

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Dempsey v. Nova Scotia Barristers' Society*, 2026 NSSC 109

**Date:** 20260410

**Docket:** Hfx No. 546538

**Registry:** Halifax

**Between:**

Nathan Kirk Dempsey

*Applicant*

v.

Nova Scotia Barristers' Society

*Respondent*

**DECISION ON MOTION ON STANDING**

**Judge:** The Honourable Justice Scott C. Norton

**Heard:** April 2, 2026, in Halifax, Nova Scotia

**Decision:** April 10, 2026

**Counsel:** Nathan Dempsey, self-represented Applicant  
Andrew Nielsen and Grace Levy, for the Respondent

**By the Court:**

**Introduction**

[1] The respondent moves for an order dismissing certain grounds in the applicant's Notice of Judicial Review as being requests for substantive review for which the applicant does not have standing.

[2] The applicant filed a Notice of Judicial Review ("Notice") of the decision dated August 19, 2025, of the Complaints Review Committee ("CRC") of the Nova Scotia Barristers' Society ("Society") ("Decision"). The Decision affirmed the July 3, 2025, ruling of the Executive Director of the Society that dismissed a complaint made by the applicant against a practising lawyer and member of the Society.

[3] A Motion for Directions was heard by Justice Jamie Campbell on December 30, 2025. At that motion, Justice Campbell scheduled this motion to determine the standing of the applicant to advance the impugned grounds. There is a second motion scheduled for a half-day hearing on June 22, 2026, to determine what constitutes the "Record". The judicial review hearing is scheduled for October 1, 2026.

**Background**

[4] Mr. Dempsey complained to the Society that one of its members had breached the Society's ethical obligations while representing Mr. Dempsey's former employer in relation to enforcement in Nova Scotia of substantial costs awards made by courts in British Columbia. The British Columbia costs awards had been made following various litigation initiated by Mr. Dempsey against his former employer in British Columbia. His complaint asserted that actions taken by the former employer's Nova Scotia counsel to enforce those costs awards in Nova Scotia were examples of the lawyer assisting (or failing to report) his client for engaging in fraudulent or illegal conduct.

[5] On July 3, 2025, the Society dismissed Mr. Dempsey's complaint against the member. It concluded that the documentation Mr. Dempsey had provided did not establish that the member had failed to comply with his ethical obligations. It also concluded that the remedy Mr. Dempsey sought was outside the Society's jurisdiction.

[6] On July 4, 2025, Mr. Dempsey completed a Request for Review form and submitted it to the Society. The Society transmitted the Request, and the extensive documentary material that Mr. Dempsey had filed in support of his complaint, to the CRC. The CRC reviewed the complaint and the material that had been before the Society.

[7] On August 19, 2025, the CRC decided that the Society's determination had been reasonable.

[8] Mr. Dempsey filed a "Notice for Judicial Review" on September 5, 2025.

### **The Impugned Grounds**

[9] Mr. Dempsey's Notice asserts that it is challenging "the CRC Decision as the final determination of the NSBS, and to the extent necessary, also challenges the underlying dismissal dated July 3, 2025, which the final decision purports to affirm."

[10] The Notice sets out Mr. Dempsey's summary of his request for review under the heading "Decision to be Reviewed." This summary describes in detail the basis for his complaint to the Society.

[11] The Notice then lists Mr. Dempsey's asserted grounds for review, under the heading "Grounds for Review":

- A. "Unreasonableness: Failure to Grapple with the Record or Legal Constraints."
- B. "Procedural Fairness: Lack of Responsive Reasons and SRL Considerations."
- C. "Misapprehension of Mandate and Jurisdiction: Improper Deference to Court Proceedings."
- D. "Failure to Consider Relevant Evidence / Overlooking Contradictory Material."
- E. "Fettered Discretion and Over-Rigid Screening Under Regulation 9.2.2."
- F. "Transparency and Reviewability: Reasons Must Permit Judicial Scrutiny."

- G. “Administrative Delay: Protracted Delay Undermines Lawfulness of Screening Outcome.”
- H. “Seriousness of the evidence and the public-interest duty to investigate.”

[12] The grounds are followed by requests for relief, which can be summarized as: quashing the decision based on unreasonableness or procedural unfairness; requiring a new decision with more or different reasons; a declaration that the NSBS misapplied its regulations; and costs.

### **Issues**

[13] The issue before me is to define the scope of the applicant’s standing on a judicial review as a complainant in a professional disciplinary process.

[14] At the outset, I observe that this issue should ordinarily be dealt with at the time of the hearing of the merits of the judicial review. However, I was persuaded that in the circumstances of this case, including the detailed briefs filed, that it would be in the interests of judicial economy to address the issue of standing as a preliminary issue in advance of the merits hearing. This decision should not be read as an endorsement that such issues should now ordinarily be dealt with as a preliminary issue.

[15] In response to the motion, the applicant filed an affidavit. Its contents are not probative of the issue before me. It is presumptively inadmissible under *Rule 39.02*. It contains irrelevant correspondence between the parties, advances inadmissible and speculative opinion evidence, and makes impermissible argument in the form of a statement of fact. It is inadmissible on the motion before me and will not be considered.

### **Law and Analysis**

[16] The law in Nova Scotia is well established that, as a complainant in a professional disciplinary process, the applicant lacks standing to seek judicial review of the substantive merits of the decision under review. The governing jurisprudence establishes that, unless legislation expressly provides otherwise, a complainant is a non-party to the disciplinary process and has no legal interest beyond that of a member of the public. Judicial review is therefore limited to procedural fairness only, and only to the minimal degree of fairness owed in these circumstances.

*Tupper v. Nova Scotia Barristers' Society*, 2013 NSSC 290; *Perry v. Nova Scotia Barristers' Society*, 2016 NSSC 121; *Watson v. Nova Scotia Barristers' Society*, 2025 NSSC 332; *Howe v. Nova Scotia Barristers' Society*, 2026 NSSC 52.

[17] The relevant considerations in determining the content of procedural fairness were set out in *Baker v. Canada (Minister of Citizenship & Immigration)*, [1999] 2 S.C.R. This court, applying the *Baker* framework, has consistently reaffirmed that the procedural fairness owed to a complainant in a professional disciplinary process is at the lower end of the spectrum.

[18] In my recent decision in *Howe*, the applicant had argued that the duty of fairness in the CRC context required enhanced procedural entitlements, including detailed disclosure, robust engagement with systemic-discrimination concerns, and fulsome reasons. I rejected this position and described the limited content of the duty of procedural fairness owed to complainants:

- (a) First, with respect to disclosure, procedural fairness requires the CRC to identify in its decision the members who conducted the review. While the omission to do so was a deficiency, it did not rise to the level of a reviewable breach (para. 25).
- (b) Second, fairness requires that the CRC genuinely consider the complainant's submissions. In *Howe*, the CRC stated in its decision that it "carefully considered" Mr. Howe's materials and conducted a "thorough review." This satisfied the duty of procedural fairness owed to a complainant. No higher degree of engagement or elaboration was required (para. 28).
- (c) Third, there is clear distinction between procedural fairness and attempts to re-litigate the merits of the decision. Mr. Howe argued that the CRC's reasons failed to meaningfully address systemic discrimination and other core issues. Such arguments do not speak to the procedural rights afforded to a complainant but instead amount to a substantive attack on the adequacy or reasonableness of the CRC's reasons (para. 29). Complainants have no standing to seek judicial review on such grounds (*Perry*, at paras. 108-112).
- (d) The provision of reasons satisfies the duty of procedural fairness owed to a complainant (para. 32).

- (e) The complainant in *Howe* also raised the issue of delay. The court emphasized that a party alleging delay had to prove that the delay was both unacceptable and caused significant prejudice (para. 38). In *Howe*, seven (7) months elapsed between the delivery of Mr. Howe's Request for Review and the CRC's decision. I found no significant or undue delay, stating that "[t]here is no requirement in the *Regulations* for the CRC to render a decision by a certain date. Any expectations a complainant may have about the time required for the CRC to render a decision has no basis in the governing statute." (para. 40)
- (f) The complainant in *Howe* did not present any evidence to demonstrate how he had been significantly prejudiced by the delay. I stated that "Mr. Howe is a non-party to the complaint, and any rights engaged by this process are not equivalent to the member who is the subject of a complaint. Mr. Howe does not have a defence to mount and is simply not prejudiced by delay in the manner a party would be." (para. 41) Mr. Dempsey's request for judicial review based on delay must be considered within this context.

[19] I turn now to analyse the grounds advanced by Mr. Dempsey. The respondent contends that grounds A, C, D, E, F, and H are "entirely substantive." Mr. Dempsey accepts that the law limits him to arguments of procedural fairness but contends that his grounds are procedural in that "Each impugned ground is directed at how the Society and the CRC received, filtered, characterized, and explained the materials before them." I will refer to his own description of the grounds in determining whether the ground is substantive or procedural or both.

[20] Ground A. This ground alleges: "Unreasonableness: Failure to Grapple with the Record or Legal Constraints." Mr. Dempsey in his brief expounds that this ground, "asks whether the Society's decision-makers engaged with the core evidentiary record at all and whether their reasons adequately explain how the 'no factual basis' conclusion can be squared with the primary-source documents." This is an argument that, on its face, engages the substantive reasonableness of the decision. It is not an argument that Mr. Dempsey as a complainant in a professional disciplinary process has standing to make.

[21] Ground C alleges, "Misapprehension of Mandate and Jurisdiction: Improper Deference to Court Proceedings." Mr. Dempsey further describes this ground in his brief as a pleading: "that the CRC misapprehended its regulatory mandate by treating

the subject-matter as ‘properly dealt with through civil proceedings and not through the complain process,’ thereby conflating the availability of court remedies with the Society’s distinct public-interest duty to investigate professional misconduct.” This argument does not engage the low-end procedural fairness that was owed to Mr. Dempsey. The argument engages substantive issues central to the legality of the decision. As a complainant, Mr. Dempsey does not have standing to make this argument.

[22] Ground D alleges, “Failure to Consider Relevant Evidence / Overlooking Contradictory Material.” Mr. Dempsey argues that this ground alleges “that the CRC failed to consider or address material, contradictory evidence ... and that its conclusion that the complaint had ‘no factual basis’ is impossible to reconcile with that evidentiary record.” Like Ground A, this argument engages the weighing of evidence. It is clearly substantive. Mr. Dempsey does not have standing to make this argument.

[23] Ground E alleges, “Fettered Discretion and Over-Rigid Screening Under Regulation 9.2.2.” Mr. Dempsey explains that this ground alleges that the CRC effectively fettered its discretion by applying this regulation in an overly rigid, categorical way without an assessment of whether the pleaded facts would amount to professional misconduct. This engages a substantive analysis of the application of the regulation to the facts and is beyond the scope of procedural fairness that Mr. Dempsey is entitled to challenge.

[24] Ground F alleges, “Transparency and Reviewability: Reasons Must Permit Judicial Scrutiny.” Here Mr. Dempsey argues that the two-paragraph Decision does not meet the standard of transparency, intelligibility and justification required for meaningful review. This argument engages an analysis of sufficiency of reasons that was rejected as substantive in *Howe* (para. 29) and *Perry* (paras. 108-112). Mr. Dempsey does not have standing to make this argument.

[25] Ground H alleges, “Seriousness of the evidence and the public-interest duty to investigate.” Mr. Dempsey explains that this allegation is that given the seriousness of the documentary evidence, a bare “no factual basis” dismissal without explanation represents an “unreasonable application” of the Society’s screening powers and an “abdication of its public-interest mandate”. Again, this clearly engages an analysis into the substantive reasonableness of the decision. This argument is beyond the scope of procedural fairness and Mr. Dempsey does not have standing to make it.

[26] I now turn to the two grounds that the Society concedes have some basis in procedural fairness.

[27] In Ground B, Mr. Dempsey asserts that as complainant he was owed “procedural fairness tailored to context.” The NSBS agrees and says that this Court has determined that, in the context of the CRC, complainants are entitled to limited procedural rights, as described above.

[28] Similarly, in Ground G Mr. Dempsey asserts that the CRC’s Decision should be quashed because of what he characterizes as “delay.” In *Howe*, I found that allegations of delay must be assessed contextually, including evidence of prejudice (paras. 35-38).

[29] The Society argues that regarding Grounds B and G, the court should specify that any procedural fairness arguments must be confined to the limited procedural rights available to the applicant. That is saying no more than the legal principles that have been developed in the authorities should be applied. It will be for the judge hearing the judicial review on the merits to determine what arguments are relevant in respect of those grounds.

[30] Further, it will be within the discretion of the judge hearing the merits of the judicial review to consider whether to permit any additional legitimate arguments of procedural fairness.

[31] Mr. Dempsey in his brief raised the issue of him having an interest as an aggrieved person or public interest standing. In my view there is no support in the authorities for a pathway for Mr. Dempsey to seek standing on either basis. There is a difference between being interested in the outcome of a decision and having an interest in the decision: *Watson, supra*. The courts in this province have specifically spoken to the scope of the interest of a complainant in a professional disciplinary process.

## **Conclusion**

[32] The motion is granted. I dismiss Grounds A, C, D, E, F, and H of the Notice of Judicial Review as being requests for substantive review for which the applicant does not have standing. I decline to further restrict or define the procedural fairness arguments to be made in respect of Grounds B and G. I decline to grant Mr. Dempsey permission to amend his pleadings. If he wishes to seek amendment of his pleadings, he must bring a proper motion for an order permitting the amendment.

[33] I set the amount of costs for the motion at \$1,000 and award that amount as costs in the cause payable to the Society at the conclusion of the matter.

Norton, J.