

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Ooms v. Health Professions Review Board*,
2023 BCSC 615

Date: 20230417
Docket: 190673
Registry: Victoria

In the Matter of the *Judicial Review Procedure Act* R.S.B.C. 1996, c. 241

Between:

Marcus Arthur Ooms

Petitioner

And:

**Health Professions Review Board,
College of Physicians and Surgeons of British Columbia,
Dr. Abram Isaac Garson Karrel**

Respondents

Before: The Honourable Mr. Justice G.R.J. Gaul

On judicial review from: An order of the Health Professions Review Board, dated
December 11, 2018

Reasons for Judgment

The Petitioner, appearing on his own behalf:

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Place and Date Hearing:

Victoria, B.C.
June 22, 24, 2021
August 18, 2021
February 15, 2022

Written submissions of the Petitioner:

March 4, 2022
April 1, 2022

Written submissions of Health
Professionals Review Board:

March 24, 2022

Written submissions of the College of
Physicians and Surgeons of
British Columbia:

March 23, 2022
March 25, 2022

Written submissions of Dr. Karrel:

March 24, 2022

Place and Date of Judgment:

Victoria, B.C.
April 17, 2023

Introduction

[1] The petitioner, Marcus Ooms, seeks the judicial review of a decision of the Health Professions Review Board (the “Review Board”), pursuant to the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 [JRPA].

[2] In the summer of 2017, Mr. Ooms filed a complaint against the individual respondent, Dr. Abram Karrel, with the College of Physicians and Surgeons of British Columbia (the “College”). On 5 July 2018, the College’s Inquiry Committee (the “Committee”) dismissed Mr. Ooms’ complaint (the “Disposition”).

[3] Mr. Ooms applied to the Review Board seeking a review of the Disposition, pursuant to s. 50.6 of the *Health Professions Act*, R.S.B.C. 1996, c. 183 [HPA]. The Review Board conducted the review and in its 11 December 2018 decision, it dismissed Mr. Ooms’ application (the “Decision”).

[4] Mr. Ooms seeks to have the Decision set aside and the matter returned to the Review Board for reconsideration.

Background Facts**Mr. Ooms’ WorkSafeBC Claim**

[5] In 2009, Mr. Ooms was employed with Irwin Industries (1998) Ltd. as a gutter installer. While at work on 22 June 2009, Mr. Ooms fell from a roof and sustained injuries to his foot and leg.

[6] As a result of his work-related injuries, Mr. Ooms submitted a claim for financial compensation to the Workers’ Compensation Board of British Columbia, now more commonly known as WorkSafeBC (“WorkSafeBC”). On 7 July 2009, WorkSafeBC accepted Mr. Ooms’ claim and began providing him with benefits pursuant to the *Workers Compensation Act*, R.S.B.C. 1996, c. 492 [WCA]. I note parenthetically at this point, that revisions were made to the WCA in 2019 that became effective in April 2020; however, those revisions have no material bearing on the issues presently before the Court.

[7] In September 2012, WorkSafeBC determined that Mr. Ooms' injuries were permanent and that he would be entitled to additional benefits under the WCA.

[8] In an effort to determine an appropriate rehabilitation program for Mr. Ooms, the WorkSafeBC case manager who was responsible for Mr. Ooms' claim arranged for Mr. Ooms to attend for a psycho-vocational assessment in November of 2012 conducted by Dr. Ingrid Friesen (the "First Assessment"). While the results of the First Assessment were reasonably positive regarding Mr. Ooms' prospects for retraining, Dr. Friesen noted that "a possible barrier in retraining, however, may be [Mr. Ooms'] symptoms of depression".

[9] As a result of the First Assessment and in particular the observation that Mr. Ooms was exhibiting signs of depression, Mr. Ooms undertook a program of psychological therapy from December 2012 until May 2013.

[10] With Mr. Ooms continuing to have difficulties returning to work, he underwent a second psychological assessment with Dr. Friesen in May of 2014 (the "Second Assessment"). In her report dated 15 July 2014, Dr. Friesen concluded that Mr. Ooms suffered from a Major Depressive Disorder ("MDD") and that his workplace accident in 2009 "can be considered to be a moderate contributing factor" to that disorder.

[11] In July 2014, WorkSafeBC accepted that Mr. Ooms' MDD was a work-related injury under the claim he had submitted in 2009. In light of this finding, WorkSafeBC started to provide additional health care benefits to Mr. Ooms in the form of treatment and medication.

[12] From approximately August 2014 until February 2016, Mr. Ooms participated in further psychological counselling to assist him in addressing his MDD.

[13] On 16 December 2015, Mr. Ooms attended the Royal Jubilee Hospital Acute Care Centre for an emergency psychiatric consultation. In her written report dated 16 December 2015, Dr. Deborah Sheinbaum, the attending psychiatrist who had met with and examined Mr. Ooms, observed:

[Mr. Ooms] has also been seeing a psychologist for quite some time through WorkSafeBC. I am not sure what issues they are dealing with, because his issues seem to be growing and do not seem to be resolving. At any rate, it appears as though just when he was about to go back to work and no work was available, things began to deteriorate...

[14] With respect to Mr. Ooms' mental health condition, Dr. Sheinbaum concluded:

There are all sorts of complicated issues which certainly are affecting this gentleman's mental status, in my opinion...He is unable to go back to work, and he is being treated with different medications, which I do not really think are going to make much of a dent until he makes some decisions in his life with respect to his employment and his relationships...

...

... There is certainly some chronic dysthymia here...I think that we are seeing evidence of a personality disorder, mixed, more than a straightforward Axis 1 diagnosis.

[15] The individual respondent, Dr. Abram Karrel is a physician and registered member of the College of Physicians and Surgeons of British Columbia (the "College"). At all material times, Dr. Karrel was employed by WorkSafeBC as a medical advisor. WorkSafeBC medical advisors do not determine a claimant's entitlement to benefits or compensation. A medical advisor's role largely entails conducting medical documentation reviews for the purpose of assisting WorkSafeBC decision makers and providing clinical opinions on medical disability: see *Rehabilitation Services and Claims Manual*, Volume II, Policy Item #97.30.

[16] On 13 January 2016, Mr. Ooms' WorkSafeBC case manager met with Dr. Karrel and other WorkSafeBC employees who were involved in managing Mr. Ooms' claim. The written report from that meeting includes the following notations:

The issues are:

Is [Mr. Ooms'] decline in mood compensable? If so, is the change so significant (in comparison to his functional stats at the time of the psych assessment), that it would render him totally disabled?

...

It was noted that the worker was recently hospitalized out of concern for his psychiatric well being a few weeks ago. It appears that some non-compensable situational stressors are contributing to the challenges he is

facing psychologically, and it was noted by the attending psychiatrist that participating or continuing those “activities” did not fit with depression. It was noted the worker likely has a personality disorder that is playing a contributory role (which MA [medical advisor] notes is pre-existing) and the suicidality is more likely related to his cluster B traits.

In consultation with the PA [psychology advisor] and MA, it was decided that there is simply not enough information to make a decision with respect to the issues outlined above. A psychiatric IME [Independent Medical Examination] was recommended (with Dr. Chapman) to determine causation, and also to provide an opinion if the MDD accepted under this claim (caused by the worker’s difficulties adjusting to a different life/new job because of his injury) is resolved or permanent. If permanent it would be important to know the severity (and tease out compensable and non compensable reasons contributing to the severity).

[17] On 14 January 2016, Dr. Karrel contacted Mr. Ooms’ general physician, Dr. Peter Meyer. Dr. Karrel’s written notes of the conversation include the following:

I spoke directly by phone with Dr. Meyer. I explained we’d had a Team Meeting and suggested a psychiatric IME might be helpful in diagnostic clarification and treatment recommendations.

Dr. Meyer agreed and assured me it would be helpful to him if I wrote up the referral letter and cc’d him on all correspondence. I agreed.

Dr. Meyer alluded to the worker’s non-compensable situational stressors as causative and that Mr. Ooms suffered from some Cluster B personality challenges in regards to his presentation and suicidal ideation.

[18] Dr. Meyer’s handwritten notes of the telephone conversation with Dr. Karrel, difficult as they are to read, appear to include the following:

Tel [indecipherable] Dr. Abram Karel [indecipherable] referral to be made [indecipherable] Worksafe. This would be helpful given current [indecipherable] issue. I’m happy @ Worksafe’s position on this.

[19] On 21 January 2016, Dr. Karrel referred Mr. Ooms to Dr. Laura Chapman for a psychiatric IME. In his letter to Dr. Chapman, Dr. Karrel noted:

On December 16, 2015, the worker presented to the Psychiatric Emergency Service (PES) with Dr. Sheinbaum...Dr. Sheinbaum’s impression was that the psychosocial aspect of the worker’s life was the predominant trigger to this current problem.

...

Dr. Sheinbaum also postulated about the presence of certain cluster B personality challenges.

Please assess this work with a view to recommending the best working diagnosis, any anticipated functional impairments on return to work, any additional investigative and/or treatments which are medically necessary and rehabilitation strategies.

Please also provide your opinion about what caused this recent episode of depressed mood.

[20] In her report dated 18 February 2016, Dr. Chapman concluded under the heading “DSM-5 Diagnoses” that Mr. Ooms suffers, amongst other things, from:

- (1) Major Depressive Disorder – recurrent – mild
- (2) Possible cluster C traits with obsessive features

[21] In reaching this diagnosis of Mr. Ooms, Dr. Chapman noted there were numerous factors that contributed to Mr. Ooms’ depressive symptoms, including his history of depressive episodes that predates his 2009 work-related injuries.

Dr. Chapman also observed:

...[Mr. Ooms] has had extensive psychotherapy with three different providers with a fluctuating course...

In my opinion, his initial injury in 2009 does not contribute to the current episode of major depressive disorder. I do agree with Dr. Friesen’s assessment that he meets criteria for major depressive disorder, particularly with persistently sad mood, persistent suicidal thoughts as well as diminished interest, energy, concentration and sleep.

Mr. Ooms’ Complaint to the College

[22] By letter dated 14 July 2017, Mr. Ooms initiated a complaint with the College relating to Dr. Karrel’s involvement in Mr. Ooms’ work-related claim to WorkSafeBC. In his letter, Mr. Ooms noted:

My complaint against Dr. Karrel concerns his work advising a case manager at WorkSafe about me. His work was not accurate in that he has made damaging comments about me that are simply not true. The untruth of these comments is particularly serious when one considers the pivotal role a doctor such as Dr. Karrel plays in a claims decision.

There are several aspects to Dr. Karrel’s work that I am troubled by, beginning with his work in the fall of 2015 and ending [with] his involvement in my file with a referral to an Independent Medical Examination conducted by Dr. Laura Chapman in mid-February, 2016.

...

My position with WorkSafeBC has been that Dr. Karrel's work must be viewed not in isolation, but as part of the greater problems at WorkSafeBC where the truth is something that is very much in dispute. In this case, Dr. Karrel has participated in the dismantling of the truth and I can't believe he was not very aware of the value of his commentary to WorkSafeBC's position, which was to destroy my claim. Dr. Karrel is not the only person who has fabricated untrue things in my claim. There are others, but this forum addresses Dr. Karrel's part in my case.

What Dr. Karrel did has helped WorkSafeBC ignore a claim file that demonstrates very clearly that my condition is much worse than WorkSafeBC now tries to say. A doctor like Dr. Karrel seems to be paid to undo other professionals' legitimate work. It is shameless. The words Dr. Karrel uses should be reserved for occasions where such commentary is true. Just because he can articulate these words does not mean he should. A doctor's word generally represents a thoughtful, truthful, honest belief, based upon proper training and accreditation. In my case, Dr. Karrel said what WorkSafeBC needed him to say to make a bigger lie (within the case) work. His conduct is dishonourable and has no basis in truth.

My view of Dr. Karrel's role in this matter has been that he has been part of a bigger lie, orchestrated by a case manager who, to say it diplomatically, has been very willing to accept the opinions of doctors who are brought in to extinguish a claim. The majority of the evidence does not support doing so. Even WorkSafeBC's own Review Division found the decision to be flawed and 'granted the worker's request'.

Now I request that the College deal with these matters. The evidence of Dr. Karrel's commentary is clear. The lack of his basis for these comments can't be proven, as it is difficult to prove a negative. I certainly cannot find a basis. So far WorkSafeBC has not provided any basis for Dr. Karrel's comments, despite my complaints.

I believe Dr. Karrel should account for his behaviour himself. I believe it should actually be up to him to demonstrate that his commentary was responsible and he should have no trouble in doing so. I doubt he can, however. WorkSafeBC, in sharp contrast, takes a much different view in defending him: I have the burden of proof to meet against the baseless writings of Dr. Karrel, who is not at all accountable for his so-called 'opinion'. Even when I present my concerns point-blank, WorkSafeBC refuses to put any questions to Dr. Karrel.

[23] Under the *HPA*, the College has the statutory duty to address all complaints that it receives.

[24] Sections 32 and 33 of the *HPA* govern the College's complaint process initiated by Mr. Ooms, the relevant portions of which read as follows:

32 (1) A person who wishes to make a complaint against a registrant must deliver the complaint in writing to the registrar.

- (2) As soon as practicable after receiving a complaint, the registrar must deliver to the inquiry committee a copy of the complaint, an assessment of the complaint and any recommendations of the registrar for the disposition of the complaint.
- (3) Despite subsection (2), the registrar, if authorized by the board, may dismiss a complaint, or request that the registrant act as described in section 36(1), without reference to the inquiry committee if the registrar determines that the complaint
 - (a) is trivial, frivolous, vexatious, or made in bad faith,
 - (b) does not contain allegations that, if admitted or proven, would constitute a matter subject to investigation by the inquiry committee under section 33(4), or
 - (c) contains allegations that, if admitted or proven, would constitute a matter, other than a serious matter, subject to investigation by the inquiry committee under section 33(4).
- (4) If a complaint is disposed of under subsection (3), the registrar must deliver a written report to the inquiry committee about the circumstances of the disposition.
- (5) A disposition under subsection (3) is considered to be a disposition by the inquiry committee unless the inquiry committee gives the registrar written direction to proceed under subsection (2).
- ...
- 33 (1) If a complaint is delivered to the inquiry committee by the registrar under section 32(2), the inquiry committee must investigate the matter raised by the complainant as soon as possible.
- ...
- (5) The inquiry committee must request the registrant who is the subject of an investigation under this section to provide it with any information regarding the matter that the registrant believes should be considered by the inquiry committee.
- (6) After considering any information provided by the registrant, the inquiry committee may
 - (a) take no further action if the inquiry committee is of the view that the matter is trivial, frivolous, vexatious or made in bad faith or that the conduct or competence to which the matter relates is satisfactory,

- (b) in the case of an investigation respecting a complaint, take any action it considers appropriate to resolve the matter between the complainant and the registrant,
- (c) act under section 36, or
- (d) direct the registrar to issue a citation under section 37.

...

[25] In essence, a complaint must be delivered to the College's Registrar (the "Registrar") following which it may be directed or "streamed" into a summary process where it is the Registrar, or their delegate, who investigates and resolves the complaint pursuant to s. 32(3) of the *HPA*. In the alternative, the Registrar may refer the complaint to the Committee for investigation and resolution pursuant to s. 33(6) of the *HPA*.

[26] In accordance with s. 32(3) of the *HPA*, and using a senior deputy registrar as their delegate, the Registrar examined Mr. Ooms' complaint and determined it summarily. In compliance with s. 32(5) of the *HPA*, the Committee reviewed and approved the contents of the deputy registrar's report, including their proposed dismissal of the complaint.

[27] The Committee's Disposition dismissing Mr. Ooms' complaint was delivered to him by letter dated 5 July 2018. In that letter, the senior deputy registrar observed under the heading "Analysis and conclusion":

As detailed by Ms. Knutson [Dr. Karrel's legal counsel], Dr. Karrel accessed a wide range of documentation in forming his opinion. We recognize that you do not agree with his conclusion. Given the legislation governing the College, however, we are not in a position to lend support to your views, nor to Dr. Karrel's.

We can confirm that it is common for physicians who provide opinions in such matters to do so on the basis of documentary review as opposed to a personal examination. Such an approach in the context of a medical advisor's duties is not inappropriate. Should a patient disagree with the conclusions drawn, the WorkSafeBC appeals process or a judicial appeal is the only available recourse, which we note you have already explored. It is through these means that a patient has the opportunity to put forward alternate views and/or second opinions from other physicians.

We understand that you believe Dr. Karrel's statements regarding cluster B personality traits lack basis. We are sympathetic to your situation; however, it appears Dr. Karrel appropriately relied on the reporting of your treating

physicians to gather his opinion. He conducted a thorough documentary review, and contacted your family physician by telephone to provide an update and to confirm that you still had a therapeutic relationship. As Ms. Knutson stated, Dr. Karrel's cluster B comments were not intended to be a diagnosis, rather an observation following review of the medical evidence. The IME with Dr. Chapman was suggested in order to further explore this commentary.

Mr. Ooms' request for a review of the Disposition

[28] On 16 July 2018, Mr. Ooms filed an application with the Review Board for a review of the Committee's Disposition. In his letter attached to the application, Mr. Ooms explains:

The College takes the position that, due to the fact that [Dr. Karrel] gave medical advice in a WCB matter, the College is generally precluded from taking the circumstances of the physician's conduct into account in regulating a physician's conduct. The College further appears to take the position that the context of Dr. Karrel's opinions is irrelevant to the false opinions themselves, that he generated. I submit these are unreasonable positions to take and that the College has jurisdiction to regulate a doctor's practice, even when employed by WorkSafeBC.

...

I do not take issue with the fact that Dr. Karrel is employed by the Board per se. I take issue with the fact that Dr. Karrel, while employed by the Board, has so blatantly taken the Board's side in communicating opinions that he could not have and these opinions, correspondingly, fit a larger, established agenda at WorkSafeBC.

Dr. Karrel does not advance the cause of medicine in doing so. He advances a crooked legal strategy. All of this occurs in an environment where the question of bias will not be measured by what I can prove beyond a reasonable doubt (or to a similar high standard). The question of bias is rightly measured as a reasonable apprehension of bias. It is circumstantial. It often is the result of appearances of bias. It is a question of reasonableness in the circumstances. What would a reasonable, well-informed person think when presented with these circumstances? Dr. Karrel cannot state he was apparently 'independent', as WorkSafeBC argues.

...

The College manages to find that Dr. Karrel was able to confirm with my family physician that my family physician and I had a therapeutic relationship. With all due respect, that is hardly the issue. The issue is that Dr. Karrel likely (more likely than not) misrepresented what my doctor said. I am troubled by the hair splitting the College engages in concerning the difference between a diagnosis and an observation. Nothing in Dr. Karrel's commentary concerning his so-called 'observations' demonstrates a measure of uncertainty. His commentary is definitive and authoritative...

The College's finding concerning Dr. Karrel's intent is baseless. It has not been articulated by Dr. Karrel and cannot be seen or quantified. The outcome is what matters. Whether Dr. Karrel did what he did with good intention or bad, the erroneous information he created lead directly to the decision to make me undergo the IME. Had Dr. Karrel behaved more responsibly and not made these things up, there would not have been the 'issue' the case manager required to order the IME. The IME was ordered to (at least partially) explore Dr. Karrel's false commentary.

[29] The provisions of the *HPA* that apply to Mr. Ooms' application to the Review Board are sections 50.53 and 50.6. The relevant portions of those provisions read as follows:

50.53(1) The review board has the following powers and duties:

...

- (c) on application by a complainant under section 50.6, to review a disposition of a complaint made by the inquiry committee under section 32(3), 33(6)(a) to (c) or 37.1;

...

...

50.6(1) A complainant may apply to the review board for a review of a disposition described in section 50.53(1)(c).

- (2) An application under subsection (1) must be made within 30 days of the day on which written notice of the disposition is delivered to the complainant.
- (3) A complainant under subsection (1) must, within the time period set out in subsection (2), deliver a copy of the application to the college and the registrant who is the subject of the complaint.
- (4) Only the complainant, the college and the registrant may be parties to a review under this section.
- (5) On receipt of an application under subsection (1), the review board must conduct a review of the disposition and must consider one or both of the following:
 - (a) the adequacy of the investigation conducted respecting the complaint;
 - (b) the reasonableness of the disposition.
- (6) A review under this section is a review on the record.
- (7) The review board may hear evidence that is not part of the record as reasonably required by the review board for a full and fair disclosure of all matters related to the issues under review.
- (8) On completion of its review under this section, the review board may make an order

- (a) confirming the disposition of the inquiry committee,
- (b) directing the inquiry committee to make a disposition that could have been made by the inquiry committee in the matter, or
- (c) sending the matter back to the inquiry committee for reconsideration with directions.

...

[30] The Decision, rendered by the Review Board on 11 December 2018, found that the College's investigation and consideration of Mr. Ooms' complaint against Dr. Karrel were adequate and that the Disposition was reasonable. Given those findings, the Review Board confirmed the Disposition.

[31] In addressing Mr. Ooms' complaint that the Registrar exceeded their jurisdiction and improperly categorized Mr. Ooms' complaint as one that did not fit the statutory definition of a "serious matter" that required the actual involvement of the Committee, the panel chair of the Review Board concluded:

[35] I dismiss in its entirety the Complainant's [Mr. Ooms'] submission that the Registrar exceeded his authority. The number of pages in the Record is not indicative of complexity; it is often, as it is here, indicative of repetitive documents, lengthy submissions and the length of time a file has been active.

[36] The Registrant [Dr. Karrel] did not provide a diagnosis; rather he provided an opinion to WorkSafeBC. There is, by definition, no physician/patient relationship between the Registrant and the Complainant. The Registrant did not treat the Complainant. There is no basis on which this can be determined to be a serious matter for decision by the Inquiry Committee.

...

[41] The investigation undertaken by the Inquiry Committee was appropriate given the facts before them. I find no evidence that further avenues of investigation were uncovered and not taken during the process. There is no evidence before me that would lead me to conclude that further investigation by the Inquiry Committee was warranted. The Complainant did not provide evidence that the investigation was not adequate.

[32] Mr. Ooms' complaint that Dr. Karrel's legal counsel prepared his response as opposed to the doctor himself was rejected by the Review Board. In his Decision, the panel chair explained:

The Complainant's submission that the Registrant did not participate in the preparation of his response and that it was the lawyer acting on her own, is purely conjecture. Any party before the Review Board may choose to be represented by counsel and it is for the party and their counsel to determine how to respond.

In any event, a response submitted by counsel acting for a party is that party's response.

[33] The Review Board's overall conclusion and confirmation of the Disposition was expressed by the panel chair as follows:

[46] In the Disposition, the Inquiry Committee set out a reasonable summary of the submissions of the Complainant and the Registrant. The concerns raised by the Complainant were set out in the Disposition. Having set out the concerns and various submissions, the Inquiry Committee addressed the concerns and concluded with no regulatory criticism of the Registrant.

[47] I find the Inquiry Committee's process and conclusion, as set out in the Record and Disposition, to be reasonable, intelligible and justified. The Record provides the evidence of process which lead to the facts and reasoning set out in the Disposition. I find the conclusion, in the Disposition, consistent with the facts and the law. Therefore, I find the Disposition reasonable.

[34] On 21 January 2019, Mr. Ooms requested a reconsideration or clarification of the Review Board's Decision. The Review Board denied that request on 23 January 2019.

The Applicable Legal Principles

[35] The legal principles applicable to a judicial review such as the one currently before the Court were refined and clarified in *College of Physicians and Surgeons of British Columbia v. The Health Professions Review Board*, 2022 BCCA 10, leave to appeal to SCC ref'd, 40106 (24 November 2022) [*Dawson*], a decision of a five-member panel of our Court of Appeal that was rendered after the parties had completed their oral submissions in the present matter. On account of this development, I provided all parties with the opportunity to make supplemental written submissions to address this change in the law.

[36] In his supplemental submissions, Mr. Ooms appears to argue that this Court should not follow or apply the legal principles articulated in *Dawson*. According to

Mr. Ooms, the Court's reasoning in *Dawson* "fails to take the broader jurisdiction of the Review Board into account" and that "at its core, *Dawson* does not move the analysis of this case much."

[37] The respondents disagree with Mr. Ooms' interpretation of *Dawson* and jointly submit that the decision has changed the analytical framework for judicial review involving the Review Board. In other words, the legal principles articulated in *Dawson* are those that are binding on this Court.

[38] I agree with the position of the respondents.

Issues

[39] Much like he did for his original complaint to WorkSafeBC, his complaint to the College, and his request to the Review Board, Mr. Ooms has provided a significant amount of material to consider on this judicial review. The panel chair of the Review Board addressed this in the Decision when he noted:

I commend the Complainant [Mr. Ooms] on his submissions including a six-page single space typed letter with his application for review and a similar 48-page Statement of Points. As reported in the Psycho-Vocational Testing Assessment in 2012, the Complainant is very competent expressing himself in writing.

[40] With respect to the petition presently before the Court, I share the panel chair's opinion of Mr. Ooms' ability to express himself on paper and would add that he is equally capable when it comes to making oral submissions.

[41] As I noted at the outset of these reasons, Mr. Ooms seeks to have the Review Board's Decision judicially reviewed. Although Mr. Ooms has raised a multitude of issues and sub-issues in his submissions, there are three principal issues that need to be addressed:

- 1) The scope of review of an alleged "jurisdictional error";
- 2) The adequacy of the investigation; and
- 3) The reasonableness of the Disposition.

Discussion

Issue #1: The scope of review of an alleged jurisdictional error

[42] One of the principal arguments Mr. Ooms made before the Review Board was that the Registrar made a jurisdictional error when they found that Mr. Ooms' complaint relating to Dr. Karrel involved a "non-serious matter" and could therefore be routed into the summary process envisaged by s. 32(3) of the *HPA* and disposed of by the Registrar without referring the matter to the Committee. Mr. Ooms contends that the nature of his complaint against Dr. Karrel, including his claim that Dr. Karrel had been untruthful and had manufactured evidence, as well as the significant quantity of materials that he had provided to the College for its consideration, all meant that the complaint was a "serious matter" that should have been investigated by the Committee pursuant to s. 33 of the *HPA*.

[43] This issue is one in which the Court of Appeal's decision in *Dawson* has had a material impact. Originally, the College had argued that the Review Board owed deference to the Registrar's decision to address Mr. Ooms' complaint summarily as opposed to referring it to the Committee. However, applying the principles articulated in *Dawson*, the College now contends that the Review Board has no power or authority to review the College's decision that a particular complaint is not a "serious matter" and can be disposed of summarily by the Registrar.

[44] In my opinion, the respondents' essentially common position on the jurisdictional issue is the correct one. The Court in *Dawson* has clarified the Review Board's powers under s. 50.6(5) of the *HPA* and has made it clear that those powers are limited to assessing the adequacy of the investigation and the reasonableness of the disposition. Moreover, the Review Board has no authority to consider or address process errors that do not impact either of those two specific issues. In my view, such an impact does not automatically arise because the Registrar has chosen to place the complaint into the summary resolution stream. Mr. Justice Groberman writing on behalf of a unanimous Court in *Dawson*, explained:

[193] The registrar does not, by placing a complaint into the summary process, dictate either the nature and depth of the inquiries that will be made, or the disposition of the complaint. Indeed, placing a complaint into the summary process stream is a preliminary step. If an inquiry committee considers, prior to the final disposition of the complaint, that it should be moved to the ordinary process, it can do that. Further, if remedies available under the summary process are inadequate, the complaint must be returned to the ordinary process.

[194] I do not suggest that the placement of a complaint into the summary process is without consequences. I understand that there will be a natural tendency to investigate complaints assigned to the summary process less rigorously than those assigned to the ordinary process. I also understand that the sanctions that may be imposed by the registrar are more limited than those that may be imposed by an inquiry committee.

[195] The Review Board, however, has direct authority to remedy any deficiencies in the investigation and to ensure that unreasonable dispositions are not allowed to stand. What the Review Board is not entitled to do is to pre-emptively restrict the procedures that the College may adopt to deal with a complaint.

[196] The Review Board has no authority to deal with process errors that do not impact the adequacy of the investigations or the reasonableness of the disposition. For example, if the registrar erroneously places a serious complaint into the summary process, but the complaint is fully investigated and is reasonably determined to be unfounded, the Review Board would not have authority to intervene.

[197] This does not mean that exercises of statutory power by the College are immune from review if they do not directly impact the adequacy of investigations or the disposition of the complaint. For those matters that are beyond the exclusive authority of the Review Board, judicial review is available.

[45] As I have noted at para. 31 of these reasons, the Review Board rejected “in its entirety” Mr. Ooms’ contention that the Registrar acted beyond their authority when they chose to address his complaint using the summary process. The Review Board also found that the investigation of Mr. Ooms’ complaint was appropriate, given the available facts and that there was no evidence that would have led the Review Board to conclude that further investigation by the Committee was warranted.

[46] In my opinion, the portions of the *Dawson* decision that I have quoted above resolve this issue in favour of the respondents. An alleged error involving the streaming of a complaint into the summary process is a matter that falls beyond the

Review Board's authority or jurisdiction, unless it is shown to have impacted the adequacy of the investigation or the reasonableness of the disposition. Given the evidence in this case, I do not see the Registrar's decision to proceed summarily to dispose of Mr. Ooms' complaint as having any impact on either of those two issues.

Issue #2: The adequacy of the investigation

[47] The jurisprudence that predates *Dawson* held that the adequacy of the College's investigation should be reviewed on the standard of reasonableness: see *Moore v. College of Physicians and Surgeons of British Columbia*, 2013 BCSC 2081, aff'd 2014 BCCA 466, leave to appeal to SCC ref'd, 36272 (4 June 2015).

[48] The Court's decision in *Dawson* overturned *Moore* and in doing so it redefined the approach the Review Board must take when assessing the adequacy of a College investigation, including the application of the "patent unreasonableness" standard. On this point, Mr. Justice Groberman notes:

[114] Adequacy describes a relationship between an action and a goal. An investigation is "adequate" if it is sufficient to meet its goals. There may be many goals of an investigation of a complaint against a physician. Obvious goals include public accountability and uncovering the truth. A further possible goal is to gather sufficient information to allow an effective remedy to be crafted. Scarcity of resources dictates that one goal of investigations will be to obtain necessary information without squandering resources. There are, no doubt, other goals that can be ascribed to the investigative process.

[115] What is important is that there is, in the concept of "adequacy", no implication of deference. Where a review board considers the "adequacy" of an investigation, it is entitled (as long as it does not act patently unreasonably) to characterize the goals of the investigation and to make judgments as to whether the efforts expended were commensurate with those goals.

...

[117] Referring to Felix Frankfurter, "Some Reflections on the Reading of Statutes" (1947) 47 Columbia L.R. 527 at 528, the Review Board describes s. 50.6(5)(a) as having been drafted with "purposeful ambiguity". I agree with that characterization. The intent was to allow the Review Board leeway in characterizing the goals of the investigation, and to allow it to exercise its own judgment on whether the investigation that was conducted was commensurate with those goals.

...

[191] As I have discussed, in considering the “adequacy of investigations”, the Review Board is entitled to consider the nature and depth of inquiries that a College has made in dealing with a complaint.

...

[49] It is now clear thanks to *Dawson* that when a Review Board’s assessment of the adequacy of a College investigation comes before the Court on judicial review, the Court must apply the patent unreasonableness test. In *West Fraser Mills Ltd. v. British Columbia (Workers’ Compensation Appeal Tribunal)*, 2018 SCC 22, Chief Justice McLachlin writing for the majority explained the patent unreasonableness standard as follows:

[28] A legal determination like the interpretation of a statute will be patently unreasonable where it “almost border[s] on the absurd”: *Voice Construction Ltd. v. Construction & General Workers’ Union, Local 92*, 2004 SCC 23, [2004] 1 S.C.R. 609, at para. 18. In the workers’ compensation context in British Columbia, a patently unreasonable decision is one that is “openly, clearly, evidently unreasonable”: *Speckling v. British Columbia (Workers’ Compensation Board)*, 2005 BCCA 80, 46 B.C.L.R. (4th) 77, at para. 33; *Vandale v. British Columbia (Workers’ Compensation Appeal Tribunal)*, 2013 BCCA 391, 342 B.C.A.C. 112, at para. 42 (emphasis deleted).

[50] Mr. Ooms’ criticism of the adequacy of the investigation begins with the fact that the Registrar chose to stream his complaint and address it using the summary process permitted by s. 32(3) of the *HPA*. He is also critical of the fact that the Review Board permitted Dr. Karrel’s counsel to file a response on his behalf as opposed to obtaining something directly authored by Dr. Karrel himself with his own version of the events.

[51] Although the Review Board did not have the benefit of the Court of Appeal’s decision in *Dawson* to guide its analysis of the adequacy of the College’s investigation in the present case, that analysis can still be assessed in light of this new jurisprudence. In this respect, I agree with counsel for the Review Board.

[52] *Dawson* has created a new analytical framework to assess whether the College’s investigation was adequate in the sense of meeting its goals, including uncovering the truth, gathering sufficient information to allow for an effective remedy to be fashioned and using resources in an efficient and effective manner.

[53] I have on this judicial review all of the materials that were before the Review Board, including all of the evidence of the investigative steps the College took to assess Mr. Ooms' complaint, including the more than 1,000 pages of records the College collected during its investigation and used in determining the complaint. The two principal elements of the investigation were:

- a) Obtaining a response to the complaint from Dr. Karrel as well as collecting the extensive records of WorkSafeBC; and
- b) Providing a series of replies, further responses, and sur-replies between Mr. Ooms and Dr. Karrel.

[54] In her amended supplemental written submissions, counsel for the College notes:

[24] ...in the context of this complaint, the goals of public accountability and truth uncovering, balanced with the efficient use of resources, this investigation achieved those goals. The investigation revealed the critical WorkSafeBC meeting notes, emergency room consultation notes, IME reports and record of Dr. Karrel to assess the allegations in the Complaint and to assess whether his conduct gave rise to any professional conduct concerns. Sufficient evidence was gathered to enable a disposition to be crafted.

[55] I agree with this submission.

[56] Applying the analytical framework and test established in *Dawson*, I reject Mr. Ooms' contention that it was patently unreasonable for the Review Board to conclude that the College's investigation was adequate. This includes any suggestion that it was equally unreasonable for the Review Board to find that there were no process errors that could impact the adequacy of the College's investigation.

Issue #3: The Reasonableness of the Disposition

[57] Another important clarification in the law resulting from *Dawson* is the standard of review when there is a risk of layering or "stacking" standards of review, as in the present case. When the Review Board is asked to assess the

reasonableness of the College's disposition of a complaint, the reasonableness standard applies. However, when it is the decision of the Review Board that is being judicially reviewed, then the standard of review is patent unreasonableness. In addressing this issue, Mr. Justice Groberman in *Dawson* explained:

[172] The *Health Professions Act* expressly provides that the Review Board is to review the College's disposition of a complaint on a reasonableness standard. This indicates that, in respect of the disposition, the statute's focus of deference is on the College. A failure by the Review Board to afford deference to the College would be a fundamental violation of the statutory scheme.

[173] The judicial review judge characterized the failure by the Review Board to defer to the College as being "patently unreasonable". I do not disagree with that manner of characterizing the error, but in my view the "stacking" of standards of review is unwieldy and unnecessary.

[174] For reasons that follow, it is my view that, in deciding whether the Review Board's view that the College's decision was unreasonable was, itself, patently unreasonable, the Court can properly take a shortcut. It need only analyze the reasonableness of the College's decision. A further inquiry into the question of whether the Review Board's decision on review was patently unreasonable will not add any substance to the inquiry. It will be an empty mechanical exercise. To understand why this is so, it is necessary to examine the nature of standards of review.

[175] The reasonableness standard of review recognizes that there will often be a range of acceptable outcomes on questions of law or fact. Each of those outcomes will be characterized as reasonable, and a tribunal does not fall into error by choosing one of the reasonable outcomes. Any of those outcomes will be a "right" answer.

...

[181] In the result, it is unnecessary to "stack" different standards of review in a regime such as the one we are considering. The Review Board, in characterizing the College's decision as unreasonable (or as reasonable), will either have reached the one acceptable outcome, or it will have reached a characterization that is patently unreasonable.

[182] Put another way, the task of a court, in an administrative regime that expressly sets out a standard of review applicable as between an administrative body and a review body, is to examine the statute to determine where it places the focus of deference. If the focus of deference is on the original decision maker, then, in reviewing a decision by the review body — on any standard of review — the court need only ask whether the review body reached the one acceptable outcome.

[183] Section 50.6(5)(b) of the *Health Professions Act* clearly focusses deference on the College's decision. The Review Board is only entitled to interfere with the disposition of a complaint where the disposition is an

unreasonable one. On a judicial review application, therefore, the court's focus, too, must be on the reasonableness of the College's decision. In a situation where the Review Board erroneously characterizes a reasonable decision as unreasonable (or an unreasonable decision as reasonable), a court must intervene on judicial review. While s. 58 of the *Administrative Tribunals Act* applies, it does not, from a practical standpoint, affect the court's analysis in such a case.

[58] These passages from *Dawson* helpfully clarify that on a judicial review such as the present one, the Court's attention must be on the reasonableness of the College's disposition and not on whether the Review Board's decision is patently unreasonable.

[59] The Review Board rendered its Decision in 2018. At that time, the seminal case on the reasonableness standard was *Dunsmuir v. New Brunswick*, 2008 SCC 9. The Court of Appeal in *Dawson* observes that the law relating to this standard of review has evolved since 2018. The leading case on this standard of review is now *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [Vavilov]. In *Vavilov*, Chief Justice Wagner writing along with six other justices notes:

[83] It follows that the focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome. The role of courts in these circumstances is to *review*, and they are, at least as a general rule, to refrain from deciding the issue themselves. Accordingly, a court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the "range" of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the "correct" solution to the problem. The Federal Court of Appeal noted in *Delios v. Canada (Attorney General)*, 2015 FCA 117, 472 N.R. 171, that, "as reviewing judges, we do not make our own yardstick and then use that yardstick to measure what the administrator did": at para. 28; see also *Ryan*, at paras. 50-51. Instead, the reviewing court must consider only whether the decision made by the administrative decision maker -- including both the rationale for the decision and the outcome to which it led -- was unreasonable.

[84] As explained above, where the administrative decision maker has provided written reasons, those reasons are the means by which the decision maker communicates the rationale for its decision. A principled approach to reasonableness review is one which puts those reasons first. A reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with "respectful attention" and seeking to

understand the reasoning process followed by the decision maker to arrive at its conclusion: see *Dunsmuir*, at para. 48, quoting D. Dyzenhaus, "The Politics of Deference: Judicial Review and Democracy", in M. Taggart, ed., *The Province of Administrative Law* (1997), 279, at p. 286.

[85] Developing an understanding of the reasoning that led to the administrative decision enables a reviewing court to assess whether the decision as a whole is reasonable. As we will explain in greater detail below, a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision.

[86] Attention to the decision maker's reasons is part of how courts demonstrate respect for the decision-making process: see *Dunsmuir*, at paras. 47-49. In *Dunsmuir*, this Court explicitly stated that the court conducting a reasonableness review is concerned with "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes": para. 47. Reasonableness, according to *Dunsmuir*, "is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process", as well as "with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *ibid*. In short, it is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies. While some outcomes may be so at odds with the legal and factual context that they could never be supported by intelligible and rational reasoning, an otherwise reasonable outcome also cannot stand if it was reached on an improper basis.

...

[99] A reviewing court must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness -- justification, transparency and intelligibility -- and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision: *Dunsmuir*, at paras. 47 and 74; *Catalyst*, at para. 13.

[100] The burden is on the party challenging the decision to show that it is unreasonable. Before a decision can be set aside on this basis, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. It would be improper for a reviewing court to overturn an administrative decision simply because its reasoning exhibits a minor misstep. Instead, the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable.

[60] The question for the Court in the present case is whether the Disposition was reasonable. In answering this question, the Court must respect the specialized expertise of the College's Registrar, who, through their delegate, was the administrative decision maker in this case.

[61] I have used the legal principles set out in *Dawson* in assessing whether the Disposition in this case was a reasonable one. In doing so, I have examined the justification, transparency and intelligibility within the decision-making process. I have also considered whether the Disposition falls within the range of possible, acceptable outcomes defensible in respect of the facts and law applicable to Mr. Ooms' case. Having done so, I am satisfied that the Disposition meets the test of reasonableness and that the Review Board committed no error in confirming the decision.

[62] In reaching this conclusion, I specifically find that it was reasonable for the Registrar to conclude that Dr. Karrel's review of the relevant medical records was reasonable and appropriate in the circumstances, as was his communication with Mr. Ooms' family physician. It was equally reasonable of the Registrar to find that there was no formal doctor-patient relationship between Dr. Karrel and Mr. Ooms. Finally, I am satisfied that it was reasonable for the Registrar to find that Dr. Karrel's remarks regarding Mr. Ooms' cluster B personality traits were not a formal diagnosis but simply observations made with a reasonable basis on the records he had available to him at the time.

[63] Overall, I am satisfied that the Registrar acted reasonably and that the Disposition was one that falls squarely within the range of possible and acceptable outcomes in this case.

Conclusion

[64] As I noted earlier in these reasons, Ms. Ooms submitted a large quantity of materials on this judicial review, including a very fulsome and lengthy written argument. The issues and sub-issues he raised were as varied as they were numerous. In these reasons for judgment, I have addressed the principal issues that

Mr. Ooms and counsel for the respondents focussed upon. Having done so, I note that I have considered all of the points and arguments that Mr. Ooms raised in both his oral submissions as well as his written submissions.

[65] Having reviewed all of the materials that were filed on this judicial review, and having considered Mr. Ooms' submissions as well as those from counsel for the respondents, I am not satisfied that there is any basis upon which I can grant the relief Mr. Ooms seeks and set aside the Review Board's Decision.

[66] For all of these reasons, Mr. Ooms' petition is dismissed.

Costs

[67] In keeping with the usual practice for judicial review proceedings, none of the respondents have sought their costs. I see no reason to depart from that practice. Consequently, the parties will bear their own costs.

"G.R.J. Gaul J"