

SUPREME COURT OF NOVA SCOTIA

Citation: *Tynes v. Nova Scotia College of Nursing*, 2025 NSSC 69

Date: 20250220

Docket: Hfx No. 535199

Registry: Halifax

Between:

Stephen Tynes

Applicant

v.

Nova Scotia College of Nursing

Respondent

DECISION ON JUDICIAL REVIEW

Judge: The Honourable Justice Scott C. Norton

Heard: February 7, 2025, in Halifax, Nova Scotia

Decision: February 20, 2025

Counsel: Stephen Tynes, self-represented Applicant
Ryan Baxter and Andrew Kinley for the Respondent

By the Court:

Introduction

[1] The applicant, Stephen Tynes, applied for a Practical Nursing License under the Nova Scotia *Nursing Act* (“Act”)¹. He filed a Notice for Judicial Review alleging that the Nova Scotia College of Nursing (“College”), as regulator under the *Act*, has unlawfully failed to decide upon his application, including on the basis that the College has violated his rights under the *Canadian Charter of Rights and Freedoms*². He seeks an Order from the court compelling the College to grant a license to him.

[2] The College opposes the judicial review on the bases that there has not been a reviewable decision made; the judicial review is premature; the *Charter* does not apply to this review; and, the College has exclusive jurisdiction at this time over the matters raised in the judicial review.

The Record

[3] The following chronology of events is confirmed by the Record For Judicial Review filed on September 20, 2024.

[4] On May 7, 2023, Mr. Tynes submitted an application via the College’s online portal for registration and licensure as a licensed practical nurse (“LPN”). The application form contained a number of questions under the Good Standing Declarations section. Mr. Tynes responded as follows to certain questions (responses in **bold**):

- (a) Are you currently the subject of any complaint, investigation or other proceedings by any registration/licensing authority? Selected: **No**.
- (b) Have you ever been charged with, pleaded guilty to, been convicted of or found to be guilty of an offence, for which you have not received a pardon, including alcohol and drug related offenses but excluding parking, speeding or similar minor motor vehicle offences that do not involve substance use? Selected: **No**.
- (c) Have you ever pleaded no contest or made any similar plea to any criminal charge? Selected: **No**.

¹ *Nursing Act*, SNS 2019, c.8

² *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being schedule B to the Canada Act 1982 (UK), 1982, c. 11.

(d) Have you ever been charged with or accused of a criminal offence that resulted in you entering into a diversion program, curative discharge or other resolution process as an alternative to conviction or prosecution? Selected: **No**.

(e) Have you ever been disciplined by a registration/licensing authority for any occupation/profession? Selected: **Yes**. Please provide a brief explanation: **Nova Scotia College of Pharmacists**.

(f) Have you ever been denied or had revoked any occupational or professional registration, license or permit, which you have not previously reported to NSCN? Selected: **No**.

(g) Were you ever the subject of an investigation, disciplined by or expelled from any university or school of nursing which you have not previously reported to NSCN? Selected: **Yes**. Please provide a brief explanation: **Dalhousie University**.

(h) In addition to the above, is there, to your knowledge or belief, any event, circumstance or condition concerning your competence, character, capacity, conduct or reputation that may impact your registration and ability to practice safely? Selected: **No**.

[5] The College's application form also contained a number of declarations that Mr. Tynes acknowledged and agreed to, including"

2. I attest that the information provided on the form is true and complete.

...

4. I consent to NSCN verifying any and all information, which may include contacting the employers, institutions or authorities cited in my application.

...

5. I understand NSCN will immediately stop the assessment of my application while they gather more information if: a) I have provided any inaccurate information; or b) I have omitted required information; or c) NSCN determines that any documents submitted during the application process have been altered, tampered with or forged.

6. I further understand that should #5 occur, it may result in a delay or denial of my application.

...

8. I understand that any and all information provided by me to NSCN in the course of the application process may be used internally by NSCN for any of its regulatory functions.

9. I confirm that I have disclosed in this application all events, circumstances, or conditions concerning my capacity, competence, character, conduct or reputation that may impact my ability to safely and ethically practice nursing.

[6] Having noted the “yes” answers to questions concerning discipline by a registration/licensing authority and expulsion from a university, the College on May 17, 2023 asked Mr. Tynes by email for information regarding these incidents as well as information from the regulatory body describing the nature of the complaints and their disposition.

[7] Later on May 17, 2023, Mr. Tynes responded by email and included a link to a Nova Scotia College of Pharmacists decision dated January 25, 2021 and also responded to questions concerning his expulsion from Dalhousie University in August 2015 as being related to charges for uttering threats that were later dropped.

[8] On June 12, 2023, the Director of Registration Services at the College sent a letter to Mr. Tynes by email asking Mr. Tynes for:

- an original Canadian criminal record check, dated within the previous six months;
- a decision from the Nova Scotia College of Pharmacists dated September 8, 2020;
- Dalhousie University’s expulsion decision;
- the recognizance and peace bond issued in relation to an uttering threats charge;
- the probation order issued in relation to a prohibited firearm/device charge;
- the probation order in relation to an assault charge; and
- reports from Mr. Tynes’ probation officer regarding compliance with the probation orders.

In light of the information that Mr. Tynes had received conditional discharges in relation to criminal charges, the Director also requested further information about the questions that Mr. Tynes had answered “no” in respect of criminal charges and diversion programs, curative discharges or other resolution processes.

[9] On January 31, 2024, the Director emailed a letter to Mr. Tynes regarding his application and advised that before the College’s assessment of his application could continue, Mr. Tynes needed to respond to the June 12 letter and provide all the requested documentation.

[10] On the same date, January 31, 2024, Mr. Tynes submitted an amended application to the College responding as follows to certain declaration questions (responses in **bold**):

- (a) Are you currently the subject of any complaint, investigation or other proceedings by any registration/licensing authority? Selected: **No**.
- (b) Have you ever been charged with, pleaded guilty to, been convicted of or found to be guilty of an offence, for which you have not received a pardon, including alcohol and drug related offenses but excluding parking, speeding or similar minor motor vehicle offences that do not involve substance use? Selected: **Yes**. Please provide a brief explanation: **As discussed in summer 2023**.
- (c) Have you ever pleaded no contest or made any similar plea to any criminal charge? Selected: **No**.
- (d) Have you ever been charged with or accused of a criminal offence that resulted in you entering into a diversion program, curative discharge or other resolution process as an alternative to conviction or prosecution? Selected: **Yes**. Please provide a brief explanation: **Conditional discharge x2**.
- (e) Have you ever been disciplined by a registration/licensing authority for any occupation/profession? Selected: **Yes**. Please provide a brief explanation: **Nova Scotia College of Pharmacists**.
- (f) Have you ever been denied or revoked any occupation or professional registration, license or permit, which you have not previously reported to NSCN? Selected: **No**.
- (g) Were you ever the subject of an investigation, disciplined by or expelled from any university or school of nursing which you have not previously reported to NSCN? Selected: **Yes**. Please provide a brief explanation: **Dalhousie University**.
- (h) In addition to the above, is there, to your knowledge or belief, any event, circumstance or condition concerning your competence, character, capacity, conduct or reputation that may impact your registration and ability to practice safely? Selected: **No**.

[11] The amended application contained the same declarations as the initial application and Mr. Tynes acknowledged and agreed to those declarations.

[12] On February 28, 2024, Mr. Tynes sent an email to College registration staff attaching two documents. The first document was a copy of Dalhousie University's expulsion decision dated June 5, 2017. The second document was the Nova Scotia College of Pharmacists Hearing Committee's decision dated September 8, 2020.

[13] Dalhousie University's expulsion decision disclosed the following information:

- (a) in 2015, Mr. Tynes was a medical student at Dalhousie;

- (b) in a session with his psychiatrist at that time, Mr. Tynes stated that he intended to stab a fellow student whose parent was an administrator at the medical school, and to come to Dalhousie's campus with a weapon to take other lives. The psychiatrist breached patient-doctor confidentiality and telephoned the parent/university administrator to inform them that their daughter had been threatened by Mr. Tynes. This resulted in a lock down of the medical school, a security process was triggered, and Mr. Tynes was arrested and charged with uttering death threats and possessing firearms and significant amounts of ammunition;
- (c) Mr. Tynes breached Dalhousie's student code of conduct by threatening other persons with bodily harm or causing persons to fear bodily harm; and
- (d) Mr. Tynes was expelled from Dalhousie University.

[14] The Nova Scotia College of Pharmacists Hearing Committee's decision dated September 8, 2020 disclosed that the College had sought certain documents and information from Mr. Tynes in relation to a number of criminal matters, including:

- (a) 2014 – one count of animal cruelty (charges dropped by the Crown);
- (b) 2015 – two count of uttering threats, one count of threatening conduct (charges dropped by the Crown), and possession of a prohibited device (over capacity magazine, resulting in a plea bargain, conditional discharge, and five-year firearms prohibition issued in 2016);
- (c) 2016 – one count of assault resulting in a plea bargain (conditional discharge February 2017); and
- (d) 2017 – one count of attempted theft, two counts of breach of probation, to which he was found not guilty (February 2018).

[15] On March 4, 2024, the College received a criminal record check, probation orders, and a peace bond issued from one of the criminal proceedings against Mr. Tynes.

[16] On April 16, 2024, at 8:49 a.m., the Director sent a letter by email to Mr. Tynes regarding next steps in the application process. In the letter, the Director advised Mr. Tynes that the College was still waiting for clarification regarding

certain questions concerning his prior criminal charges, conditional charges, and details regarding same. The Director advised that once the College received this information, it would be able to continue with its review of Mr. Tynes' application.

[17] On April 16, 2024, at 1:47 p.m., Mr. Tynes replied, stating that he had answered 'no' to the questions regarding criminal charges because he did not have a criminal record as a result of any charges filed against him. He stated that he had submitted the documents that were asked of him, and asked the College not to hold up his licensing application.

[18] On April 16, 2024, at 4:03 p.m., College registration staff responded to Mr. Tynes' email and stated that the College would review his file and let him know if anything else was required.

[19] On May 7, 2024, at 5:57 a.m., Mr. Tynes emailed the College registration staff inquiring as to the status of his application.

[20] On May 7, 2024, at 8:08 a.m., College registration staff replied to Mr. Tynes' email and stated that the College was reviewing his application, it would update him as soon as the review was completed, and if there were any further requirements.

[21] On May 29, 2024, at 8:19 a.m., the Director sent a letter by email to Mr. Tynes outlining the background of the matter, and that the College had not received information and documents requested from Mr. Tynes regarding the criminal matters against him. The Director further stated and requested:

As the public interest regulator of the nursing profession in Nova Scotia, NSCN is required to assess an applicant's character to safely and ethically engage in practice. This requirement is found at subsection 18(1)(c)(iii) of the Nursing Act. Based on our review of the documents and information, we have concerns regarding whether you possess the character to safely and ethically engage in practice. In order to assess this issue, we require you to provide the additional following documents to NSCN:

1. Official transcripts of your appearances in Provincial Court in relation to the following charges:
 - i. May 22 – 25, 2013: assault (CC section 266);
 - ii. 2014: animal cruelty;
 - iii. August 2015: 2 counts of uttering threat, 1 count of threatening conduct;

- iv. August 21, 2015: possession of a prohibited weapon, restricted weapon, a prohibited device (CC 91(2));
- v. 2016: assault;
- vi. 2017: attempted theft, 2 counts breach of probation; and
- vii. any and all other criminal charges, previous or pending, regardless of the outcome.

2. With respect to the charges set out in clause 1, production of all relevant non-privileged documents in your possession or control, including documents which may be in the possession of third parties. This includes, but is not limited to, disclosure, court documents, decisions, Informations, and Orders.

Please note that your application may not be considered complete until we receive all of the above information.

If there is any reason any of the transcripts or documents cannot be provided, please let us know so that we can consider next steps.

As noted in my previous letter, if there is anything else that you would also like us to consider in assessing your application, particularly with respect to your character, please provide it in writing.

Upon receipt of the above information, we will assess your application and advise you of the outcome.

[22] On May 29, 2024, Mr. Tynes replied to the letter via email, where he stated:

I understand what is being requested in part 1, but I have none of the documents listed in part 2 in my possession or control, and I have no way of knowing what documents other third parties have in their control. Furthermore, this is getting ridiculous, and I do not believe I am being treated equitably here. Did you ask [redacted] for all of these type of documents when she applied for her license? She has a criminal record for attacking a police officer. I highly doubt it. Is this going to be the end off the document train? You asked me for a long list of documents, and I provided them. Now you are asking me for more. What's next even more? I believe this is just and illegal attempt by NSCN to deny me a license without actually saying so. I am not going to waste more of my time and money tracking down random documents only for you to deny my nursing license. You do not need these documents to make a decision on my nursing license. I have no criminal record, so your organizations discrimination against me is criminal. Please make a decision based on the documents you have and stop delaying me from working. If I am denied a nursing license, I will seek the appropriate legal action against your organization. Thank you. Goodbye.

[23] On June 3, 2024, College registration staff wrote to Mr. Tynes advising she had forwarded his email to the Director for review and response.

[24] On June 17, 2024, at 4:00 p.m., the Director, responded by email to Mr. Tynes, stating:

I write further to your email of May 29, 2024. As the public interest regulator of the nursing profession in Nova Scotia, NSCN is required according to the Nursing Act to ensure applicants have the character to safely and ethically engage in practice. In consideration of your history of criminal charges, academic expulsion, and regulatory proceedings with the Nova Scotia College of Pharmacists, NSCN has concerns regarding your character. NSCN is also concerned with your responses to the good standing declaration questions on its application form.

In order to fully assess your character, NSCN requires the documents and information set out in my correspondence dated May 29, 2024. As you do not have any of the documents in part 2 in your possession, we suggest that you contact the criminal lawyer(s) that represented you with respect to the charges. Your lawyer(s) should have the Crown disclosure and other requested documents. Further, you may wish to contact the Provincial Court for the Informations, decisions, orders, and any other court documents related to these charges.

Once NSCN receives the requested information, your application will be processed in accordance with the Nursing Act. The sooner we receive the documents, the sooner we will be in a position to fully assess your application.

[25] Mr. Tynes responded by email on that date, at 4:49 p.m.:

I am not, and will not consent to giving disclosure material to NSCN. Court disclosure material is merely hearsay and I will not have hearsay affecting my licensing application. Court transcripts and decisions are part of the public record, so if NSCN wants those they can obtain them at their own expense. I do not have the means to pay a criminal attorney at this time to render services to gather these documents. NSCN's actions have caused me significant financial hardship to the point where I am on income assistance due to being unable to work as a result of your actions. These actions have been causing said hardship since on or before April 16, 2024.

As for my character, I have been providing exemplary nursing care for over 2 years, even risking my own health through Covid-10 [*sic*]. I have graduated from [*sic*] NSCC with honours, and should be one the most desirable LPN candidates for potential employers. Anyone can be charged with a criminal offence, as the standard for probable cause is extremely low. Charges which have been dismissed or for which I have been found not guilty should have no bearing on my application for licensure. Furthermore, neither should the charges resulting in conditional discharges, as a Nova Scotia Provincial Judge has already deemed those to be minor offences, and NSCN should respect the legal process with regard to those charges. The academic expulsion from Dalhousie University was illegal and should be discounted given that the threats charges for which I was expelled were dropped.

The decision by the Nova Scotia College of Pharmacists (NSCP) has nothing to do with pharmacy or pharmacy practice. They believe that their Act compels me to turn over documents that they do not have privilege to, I requested that they prove it in court, and they refused and reprimanded me. Given that NSCN wishes me to provide disclosure materials as did NSCP, I will tell you what I have told them. If you want disclosure materials, then please, obtain a court order.

This email should satisfy your requirements, and thus NSCN should be able to make a decision on my nursing license. I realize that it may take time for a decision to be made, but please do so, and inform me of your decision. Thank you.

[26] On June 20, 2024, College registration staff noted that she had sent Mr. Tynes' email to the Director for review.

[27] On June 26, 2024, College registration staff provided Mr. Tynes' with the Director's response by email, which was that his application would not be considered complete by the College until it received the previously requested information.

[28] On July 15, 2024, Mr. Tynes sent to College registration staff an email stating:

Given that NSCN is unwilling to give me a license and instead chooses to attempt to violate my Charter Rights by holding my licensing application hostage, I will be filing for judicial review. I will be scheduling a hearing date, they are currently booking for April 2025. Please give me some dates that are acceptable in April 2025, and I will schedule the hearing. If I don't hear back from you within 24 hours, I will schedule the date and inform you of the appointment time/date. Thank you.

[29] On July 16, 2024, the Director responded by email and reiterated many of the same points he had expressed in previous letters and emails – e.g., the requirement of further documents and information – and stated that the College had not made a decision regarding his application as it was not complete. The Director also said in that email:

We have not received any of these documents. If you are experiencing difficulty accessing any of the requested documents, please let us know. Please provide the documents you have been able to obtain, and describe the efforts you have made to obtain others.

Upon receiving the available information and documents, you [sic] application will be processed and a decision made.

As no decision has yet been made regarding your LPN application, NSCN believes a judicial review would be premature. If you decide to proceed with a judicial review at this stage of the application process, NSCN will bring a motion to dismiss

the judicial review based on prematurity. If it is successful with its motion, NSCN will ask the court to order you to pay costs to NSCN.

[30] On July 22, 2024, Mr. Tynes filed a Notice for Judicial Review. On August 6, 2024, the College filed its Notice of Participation.

Positions of the Parties

[31] Mr. Tynes asserts that the College failed to meet their obligations under the *Act* by failing to make a decision on his application for licensure. He says the College should have either granted him a license or denied his application with reasons as required by s. 23(a) of the *Act*. Instead, they have effectively suspended his application by requiring him to provide them with additional documents that he says he does not possess and does not have the means to obtain. Further, he asserts that the documents are hearsay, and as such do not inform the considerations to be made by the College on his application. They relate to historical criminal charges that were either withdrawn, dismissed or dealt with by discharge such that they do not appear on his criminal record and vulnerable sector checks that have been provided to the College.

[32] Mr. Tynes argues that this positioning by the College is unreasonable and is in effect a decision to deny his application by holding his application hostage until he produces documents that he says are irrelevant and that he should not have to produce. He claims that the actions by the College violate his s. 11(h) and s. 13 *Charter* rights.

[33] The College opposes the judicial review on the bases that there has not been a reviewable decision made; the judicial review is premature; the *Charter* does not apply to this review; and, the College has exclusive jurisdiction at this time over the matters raised in the judicial review. With respect to the argument that the College has failed to make a decision, it says that it is simply not in a position to make a decision because the application remains incomplete.

Legislative Overview

[34] I begin with a review of the applicable statutory framework of the *Act* to determine whether a decision-maker rendered a reviewable decision.

[35] The *Act* creates and delegates to the College the statutory requirements to regulate the practice of nursing. Section 4 specifies the objects of the College

including protection of the public interest in the practice of the nursing profession. To carry out these objects, the College is given the power to regulate the provision of nursing services and govern its registrants through the registration, licensing, professional conduct, education approval and other processes as set out in the *Act* and its regulations. The second part of the *Act* is titled “Registration and Licensing” and governs the registration and licensing of applicants seeking to practice nursing in Nova Scotia.

[36] Subsection 18(1) of the *Act* specifies that an “applicant for registration” shall submit a “completed application” in a form approved by the Chief Executive Officer. The completed application is to include payment of the applicable fee, proof of education, and proof of other items, including proof of “character to safely and ethically engage in practice” and “the absence of outstanding complaints, prohibitions, conditions, agreements or restrictions from any registration or licensing authority”. The relevant parts of subsection 18(1)(c) of the *Act* state:

18(1) An applicant for registration on any register other than a conditional register shall submit a completed application in a form approved by the Chief Executive Officer together with

...

(c) proof satisfactory to the Chief Executive Officer that the applicant

...

(iii) has the capacity, competence, and character to safely and ethically engage in practice,

(iv) has no outstanding complaints, prohibitions, conditions, agreements or restrictions from any registration or licensing authority that would preclude registration on a register other than a conditional register,

...

[37] Subsection 18(1)(d) of the *Act* also requires any information the Chief Executive Office needs to establish that subsection 45(2) of the *Act* does not apply. Section 45 of the *Act* prescribes the duties of a registrant and specifies that where a person, among other things, is applying for registration or a licence, the Chief Executive Officer may, require the person to attend a meeting before the Registration and Licensing Committee to fully disclose the facts and circumstances of any matters relating to criminality, disciplinary findings, licensing sanctions, and/or investigations. The salient parts of subsections 18(1)(d) and 45(2) of the *Act* are as follows:

18(1) An applicant for registration on any register other than a conditional register shall submit a completed application in a form approved by the Chief Executive Officer together with

...

(d) any information the Chief Executive Officer requires to establish that subsection 45(2) does not apply to the applicant; and

...

45(2) Notwithstanding anything contained in this Act or the regulations, where a person

(a) has been charged with, pleaded guilty to, been convicted of any offence in or out of Canada that is inconsistent with the proper professional behaviour of a registrant, including a conviction under

(i) the *Criminal Code* (Canada),

(ii) the *Controlled Drugs and Substances Act* (Canada), or

(iii) such other legislation as may be prescribed in the regulations;

(b) has been found guilty of a disciplinary finding in another jurisdiction;

(c) has had a licensing sanction imposed by another jurisdiction; or

(d) is the subject of an investigation or disciplinary process in any jurisdiction,

and the person is a registrant or applies for registration or a licence or the renewal of a licence, the Chief Executive Officer may, by such notice as the Chief Executive Officer prescribes, require the person to attend a meeting before the Complaints Committee or, where the person is not a registrant, the Registration and Licensing Committee, to fully disclose the facts and circumstances of any of the matters referred in subsection (2).

[38] After receiving the information required from an applicant applying for registration and licensing, the Chief Executive Officer is to make a decision regarding that application. Pursuant to subsection 21(1) of the *Act*, the Chief Executive Officer may (a) approve the application; (b) deny the application; (c) impose conditions or restrictions on the registration or license; or (d) refer the application to the Registration and Licensing Committee. Section 8(3) of the *Act* allows the Chief Executive Officer to delegate any functions assigned to the Chief Executive Officer by the *Act*.

Analysis

[39] *Civil Procedure Rule 7* governs judicial reviews and outlines the type of administrative decisions that can be subject to judicial review. *Rule 7.01* defines “decision” and “decision-making authority” as follows:

In this Rule,

“decision”, includes all of the following:

- (i) an action taken, or purportedly taken, under legislation,
- (ii) an omission to take action required, or purportedly required, by legislation,
- (iii) a failure to make a decision;

“decision-making authority” includes anyone who makes, neglects to make, takes, or neglects to take a decision.

[40] *Rule 7.02(2)(a)* says that the *Rule* applies to the supervisory authority of the court. The Supreme Court of Canada in *Highwood Congregation of Jehovah’s Witnesses (Judicial Committee) v. Wall*, 2018 SCC 26, instructed that the purpose of judicial review is to ensure the legality of state decision making. It is a public law concept that allows s. 96 courts to “engage in surveillance of lower tribunals” in order to ensure that these tribunals respect the rule of law. The state’s decisions can be reviewed on the basis of procedural fairness or on their substance (para. 13).

[41] The two part test in *Highwood* for when a decision can be the subject of judicial review was re-stated by the Nova Scotia Court of Appeal in *Nova Scotia Health Authority v. Finkle and West*, 2024 NSCA 87, at para. 67, as “was there ‘an exercise of state authority ... of a sufficiently public character?’”.

[42] The College concedes that it is a decision-making authority capable of making a decision that is subject to judicial review.

[43] While I agree with the College that it has not made a decision on Mr. Tynes’ application, I find that its refusal to follow its statutory direction in processing the application amounts to a failure to make a decision that is reviewable by this court.

[44] The College has requested certain documents from Mr. Tynes that are not in his possession or control. Mr. Tynes has refused to obtain them for reasons that are legally arguable and reasonable. He says that he does not have the means to obtain

them and argues that they are hearsay and otherwise not probative of the questions that the College is required to determine in consideration of his application.

[45] The College requested “official transcripts of your appearances in Provincial Court” relating to charges dated between 2013 (fifteen years ago) and 2017 (eight years ago) that disclose no convictions on the Criminal Record Check. The College relies on s. 18(1)(d) as authority for requesting this information. That subsection provides that the applicant provide any information the Chief Executive Officer requires to establish that subsection 45(2) does not apply to the applicant.

[46] Subsection 45(2) provides that where an person has been charge with, pleaded guilty to, been convicted of any offence that is inconsistent with the proper professional behaviour of a registrant, and the person applies for a licence, the Chief Executive Officer may require the person to attend a meeting with the Registration and Licensing Committee to fully disclose the facts and circumstances of any of the matters referred to in the subsection.

[47] While the court is generally reluctant to intervene in ongoing proceedings before an administrative tribunal, the position of the College that Mr. Tynes either capitulates to their request or his application remains undetermined indefinitely is not procedurally fair or reasonable. The College conceded in oral argument that there is no internal appeal process for Mr. Tynes to challenge the demand by the College that Mr. Tynes obtain and submit documents that he argues are not properly considered by the College.

[48] In these circumstances, I do not find the Notice to be premature as the authorities have considered that principle. In the present case, and given that there is no other remedy for Mr. Tynes to challenge the position of the College, I find that this is an exceptional circumstance requiring this court to exercise its supervisory authority.

[49] Objectively, the Chief Executive Officer has sufficient information to determine whether or not to invoke the authority under subsection 45(2) to require Mr. Tynes to attend a meeting and fully disclose the facts and circumstances relating to his historical criminal charges.

[50] If the Chief Executive Officer decides to invoke the meeting authorized by subsection 45(2), the information obtained at the meeting will inform the decision to be made pursuant to subsections 18(1)(c)(iii) and (iv). Similarly, if Mr. Tynes refuses to provide any information, that will inform the decision.

[51] The College also has Mr. Tynes' written consent on the application form for the College to verify any and all information, including contacting the employees, institutions and authorities cited in his application. Nothing prevents the College from obtaining public records from the Provincial Court.

[52] This is not a case where the subject of the judicial review notice is merely administrative, for example, an email advising a person of a rule or a process. Here, Mr. Tynes has taken a substantive position that the information requested is not relevant nor properly admissible on the consideration of his application. He is entitled to having a decision made by the College on those issues.

[53] The College might determine that the information is so important that without it being provided his application is denied. Mr. Tynes could then seek judicial review of that decision. In failing to make any decision, the College is not acting reasonably or fairly. Accordingly, I grant Mr. Tynes' Notice for Judicial Review of this process.

[54] In the Notice for Judicial Review, Mr. Tynes sought the following relief:

The applicant requests an order to compel Nova Scotia College of Nursing to grant a Practical Nursing License to Stephen Tynes, thus giving him the designation of Licensed Practical Nurse within 30 days.

[55] Pursuant to the *Act*, the registration and licensing of individuals to practice nursing in Nova Scotia is within the jurisdiction of the College. This court does not have the jurisdiction to grant the relief requested by Mr. Tynes for registration and licensure as an LPN in Nova Scotia. The question of whether Mr. Tynes is eligible for registration and licensure fall within the College's statutory responsibilities and specialized expertise. Courts have consistently found in such circumstances that the court is without jurisdiction to make licensing decisions: *Speck v. The Law Society of Upper Canada*, 2016 ONSC 3094.

[56] In the Notice for Judicial Review, Mr. Tynes alleged violations of his *Charter* rights under ss. 11(h) and 13. In his oral argument he also alleged his s. 15 rights were violated by the College.

[57] The *Charter* does not apply to Mr. Tynes' application for judicial review. The authorities are clear that the College must first assess and decide the *Charter* issues raised by Mr. Tynes. Courts have dismissed judicial review applications that raised *Charter* issues not presented to the administrative decision-maker as being

premature. For example, *Dioguardi Tax Law v. The Law Society of Upper Canada*, 2016 ONCA 531.

Conclusion

[58] Mr. Tynes' Notice for Judicial Review is granted on the narrow issue that the process followed by the College is not fair or reasonable and provides Mr. Tynes with no internal process to challenge the College's demand for production of records that Mr. Tynes says are legally not required. The College is ordered to determine whether or not to engage a meeting as required by subsection 45(2) within 30 calendar days of this decision and to provide Mr. Tynes with a decision on his application in compliance with s. 21 of the *Act* within 3 months of this decision.

[59] The College shall pay costs to Mr. Tynes in the amount of \$1,500 forthwith.

Norton, J.