

SUPREME COURT OF NOVA SCOTIA

Citation: *Shanks v. Nova Scotia College of Nursing*, 2025 NSSC 250

Date: 20250820

Docket: Hfx No. 538719

Registry: Halifax

Between:

Catherine Shanks

Applicant

v.

Nova Scotia College of Nursing

Respondent

Decision

Judge: The Honourable Justice Denise Boudreau

Heard: June 16, 2025, in Halifax, Nova Scotia

Counsel: David Wallbridge and Sophie Pineau, for the Applicant
Ryan Baxter and Raylene Langor, for the Respondent

By the Court:

[1] This is a judicial review brought by the applicant seeking review of a decision of the Reinstatement Committee (the “Committee”) of the Nova Scotia College of Nursing (“NSCN”).

[2] The applicant became licenced to practice as a registered nurse in 1999. During the year 2018, she was employed as the Clinical Nursing Coordinator at Direction 180 in Halifax, which is a community-based methadone clinic.

[3] In October of that year, information came to light showing that the applicant had entered into an inappropriate and intimate relationship with a client of the clinic where she worked. This client had a pre-existing opioid use disorder and was noted to have relapsed in August 2018 (allegedly as a result of conflict with the applicant). It also came to light that money had been loaned to the applicant by the client. There was evidence that the applicant had encouraged the client to transfer to a different clinic.

[4] This situation was reported to the NSCN, and a formal complaint process was initiated in November 2018. In response, the applicant acknowledged that the allegations were true and agreed that, as a result, her registration as an RN should

be revoked. This was accepted by the Professional Conduct Committee by decision dated February 11, 2021. It was further noted (as agreed upon by the applicant) that the applicant would be ineligible to apply for re-instatement of her professional licence for a period of two years following the decision. The applicant then applied for reinstatement in August 2023 to the Reinstatement Committee (the “Committee”).

[5] In its response to the Committee, the NSCN noted that it did not contest the applicant’s request for reinstatement provided that a number of conditions and restrictions be placed on her licence to practice, should the Committee see fit to allow her to return to practice. These conditions were agreed to by the applicant in advance, and the parties prepared a draft order for the Committee’s consideration.

[6] The Committee rejected the applicant’s request for reinstatement by decision dated November 13, 2024 (the “Decision”). The Committee further noted that the applicant would need to wait a year before filing a new application for reinstatement, and only upon completion of a number of conditions. It is from this decision that the applicant seeks judicial review.

Standard of Review

[7] The parties agree, as do I, that the appropriate standard of review is reasonableness. To survive such a standard of review, a decision must be based on an intelligible and coherent chain of logic, justifiable in light of the facts before the decision maker, and the law that governs the matter. Such a standard provides deference to the decision maker as an entity operating within its own sphere of specialized knowledge. A decision should be read and assessed “as a whole”. A reasonableness standard does not permit a reviewing court to replace the decision with what the reviewing court would or might have done. The starting point and over-arching principle to keep in mind is restraint.

[8] The leading case of *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, provides us with the template for such an analysis:

[101] What makes a decision unreasonable? We find it conceptually useful here to consider two types of fundamental flaws. The first is a failure of rationality internal to the reasoning process. The second arises when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it. There is, however, no need for reviewing courts to categorize failures of reasonableness as belonging to one type or the other. Rather, we use these descriptions simply as a convenient way to discuss the types of issues that may show a decision to be unreasonable.

[102] To be reasonable, a decision must be based on reasoning that is both rational and logical. It follows that a failure in this respect may lead a reviewing court to conclude that a decision must be set aside. Reasonableness review is not a “line-by-line treasure hunt for error”: *Irving Pulp & Paper*, at para. 54, citing *Newfoundland Nurses*, at para. 14. However, the reviewing court must be able to trace the decision maker’s reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that “there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence

before it to the conclusion at which it arrived”: *Ryan*, at para. 55; *Southam*, at para. 56. ...

[103] While, as we indicated earlier (at paras. 89-96), formal reasons should be read in light of the record and with due sensitivity to the administrative regime in which they were given, a decision will be unreasonable if the reasons for it, read holistically, fail to reveal a rational chain of analysis or if they reveal that the decision was based on an irrational chain of analysis: ... A decision will also be unreasonable where the conclusion reached cannot follow from the analysis undertaken ... or if the reasons read in conjunction with the record do not make it possible to understand the decision maker's reasoning on a critical point ...

[104] Similarly, the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise. This is not an invitation to hold administrative decision makers to the formalistic constraints and standards of academic logicians. However, a reviewing court must ultimately be satisfied that the decision maker's reasoning "adds up".

Grounds for review

[9] In its brief to this Court, the applicant alleges the following errors in the Committee's decision:

1. Their decision is illogical in that they determined that the applicant lacked the insight and judgment to practice nursing because she did not, in advance of the hearing, complete a boundaries course; this despite the agreement of the NSCN that she do so after reinstatement.
2. Their decision is unjustified and illogical given the uncontradicted expert opinion that had been presented.

3. Their decision that the applicant lacked “current skill and judgment” was unreasonable, unjustified, and not supported by the evidence adduced at the hearing.
4. They misapprehended the evidence in relation to the applicant’s hours of practice as a nurse since 2018.

Statutory Framework

[10] The Reinstatement Committee of the NSCN is a creature of statute. Its constitution and powers can be found at ss. 109-115 of the *Nursing Act*, SNS 2019, c. 8 (the “*Act*”):

Reinstatement Committee

- 109** The Board shall appoint a Reinstatement Committee composed of at least one public representative and such other number of registrants and public representatives as the Board determines.

Chair

- 110** The Board shall appoint the Chair of the Reinstatement Committee.

Quorum

- 111** A quorum of the Reinstatement Committee consists of three persons from the committee appointed under Section 109, at least one of whom must be a public representative, and the remainder of whom must hold such designations as set out in the by-laws.

Duties of Reinstatement Committee

- 112 (1)** The Reinstatement Committee shall review applications for reinstatement of registration and licence following revocation of the registration or licence of a registrant, and shall perform such other duties as set out in this Act and the regulations.
- (2)** Applications for reinstatement must proceed in accordance with the process set out in the regulations.

- (3) Where a registrant's registration or licence has been reinstated under this Section, the Reinstatement Committee, in its discretion, shall determine whether publication of the reinstatement is required in the interest of the public.

Powers, privileges and immunities

- 113** The Reinstatement Committee and an investigator appointed in accordance with the regulations have all the powers conferred by this Act and the by-laws in the discharge of its functions, including the ability to award costs, as well as the powers, privileges and immunities of a commissioner appointed under the *Public Inquiries Act*, with the exception of the powers of contempt, arrest and imprisonment.

Hearing

- 114 (1)** In a hearing before the Reinstatement Committee, a party has the right to
- (a) natural justice;
 - (b) be represented by legal counsel, a union representative or another representative at the party's expense;
 - (c) disclosure of any information to be provided to the Committee; and
 - (d) a reasonable opportunity to present a response and make submissions.
- (2) Evidence is not admissible before the Reinstatement Committee unless, at least 10 days before the hearing, the opposing party has been given
- (a) for written or documentary evidence, an opportunity to examine the evidence;
 - (b) for expert evidence, the expert's qualifications and a copy of the expert's written report or, where there is no written report, a written summary of the evidence; and
 - (c) the identity of any other witness, and a summary of the witness's anticipated evidence.
- (3) The Reinstatement Committee may extend beyond 10 days the time required for an opposing party to be provided with evidence under clause 2(b).
- (4) Notwithstanding subsection (2), the Reinstatement Committee may, in its discretion, allow the introduction of evidence that is otherwise inadmissible under subsection (2) and may make directions it considers necessary to ensure that a party is not prejudiced.

Decision of Reinstatement Committee final

115 A decision of the Reinstatement Committee is final. 2019, c. 8, s. 115.

[11] It should also be noted that reinstatement is the subject of regulations: the *Nursing Regulations*, N.S. Reg. 76/2019, provide rules as to forms, notice, hearings, and evidence. The regulations further provide:

Parties to Reinstatement Committee hearing

- 20** The parties to a hearing before the Reinstatement Committee are
- (a) the applicant for reinstatement; and
 - (b) the College, as represented by the Chief Executive Officer or a person designated by the Chief Executive Officer.

Decision of reinstatement committee

- 21 (1)** After considering the evidence and the representations from the parties, the Reinstatement Committee must decide to accept or reject a reinstatement application.
- (2)** The Reinstatement Committee must communicate its decision under subsection (1), together with reasons, in writing to all of the following:
- (a) the applicant;
 - (b) the Chief Executive Officer.

...

Reinstatement eligibility

- 22** To be eligible for reinstatement, an applicant must meet the criteria for registration and licensing under the Act and these regulations ...

[12] These “criteria for registration and licensing”, referenced in that last Regulation can be found at ss. 18 and 20 of the *Act*. I quote here the requirements that would be of interest in the context of the present review:

Application and criteria for registration

- 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,
 - ...
- 20 (1)** An applicant for a practising licence must submit a completed application in a form approved by the Chief Executive Officer together with
 - ...
 - (b) proof satisfactory to the Chief Executive Officer that the applicant
 - (i) continues to meet the criteria in sub- clauses 18(1)(c)(i), (iii), (v) and (vii)
 - ...

[13] Other than those criteria, the *Act* and Regulations are silent as to the factors that the committee should consider in assessing evidence and in coming to its decision. However, case law (particularly from Ontario) has established a list of relevant considerations that have factored heavily in past decisions of such committees:

In the cases of *Kulkarni v. CPSO* (2004) and *Kernerman v. CPSO* (2010), the Discipline Committee identified a list of factors that could be considered on applications for reinstatement. Those factors include:

- a) the facts giving rise to the misconduct that led to revocation and other conduct relevant to the physician's suitability to return to practice;
- b) changes in the physician's circumstances since the time of revocation;
- c) the success of rehabilitation including the degree of insight into past inappropriate conduct;
- d) the physician's current mental health and future prognosis;
- e) the physician's attempts at restitution, if any;
- f) the physician's current knowledge, skill and judgement;
- g) the physician's present character - will he practice medicine with decency, integrity and honesty and in accordance with the law;

h) the impact of the physician's readmission on the reputation of the profession; and

i) the protection of the public

Ontario (College of Physicians and Surgeons of Ontario) v. Manohar, A.V., 2014
ONCPSD 17, at page 4

[14] I shall address each of the applicant's arguments in turn.

[The] decision is illogical in that [the Committee] determined that the applicant lacked the insight and judgment to practice nursing because she did not, in advance of the hearing, complete a boundaries course.

[15] It is the contention of the applicant that the Committee's decision(s) in the area of "insight and judgment" was inordinately and uniquely based on the fact that the applicant had not completed an educational program in the area of "professional boundaries" by the time of the hearing. The applicant says that this is an unjustified and unfair decision as it does not take into account the other evidence before the Committee relating to her insight and judgment, and also does not take into account that the applicant and the NSCN had already agreed that she would take such a course within 90 days of reinstatement (as requested and agreed to by the NSCN prior to the hearing). The applicant notes that as the NSCN itself was content with this plan, it is unreasonable, illogical and unfair for the Committee to disagree with it.

[16] The NSCN, in response, notes that it is only a party to matters before the Committee and therefore entitled to make representations and recommendations, but it is not the decision maker. It points out that the Committee is the independent decision maker and is entitled to make decisions as it sees fit. The NSCN notes that it is the applicant's onus and responsibility to put forward evidence that satisfies the Committee that she should be reinstated.

[17] The NSCN further notes that while it had drafted conditions that it accepted *in the event that* the applicant was reinstated, the decision to reinstate was entirely that of the Committee. The NSCN further notes that the Committee's decision in relation to the applicant's "insight and judgment" was not solely or entirely based on the issue of the boundaries course, but rather on an assessment of everything before it. The NSCN submits that the Committee's decision is reasonable on this point.

[18] The Decision starts by noting that it had before it much documentary evidence, *inter alia*:

- a) the Application for Reinstatement;
- b) an Agreed Statement of Facts agreed upon by the parties (P 8) containing full particulars and background of the matter, including an IME completed in January 2020;
- c) the Application for Consent Revocation and Professional Conduct Committee's decision from March 2021;

- d) evidence of mental health treatment undergone by the applicant since her revocation from practice, including correspondence from the treatment provider;
- e) IME prepared April 2024;
- f) reflective essay prepared by the applicant;
- g) character references provided by the applicant;
- h) evidence relating to the applicant's currency of practice and work history following revocation;

[19] Some of these documents were described in detail by the Committee.

[20] The Committee then made reference to the oral evidence it had heard, including evidence from the applicant herself. It went on to summarize the positions of the parties, including the draft order that had been submitted by the NSCN and agreed to by the applicant. It then provided a summary of a few cases before moving on to its "Findings" and the "Decision".

[21] In the section headed "Findings", the Committee provided some areas of evidence that it considered relevant (and concerning) in relation to the applicant's "rehabilitation", "current skill and judgment", and "current character". The Committee's impressions and findings as to the applicant's insight and/or judgment can be found throughout these paragraphs:

68. Ms. Shanks' Reflective Journey is a statement about herself, her self-care practices, her personal growth, and caring for others in her personal life. While it is reasonable to include how she has personally grown and changed, her statement is lacking in a real understanding of her actions in her professional capacity as a nurse. The Reinstatement Committee finds that her only reference to boundaries is

that it is “vital to self-care”. There is no acknowledgement or reference whatsoever to the client and how her actions affected Client A.

69. After her license was revoked, Ms. Shanks worked doing deliveries and starting a cleaning company, which are very commendable. However, it appears from the IME report of March 2024, that at the time of the assessment, Ms. Shanks was also working part time as a peer support worker at a health organization which assists individuals in need. The Reinstatement Committee finds that Ms. Shanks’ working as a peer support worker with individuals in need, after she submitted her application for reinstatement, is very concerning. This organization assists vulnerable persons. Ms. Shanks’ decision to work as a peer support worker at this organization suggests she has not rehabilitated herself.

70. The IME report also notes that Ms. Shanks ‘is interested in returning to nursing and has a particular interest in patients who are in “dire” need’. Ms. Shanks’ interest patients who are in “dire” need upon her return to nursing is also concerning and puts her judgement and insight into question and is further evidence that she has not rehabilitated herself.

71. At paragraph 26 of the Amended Decision of the Professional Conduct Committee, the assessor states that “Ms. Shanks knew her actions were inappropriate and she was concerned about boundaries.” However, during her testimony, when questioned by the Reinstatement Committee, Ms. Shanks stated that she had not completed a boundaries course. The Committee understood her to say that she tried but could not find one. She also stated that she had never read the NSCN Boundaries Guidelines.

72. The Reinstatement Committee takes notice that by simply typing the word “boundaries” in the NSCN website, you will see “Professional Boundaries” and if you click on that you will see “Professional Boundaries and the Nurse-Client relationship: Guidelines for Nurses.” It is very difficult for the Reinstatement Committee to understand Ms. Shanks’ response when questioned about a boundaries course or her response that she had never read the NSCN Boundaries Guidelines in the circumstances of her professional misconduct. Also, if she could not find a boundaries course, it is difficult for the Committee to understand why she would not contact the NSCN to assist her with this. While a boundaries course was not required under the NSCN Reinstatement Policy, a nurse who has been found guilty of professional misconduct for having a sexual relationship with the client, and borrowing money from a client, should have the insight to have sought out a boundaries course on their own.

73. The IME report at page 8, refers to the considerable body of literature on boundary violations in professional practice. The assessor goes on to recommend that she take a boundaries course on page 9 of the report. Even if Ms. Shanks had not realized in August 2023 when she reapplied for reinstatement that she should complete a boundaries course, she should have realized it after receiving a copy of the IME report. If she was really intent on preparing to re-enter the profession, the

Reinstatement Committee finds that she would have found a way to complete a boundaries course.

74. The Reinstatement Committee finds that Ms. Shanks has not sufficiently rehabilitated herself. It appears from her evidence that even during the Professional Conduct Process she did not have the insight or judgement to review the NSCN Boundaries Guidelines nor make any significant effort to find a boundaries course. In addition, during the past year since submitting her application, the Reinstatement Committee finds that Ms. Shanks did not have the insight or judgement to review the NSCN Boundaries Guidelines or make any effort to find a boundaries course.

75. The draft Order does provide that Ms. Shanks must successfully complete a boundaries course, and she must create a plan to maintain her professional boundaries both, within 90 days of the date of the Order. As Ms. Shanks has 90 days under the draft Order to complete a boundaries course, it is therefore possible that Ms. Shanks could return to practice before she completes a boundaries course. The Reinstatement Committee finds it concerning that Ms. Shanks is not required to take a boundaries course prior to reinstatement of her license.

...

78. One of the conditions in Mr. MacIsaac's letter is "Conduct a self-assessment of their individual competence and develop and implement a learning plan to address any gaps." While it is not necessary under the Reinstatement Policy, if Ms. Shanks had the necessary insight, she would have conducted a self-assessment of her competence and developed a learning plan on her own initiative given she had not practiced since 2018 ...

79. In each of the four cases referred to the Reinstatement Committee, all of the applicants had completed education to remain current in their respective fields during the time they were out of practice. One even re-trained in an allied health field. The evidence shows that Ms. Shanks did not do any preparation or education for her possible return to practice, including reviewing even the *Code of Ethics* or the NSCN's *Standards of Practice for Registered Nurses*.

80. In terms of preparing for returning to practice, Ms. Shanks stated on questioning that she "will look for mentorship and ask questions. Whatever [she] need[s] to learn, [she] will." There is no evidence that Ms. Shanks has done any reading or taken any courses, whether online or in person in the last five years to ensure that she has remained current with nursing practices. Ms. Shanks could, at a minimum, have gone on the NSCN website and reviewed the Standards of Practice for Nursing and completed the Online Education Modules. The Reinstatement Committee is sympathetic to Ms. Shanks' economic circumstances, but there are free resources available to her which she could have accessed since 2018.

...

81. The Reinstatement Committee finds that she has made no effort to prepare for her return to practice in terms of education to ensure she meets current standards. Therefore, Ms. Shanks does not have the current skill and judgement to return to the practice of nursing at this time.

82. The Reinstatement Committee acknowledges the work which Ms. Shanks has done on her personal journey, her commitment to therapy and understanding her triggers. She is clearly committed to understanding the root of her issues and learning from her past.

83. However, Ms. Shanks has not demonstrated the necessary insight or understanding with respect to her relationship with vulnerable people (clients, family members and friends) or the need to maintain her distance from them because of the potential to engage in boundary crossings or violations. Ms. Shanks' providing care for vulnerable persons is of concern.

84. As noted above, in the IME report the assessor refers to Ms. Shanks' work as a peer support worker for a health organization which assists individuals in need. This report is dated April 2024, which was after Ms. Shanks applied for reinstatement of her licence. To be working with individuals in need just months before this Hearing raised concerns about Ms. Shanks' judgement and insight into the issues which led to the revocation of her license. It goes to a fundamental lack of understanding of the root of the boundary violations: working in a situation where there is an imbalance of power and a potential for abuse because of the vulnerability of the client population.

85. Ms. Shanks' own evidence and that of one of her character references is that since her revocation, she cared for her cousins in her home, both of whom are vulnerable. Her character references state that she opens her homes to others, including the family of one of the references. While Ms. Shanks denied opening her home to people other than family members, her references suggest that she does. It is understandable to help family members who are in need. However, given the reason for Ms. Shanks revocation of her nursing license, it is of concern that her character references suggest that she opens her home to others.

86. In addition, the evidence related to Ms. Shanks opening her home to others and assisting vulnerable individuals is an issue related to her rehabilitation with respect to boundaries.

...

88. Ms. Shanks identifies as and appears to define herself as a nurse. It appears that her need to be seen as a nurse or caregiver is stronger than her need to develop insight about the potential pitfalls of working with vulnerable people. The evidence suggests that to date, Ms. Shanks has focused only on herself and the impact her conduct has had on her, but not on the people or clients she has worked with, cares for, or who are in "dire need". The hallmark of nursing is the selfless provision of care to others and ensuring that the wellbeing of the patient or client is the primary consideration. Based on her reflective writing, the comments from

her various therapists and character references, and her responses at the Hearing, Ms. Shanks has not demonstrated accountability for the impact her actions have had on others.

89. Based on these findings, the Reinstatement Committee has determined that Ms. Shanks does not currently have the required character to return to the practice of nursing.

90. As the Reinstatement Committee has found that Ms. Shanks has not rehabilitated herself, is not of good current character and does not have current skill and judgement to practice, the conditions and restrictions set out in the draft Order and Mr. MacIsaac's letter are not sufficient to protect the public, nor ensure the reputation of the professions ability to self-regulate.

91. It is of note that in the draft Order and in Mr. MacIsaac's letter, there are no conditions required of Ms. Shanks prior to her reinstatement. All of the conditions and restrictions appear to be upon the reinstatement of her registration and licensing. Without current skill and judgement, rehabilitation, a boundaries course and a change in her current character prior to reinstatement, the Reinstatement Committee finds the public will not be protected.

...

[22] It is clear from the reading of the decision as a whole that the fact that the applicant had not taken a boundaries course prior to the hearing was only one factor in their decision, albeit a significant one. They did conclude, as it was their prerogative to do, that given the circumstances before her the applicant should have known to seek out a number of areas of assistance and educational/training opportunities. They found that the applicant's failure to seek out or avail herself of any such resources (even those that would have been easy, such as a viewing of website resources) was a demonstration that the applicant had not yet reached a level of insight and rehabilitation that the Committee felt she should have.

[23] In my view, their decision in this area was intelligible, rational and followed a reasonable chain of logic. I find that it quite comfortably meets the *Vavilov* standard.

[The] decision is unjustified and illogical given the uncontradicted expert opinion that had been presented.

[24] An “Independent Medical Examination (psychiatric)” report of the applicant, prepared by psychiatrist Dr. P. Scott Theriault, was before the Committee. It is contained in the record before me.

[25] This report never explicitly states its purpose. Dr. Theriault does note at p. 7:

I will proceed by way of discussion of Ms. Shanks’ case as, due to the unusual nature of the IME itself, I was not provided with any list of questions to respond to.

[26] I take this to mean that Dr. Theriault may not have been entirely clear as to what he was being asked. In any event, this report did provide the Committee with an expert opinion as to the applicant’s psychiatric health. It provided a diagnostic impression of “Major depressive disorder, recurrent, in remission.” The report also noted, as the Committee repeated in its Decision:

76. Based on the evidence in the IME report and treatment provider report, Ms. Shanks is healthy and there is no medical reason that she cannot return to the practice of nursing.

[27] This opinion is not questioned by the Committee and, indeed, their reasons for denial of the application are not related to the applicant's health.

[28] In his IME report, Dr. Theriault goes on to say (p. 8):

In my opinion, Ms. Shanks does not, as a function of any mental disorder, demonstrate any ongoing disability that would render her a risk to the safety or health of any patients under her care should she return to the practice of nursing. She does not, in my opinion, present a significant risk for re-engaging in boundary violation given Ms. Shanks' currently stable mental state, her renewed sense of self-confidence and self-efficacy and her continued involvement in supportive structures, both formal and informal.

However, in my opinion, an ounce of prevention is worth a pound of cure. Should Ms. Shanks return to nursing, she should pay particular heed to the two factors noted above.

In my opinion, Ms. Shanks should likely refrain from particularly vulnerable populations, such as individuals with substance use disorder (particularly in light of her own son's substance use disorder and her family history of same) or certain groupings of psychiatric patients such as individuals with personality disorders whose own needs may impact on the professional relationship. Ms. Shanks could take further preventative steps by working primarily with patients with whom she would have a fixed and time-limited interaction rather than in an area such as was the case with patient A, with prolonged regular contact over time. In this way, Ms. Shanks could return to the practice of nursing and through her ongoing work with her therapist, and her attention to preventative measures (which could at the most practical level, include not giving patients any access to her email) return to practice dealing with any number of other patients in "dire" circumstances. In light of this, in addition to her current therapeutic endeavors, Ms. Shanks may benefit from engagement in a boundaries course, if such is available, either online or in person.

[29] It is clear that the IME report was addressing these issues from a strictly medical viewpoint. It is also clear that, even in providing his opinions on the issue of "risk", Dr. Theriault takes the time to express quite a significant "caveat".

[30] Most importantly, the decision that was to be made by the Committee encompassed far more than this report was addressing. Dr. Theriault was not the decision maker; his contribution was only one part of the evidence that the Committee was presented with and had to grapple with. The Committee did not reject his report, nor does it appear to even quibble with its findings in any appreciable way; his opinions and findings were included, along with all of the other evidence that the Committee found important or persuasive.

[31] In my view, the decision of the Committee took the IME report into account and did not discard that evidence. It was simply a report from a medical practitioner's perspective, which formed one part of the entire analysis before the Committee. I see nothing in their analysis or treatment of this report which could be deemed illogical or unjustifiable.

[The] decision that the applicant lacked "current skill and judgment" was unreasonable, unjustified, and not supported by the evidence adduced at the hearing.

[32] To some extent, I have addressed this already in this decision. In my view, the Committee laid out in detail its reasons for concluding that the applicant lacked

“current skill and judgment”. Its assessment of the evidence before it culminated in their section entitled “Decision” starting at para. 93:

93. The Reinstatement Committee carefully and thoughtfully considered all of the evidence, submissions and case law which were presented during the Hearing. First and foremost, the Reinstatement Committee considered the Objects of the College and in particular, the public interest and the protection of the public. In considering the public interest one of the important considerations was Ms. Shanks past misconduct in the context of the factors set out in the caselaw.

94. As to Ms. Shanks’ past misconduct, both the sexual aspect and the borrowing of money were considered by the Reinstatement Committee when assessing the evidence with respect to rehabilitation and current character factors and in making its findings. Ms. Shanks’ personal and sexual relationship and borrowing of money, regardless of the duration, were clear boundary violations, which she acknowledged during the Professional Conduct Process. If Ms. Shanks had insight into her misconduct, she would have sought assistance to find a boundaries course and taken it before the Hearing. Therefore, her failure to complete a boundaries course or even review the NSCN’s *Professional Boundaries and Nurse Client Relationship Guidelines* or the *Sexual Misconduct Standard of Practice for Nurses* prior to applying for reinstatement or before this Hearing has led the Reinstatement Committee to conclude that she has not rehabilitated herself and has no real insight with respect to boundaries.

95. As to her current character, it appears from the evidence that Ms. Shanks has worked hard on her personal health and growth. She appears to be a kind, caring and empathetic person and she cares deeply for others, especially those in need. The Reinstatement Committee accepts that Ms. Shanks has taken responsibility for her actions in 2018 and that she has been engaging in therapy and self-development and reflection. The impression the Reinstatement Committee gets from her character witnesses is that Ms. Shanks does what she can to help vulnerable individuals. This is both a current character issue and a boundaries issue. While in other circumstances this would be found to be a very positive aspect of one’s character, however, in Ms. Shanks’ personal circumstances, it is (sic) concerning and raises questions as to Ms. Shanks’ judgement and insight and therefore the Reinstatement Committee has determined that she does not have the current character to practice nursing at this time.

96. While Ms. Shanks has made significant effort with her health and self-growth, she has not made any effort to prepare professionally to return to the practice of nursing. In light of the length of time she has been out of acute care nursing, Ms. Shanks has not demonstrated that she is ready to do what is necessary to re-enter the profession. The last time she practiced as a nurse was 2018. In the last five years, before she submitted her application, she has only worked 151.5 hours. If she last worked in 2018, it is now six

years since Ms. Shanks practiced. No evidence was presented of any form of education completed by Ms. Shanks' in the last six years. Therefore, the Reinstatement Committee has determined that Ms. Shanks does not have the necessary skill judgement and currency to return to practice at this time.

97. The common threads throughout these noted factors are insight and judgement. Ms. Shanks has not demonstrated that she has the necessary insight and judgement to practice nursing at this time. Allowing Ms. Shanks to return to practice without having rehabilitated herself with respect to boundaries, without the current character, without the necessary skill, judgement and currency to practice, it is not in the public interest and does not meet the Objects of the College.

98. The Reinstatement Committee accepts that the standard of proof is on a balance of probabilities and that Ms. Shanks has the onus of proof.

99. The Reinstatement Committee has determined that Ms. Shanks has not proven, on a balance of probabilities, that she has the necessary insight and judgement necessary to practice nursing at this time. ...

[33] This decision was the Committee's to make. On balance I find that the Committee's reasons are intelligible, justifiable, and are supported by the evidence that was before them, as well as requirements, rules and common-law factors that governed their decision.

[The Committee] misapprehended the evidence in relation to the applicant's hours of practice as a nurse since 2018.

[34] The evidence before the Committee contained contradictory evidence as to the applicant's currency of practice. The original Agreed Statement of Facts put before the Committee indicated that, "34. Ms. Shanks has practise (sic) over 320 hours within the last 5 licensing years." However, counsel for NSCN wrote to the

Chair of the Committee on September 6, 2024, and noted that a correction was needed:

Article 31 of NSCN's By-Laws indicates the various ways whereby an applicant may satisfy the currency of practice requirement, including by nursing practice that meets the criteria established by Board resolution (Article 31.1.2) – which includes a minimum of 320 hours of practice no later than 5 licensing years prior to their application.

Initially, NSCN and Catherine Shanks believed that she satisfied the 320 hours of practice requirement. Accordingly, at paragraph 34 of the original version of the Agreed Statement of Facts sent to the Reinstatement Committee on August 14, 2024, the parties stated:

34. Ms. Shanks has practise over 320 hours within the last 5 licensing years.

Upon further review, the parties recently determined that Catherine Shanks has in fact only practised 280 hours within the last 5 licensing years. The parties enclose a revised version of the Agreed Statement of Facts to reflect this change. Paragraph 34 of the Agreed Statement of Facts now states:

34. Ms. Shanks has practised 280 hours within the last 5 licensing years.

[35] In her oral evidence before the Committee, the applicant herself stated that she had practiced 151.5 hours in the last five years. (Ms. Shanks' counsel submits that she was in error in saying this.)

[36] The Committee noted at para. 77 of its Decision:

77. Ms. Shanks' evidence is that she has worked 151.5 hours in the last five years. To meet currency of practice, 320 hours are required. Therefore, based on the number of hours she has worked in the last five years Ms. Shanks does not meet the NSCN's Currency of Practice requirements set out in Bylaw 31. However, the issue of her currency of practice has been addressed by the conditions and restrictions set out in Mr. MacIsaac's letter of September 4, 2024.

[37] This evidence (in relation to the applicant having worked "151.5 hours") was repeated by the Committee in their para. 96 (already quoted hereinabove).

There was no mention by the Committee that the Agreed Statement of Facts had provided a different number.

[38] It is the submission of the applicant that the Committee misapprehended the evidence in relation to “currency of practice” and failed to notice/resolve the contradiction(s) that was (were) raised by the documentary versus the oral evidence.

[39] The respondent noted that even if this contradiction had been resolved by the Committee, it would have made no difference to their decision. The applicant did not meet the statutory criteria in either scenario, i.e., whether the applicant had worked 280 hours, or 151.5 hours, neither option met the “currency of practice” requirement.

[40] Paragraph 77 of the Decision, noted hereinabove, correctly states evidence that was before the Committee. The applicant’s evidence was noted, and the “currency” requirements are stated. The Committee had the September 6, 2024, letter and the Agreed Statement of Facts before them, and would have been aware of the discrepancy in the number of “worked” hours. I do not take their failure to specifically mention it as evidence that they misapprehended it; it simply is not mentioned. Neither option fulfilled the statutory criteria. I agree that this

discrepancy made no difference in the logic of their decision to deny the application (or, put another way, *would have* made no difference in their logic).

[41] In my view, the Decision meets the *Vavilov* test and should not be disturbed. The applicant's request to quash the Decision is denied. If the parties cannot agree on costs, I would accept concise written submissions from counsel within 30 days of this decision.

Boudreau, J.