate is part of the inquiry into whether to exercise the discretion to grant judicial review: *Strickland v Canada (Attorney General)*, 2015 SCC 37 at para 43, [2015] 2 SCR 713 [*Strickland*]. Relevant factors include the convenience of the alternate remedy; the nature of the error alleged; the nature of the other forum that could deal with the issue; the existence of adequate recourse in the forum in which litigation is taking place; expeditiousness; the relative expertise of the alternative decision-maker; economical use of judicial resources; and cost: *Strickland* at para 42. This list is not exhaustive.

[60] In this case, the applicant seeks to quash numerous charges against him on the ground that the PCC did not have jurisdiction to investigate the matters alleged. The discipline committee is obligated to hear and determine the charges recommended by the PCC: s. 28 of the *Act*. The statutory appeal mechanism is not an effective means for the member to challenge the PCC's authority to bring the charges. A member can

only appeal the discipline committee’s decision after being found guilty of professional incompetence or professional misconduct: s. 35 of the *Act*. It would not be reasonable to require the applicant to defend the Impugned Charges before the discipline committee if the PCC lacked authority to refer them to discipline in the first place: see *Nanson v Discipline Committee of the Saskatchewan College of Psychologists*, 2009 SKQB 78 at para 21, 332 Sask R 287. Unlike the circumstances in *Whatcott*, a hearing is not required to determine any facts as a prerequisite to deciding the jurisdictional issue. I conclude that the Court should exercise its discretion to determine the merits of the application.

## V. Standard of Review

[61] The parties agree that the applicable standard of review is reasonableness. I will provide only a brief overview of the governing principles.

[62] Following *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*], the reasonableness standard applies presumptively to all administrative decisions, unless a different standard is compelled by a clear indication of legislative intent or by the rule of law. Reasonableness review provides a sufficiently robust framework for assessing whether administrative bodies have exceeded their legal authority: *Vavilov* at paras 65-67. When the decision maker’s interpretation of its statutory authority is reviewed on the reasonableness standard, “precise or narrow statutory language will necessarily limit the number of *reasonable* interpretations open to the decision maker”: *Vavilov* at para 68 [emphasis in original]. By contrast, conferral of broad powers in general terms signals the legislature’s intent to give the administrative body greater leeway to interpret its enabling statute, and reviewing courts should give effect to this intent.

[63] Reasonableness review is concerned “with ‘the qualities that make a

decision reasonable, referring both to the process of articulating the reasons and to outcomes’’: *Vavilov* at para 86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190. As explained in *Vavilov* at para 86:

[86] ... Reasonableness, according to *Dunsmuir*, “is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process”, as well as “with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law’’: *ibid*. In short, it is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies. While some outcomes may be so at odds with the legal and factual context that they could never be supported by intelligible and rational reasoning, an otherwise reasonable outcome also cannot stand if it was reached on an improper basis.

[Emphasis in original]

[64] To determine whether a decision as a whole is reasonable, the reviewing court must ask whether the decision bears the hallmarks of reasonableness: justification, transparency, and intelligibility. The reviewing court must also ask whether the decision is justified in relation to the relevant factual and legal constraints that bear on the decision: *Vavilov* at para 99.

[65] The party challenging the decision bears the burden of showing that it is unreasonable. Shortcomings in the decision must be sufficiently serious that the decision does not exhibit the requisite degree of justification, intelligibility, and transparency. The shortcomings must be sufficiently central or significant to render the decision unreasonable: *Vavilov* at para 100.

[66] In *Vavilov* at para 77, the Supreme Court also addressed the decision-maker’s obligation to give reasons. Written reasons are not required for all

administrative decisions. Whether written reasons are required depends upon the context. Written reasons are usually required where the decision-making process gives the parties participatory rights, an adverse decision would have a significant impact on an individual, or there is a right of appeal. Some situations do not readily lend themselves to a formal set of reasons. The reviewing court must look to the record as a whole to understand the decision and, by doing so, the court will often uncover the rationale for the decision: *Vavilov* at para 137.

[67] In the present application, the decision in issue is the PCC's determination that it had the statutory authority to investigate Mr. Anderson's practices related to assessing, treating, and billing patients of his Clinic by review a sampling of patient files in addition to the file related to patient MW. The PCC's "decision" regarding its jurisdiction is not set out in writing anywhere and must be inferred from the investigative steps that it took and the Report it sent to the discipline committee. This is not surprising. One would not expect the investigative committee of a professional regulatory association to issue formal reasons about its jurisdiction during the course of investigating a complaint.

## **VI. Analysis**

### **A. Scope of Statutory Authority to Investigate Complaints**

[68] Section 25 of the *Act* is the operative provision governing investigations by the PCC. At the time of the investigation in the present case, the provision read as follows:

25(1) Where the professional conduct committee is requested by the council to consider a complaint or is in receipt of a written complaint alleging that a member is guilty of professional misconduct or professional incompetence, the committee shall:

- (a) review the complaint; and

(b) investigate the complaint by taking any steps it considers necessary, including summoning before it the member whose conduct is the subject of the complaint or assessing the member's competence.

(2) On completion of its investigation, the professional conduct committee shall make a written report to the discipline committee recommending:

(a) that the discipline committee hear and determine the formal complaint set out in the written report; or

(b) that no further action be taken with respect to the matter under investigation because:

(i) the matter has been resolved with the consent of the complainant and the member who is the subject of the investigation; or

(ii) no further action is warranted on the facts of the case.

(3) The formal complaint set out in a written report made pursuant to clause (2)(a) may relate to any matter disclosed in the complaint received pursuant to subsection (1) or the investigation conducted pursuant to subsection (1).

(4) A report signed by a majority of the professional conduct committee is the decision of that committee.

(5) The professional conduct committee shall provide, or cause the executive director to provide, a copy of a written report made pursuant to clause (2)(b) to:

(a) the council;

(b) the person, if any, who made the complaint mentioned in subsection (1); and

(c) the member whose conduct is the subject of the complaint mentioned in subsection (1).

[Emphasis added]

[69] Mr. Anderson invites the Court to conclude that the PCC acted

unreasonably by interpreting broadly its authority to investigate the complaint. According to the applicant, a reasonable interpretation of the PCC's jurisdiction would have restricted its investigation only to the concerns mentioned in the initial complaint about MW's two appointments at the Clinic.

[70] Legislation must be interpreted in accordance with s. 2-10 of *The Legislation Act*, SS 2019, c L-10.2, which reads:

**2-10(1)** The words of an Act and regulations authorized pursuant to an Act are to be read in their entire context, and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of the Legislature.

(2) Every Act and regulation is to be construed as being remedial and is to be given the fair, large and liberal interpretation that best ensures the attainment of its objects.

[71] Subsection 2-10(1) of *The Legislation Act* codifies the modern principle of statutory interpretation, articulated in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 at 40-41; *Zielke v Law Society of Saskatchewan*, 2021 SKCA 156 at para 21, 467 DLR (4th) 427.

[72] In *Acess Capital Partners Inc. v Allsteel Builders (2) Limited*, 2015 SKCA 33, 383 DLR (4th) 334, Jackson J.A. explained how the modern principle is applied:

[56] There are three dimensions of the Modern Principle: (i) textual meaning; (ii) legislative intent, which encompasses the scheme and object of the statute and Parliament's intention; and (iii) "compliance with established legislative norms," which are part of the whole context in which the statute's words are to be read and part of the legislature's intention (*Sullivan [Sullivan on the Construction of Statutes*, 6th ed (Markham, Ont: LexisNexis Canada, 2014), p. 8 at para. 2.5). For example, rules regarding textual analysis assist in the determination of the meaning of the text, the rules regarding extrinsic aids help interpreters identify

what they may look at for determining legislative intent, and strict and liberal construction and presumptions of legislative intent contribute to determining the purpose of the statute and to evaluating whether an outcome is acceptable (*Sullivan* p. 10 at para. 2.8).

[73] Read in its grammatical and ordinary sense, ss. 25(1) of the *Act* confers considerable leeway on the PCC to investigate complaints against members. The provision requires the PCC to review a complaint of professional misconduct or professional incompetence and to investigate it. In conducting the investigation, the PCC is empowered to take any steps it considers necessary. Such steps include summoning before the PCC the member whose conduct is the subject of the complaint or assessing the member's competence. On completion of its investigation the PCC must submit a report to the discipline committee setting out the PCC's recommendation. The PCC may recommend that the discipline committee hear and determine a formal complaint set out in the written report. The formal complaint may relate to any matter disclosed in the initial complaint or during the investigation of that complaint by the PCC.

[74] As previously mentioned, if the PCC's report recommends that the discipline hear and determine a formal complaint, the discipline committee shall hear the complaint and shall determine whether or not the member is guilty of professional misconduct or professional incompetence: s. 28 of the *Act*.

[75] Since the formal complaint can include charges related to matters learned by the PCC during the course of its investigation, a plain reading of the text indicates that the PCC's investigation is not limited strictly to the parameters of the initial complaint. In this respect, the language at issue here is broader than the statutory text considered by Currie J. in *Swanson*. In that case, the provision governing investigations of chartered accountants prescribed a process beginning with an initial complaint and concluding, in some cases, with a written report to the discipline committee that

contained the complaint of the professional conduct committee. Currie J. concluded that the complaint put to the discipline committee could be broader than the original complaint. He reasoned that this was consistent with the statute's goal of protecting the public interest and the reality that members of the public are unlikely to know how to identify alleged breaches of statute or bylaws precisely. He held that, implicitly, the statute allowed the committee to investigate and recommend a hearing with respect to matters that came to its attention during the investigation. While the committee could not "root around for something to investigate," it could investigate matters that were related to the initial complaint: *Swanson* at para 45.

[76] Currie J. found support for this conclusion in *Stolen v British Columbia College of Teachers* (1995), 128 DLR (4th) 453 (BC CA) [*Stolen*]. In that case, the applicant applied for judicial review of the citation (*i.e.*, the notice of hearing). The citation alleged that the member was guilty of conduct unbecoming, citing six instances where the member had assaulted his wife or his former girlfriend. The chambers judge found that the investigating committee did not have jurisdiction to investigate anything other than a report from the school board and a complaint signed by five members of the college, which referred to Mr. Stolen's conviction of having assaulted his wife on one occasion. That conviction was the basis of the first count of conduct unbecoming set out in the citation.

[77] Writing for the majority, Southin J.A. concluded that the reports of the school board and the five members raised the issue of whether the respondent was a man given to violence against women. She concluded that an investigation into other instances of alleged violence than the one specifically referred to was within the scope of the provision conferring authority on the investigating committee. "Conduct" to be investigated included conduct of the nature referred to in the report or the complaint: *Stolen* at para 59.

[78] In separate, concurring reasons, Justice Prowse held that the statutory language entitled the investigating committee to investigate not just the initial complaint but also other instances of alleged misconduct or incompetence disclosed during the course of the investigation: *Stolen* at para 32. In that case, the statutory wording contemplated a “preliminary investigation into the conduct or competence of the member” following receipt of a complaint about the conduct of that member. Prowse J.A. held that the investigating committee was not precluded from considering information that came to its attention at the outset or during the course of its investigation if it related to the conduct or competence of the member who was the subject of the complaint: *Stolen* at para 50. Information received by the investigating committee tended to show a pattern of behaviour that placed the complaint in a different light than if it stood alone: *Stolen* at para 52.

[79] As Currie J. noted in *Swanson* at para 51, the breadth of the decision in *Stolen* stemmed from the applicable statutory provision, which authorized an investigation into the member’s “conduct or competence.” The statutory text in issue in *Swanson* was narrower, authorizing investigation of the “complaint.” Currie J. drew from *Stolen* “the principle that the investigation of matters *related to* the initial complaint, or *of the nature referred to in* the initial complaint, is fair”: *Swanson* at para 51 [emphasis in original]. Application of this principle would be narrower where the statutory authority was narrower.

[80] The statutory text in issue in the present case falls somewhere between *Swanson* and *Stolen* in its breadth. Unlike the legislative wording in *Swanson*, ss. 25(3) of the *Act* grants the PCC express authority to refer to discipline “any matter disclosed in ... the investigation” of the initial complaint. I will now consider the legislative intent to determine whether s. 25 can reasonably be interpreted to authorize investigation of matters related to the initial complaint or of the nature referred to in the initial

complaint.

[81] When the PCC's investigation took place, the *Act* did not contain an express statement of the statute's object or purpose. However, an overview of the *Act* reveals that it shares with other statutes governing self-regulating professions the goal of protecting the public interest.

[82] The *Act* confers on the council the authority to manage and regulate the affairs and business of the College. Among other things, the *Act* empowers the council and the members of the College to adopt bylaws to govern the profession of physical therapists. Regulatory bylaws can be made for various purposes, including to set standards of professional conduct, competency and proficiency of members, to provide for a code of ethics for members, and to set standards regarding the manner and method of practice of members (ss. 14(2)(c) to (e)). Regulatory bylaws can prescribe procedures for the review, investigation and disposition of complaints by the PCC (ss. 14(2)(f)). They can govern the approval of education programs for the purpose of registration and set standards for continuing education of members (ss. 14(2)(i) to (j)). They can prescribe the minimum amount of liability protection members are required to obtain. Regulation of these matters is obviously intended to further the goal of protecting the public. Regulatory bylaws have been adopted: *The Saskatchewan College of Physical Therapists Regulatory Bylaws Amendments, 2016*.

[83] Protection of the public is also the focus of the *Act*'s definitions of professional incompetence and professional misconduct. Professional incompetence includes the display by a member of a lack of knowledge, skill or judgment or a disregard for the welfare of a member of the public served by the profession of a nature or to the extent that it demonstrates the member is unfit to continue to practice the profession: s. 22. Professional misconduct includes conduct that "is harmful to the best interests of the public or the members": ss. 23(a).

[84] Having regard for the foregoing provisions, it is evident that protection of the public is the principal object of the *Act*. Modern principles of statutory interpretation mandate that s. 25 be given the “fair, large and liberal interpretation” that best ensures the protection of the public interest. The intent and purpose of the section is to permit and encourage the investigation of possible improper conduct by members: see *Kawula v Institute of Chartered Accountants of Saskatchewan*, 2017 SKCA 70 at para 119.

[85] However, the applicant submits that it is a generally accepted principle that professional discipline legislation is to be narrowly construed in favour of the professional being disciplined, given the serious consequences to the professional from being subject to the discipline process. He cites *Association of Professional Engineers of Ontario v Leung*, 2018 ONSC 4527 at para 50 [*Leung*] and the authorities referred to therein. In *Leung*, the Court held a proper and contextual reading of the statute supported the discipline committee’s conclusion that it did not have jurisdiction over the actions of persons before they were members. The relevant provision granted jurisdiction in respect of allegations of misconduct or incompetence of members or licence holders, while other provisions in the statute used broader language. Thus, the specific wording of the statute drove the result.

[86] The applicant also cites *Ontario College of Pharmacists v Katzman* (2002), 223 DLR (4th) 371 (Ont CA) [*Katzman*], for the proposition that the regulator’s investigative authority should be narrowly interpreted. Recently, however, when considering its earlier decision in *Katzman*, the Ontario Court of Appeal commented that *Katzman* supports a broader interpretive approach, balancing the public interest with the member’s right to a fair hearing: see *Abdul v Ontario College of Pharmacists*, 2018 ONCA 699 at para 18, 142 OR (3d) 682.

[87] Finally, the applicant cites *Johnston v Association of Professional*

*Engineers of Saskatchewan* (1970), 15 DLR (3d) 482 (CanLII) (Sask CA) [*Johnston*]. In that case, the council of the regulatory association convicted an engineer of misconduct in two particulars which had not formed part of the complaint and had not been set out in the notice of hearing, which specified a different complaint of negligence or misconduct. The Court of Appeal held that the council acted without jurisdiction by considering and disposing of a charge not remitted to it: *Johnston* at para 17. In my view, *Johnston* is distinguishable from the present situation as the member had no notice of two of the charges for which he was found guilty. To the extent that *Johnston* addresses the regulator’s investigative authority, it says only that “the council had jurisdiction to enter upon the inquiry and to conduct a complete investigation of the complaint ...”: *Johnston* at para 14. *Johnston* does not consider the legislative intent of the applicable legislation, nor was it informed by modern principles of statutory interpretation.

[88] The cases cited by the applicant must be juxtaposed against other recent court decisions holding that a professional regulator’s legislation should be interpreted broadly and purposively to ensure that public protection is achieved: see *Grimstead v Ontario College of Teachers*, 2023 ONSC 1801 at para 59; *Saskatchewan College of Paramedics (Professional Conduct Committee) v Bodnarchuk*, 2015 SKCA 81 at para 31, 465 Sask R 36; *Strom v Saskatchewan Registered Nurses’ Association*, 2020 SKCA 112 at para 77, 453 DLR (4th) 472. Courts have on many occasions emphasized that the primary role of professional regulatory bodies is to protect the public interest: see *Pharmascience Inc. v Binet*, 2006 SCC 48 at para 36, [2006] 2 SCR 513 [*Binet*]. The delegation of the power of self-regulation by the state comes with the duty to provide adequate protection for the public: *Binet* at para 36. Many of these decisions are binding authority on this Court.

[89] I conclude that a broad and purposive interpretation of the provision

conferring authority on the PCC to investigate is in keeping with modern principles of statutory interpretation and with the leading authorities on this topic. The PCC's implicit conclusion that it had the authority to investigate whether MW's complaint was an isolated incident or typical of Mr. Anderson's practice was within the range of acceptable and rational choices available to it and readily defensible in respect of the facts and law. Put another way, the PCC reasonably concluded that it had the authority to investigate matters related to the initial complaint or of the nature referred to in the initial complaint. This interpretation of the PCC's jurisdiction is justified given the *Act's* objective of protecting the public.

[90] In my reasons I have alluded to revisions to the governing statute. Amendments to the *Act* after the PCC completed its Report provide that the object of the *Act* and the duty of the College is to govern the profession of physical therapists in the interests of the public: Part 16 of *The Miscellaneous Statutes (Health Professions) Amendment Act, 2023*, SS 2023, c 6 (in force May 15, 2023). Section 25.1, included in the recent amendments, confers expansive investigative powers on the PCC. These amendments reinforce that protection of the public is the overriding objective of the legislation, but because they came into effect after the Decision in issue, I have not relied on them in determining this judicial review application.

## **B. Application to the Impugned Charges**

[91] As alleged in the initial complaint sent by Mr. Wilson to the College, patient MW had been booked to see Mr. Anderson, a physical therapist, but was instead seen by a member of the Clinic's support staff, Mr. Strueby, for assessment and subsequent treatment. MW was later billed for the assessment and treatments by Mr. Anderson, even though MW was allegedly not seen by him and Mr. Strueby left the assessment room periodically to consult with Mr. Anderson.

[92] Mr. Wilson suggested Mr. Anderson had violated standards of practice by, *inter alia*, failing to assess MW himself before assigning MW to receive services from an unregulated health care provider under his supervision. He also alleged that Mr. Anderson's billing practices violated the College's code of ethical conduct by naming a registered member of the College as the person who performed the patient's assessment and treatment when that was not what occurred.

[93] The complaint indicated that MW had not been harmed as a result of the alleged infractions but suggested there was "potential for harm to a member of the public ... if this is a common practice at this clinic." Finally, the complaint expressed the hope that the College would "investigate this occurrence to ensure it is not a common practice of this clinic" (Certified Record of Proceedings, Tab 2).

[94] The PCC's minutes of January 27, 2021, summarized the initial complaint without referring to Mr. Wilson's concern about the Clinic's "common practice." Mr. Anderson had seized on this summary as limiting the scope of the complaint to MW's appointments. In my respectful view, that narrow reading of the complaint is untenable.

[95] Rather, the initial complaint can reasonably be read as making allegations about Mr. Anderson's practice generally, and not simply about matters arising from MW's two appointments at the Clinic. Investigating whether Mr. Anderson performed the initial assessment of each patient and prepared their treatment plan, or whether he routinely delegated these tasks to support staff, was within the scope of the initial complaint. Similarly, the initial complaint raised the concern that the Clinic might routinely be billing patients for professional services provided by Mr. Anderson when the services had in fact been performed by unlicensed staff. On its face, the complaint invited the PCC to investigate matters related to or of the nature referred to in the initial complaint involving MW.

[96] I conclude that the PCC's decision to investigate the complaint by reviewing 30 randomly selected patient files to see whether those patients were seen by Mr. Strueby rather than Mr. Anderson for their initial assessment and preparation of their treatment plan was reasonable. It was encompassed by the concern in the initial complaint about Mr. Anderson's common practice. The PCC was investigating the same kind of alleged misconduct in relation to those 30 patients that had been specifically brought forward regarding MW.

[97] Two of the Impugned Charges, charges 1(a) and 1(a) in the Report, concern the provision of physiotherapy services by a staff person at the Clinic to a new patient. They use wording identical to charges 2(a) and 2(b), which involve patient MW specifically. They involve one of the patients whose file was randomly selected during the PCC's investigation. In my view, these charges concern matters disclosed during the PCC's investigation and relate to or are at least of the nature of concerns raised in the initial complaint. I conclude that the PCC's decision that it had the authority to investigate these matters and refer them to discipline was reasonable.

[98] The PCC's investigation also examined how the 30 randomly selected patients had been billed for their appointments. In some cases, they had been billed directly. In others, WCB or SGI were providing coverage for their physiotherapy. Investigating whether the billings for those patients lined up with who had provided physiotherapy to them was also encompassed by the concerns raised in the initial complaint about Mr. Anderson's billing practice. These inquiries were related to the initial complaint or at the very least were of the nature referred to in the initial complaint. Accordingly, I conclude that the PCC's decision to review the Clinic's billings for these 30 patient files was also reasonable.

[99] Charge 3(a) alleges that Mr. Anderson reported to WCB that he provided physiotherapy services to a patient when Mr. Strueby had in fact provided those

services when he was not a member of the College nor approved by WCB as a provider of physiotherapy services for payment by the WCB. This charge is also related to the initial complaint and involves matters learned by the PCC during the course of its investigation.

[100] The remaining Impugned Charges, charges 3(b)(i), 3(b)(ii), 3(b)(iii), 3(b)(iv), 3(b)(v), 3(b)(vi), 3(b)(vii), 3(b)(viii), and 3(b)(ix), all allege that Mr. Anderson submitted invoices to patients indicating that he had provided physiotherapy services to them when those services had actually been provided by Mr. Strueby or another unregulated staff person. Each charge relates to a different patient and uses wording identical to a separate charge (charge 3(b)(x)) concerning the invoice provided to patient MW. Again, these charges are all closely related to the subject-matter of the initial complaint and involve matters learned by the PCC during the course of its investigation.

[101] I conclude that the PCC's decision to refer the allegations of misconduct regarding Mr. Anderson's invoicing practices was a reasonable interpretation of its statutory authority. In investigating these matters, the PCC was not rooting around for something to investigate. Rather, it was investigating matters of the same nature as the complaint involving MW.

[102] The decision to review 30 randomly selected patient files also speaks to the reasonableness of the PCC's investigation. It is apparent that the Clinic's practice was busy and served many patients. The number of files selected for review is relatively modest when considered in that light. Mr. Anderson contends that the random sampling of patient files suggests a fishing expedition. However, another way of looking at it is that the PCC concluded a random sampling of 30 patient files in addition to the MW file would provide a representative sample of the Clinic's practise. This approach was restrained and not overly intrusive on the Clinic.

**VII. Conclusion**

[103] For the foregoing reasons, I conclude that the PCC's decision to refer the Impugned Charges to the discipline committee was reasonable. Mr. Anderson's application for judicial review is dismissed with costs.

\_\_\_\_\_  
J.  
P.T. BERGBUSCH