

SUPREME COURT OF NOVA SCOTIA

Citation: *Howe v. Nova Scotia Barristers' Society*, 2026 NSSC 52

Date: 20260211

Docket: Hfx No. 537151

Registry: Halifax

Between:

Lyle Howe

Applicant

v.

Nova Scotia Barristers' Society

Respondent

DECISION ON JUDICIAL REVIEW

Judge: The Honourable Justice Scott C. Norton

Heard: January 29, 2026, in Halifax, Nova Scotia

Decision: February 11, 2026

Counsel: Laura McCarthy, for the Applicant
Ashley Hamp-Gonsalves and David Hutt, for the Respondent

By the Court:**Overview**

[1] Lyle Howe requests judicial review of a decision of the Complaints Review Committee of the Nova Scotia Barristers' Society that upheld the finding of an independent investigator that Mr. Howe's complaint against the former Executive Director of the Society, Mr. Darrel Pink, should be dismissed.

[2] The decision of the Complaints Review Committee ("CRC") of the Nova Scotia Barristers' Society ("Society") is dated September 10, 2024 ("Decision"). The Decision arose from Mr. Howe's statutory right of review from the conclusion of an independent investigator, Justin Robichaud, to dismiss a complaint that Mr. Howe had filed against the Society's former Executive Director, Mr. Darrel Pink.

[3] The complaint arose from a telephone call made on November 16, 2011, by Mr. Pink in his official capacity to Chief Judge Patrick Curran of the Provincial Court of Nova Scotia.

[4] In the Notice of Judicial Review, Mr. Howe enumerated seven grounds for judicial review. In his brief, Mr. Howe organized the allegations into four grounds:

- (a) The CRC breached the duty of procedural fairness.
- (b) The Decision was substantively unreasonable as it did not grapple with the issues raised by Mr. Howe.
- (c) There was a reasonable apprehension of bias in the Decision.
- (d) There was delay in rendering the Decision.

[5] The request for judicial review is denied. As I will elaborate below, as a complainant in a regulatory disciplinary process, the applicant does not have standing to seek judicial review on the merits of the decision. The grounds of judicial review relating to substantive fairness cannot succeed and must be dismissed. With respect to the procedural fairness argument, the degree of fairness owed to an applicant is on the lower end and was met by the CRC in this case. The Decision was made in a timely manner. With respect to the allegation of bias, no evidence was presented to rebut the strong presumption of impartiality.

Facts

[6] The following is a concise statement of the facts from the Record filed with the court on May 20, 2025:

1. Mr. Howe filed a complaint against Mr. Pink on April 26, 2021 (the “Complaint”). The allegations set out in the Complaint centre around a phone call Mr. Pink had with then Chief Judge Curran on November 16, 2011.
2. According to a memorandum authored by Mr. Pink, Mr. Pink had a conversation with Judge Curran, wherein Mr. Pink asked whether the Judge was aware of any concerns the Provincial Court had about Mr. Howe. Mr. Pink’s memo says Mr. Pink indicated Mr. Howe was a young African Nova Scotian lawyer, and Mr. Pink had heard some things suggesting Mr. Howe may need some assistance.
3. In his Complaint, Mr. Howe alleges, among other things, Mr. Pink breached Mr. Howe’s confidentiality and engaged in individualized and systemic discrimination.
4. Following receipt of the Complaint, considering a Human Rights Complaint filed by Mr. Howe against the Society, the Society held the file in abeyance. The abeyance period was the earlier of 12 months or the resolution of the Human Rights Complaint.
5. The Society appointed Mr. Justin Robichaud to act as special investigator into the Complaint in about April 2022. Mr. Robichaud is a practicing lawyer in New Brunswick and is not a member of the Society.
6. Mr. Robichaud wrote to Mr. Pink on April 29, 2022, requesting his consent for a review of the abeyance period or a response to the Complaint. Mr. Pink opted to have the Complaint move forward. On May 19, 2022, Mr. Pink filed his response to the Complaint.
7. On August 15, 2022, both Mr. Howe and his legal counsel, Laura McCarthy, filed replies to Mr. Pink’s response.
8. Mr. Robichaud subsequently conducted an investigation. This included reviewing the Complaint, Mr. Pink’s response, and the reply materials. Mr. Robichaud also solicited further information from Mr. Howe, Mr. Pink, and the Society, and interviewed both Mr. Howe and Mr. Pink.
9. On January 12, 2024, Mr. Robichaud issued a decision dismissing the Complaint. He found there was no factual basis to suggest Mr. Pink’s conduct represented a marked departure from his ethical and legal responsibilities.
10. On February 20, 2024, Mr. Howe filed a Request for Review of Mr. Robichaud’s decision (the “Request for Review”), as permitted by Section 9.4 of the Regulations made pursuant to the *Legal Profession Act*, SNS 2004, c 28 (the “*Legal Profession Act*” and “*Regulations*,” respectively).
11. The CRC met to consider the Request for Review on May 13, 2024.

12. The CRC issued its Decision on September 24, 2024. In making the Decision, the CRC reviewed the Complaint, all correspondence to the Society, all of Mr. Pink's reply material, and the documents generated by Mr. Robichaud's investigation.

13. The CRC considered issues of bias raised by Mr. Howe. In particular, the CRC considered Mr. Howe's assertion that, as lawyers who are, by definition, members of the Society, the CRC's review of a complaint made against the Society's Executive Director gives rise to a reasonable apprehension of bias. After considering legal tests and, in particular, recent guidance from the Nova Scotia Court of Appeal, the CRC indicated it was satisfied it could conduct its review impartially.

14. The CRC found Mr. Robichaud's decision to dismiss the Complaint reasonable and upheld the decision.

15. Mr. Howe filed a Notice of Judicial Review of the Decision on October 2, 2024.

Issues

[7] The issues raised for the court to consider on this judicial review are as follows:

1. Does the applicant have standing to request a substantive review of the decision?
2. Did the CRC act in a procedurally fair manner in determining Mr. Robichaud's decision to dismiss the Complaint was reasonable?
3. Does the Decision give rise to a reasonable apprehension of bias?

Standard of Review

[8] The parties agree that the standard of review on issue 1 is reasonableness in accordance with the Supreme Court of Canada decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65. The Nova Scotia Court of Appeal has recently summarized the principles of reasonableness review in *EMC Emergency Medical Care Inc. v. Canadian Union of Postal Workers*, 2024 NSCA 55, at paras. 32-47.

[9] The analysis which applies to a judicial review on the grounds of procedural fairness is not a "standard of review" analysis *per se*. Instead, a two-step approach is followed which first requires consideration of the content of the CRC's duty of fairness, and then, whether the CRC breached that duty: *Communications, Energy*

and Paperworkers Union of Canada, Local 141 v. Bowater Mersey Paper Co. Ltd., 2010 NSCA 19, at paras. 30-31.

[10] In *Burt v. Kelly*, 2006 NSCA 27, the Court described the two-step process, at para. 21:

[21] The first step – determining the content of the tribunal’s duty of fairness – must pay careful attention to the context of the particular proceeding and show appropriate deference to the tribunal’s discretion to set its own procedures. The second step – assessing whether the Board lived up to its duty -- assesses whether the tribunal met the standard of fairness defined at the first step. The court is to intervene if of the opinion the tribunal’s procedures were unfair. In that sense, the court reviews for correctness. But this review must be conducted in light of the standard established at the first step and not simply by comparing the tribunal’s procedure with the court’s own views about what an appropriate procedure would have been. Fairness is often in the eye of the beholder and the tribunal’s perspective and the whole context of the proceeding should be taken into account. Court procedures are not necessarily the gold standard for this review.

[11] The content of the Board’s duty of fairness is to be assessed based on the factors outlined by the Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817. At paras. 23 to 28, the Court provided a list of five non-exhaustive factors that are intended to assist a court determine whether the procedures that were followed respected the duty of fairness:

1. the nature of the decision being made and the process followed in making it.
2. the nature of the statutory scheme and the terms of the statute pursuant to which the body operates.
3. the importance of the decision to the individual or individuals affected.
4. the legitimate expectations of the person challenging the decision.
5. the choices of procedure made by the agency itself.

Analysis

Does the applicant have standing to request a substantive review of the decision?

[12] The case law in Nova Scotia clearly states that a complainant in a professional disciplinary proceeding does not have standing to seek judicial review on the merits, or the substantive reasonableness, of a decision.

[13] This was recently confirmed by Justice Darlene Jamieson, as she then was, in *Watson v. Nova Scotia Barristers' Society*, 2025 NSSC 332, at para. 12:

[12] The law is clear that as a complainant in a professional discipline process, Ms. Watson is a non-party and has no standing to seek judicial review of the merits of the disciplinary body's decision. In *Brinton v. the Judicial Council of Nova Scotia*, 2024 NSSC 397, Justice Brothers provided a detailed overview of the law in this regard and stated:

[74] Courts across the country have held that “[u]nless a statute expressly provides otherwise, a complainant in a professional discipline case has no standing to challenge the substantive reasonableness of a decision not to refer a complaint to a discipline hearing.

[14] Mr. Howe acknowledges the general principle stated in *Watson* but argues that the issues raised by him are issues of procedural fairness.

[15] Part VI of the applicant's brief, titled “Reasonableness and Substantive Review” is, respectfully, a clear attack on the substantive reasonableness of the Decision. The argument is that the CRC failed to grapple with systemic and adverse-impact discrimination. While Mr. Howe's arguments are articulately and forcefully made, they are clearly in the nature of a challenge to the substantive reasonableness of the Decision, something that as a complainant he does not have standing to do.

[16] Mr. Howe has characterized other substantive issues as procedural fairness issues and I will deal with those below.

Did the CRC act in a procedurally fair manner in determining Mr. Robichaud's decision to dismiss the Complaint was reasonable?

[17] The content of procedural fairness is assessed contextually using the five *Baker* factors listed above. The statutory provisions are an important part of the contextual analysis. The *Regulations* applicable to the review by the CRC are as follows:

9.4 Review of Dismissal by Complaints Review Committee

9.4.1 A complaint dismissed pursuant to subregulations 9.2.2 or 9.2.9 must be reviewed by the Complaints Review Committee if, within thirty (30) days of notification of the dismissal being forwarded to the complainant, the complainant submits a Request for Review to the Chair of the Complaints Review Committee.

Extension of Time

9.4.2 The Chair of the Complaints Review Committee may, where there are reasonable grounds to do so, extend the time for requesting a review under subregulation 9.4.1.

Notice

9.4.3 The Chair of the Complaints Review Committee must advise the member and Executive Director in writing when a Request for Review is received.

Scope of Review

9.4.4 The Complaints Review Committee may review all files, records and documents obtained or produced by the Executive Director in the course of investigation of the complaint, including files and information that are subject to solicitor-client privilege and the Complaints Review Committee must not disclose any privileged information, except as permitted under the *Act*.

Review by Committee

9.4.5 The procedure applicable to the review of a complaint received by the Complaints Review Committee will be determined by the Committee.

Confidentiality

9.4.6 The Complaints Review Committee will keep all requests for review confidential in accordance with Section 40 of the *Act*.

9.4.7 Following a review of the matter, the Committee must:

- (a) render a written decision which confirms the dismissal of the complaint; or
- (b) return the complaint to the Executive Director to investigate in accordance with the Committee's decision.

Decision of the Committee

9.4.8 In making a decision under subregulation 9.4.7, the Complaints Review Committee must determine whether, based on the evidence before the Executive Director, the decision to dismiss was reasonable.

9.4.9 If the Complaints Review Committee determines that the Executive Director's decision was not reasonable, then it may direct that the complaint be returned to the Executive Director.

Reasons

9.4.10 The Complaints Review Committee must provide written reasons to the complainant, the lawyer and the Executive Director.

[Emphasis added]

[18] In *Perry v. Nova Scotia Barristers' Society*, 2016 NSSC 121, Justice Suzanne M. Hood considered the contents of the duty of procedural fairness owed by the CRC to a complainant in a professional discipline process under the *Legal Profession Act*

and *Regulations*. The factual and statutory framework in *Perry* are similar to this case. A complainant made a complaint against a former lawyer. The Director of Professional Responsibility dismissed the complaint, and the CRC upheld the dismissal on review. The complainant then sought judicial review of the CRC decision.

[19] After considering the five factors enumerated in *Baker*, Justice Hood determined a low degree of fairness was owed to the complainant (at para. 53). In determining the level of procedural fairness was at the low end, Justice Hood highlighted a number of factors, including:

1. The CRC's function is administrative, with two exceptions. The two exceptions are the statutory requirement that the CRC determine whether the underlying decision was correct, and to provide reasons, which are adjudicative in nature (at para. 48).
2. Mr. Perry is entitled to a review of the decision of the Director of Professional Responsibility (at para. 49).
3. Although Mr. Perry considers the decision important to him, it does not affect his rights or livelihood (at para. 50).
4. The *Legal Profession Act* and policy establishing the CRC would not give Mr. Perry a greater expectation of procedural fairness than the right to request a review and to receive written reasons (at para. 51).
5. The Regulations give the CRC the right to set its own procedure – it does not conduct hearings or otherwise engage in quasi-judicial proceedings (at para. 52).

[20] The *Regulations* have been amended since *Perry*. However, most of the provisions are the same or similar. The wording describing the scope of the CRC's review is virtually identical (now *Regulation 9.4.4*), and the CRC is still required to produce a written decision if it upholds a dismissal. The current *Regulations* expressly state the CRC determines its own procedure for review (*Regulation 9.4.5*).

[21] Section 9.4 of the Regulations now governs the CRC's review of a dismissal. One key difference between the current *Regulations* and those referenced in *Perry* is that the CRC is now required to conduct a review and determine whether the dismissal was reasonable (not correct) (*Regulation 9.4.8*).

[22] Pursuant to the *Legal Profession Act*, associated *Regulations*, and consistent with *Perry*, the procedural rights owed by the CRC to Mr. Howe in this case included the following:

1. The obligation to perform a review of the dismissal.
2. The right to be provided reasons.
3. The right to an unbiased decision maker.

[23] The question of bias will be addressed below. I find that the CRC met the requisite duty of procedural fairness in these circumstances. In particular:

- The CRC engaged in a review of the Investigator's decision.
- The CRC provided written reasons to Mr. Howe.

[24] In his brief, Mr. Howe argues the duty of procedural fairness entitled him to:

1. clear disclosure of the composition of the CRC and any potential conflicts, particularly in a complaint about the conduct of a former Executive Director.
2. genuine consideration of Mr. Howe's submissions and evidence, including those relating to systemic discrimination and the Ruck Report process.
3. reasons that meaningfully engage with the central issues raised, including systemic and adverse-impact discrimination and the alleged double standard; and
4. a transparent explanation of how the CRC considered and rejected Mr. Howe's allegations of bias.

[25] With respect to point (a), in my view the duty of procedural fairness required the CRC to identify, in the Decision, the members empanelled to review Mr. Robichaud's dismissal of the Complaint to Mr. Howe. However, the failure to do so, on the facts of this case, do not justify any relief by way of judicial review.

[26] On the face of the Decision, Vice Chair Derek Land rendered it. The Decision shows that Mr. Howe knew of Mr. Land's involvement and that Mr. Howe spoke to Mr. Land by telephone during the panel's review. The members of the CRC were published on the Society's website. Mr. Howe did not request any potential member be recused from the panel. The CRC's meeting minutes disclosed in the

Supplemental Record identify the other panel members as Omid Alizdeh and Kim Johnson. While Mr. Howe did not receive the meeting minutes at the time he received the Decision, the minutes are now in his possession and he has advanced no argument, nor tendered any evidence, of individual bias on the part of any CRC panel member.

[27] Further, the CRC states in its Decision that it expressly considered potential conflicts of interest and bias while performing its functions. Mr. Howe was not entitled to receive the CRC's bias analysis or determinations in advance of fulfilling its statutory function. As noted, the issue of bias will be further addressed below.

[28] On point (b), the CRC's Decision says it "carefully considered" all submissions made by Mr. Howe and the merits of his Complaint. The Review was dismissed following the Committee's "thorough review." In my view, this fulfills the duty of procedural fairness owed to Mr. Howe.

[29] Mr. Howe's remaining allegations of "breaches of procedural fairness" allege the CRC's Decision and reasons are inadequate, unreasonable, or did not provide sufficient explanation. These grounds do not speak to the procedural rights afforded to Mr. Howe. Any challenge to the adequacy of the CRC's reasons constitutes a substantive review of the Decision. This issue was considered by Justice Hood in *Perry* at paras. 108-112.

[30] Justice Hood relied on the Supreme Court of Canada's decision in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, wherein the Court stated:

[20] ... *Baker* stands for the proposition that "in certain circumstances", the duty of procedural fairness will require "some form of reasons" for a decision (para. 43). It did not say that reasons were *always* required, and it did not say that the quality of those reasons is a question of procedural fairness. In fact, after finding that reasons were required in the circumstances, the Court in *Baker* concluded that the mere notes of an immigration officer were sufficient to fulfil the duty of fairness (para. 44).

[21] It strikes me as an unhelpful elaboration on *Baker* to suggest that alleged deficiencies or flaws in the reasons fall under the category of a breach of the duty of procedural fairness and that they are subject to a correctness review. ...

[22] It is true that the breach of a duty of procedural fairness is an error in law. Where there are no reasons in circumstances where they are required, there is nothing to review. But where, as here, there are reasons, there is no such breach.

Any challenge to the reasoning/result of the decision should therefore be made within the reasonableness analysis.

[Emphasis added. Italics in original.]

[31] *Perry* does not support Mr. Howe’s argument the CRC must provide “reasons that engage with his central issues.” At para. 112 of *Perry*, after considering both *Newfoundland Nurses* and *Baker*, Justice Hood states:

[112] Applying those principles to this case, I conclude that the CRC did give reasons and therefore satisfied the requirement in the regulations. To delve more deeply into the reasons **is part of the reasonableness test which is not applicable here**. Accordingly since reasons were given in writing as required to explain how the CRC came to its conclusion, the requirement of procedural fairness has been met in that regard.

[Emphasis added in bold. Underlining in original.]

[32] Here, the CRC gave written reasons explaining how it came to its conclusion. This meets the duty of procedural fairness owed to Mr. Howe in the circumstances.

[33] Again, to the extent Mr. Howe asks this Court to consider whether the Decision adequately engages with certain issues, or provides sufficient justification on findings, this constitutes a substantive judicial review. Mr. Howe does not have standing to seek a substantive review of the Decision, and his arguments must be dismissed.

[34] Mr. Howe also alleges the Decision was delayed. In his brief, Mr. Howe states that delay is a “relevant contextual factor reinforcing the need for a robust remedy.”

[35] The law with respect to delay in administrative proceedings is well-established. Typically, delay is alleged by a respondent to a regulatory process, where the respondent alleges the delay has caused the respondent prejudice such that their ability to defend or advance their position is prejudiced. The party alleging delay typically seeks a permanent stay of the proceedings on this basis.

[36] *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, and *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29, confirm there are two situations where delay may warrant a stay of an administrative matter:

1. delay causing hearing unfairness; and

2. inordinate delay causing significant prejudice: even when there is no prejudice to hearing fairness, an abuse of process may occur if significant prejudice has come about due to inordinate delay.

(*Blencoe* at paras. 102-115; *Abrametz* at para. 40-43)

[37] In either case, courts must assess whether the delay at issue has caused the prejudice or hearing unfairness alleged.

[38] A stay of proceedings is considered a drastic measure and should only be granted in the clearest cases. The party alleging delay must prove both: that the delay is unacceptable; and significant prejudice. As stated by the Court in *Blencoe* at para. 101:

[...] delay, without more, will not warrant a stay of proceedings as an abuse of process at common law. Staying proceedings for the mere passage of time would be tantamount to imposing a judicially created limitation period (see: *R. v. L. (W.K.)*, [1991] 1 S.C.R. 1091, at p. 1100; *Akthar v. Canada (Minister of Employment and Immigration)*, [1991] 3 F.C. 32 (C.A.)). In the administrative law context, there must be proof of significant prejudice which results from an unacceptable delay.

[39] Whether or not a delay is inordinate is also contextual and fact specific. In *Blencoe*, the Court determined a 32-month delay between the filing of a complaint, and a scheduled hearing was not so inordinate as to amount to an abuse of process (para. 132).

[40] Approximately seven months elapsed between the delivery of Mr. Howe's Request for Review, and the CRC's Decision. There is no requirement in the *Regulations* for the CRC to render a decision by a certain date. Any expectations a complainant may have about the time required for the CRC to render a decision has no basis in the governing statute. I find that the period of time occupied here does not represent significant or undue delay.

[41] Further, Mr. Howe has not presented any evidence to demonstrate how he has been significantly prejudiced by the delay. Mr. Howe is a non-party to the complaint, and any rights engaged by this process are not equivalent to the member who is the subject of a complaint. Mr. Howe does not have a defence to mount and is simply not prejudiced by delay in the manner a party would be. Even if Mr. Howe were a party, the threshold for judicial intervention in cases of delay as set out in *Blencoe* and *Abrametz* has not been met.

[42] With respect to the timeline for receipt of decisions from the CRC and procedural fairness more generally, the court's decision in *Watson, supra*, is assistive. In *Watson*, the court repeatedly emphasized a complainant's personal interest in a complaint, even where they were directly affected by the alleged conduct, does not create procedural fairness entitlements beyond the low end of the spectrum (paras. 26 and 30). The court's comments are apposite to the issue of delay – Mr. Howe's personal interest in the subject matter of his Complaint did not entitle him to receive the Decision sooner than he did.

[43] In conclusion on the issue of procedural fairness, as a non-party to the Complaint, Mr. Howe was entitled to procedural fairness in the CRC process. Mr. Howe's procedural fairness entitlements are on the low end and include the rights to have his Request for Review heard, to be considered by an impartial decision-maker, and receive reasons.

[44] The CRC met the duty of procedural fairness required by the relevant statute, regulations, and legal authorities. The CRC considered the detailed material made available to it and rendered the Decision in a timely manner. Mr. Howe was not entitled to any further procedural or participatory rights in the process.

[45] Many of Mr. Howe's complaints about the Decision are not procedural in nature. They allege the CRC's decision was inadequate, improperly reasoned, or unreasonable. Those grounds of review sound in substantive review and are not available to Mr. Howe as a non-party to the matter.

Does the Decision give rise to a reasonable apprehension of bias?

[46] Mr. Howe alleges the CRC failed to have an open mind to issues, which resulted in biases and prejudging of the issues. He argues the reasonable person is taken to be aware of the reality of racism and systemic discrimination in the justice system. He also highlights that the Society has expressly acknowledged systemic racism within the Society.

[47] In *Howe v. Nova Scotia Barristers' Society*, 2019 NSCA 81, the Court of Appeal helpfully summarized the legal principles engaged where a reasonable apprehension of bias is alleged. The Court noted:

[120] *MacLean, supra*, described the legal principles engaged when there is a reasonable apprehension of bias. They are as follows:

[39] First, as a matter of law, there is a strong presumption of judicial impartiality, which is not easily displaced. Second, there is a heavy burden of proof upon the person making the allegation to present cogent evidence establishing “serious grounds” sufficient to justify a finding that the decision-maker should be disqualified on account of bias. Third, whether a reasonable apprehension of bias exists is “highly fact-specific.” Such an inquiry is one where the context, and the particular circumstances, are of supreme importance. The allegation can only be addressed carefully in light of the entire context. There are no shortcuts. See *Wewaykum Indian Band v. Canada*, 2003 SCC 45.

[40] The “test” regarding what constitutes a reasonable apprehension of bias appears in the oft-quoted dissenting judgment of de Grandpré, J. in *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369 at ¶40:

...the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information, that test is “what would an informed person, viewing the matter realistically and practically— ...conclude? Would he think that it is more likely than not that Mr. Crowe, whether consciously or unconsciously, would not decide fairly.

[41] In relation to what constitutes the “reasonable person”, the qualifications are not limited to just being “reasonable”. The law requires a fully *informed* “reasonable person.” That is:

...a person who approaches the question of whether there exists a reasonable apprehension of bias with a complex and contextualized understanding of the issues in the case. The reasonable person understands the impossibility of judicial neutrality, but demands judicial impartiality.

[*R. v. S.(R.D.)(R.D.S.)*, [1997] 3 S.C.R. 484]

[Emphasis in original]

[48] To make out a reasonable apprehension of bias, a party must present cogent, fact-specific, evidence of bias in the circumstances. As stated by the Nova Scotia Court of Appeal in *Howe v. Nova Scotia Barristers’ Society*, 2025 NSCA 62:

[86] There is a strong presumption of judicial impartiality which extends to statutory tribunals. Anyone making an allegation of bias must present evidence establishing serious grounds sufficient to justify a finding that a decision-maker should be disqualified on account of bias.

[49] Mr. Howe presents no direct evidence of bias. Mr. Howe has only offered speculation about what the reasonable person “may have legitimate questions about” to establish “serious grounds” requiring this court to quash the Decision.

[50] Mr. Howe asks this court to find a reasonable apprehension of bias against him based on the CRC’s existence within the larger structure of the Society, the position of the respondent member to the Complaint, and the Decision itself. He has offered no foundation for any allegations of bias. Speculation and musing do not discharge the “heavy burden of proof” required to rebut the strong presumption of impartiality.

[51] Arguments like those advanced by Mr. Howe were raised by the applicant in *Perry* and dismissed by Justice Hood. Mr. Perry argued there was a reasonable apprehension of bias on the part of the Chair of the CRC, and in the CRC itself *vis-a-vis* the Executive Director (which was Mr. Pink at the time). Justice Hood made the following findings:

- The Chair of the CRC is paid but submits an invoice to the Director of Finance. The only role of the Executive Director is to sign the cheque. This is like the case with many tribunals; members are paid, for example, by the federal or provincial government, but they are independent tribunals (para. 63).
- There are protections in place to insulate the CRC from other parts of the Society (para. 65).
- Staff specifically assigned to the CRC assist the Chair with administrative functions (para. 66).
- Mr. Perry cross-examined Mr. Pink, the Executive Director, at length at the hearing. Mr. Pink confirmed that as Executive Director he is not involved with the CRC. He explained that the CRC is insulated from the Society and the direction of the Executive Director. He said it is independent of both Council and the Executive Director (para. 73).
- There is no evidence Mr. Pink, any member of his staff or a member of Council had any influence on the decision of the CRC (para. 75).

[52] In my view, an informed and reasonable person would not have legitimate questions or concerns about the questions posed by Mr. Howe. A fully informed reasonable person would not have any reason to believe the CRC was biased. To the

contrary, the CRC members are professionals engaged in a professional function. The CRC is insulated from the Society, and Executive Director by *Regulation 2.9.18*.

[53] The CRC expressly engaged with issues of bias and potential conflict in the Decision. The reasonable person standard must be applied, understanding that judicial neutrality is impossible but judicial impartiality is required.

[54] This ground of review is dismissed.

Conclusion

[55] In summary, as a complainant in a professional discipline process Mr. Howe does not have standing to seek judicial review on the merits of the CRC's Decision. With respect to the procedural fairness grounds, the degree of procedural fairness owed by the CRC to a non-party like Mr. Howe is on the lower end. The CRC treated Mr. Howe fairly, made its decision in a timely manner, and met its obligations of procedural fairness in this case. With respect to the allegations of bias, the CRC decision was impartial and fair. Mr. Howe presents no evidence of bias to rebut the strong presumption of impartiality.

[56] The judicial review is dismissed.

[57] If the parties are unable to agree on costs, I will accept written submissions from the parties within three weeks of the decision of not more than five pages, double spaced with any cases or authorities hyperlinked (or electronic books of authorities emailed to my judicial assistant).

Norton, J.