SUPREME COURT OF NOVA SCOTIA

Citation: *Hogg v. Registration Appeal Committee and College Of Paramedics of Nova Scotia*, 2024 NSSC 278

Date: 20240923
Docket: No. 526777
Registry: Halifax

Between:

Sybil Hogg

Applicant

v.

Registration Appeal Committee and College of Paramedics in Nova Scotia

Respondent

DECISION

Judge:	The Honourable Justice John A. Keith
Heard:	February 1, 2024, in Halifax, Nova Scotia
Post-Hearing Written Submissions:	April 29, 2024 August 6, 2024 August 20, 2024 August 23, 2024
Counsel:	Self-Represented, for the Applicant Ryan Baxter and Raylene Langor, for the Respondent

By the Court:

INTRODUCTION AND ISSUE

[1] On July 26, 2021, the Applicant Ms. Hogg applied to the College of Paramedics of Nova Scotia (the "**College**", as it was then known[1]) for registration and licensure as a paramedic in this province. The Executive Director and Registrar of the College of Paramedics of Nova Scotia (Karl Kowalczyk) referred Ms. Hogg's application to the College's Registration Committee.

[2] On May 16, 2022, the Registration Committee issued a decision denying Ms. Hogg's application for registration and licensure as a paramedic.

[3] Ms. Hogg appealed to the Registration Appeal Committee under Nova Scotia's *Paramedics Act*, S.N.S. 2015, c. 33, as amended (the "**Act**") and Part 3 (Review and Appeal of Registration and Licensing Decision) of the *Paramedics Regulations*, N.S. Reg 57/2017 (the "**Regulations**").[2]

[4] A dispute arose as to the nature of the hearing before the Registration Appeal Committee and, by extension, the scope of the evidence which could be presented by the parties as part of this appeal process.

[5] The College argued that the appeal should proceed as a hearing *de novo* which translates literally into "from the beginning". Under this procedure, the Registration Appeal Committee would approach the matter as if it were being heard for the first

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[1] Subsequent to Ms. Hogg's application for licensure and her appeal proceedings in this matter:

1. The legislature repealed the *Paramedics Act* and replaced it with the *Regulated Health Professions Act*, S.N.S. 2023, c. 15. (see s. 196 of the *Regulated Health Professions Act*). The *Regulated Health Professions Act* received Royal Assent on November 9, 2023. Numerous statues governing other health professionals (including, for example, the *Dental Act*, the *Medical Act*, the *Nursing Act*, the *Pharmacy Act*, the *Psychologists Act* etc..) have yet to be proclaimed in force; and
2. New regulations were established under the *Regulated Health Professions Act*. These new regulations became effective on June 3, 2024 (N.S. Reg. 107/2024).

Significant provisions changed under the new statutory and regulatory regime – including the name of the College which is referred to as an "existing regulator" and, on a prospective basis, called simply a "regulatory body" in the new *Regulated Health Professions Act*.

[2] As indicated in footnote 1 above, the governing legislation has now been replaced. However, the parties have properly argued this dispute under the Act and Regulations that existed at the time. Section 169(2) of the new statute confirms that: "… where a hearing has commenced under a former Act, the hearing must proceed in accordance with the former Act, unless the parties agree the matter can be addressed under this Act."

time. Thus, the evidence which could be presented would, therefore, be broad in scope and constrained largely by ss. 46(1)(d) and 50 of the Regulations which describe what evidence may be presented and potentially allowed or admitted by the Registration Appeal Committee.

[6] Ms. Hogg argued that the appeal was more akin to judicial review or appellate review based on an existing record. Under this procedure, the Registration Appeal Committee would approach the matter by focusing on the merits of the original decision. Thus, the evidence which could be presented on appeal was, therefore, more narrow in scope and limited to that which was before the original decision maker (i.e. the "**record**") - perhaps supplemented by such limited additional evidence as might be permitted by law.[3]

[7] The Registration Appeals Committee heard arguments and decided that the appeal would proceed as a hearing *de novo*.

[8] Ms. Hogg vehemently disagrees with this decision and took immediate steps to appeal (and reverse) the Registration Appeals Committee's decision.

[9] Ms. Hogg's appeal attempts proved somewhat complicated and protracted. She initially filed an appeal with the Nova Scotia Court of Appeal.

[10] On September 5, 2023, Derrick, J.A. concluded that there was no jurisdiction under either the Act or the Regulations to ground Ms. Hogg's appeal to that Court. In doing so, Derrick, J.A. acknowledged that the Registration Appeals Committee incorrectly described itself as a "hearing panel". The term "hearing panel" has a defined meaning under the Act triggering certain appeal rights directly to the Nova Scotia Court of Appeal. As Derrick, J.A. noted, by erroneously (but inadvertently) using this term to describe itself, the Committee may have caused some jurisdictional confusion around Ms. Hogg's statutory right to appeal. (*Hogg v. College of Paramedics of Nova Scotia (Registration Appeal Committee)*, 2023 NSCA 62 at para. 35) I mention this because it partly explains the delay which arose in seeking judicial review. I return to this issue below.

[11] Ms. Hogg immediately sought to reconstitute her appeal as an application for judicial review. By this time, however, the deadline for Ms. Hogg to file an

[3] In *Bernard v. Canada Revenue Agency*, 2015 FCA 263, Stratas, J.A. explained the limitations which apply when attempting to supplement the record with additional evidence. (at paras. 19 – 27) In *Administrative Law in Canada (*7th ed.*)*, Sara Blake similarly discusses the complexities which arise when attempting to introduce "fresh" evidence in an appeal based on a review of the record. (at pp. 195 – 197)

application for judicial review had long lapsed. Ms. Hogg was compelled to file this motion for an extension of time.

[12] The College opposes Ms. Hogg's request for an extension. It argues that Ms. Hogg has failed to satisfy the requirements of the legal test and that the principle of prematurity requires the Court to exercise restraint and allow the Registration Appeal Committee to complete its work.

[13] On the surface, the legal dispute between the parties is relatively straightforward. The principles for determining whether to extend the time to file an appeal are well-established. Below the surface, however, lies a deeper, more contentious evidentiary concern that has intensified the adversarial nature of this proceeding.

[14] Section 17(2) of the Regulations establishes the criteria for evaluating a person who applies for a paramedic's license. These include whether the person seeking licensure has "the current capacity, competence and character to safely and ethically practise paramedicine" (s. 17(2)(h), emphasis added).

[15] Ms. Hogg maintains that unless the Registration Appeals Committee's decision is reversed and the hearing moves forward as a form of judicial review – not *de novo* - the College seeks to launch a smear campaign involving malicious, indiscriminate attacks on her reputation (or character), unconstrained by any concern over whether this anticipated "character evidence" will be exceedingly prejudicial; or whether it will be relevant in the sense of informing a reasonable or meaningful assessment of Ms. Hogg's qualities as a paramedic. During oral argument, Ms. Hogg expressed concern that once these attacks begin, her reputation will be falsely and irreversibly undermined, and that the Registration Appeals Committee as currently constituted lacks the competence to prevent this injustice, implement a fair process, and achieve a just result.

[16] The specific content of the evidence which Ms. Hogg fears is somewhat unclear. It has been described broadly as "character evidence". Based on the evidence before me, the controversy appears to surround Ms. Hogg's political, cultural, social, and/or religious views around Islam – and the scope of evidence that may be allowed on this issue. Neither party presented sufficient evidence to more clearly describe the precise nature of the problem. What is clear, however, is that Ms. Hogg believes that the College is determined to unearth information from her past which will unjustifiably disparage her reputation and commit a form of character assassination.

[17] For the reasons which follow, I am compelled to dismiss Ms. Hogg's application for an extension of time. There is a significant concern that this motion for an extension and related attempt to seek judicial review is premature, among other things. For clarity, I make no final determinations as to:

1. The Registration Appeal Committee's decision to proceed by way of a hearing *de novo*; or
2. Ms. Hogg's fundamental concerns around the scope of allowable evidence regarding her "current capacity, competence and character to safely and ethically practise paramedicine" are unfounded. The Registration Appeal Committee has yet to make any decisions on what evidence, if any, will be allowed or disallowed on this issue, and has not yet made any determinations as to the boundaries which apply, including, for example, whether any such evidence is exceedingly prejudicial and/or so irrelevant to the qualities required of a person seeking to practise paramedicine in Nova Scotia.

These may become issues in the future, after the Registration Appeal Committee has rendered a decision on the merits of Ms. Hogg's request for licensure as a paramedic.

THE LEGAL TEST

[18] The Court retains a discretion to extend the deadline for filing an appeal. The factors which bear upon the exercise of that discretion include:

- Whether the applicant formed a *bona fide* intention to appeal when the right to appeal existed;
- Whether the applicant had a reasonable excuse for the delay in failing to appeal within the prescribed time;
- The length of delay;
- The presence or absence of prejudice to the respondent;
- The apparent strength or merit of the proposed appeal.

(*Ezurike v. Gbeve*, 2023 NSCA 23 ("***Ezurike***"), at para. 9)

[19] These factors do not operate as a strict checklist or become "boxes to tick" and thereby constrain the Court's discretion within certain enumerated and categorical concerns. They do, however, play a helpful role in guiding the Court's attention and focusing its reasoning around the more predominant and overarching

requirement: achieving a just result in the circumstances or, more precisely, ensuring that extending the time for filing an appeal will advance the interests of justice (*Ezurike* at para. 10; and *Re Fawson Estate*, 2013 NSCA 54 at para. 15). Thus, in *Farrell v. Casavant*, 2010 NSCA 71, Beveridge, J.A. wrote at para. 17:

> Given the myriad of circumstances that can surround the failure by a prospective appellant to meet the prescribed time limits to perfect an appeal, it is appropriate that the so called three-part test has since clearly morphed into being more properly considered as guidelines or factors which a Chambers judge should consider in determining the ultimate question as to whether or not justice requires that an extension of time be granted. (See *Mitchell v. Massey Estate* (1997), 163 N.S.R. (2d) 278 (N.S.C.A. [In Chambers]); *Robert Hatch Retail Inc. v. Canadian Auto Workers Union Local 4624*, 1999 NSCA 107 (N.S.C.A. [In Chambers]).) From these, and other cases, common factors considered to be relevant are the length of delay, the reason for the delay, the presence or absence of prejudice, the apparent strength or merit in the proposed appeal and the good faith intention of the applicant to exercise his right of appeal within the prescribed time period. The relative weight to be given to these or other factors may vary. As Hallett J.A. stressed, the test is a flexible one, uninhibited by rigid guidelines.

CHRONOLOGY OF MATERIAL FACTS

[20] The following chronology serves as a useful starting point for applying the principles and factors which guide the Court's discretion:

1. As indicated, the Registration Committee denied Ms. Hogg's application for licensure as a paramedic. Ms. Hogg appealed to the Registration Appeal Committee.

2. By letter dated June 28, 2022, counsel for the College acknowledged receipt of Ms. Hogg's appeal and attached "a copy of all non-privileged documents in the College's possession relevant to [Ms. Hogg's] appeal."

3. On August 26, 2022, the Registration Appeals Committee convened an initial, pre-hearing conference call with counsel for Ms. Hogg and counsel for the College. The minutes from that call indicated that counsel for Ms. Hogg was taking the position that the appeal should proceed as a hearing *de novo* and that she anticipated calling witnesses and new evidence. Counsel for the College took the position that the appeal was limited to "a review of the Registration

Committee Decision and there would be no new evidence tendered." As will be seen below, somewhat ironically, the positions of the parties are now reversed.

4. By email dated October 14, 2022, Ms. Hogg (now self-represented) reversed procedural course. She took the position that the appeal should proceed as a review and that she did not intend to call any witnesses. By letter sent later that same day, the College agreed and re-iterated their original position that the appeal was a review – not a hearing *de novo*. On the basis of that agreement, the Chair of the Registration Appeal Committee set the matter down for a one-day hearing on February 15, 2023.

5. On December 16, 2022, counsel for the College sent both Ms. Hogg and the Chair of the Registration Appeal Committee the formal "Record for review in this matter".

6. When the hearing began on February 15, 2023, based on the evidence before me, it appeared that Ms. Hogg may have sought to introduce new evidence that was not contained in the record. The hearing was adjourned to May of 2023 with the Registration Appeals Committee now agreeing to accept new evidence at the hearing. It is unclear whether anyone turned their mind, at this time, to the impact of this decision on the earlier agreement to proceed as a review (not a hearing *de novo*). That issue would later erupt as the parties approached the new hearing date.

7. On February 18, 2023, Ms. Hogg emailed counsel for the College to ask whether she should send the evidence which she intended to use at the appeal hearing to both the College and chair of the Registration Appeal Committee. On February 20, 2023, counsel for the College replied that the evidence should only be sent to him at this point; and that "[a]t the resumption of the hearing, [Ms. Hogg] can provide the evidence to the Registration Appeal Committee".

8. On March 13, 2023, the Chair of the Registration Appeal Committee convened another pre-hearing conference. At that time, she noted that, among other things:

(a) At least ten days prior to the appeal hearing, the parties must advise one another as to the identity of any witnesses, copies of any documents other than those contained in the "record" which they intended to tender into evidence; and copies of any expert reports. Moreover, the Chair confirmed that:

(i) "Witnesses may be called by both parties";

(ii) "Any documents not already in the record can be introduced by either party during witness testimony";

(iii) Ms. Hogg's intention to only call herself as a witness but reserving the right to call other witnesses, depending on the College's position; and

(iv) Counsel for the College indicated it intends on calling "one lay witness and an expert Muslim witness".

9. In an email also dated March 13, 2023, Ms. Hogg attached additional evidence which she intended to use on appeal. The attachments were not placed before me although one documents is entitled "Pledge to Stop Political Islamic Entryism".

10. In this March 13, 2023, exchange the true nature of the evidentiary issue which sharply divided the parties begins to emerge. Ms. Hogg was particularly concerned with the College's confirmation of its intent to call "an expert Muslim witness". The College contends that Ms. Hogg's views towards Islam are relevant to the issue of whether Ms. Hogg has the "current capacity, competence and character to safely and ethically practise paramedicine" (s. 17(h) of the Regulations and included among the required criteria of licensure as a paramedic). Ms. Hogg takes great offence. In subsequent submissions to the Registration Appeal Committee dated April 14, 2023, she expresses respect for the Islamic religion and its core beliefs but draws a distinction between Islam as a religion and "Islamism", which she describes as the "political implementation of

Islamic principles and values and a basis for government". Based on the evidence before me, this issue sparked heated discussions and, as will be seen below, ultimately re-ignited an increasing confrontational debate over whether the procedure constituted a review or a hearing *de novo*.

11. On April 17, 2023, Ms. Hogg provided the College with the new documentary evidence that she planned to present at the hearing in May, 2023.

12. On May 17, 2023, counsel for the College delivered its new evidence for the upcoming appeal. Immediately after receiving the College's evidence (i.e. during the evening of May 17, 2023), Ms. Hogg emailed the Chair of the Registration Appeals Committee and resurrected the question of whether the parties were engaged in a review or hearing *de novo*.

13. By letter dated May 18, 2023, the Chair of the Registration Appeals Committee confirmed that "upon determining new evidence would be permitted at the Appeal Hearing, which is statutorily permitted under s. 50 of the Paramedics Regulations, in effect, the hearing changed to a hearing de novo." She reiterated that same conclusion in a second letter sent later that same day. Then, in a third letter also dated May 18, 2023, the Chair wrote to say that she had given further consideration to the matter and required submissions. She said:

> While it is clear from the *Paramedics Regulations* that the Registration Appeal Committee may hold an oral hearing and can hear evidence, there is no provision which states that the Appeal Hearing is a review or a hearing *de novo* [sic] or something in between. Therefore, it would helpful for the Committee to be provided with further submissions and any caselaw that may be available on the issue of whether, by allowing new evidence the appeal hearing automatically becomes a hearing de novo [sic] or something in-between a review and a hearing de novo [sic].

14. On May 25, 2023 and after receiving further submissions, the Registration Appeals Committee affirmed its original decision that the procedure was a hearing *de novo*. It wrote, *inter alia*:

> For the following reasons, the Registration Appeal Committee has determined that the Appeal Hearing is a hearing de novo [sic]. Evidence at the Appeal Hearing can include the record before the Registration Committee and fresh evidence and submissions by the parties.
>
> A review means a review of the record of the prior decision maker. A review is just that, a review of the record. By allowing new evidence not included in the record, as permitted pursuant to s. 50 of the Paramedics Regulations [sic], the proceeding is no longer solely a review of the record.
>
> …
>
> Prior to the commencement of the Appeal Hearing, the parties had agreed that the proceeding was a review and not de novo [sic]. The Registration Appeal Committee understood, after making a determination that evidence could be called by the parties, that upon resumption the Appeal Hearing would be de novo [sic] and was under the impression that both parties understood this.
>
> (at paras. 18, 19, and 23)

I refer to this decision below as the "Impugned Decision".

15. Ms. Hogg disagreed with the Impugned Decision. On June 30, 2023, she filed Notice of Appeal with the Nova Scotia Court of Appeal. However, a preliminary issue arose as to whether the Court of Appeal had jurisdiction to hear the matter. The College moved to pre-emptively dismiss the appeal for want of jurisdiction.

16. Prior to the motion for dismissal being heard, the College offered Ms. Hogg the opportunity to voluntarily withdraw her appeal. Ms. Hogg declined and insisted on proceeding.

17. By decision rendered September 5, 2023 (2023 NSCA 62), Derrick, J.A. allowed the College's motion and dismissed the appeal. Derrick, J.A. began by observing that Ms. Hogg's right of appeal must be grounded in the Act or Regulations. Ms. Hogg referred to s. 91(1) of the Act which recognizes a right to appeal "any point of law from the finding of a hearing panel to the Nova Scotia Court of Appeal". However, s. 2(1)(m) of the Act defines the term "hearing panel" as the decision maker who deals with members of the College facing professional conduct matters under the Act. In this case, Ms. Hogg:

18. 18. Is not currently a member of the College. On the contrary, Ms. Hogg seeking licensure to become a member of the College;

19. Is not named in professional conduct proceedings under s. 64(1) of the Act; and

20. Is not subject to a professional conduct finding by a "hearing panel" from which a right to appeal may arise under s. 91(1) of the Act.

Derrick, J.A. concluded at paras. 36 and 41:

> There is nothing in the *Paramedics Act* or Regulations that provides Ms. Hogg with a right of appeal to this Court. Section 91(1) does not apply to the registration and licensure process in which she is a participant. She cannot use s. 91 (1) to launch an appeal into this Court from the Registration Appeal Committee's May 25, 2023 decision.
> …
> This Court has no jurisdiction to hear the appeal Ms. Hogg is seeking to pursue from the Committee's decision. There is no bad faith in the College bringing a motion to dismiss the appeal and no prejudice to Ms. Hogg occasioned by the amendment of the College's notice of participation.

Ms. Hogg's appeal was dismissed for want of jurisdiction. However, Derrick, J.A. recognized that, in the heading of the Impugned Decision, the Registration Appeal Committee mistakenly identified itself as a "Hearing Panel". This error created a degree of confusion over whether the Committee was (or considered itself to be) a "hearing panel" whose decisions triggered a right of appeal to the Nova Scotia Court of Appeal under s. 91(1) of the Act. Derrick, J.A. agreed that "[i]t would have been more precise and accurate for the description to have been: "A Hearing Before the Registration Appeal Committee" (at para. 35).

21. Faced with this jurisdictional barrier, Ms. Hogg immediately filed a motion to extend the time for initiating judicial review with this Court.

ANALYSIS

[21] Returning to the relevant factors identified in *Ezurike* (see para. 18 above), I am satisfied that Ms. Hogg:

1. Formed and maintained a *bona fide* intention to appeal when the right to appeal existed;

2. Had a reasonable excuse for the delay in failing to appeal within the prescribed time; and

3. In these unique circumstances (including an intervening appeal to the Nova Scotia Court of Appeal), the length of the delay in seeking leave to extend time was significant but not fatal.

[22] As indicated above, Ms. Hogg consistently and immediately invoked the courts to challenge the Registration Appeal Board's Decision. She filed her appeal with the Court of Appeal in a timely fashion and immediately sought to extend the time for seeking judicial review when that appeal was dismissed for want of jurisdiction.

[23] I recognize the College's argument that Ms. Hogg should not be excused for the delay associated with her misinterpretation of the Act and resulting ill-fated appeal. I also recognize that by letter dated July 19, 2023, the College offered Ms. Hogg an opportunity to withdraw her appeal without costs. There is caselaw confirming that a party who stubbornly ignores offers to engage in a more appropriate appeal process (e.g. judicial review) must be prepared to accept the risks associated with their unreasonable decisions. For example, in *Tupper v. Nova Scotia Barristers' Society*, 2013 NSSC 290, MacDougall, J. wrote at para. 28:

> It was not reasonable, in my view, for Mr. Tupper to ignore the helpful comments of both Mr. McGrath and Mr. Larkin that the *Legal Profession Act* provides no right of appeal to a complainant from a decision of the Review Subcommittee to dismiss his complaint. Even after the Court of Appeal determined that Mr. Tupper's constitutional argument was entirely without merit, he elected to appeal to the Supreme Court of Canada rather than to immediately file a motion with this Court for an extension of time to file an application for judicial review.

(Appeal dismissed 2014 NSCA 90, leave to appeal to SCC dismissed, 2015 CarswellNS 134).

[24] However, this case can be distinguished from *Tupper* in a number of respects including:

1. In *Tupper*, opposing counsel advised the appellant Mr. Tupper that he has no right of appeal and also advised that his only option would

be an application to this court for judicial review (at para. 11). Here, the College's offer similarly suggested that Ms. Hogg consider an application for judicial review. In *Tupper*, MacDougall, J. emphasized the Barristers' Society's comprehensive efforts to guide Mr. Tupper towards a more appropriate process only to have Mr. Tupper improperly rebuff the attempt. The College is under no obligation to either offer Ms. Hogg legal advice or make suggestions regarding more viable procedural avenues of appeal. The College is also not required to make settlement offers which involve concessions deemed unacceptably inconsistent with its own interests. Furthermore, self-represented parties cannot simply presume that their own inexperience or lack of legal training will automatically excuse unreasonable delay (*MacDonald v. Canada (Attorney General*), 2017 FC 2 at paras. 13 and 29). That said, in Tupper, the appellant (Mr. Tupper) sought to appeal a decision dated February 21, 2012. The Nova Scotia Court of Appeal dismissed the appeal for want of jurisdiction on January 31, 2013 (2013 NSCA 14). Mr. Tupper then appealed to the Supreme Court of Canada which dismissed this final appeal on June 27, 2013 (2013 CarswellNS 458). The entire process took more than 16 months. By contrast, in this case, the Impugned Decision was released on May 25, 2023. The Court of Appeal dismissed Ms. Hogg's appeal less than four months later, on September 5, 2023. Ms. Hogg did not extend the delay with a further appeal to the Supreme Court of Canada. In short, the delay caused by appeal proceedings in this case was much less severe than in *Tupper*; and

2. More importantly, in my view and as Derrick, J.A. noted, the Registration Appeal Committee's Impugned Decision mistakenly identified it as a "hearing panel". This inadvertent but material error is a unique feature of this case which resulted in at least a degree of confusion regarding the applicability of s. 91(1) of the Act.

[25] Again, I emphasize that this decision should not be interpreted as encouraging parties to launch misguided, doomed proceedings before the Nova Scotia Court of Appeal, secure in the knowledge that they will be granted an extension of time when it finally dawns that an application for judicial review is more appropriate. However, in my view, the unique circumstances of this case do not render Ms. Hogg's actions (and the resulting delay) fatal to her request for an extension of time.

[26] As to the issue of prejudice, the College does not point to any particular problem but generally observes that any delay is corrosive to the aims of justice and the promise of a "just, speedy, and inexpensive determination of every proceeding" in Civil Procedure Rule 1.01. The College is correct. However, given the relatively modest delay and the lack of a more specific concern, this factor weighs in favour of the College – but not heavily.

[27] In my view, the more significant and ultimately determinative factor that tilts the assessment in favour of dismissing this motion relates to the relative strength of Ms. Hogg's appeal and the issue of prematurity.

[28] The Court is generally reluctant to intervene in ongoing proceedings before an administrative tribunal. The jurisprudence often describes the rationale explaining this reluctance or curial restraint as the "prematurity principle". In *C.B. Powell Ltd. v. Canada (Border Services Agency)*, 2010 FCA 61 ("***C.B. Powell***"), Stratas, J.A. describes the principle as follows, at para. 33:

> Courts across Canada have enforced the general principle of non-interference with ongoing administrative processes vigorously. This is shown by the narrowness of the "exceptional circumstances" exception. Little need be said about this exception, as the parties in this appeal did not contend that there were any exceptional circumstances permitting early recourse to the courts. Suffice to say, the authorities show that very few circumstances qualify as "exceptional" and the threshold for exceptionality is high: see, generally, D.J.M. Brown and J.M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf) (Toronto: Canvasback, 1998), at 3:2200, 3:2300 and 3:4000 and David J. Mullan, *Administrative Law* (Toronto: Irwin Law, 2001), at pages 485-494. Exceptional circumstances are best illustrated by the very few modern cases where courts have granted prohibition or injunction against administrative decision makers before or during their proceedings. Concerns about procedural fairness or bias, the presence of an important legal or constitutional issue, or the fact that all parties have consented to early recourse to the courts are not exceptional circumstances allowing parties to bypass an administrative process, as long as that process allows the issues to be raised and an effective remedy to be granted: see *Harelkin*, above; *Okwuobi*, above, at paragraphs 38-55; *University of Toronto v. C.U.E.W., Local 2* (1988), 52 D.L.R. (4th) 128 (Ont. Div. Ct.). As I shall soon demonstrate, the presence of so-called jurisdictional issues is not an exception circumstance justifying early recourse to courts.

[29] In *Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission)*, 2012 SCC 10, Cromwell, J. similarly stated, for the court, at para. 36 (citations omitted):

> ... Early judicial intervention risks depriving the reviewing court of a full record bearing on the issue; allows for judicial imposition of a "correctness" standard with respect to legal questions that, had they been decided by the tribunal, might be entitled to deference; encourages an inefficient multiplicity of proceedings in tribunals and courts; and may compromise carefully crafted, comprehensive legislative regimes ... Thus, reviewing courts now show more restraint in short-circuiting the decision-making role of the tribunal, particularly when asked to review a preliminary screening decision ...

[30] There are many good policy reasons which justify the importance of judicial restraint before the court presumes to insinuate itself in the ongoing proceedings of an administrative tribunal. They include:

1. Allowing administrative tribunals to productively operate within their defined spheres of authority generates significant tangible benefits in the form of specific expertise, increased efficiencies, cost savings, and speed. Thus, a reviewing court should have “all of the administrative decision-maker’s findings; these findings will be suffused with expertise, legitimate policy judgments and valuable regulatory experience” (*C.B. Powell* at para. 32). In light of these important concerns, the Courts exercise a reasonable degree of restraint before undertaking a review of their work;

2. Where the courts prematurely insinuate themselves into the work of administrative tribunals, a number of related, unnecessary risks arise such as:

3. Weakening the process by creating a multiplicity of disjointed and fragmented proceedings; and

4. Potential distortion of the factual and legal issues by the courts before administrative tribunals are provided sufficient opportunity to explore and understand the disputed matters in their proper factual and legal context;

5. Elected members of the legislature review, vote upon, and ultimately pass into law the statutes under which administrative tribunals claim jurisdiction. The democratic legitimacy associated with the legislative process is deserving of the court’s respect.

[31] As such, the courts only intervene in an ongoing administrative tribunal process in rare, exceptional circumstances (*Thielmann v. The Association of Professional Engineers and Geoscientists of the Province of Manitoba*, 2020 MBCA 8 ("***Thielmann***"), at para. 49 – 50; *Abdi v. Canada (Safety and Emergency Preparedness)*, 2018 FC 202, at para. 18; *Thielman Lourenco v. Hegedus*, 2017 ONSC 3872, at paras. 6 and 24).

[32] Similarly, in *Fraser v. Sampson*, 2023 NSSC 355, Gogan, J. (as she then was) observed: "Absent exceptional circumstances, an applicant must exhaust all levels of administrative procedure before seeking a remedy from the Court. The burden is on the party invoking exceptional circumstances" (at para. 22).

[33] I pause here to address a preliminary argument advanced by Ms. Hogg. She contends that the principle of prematurity is only applied by the judge who may ultimately preside over the judicial review process – not a judge considering whether to extend for filing a belated application for judicial review. She says that the "assessment of prematurity should be reserved for the substantive judicial review proceedings, where the merits can be fully and fairly examined in accordance with established legal principles" (Supplementary written submission filed on April 29, 2024, at p. 2). In further supplementary written submissions dated August 23, 2024, Ms. Hogg submits that it would be "illogical for this court to entertain arguments of prematurity regarding the merits of the proposed grounds in my draft Notice for Judicial Review during a motion seeking an extension of time to file" (at p.2).

[34] Respectfully, I disagree. The question of whether Ms. Hogg's request for judicial review is premature is not exclusively reserved for the commencement of the judicial review process. Setting aside concerns around inefficiency and duplicative proceedings, the issue of prematurity also goes to the strength of the arguments being made for an extension of time. The court's discretion is not so narrowly restricted as to ignore concerns around prematurity when considering whether to extend the time to file for judicial review – and push this debate off to some indeterminate point in the future. Thus, for example, prematurity becomes relevant in assessing whether a preliminary motion to enjoin proposed judicial review proceedings before they have formally begun (*MacLean v. Fraser*, 2024 NSSC 97).

[35] In *Thielmann*, the Manitoba Court of Appeal provided the following helpful summary as to when and how exceptions to the prematurity principle is applied in practise, at paras. 49-50:

> In conclusion, the courts have not provided a definition of "exceptional circumstances" with respect to the prematurity principle. The factors to be considered in exercising this discretion cannot be reduced to a checklist or a statement of general rules. The list of factors to be considered is not closed and courts will not have to apply every factor, but only those that are relevant.
>
> Among the factors that might be considered are: (i) hardship/prejudice (including irreparable harm, urgency, and excessive delay); (ii) waste of resources if judicial review is not proceeded with; (iii) delays if judicial review proceeds; (iv) fragmentation of proceedings; (v) strength of the case, including whether there is a clear abuse of process or proceedings that are so deeply flawed that it is clear and obvious that judicial review will be successful; and (vi) the statutory context, including whether there is an adequate alternative remedy. Furthermore, weight should always be given to the overarching consideration that an administrative tribunal should be given the opportunity to determine the issue first, and to provide reasons that can be considered by the court on any eventual review.

[36] In my view, the Court should exercise restraint at this stage of the proceeding and not prematurely interfere with the Registration Appeal Committee's ongoing work. My reasons include:

1. As to the issue of hardship/prejudice, allowing judicial review to proceed at this stage would create delay which undercuts the goals of efficiency and economy in administrative proceedings. Based on the evidence before me, this is not a case where judicial resources would be wasted if the Registration Appeal Committee's proceedings were not further suspended to conduct a judicial review. On the contrary, I am satisfied that judicial resources would be wasted if a judicial review were to proceed.

2. Further on the issue of prejudice, respectfully, there is a lack of clarity around:

    a. The advantages which will be gained by judicial review, which reinforces the need for restraint; and

    b. The prejudice which will result if judicial review is denied.

    In cases where administrative proceedings were suspended mid-stream, the risk of prejudice was clear and imminent. For example, in *MacLean v. Fraser*, 2024 NSSC 97, the evidence revealed the absence of reasonable alternative remedies if judicial review was denied;

irretrievable harm to public confidence in a public complaints process; and concerns around the jurisdictional boundaries of authorities operating in the same sphere. By contrast, in this case, the specific evidence that fuels Ms. Hogg's fears over irreparable prejudice has only been presented in general and somewhat oblique terms. As mentioned, it appears to centre around Ms. Hogg's views on Islam or, in Ms. Hogg's words, the different political ideology of "Islamism". However, the parties made the deliberate decision to not present copies of the disputed evidence. Ultimately, I was not given sufficient details to comment meaningfully on its alleged prejudicial or inflammatory content.

In short, I am unable to conclude that the disputed evidence is irrelevant, excessive, or irreparably and unnecessarily disparaging of Ms. Hogg. Perhaps more importantly, the mere fact that the College may try to present new evidence does not mean that the Registration Appeal Committee will allow it.

3. Ms. Hogg has an alternative remedy under the Regulations with respect to her evidentiary concerns. While the evidence which may be allowed by the Registration Appeal Committee is flexible, the Committee is equally entitled to "make any directions it considers necessary to ensure that a party is not prejudiced by the admission of the evidence" (s. 50(2) of the Regulations, emphasis added). In other words, Ms. Hogg has an alternative remedy because the Registration Appeals Committee is statutorily empowered to avoid undue prejudice to her. Based on the evidence before me, the Committee should be allowed to review the evidence; make decisions as to what evidence will be allowed; and complete its work – before the Court presumes a problem and proactively steps in to adjudicate on these matters. Here again, I repeat that I make no determinations as to the merits of Ms. Hogg's evidentiary concerns or whether (and to what extent) this evidence may be relevant or exceedingly prejudicial. I am not required to make this determination and the evidence before me is insufficient to do so, in any event.

4. As to Ms. Hogg's argument that the damage to her reputation becomes irreparable once the College's attacks begin and that the Registration Appeals Committee as currently constituted lacks the competence to avoid this harm, I acknowledge that certain decisions made by the

Registration Appeal Committee may have created a degree of confusion in the past. However, I have not seen any evidence which would suggest that the Registration Appeal Committee is irredeemably incompetent, incapable of procedural fairness, or unable to deliver justice to the parties. In my view and based on the evidence before me, any such conclusions would be extremely unfair and undeserved.

5. As to the strength of Ms. Hogg's substantive arguments around whether the appeal should be heard as a review or a hearing *de novo*, this factor is neutral and does not compel any particular conclusion on the motion to extend time. On the one hand, Ms. Hogg is correct that the Act and the Regulations consistently use the word "review" to describe the work of the Registration Appeal Committee. I refer to s. 31 of the Act and ss. 39, 41 and 52 of the Regulations. On the other hand, s. 50 of the Regulations does not explicitly limit the evidence at the hearing of the appeal to the record before the original decision maker. Rather, s. 50(1) simply lists three broad categories of evidence (written or documentary evidence, expert evidence, and evidence from witnesses) that may not be admissible unless the opposing parties give one another ten days notice of any evidence they intend to rely upon this evidence at the hearing. In other words, the restriction around evidence is primarily procedural.[4] Moreover, s. 50(2) states that the Committee may allow evidence that is otherwise inadmissible but retaining the discretion to "make any directions it considers necessary to ensure that a party is not prejudiced by the admission of the evidence." Overall, the positions advanced by the parties are arguable. I do not find that the Impugned Decision is so deeply flawed that the strength of Ms. Hogg's arguments become a decisive or predominate factor in my assessment. To be clear, I am not making any final determination with respect to this issue. I simply find it to be a neutral factor that does not weigh in favour of Ms. Hogg so as to be a significant factor in granting an extension of time.

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[4] Whether a hearing before the Registration Appeals Committee is *de novo* or a review of the record is a question of statutory interpretation. While not determinative of this issue, I note that, before this dispute erupted, both Ms. Hogg and the College sought to introduce new evidence on appeal. Their only apparent concern, at least initially, was compliance with the procedural requirement of providing one another with ten days notice of the evidence they would be relying on at the appeal. Neither side referenced any other restrictions on the evidence that could be presented or, for example, cited law in an effort to justify the new evidence as necessary to supplement the "record" as might occur where the hearing is a review of the record. (see footnote 3 above). Again, this is not determinative of the issue. The principles of statutory interpretation apply. However, it is notable.

6. Ms. Hogg also cites the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (*"Vavilov"*), as authority for a principle of statutory interpretation that: "an appeal is a review of the record unless a de novo hearing is explicitly prescribed" (at p. 3 of her written submissions). She does not provide a specific paragraph reference in support of this statement. Respectfully, the Supreme Court of Canada's decision in *Vavilov* was focussed almost entirely on determining the standard of review for administrative decisions. Neither the majority decision of Wagner, CJ, Moldaver, Gascon, Côté, Brown, Rowe, and Martin JJ. nor the minority but concurring decision of Abella and Karakatsanis, JJ. supports Ms. Hogg's argument. Vavilov decision does make passing references to *de novo* hearings (at paras. 83, 116, 124, 252, 271-272, 283, 305, and 207). However, these comments are made in the context of applying the appropriate standard of review. They do not confirm the categorical conclusions proposed by Ms. Hogg.

7. Finally, Ms. Hogg states that where "the tribunal's decision is backed by law in a way that makes it difficult to challenge, such as through a finality clause, the Courts should err on the side of caution in favour of the party making the application for judicial review" (Supplementary written submission filed on April 29, 2024, at p. 1.). In support of this conclusion, Ms. Hogg cites *Lord Nelson Hotel Ltd. v. City of Halifax*, 1973 CanLII 2320 (NSSC), and *Atlantic Shopping Centres Limited, Bedford Place Limited and Sackville Town Centre Limited v. The Provincial Planning Appeal Board et al.*, 1983 CanLII 5236 (NSSC). In subsequent supplementary written submissions dated August 24, 2024, Ms. Hogg repeats that the Impugned Decision is "a final determination of a preliminary matter upon which its jurisdiction depends" (Supplementary written submission filed on August 24, 2024, at p. 1).

   Section 53 of the Regulations states that: "A decision of the Registration Appeal Committee is final." However, as the College acknowledges in its supplementary written submissions dated August 20, 2024: "… the *Paramedics Act* does not protect a decision of the Registration Appeal Committee from challenge." This includes a potential future challenge of the decision to conduct a hearing *de novo*. I also note the following comment from Donald Brown, K.C., The Honourable John M. Evans

and Adam Beatty's text Judicial Review of Administrative Action in Canada, vol. 2, at §13:60:

> To entrust the repository of a statutory grant of authority the power to determine conclusively the legal limits on its power is incompatible with the notion of limited government and the rule of law. Thus, it is ultimately the responsibility of the courts, constitutionally located at arm's-length from the Executive, to ensure that governmental action complies with the law. Hence, courts have been resistant to legislative provisions that limit or remove the jurisdiction of the superior courts to review the legality of governmental action, and have construed some preclusive clauses so narrowly as to give them minimal effect, if any. Even the most explicit provisions - the so-called "no-certiorari" clauses - are interpreted as preserving the courts' power to set aside an administrative decision on the ground that it was made in excess of a tribunal's jurisdiction including a breach of duty of fairness. Indeed, preclusive clauses which are interpreted as protecting tribunals from all judicial review, even for jurisdictional error, are unconstitutional.

CONCLUSION

[37] Ms. Hogg's motion to extend time to file for judicial review of the Registration Appeal Committee's preliminary Impugned Decision is dismissed. At the risk of repetition, it is neither necessary nor appropriate at this stage to comment further upon (or determine) such matters as:

1. The merits of the Registration Appeal Committee's decision to proceed with a hearing *de novo;*

2. What principles and/or restrictions define the limits of evidence which goes to an applicant's "current capacity, competence and character to safely and ethically practise paramedicine" (s. 17(2)(h) of the Regulations); and

3. What weight should be attached to any such evidence which, under s. 17(2)(h) of the Regulations, is deemed allowable and relevant?

[38] These are issues for the Registration Appeal Committee to consider in the first instance, while fulfilling its statutory mandate.

Keith, J.