In the matter of an application (the “Application”) for review under section 50.54 of the Health Professions Act, R.S.B.C. 1996, c. 183, as amended, of a registration decision made by registration committee

I INTRODUCTION

[1] The Applicant is a medical doctor who received his training outside of Canada and is seeking to obtain registration from the College to practice medicine in British Columbia. The Application for Review under the Health Professions Act, R.S.B.C. 1996, c. 183, as amended, (the “Act”) was made to the Review Board in response to the Registration Committee decision communicated to the Applicant in the Executive Director, Registration Services’ letter dated October 25, 2016 [the “2016 Decision Letter”]. The letter set out the reasons the Registration Committee denied the Applicant registration and provided the steps he would have to take for the Committee to reconsider his eligibility.

[2] The 2016 Decision Letter referred to a letter written to the Applicant by the College in October 2012 advising the Applicant that he was not eligible for registration and licensure for reasons as set out there-in. The reasons for ineligibility in 2012 remain
essentially the same in 2016. The Applicant considers the conditions imposed on him for registration by the College to be unreasonable.

[3] By way of remedy, the Applicant seeks greater flexibility from the Registration Committee in considering his qualifications, training and experience, including a Practice Ready Assessment (the “PRA”) in his specialty, so that he can practice in BC.

II BACKGROUND

[4] The Applicant was advised in a letter from the College dated October 10, 2012, (the “2012 Letter”) that he was not eligible for registration with the College. Having reviewed the Applicant’s training and experience at the time, the Deputy Registrar wrote that to be considered eligible for registration the Applicant:

…must be accepted into and successfully complete an accredited postgraduate residency training program in any jurisdiction in the world where such a training program is both recognized and accredited by the RCPSC. Until such postgraduate training is completed, you are not eligible for any class of independent medical practice in British Columbia. ¹

[5] The Applicant is a Canadian citizen who received his medical training outside of Canada in a non-English speaking country. His postgraduate training in his specialty was completed at an institution which is not recognized by the Royal College of Physicians and Surgeons of Canada (the “RCPSC”).

[6] In the 2012 Letter the Deputy Registrar provided the Applicant with two options that might provide him with a pathway to registration. One option was to apply to a specific International Medical Graduate Program at a BC hospital. The other option was to complete an assessment of competency, a PRA acceptable to the Registration Committee at a province in Canada where such a program is available and the Deputy Registrar provided a list of provinces with those programs.

[7] In August 2015, the Applicant contacted the College with an inquiry regarding the standard for English Language Proficiency (the “ELP”). The College responded with their guidelines. In submissions to this hearing, the Applicant provided a document which indicates that he has satisfied the requirements set out by the College. I note that the document showing the results of the ELP evaluation was not provided to the Registration Committee by the Applicant and therefore, has not been accepted by the Committee.

[8] In November 2015, the Applicant wrote the College to ask if there was going to be a PRA for his specialty in the near future. The person who responded for the College wrote “I do not know when this will be extended for the specialist (category).” It is clear that there was no PRA for his specialty in BC at that time and no commitment to when there might be such a program.

¹ RCPSC refers to The Royal College of Physicians and Surgeons of Canada.
In January 2016, the Applicant contacted the College and received a detailed and comprehensive response which set out his options for registration in BC. The substance of this response is entirely consistent with the 2012 Letter.

In February 2016, the Applicant wrote the College requesting an appointment to meet a registration advisor. In response two weeks later, the College advised the Applicant that they do not offer in person meetings to discuss registration options. The writer offered email and phone discussion options and then provided substantially the same, if not the identical, information which had been provided one month earlier.

In a subsequent email in late February, the Applicant asked if the College recognizes the PRA programs from other Provinces. The College responded with the information set out in their Bylaws and invited the Applicant to follow up if the circumstances applied to him. In context, it appears that the writer was unaware of the prior communication and specifically the response in the 2012 Letter.

In May 2016 the Applicant wrote the College noting that the requirements of the College, which he referred as “extreme barriers,” were preventing him from working which resulted in his family suffering. He wrote that there should be a PRA program for his specialty and that due to his age, he was not able to do postgraduate residency in Canada. He concluded “I hold the college responsible of [sic] my well being [sic] and responsible for my family feature [sic]. I believe that the college has to provide different and alternative routes to all Canadian doctors.”

The College responded with an explanation of the legal authority which governs the College, the Act, and provided, once again, the complete information on the options available to the Applicant for attaining registration in BC.

The Applicant responded, “Still I hold the college and by its policies of unfairness responsible for my family future.”

Following other communication in June, the Applicant wrote to the College in August 2016 asserting that the regulations are “…unhuman [sic] and unobjective [sic]” and that the College was hurting his family.

In response to further requests by the Applicant, the College agreed to present his file to the Registration Committee. In an email on August 31, 2016, the Applicant was given the opportunity to provide any additional information and documentation he would like to in support of his application.

The Registration Committee considered his application in a meeting on September 26, 2016, which resulted in the decision communicated in the 2016 Decision Letter.

III APPLICANT’S STATEMENT OF POINTS

The Applicant submits that he is a Canadian citizen, with training and fifteen years of experience in his specialty. He submits that while his training and experience is
from outside Canada, the College should make the PRA route available in his specialty and there should be some flexibility from the College so that he can practice in BC.

[19] The Applicant submits that he moved to Canada from his foreign post in 2015 expecting to participate in a PRA program in another province. He submits that the other province changed the regulations for aspects of the PRA and he was not able to participate in the program.

[20] The Applicant submits that the Registration Committee decision is biased as it does not make provisions for someone in his situation. He submits that the Registration Committee should take into consideration his four years of residency training and fifteen years of experience.

[21] The Applicant submits that he did not use aggressive and threatening language during his interaction with the College; he submits that he was upset at the College as an organization and not at any one person. He submits that the Registration Committee is preventing him from earning a living and is harming his family.

[22] In his Statement of Points, the Applicant provided his ELP results which he did not provide to the Registration Committee and an undated email in which an unidentified writer asserts that the MCCEE\textsuperscript{2} test results are good for life and do not expire. The formal MCCEE letter reporting on his test results from 1991, which is in the Applicant’s submissions to the Registration Committee, makes clear that the “…validity of [the Applicant’s] PASS standing on this Evaluating Examination is limited to five (5) years from March 7, 1991.”

IV EVIDENCE

[23] The Review Board utilizes a two-stage hearing process as set out in Rule 44 of the Rules of Practice and Procedure for Reviews under the Health Professions Act, R.S.B.C. 1996, c. 183 (the “Review Board Rules”). This hearing is conducted in accordance with Stage 1 as set out in Rule 44.

[24] Therefore, this review is based on the record of the investigation provided by the College, (the “Record”), the Applicant’s Application for Review and his Statement of Points which together constitutes the evidence before this hearing.

V THE REVIEW BOARD’S MANDATE

[25] The Review Board exists in part to provide, upon an application for review by an applicant, impartial and objective reviews of registration decisions of Registration Committees of the health profession colleges of British Columbia.

[26] There is some uncertainty in prior Review Board decisions regarding the standard to be applied in registration reviews. While I reference those decisions herein,

\textsuperscript{2} MCCEE refers to the Medical Council of Canada Evaluating Examination for graduates of foreign medical schools.
I will state here that I have decided to review the Registration Committee’s decision in this case on a standard of reasonableness as is more fully set out below.

[27] Should I find a decision not reasonable, the Act provides me with the authority to, among other actions, direct the Registration Committee to either make a decision that it could have made or (more typically) to send the matter back to the Registration Committee for reconsideration with directions.

VI STATUTORY PROVISIONS GOVERNING THE REVIEW BOARD

[28] The Review Board and the College are governed by the Act. For the convenience of the reader, I set out here the sections of the Act which establish the foundation for my decision.

[29] Section 50.54 of the Act allows an applicant in receipt of a registration decision, the right to request a review by the Review Board. The review is a review on the Record, subject to any additional evidence the Review Board determines is reasonably required for a full and fair disclosure of all matters related to the issues under review.

[30] Section 50.54(9) sets out the options available to me:

50.54 (9) On completion of its review under this section, the review board may make an order

(a) confirming the registration decision,

(b) directing the registration committee to make a decision that could have been made by the registration committee in the matter, or

(c) sending the matter back to the registration committee for reconsideration with directions.

[31] In s.16(1) and 16(2)(c) of the Act the College is charged with its overarching duty and key responsibilities. For the convenience of the reader, I set out these sections here:

16 (1) It is the duty of a college at all times
(a) to serve and protect the public, and
(b) to exercise its powers and discharge its responsibilities under all enactments in the public interest.

(2) A college has the following objects:

…..

(c) to establish the conditions or requirements for registration of a person as a member of the college;
In s.19 the Act sets out that the College may make bylaws “…consistent with the duties and objects…” of the College.

VII BYLAW PROVISIONS GOVERNING REGISTRATION

One of the specific objects of the College is to “establish the conditions or requirements for registration of a person as a member of the college” as set out in s. 16(2)(c). To that end, the College has under its bylaws (Bylaw 1-15) established the Registration Committee:

(1) The registration committee is established consisting of at least six persons appointed by the board, at least one-third of whom must be public representatives.

(2) The committee must include at least four registrants, two of whom must be elected board members.

(3) The committee has discretion to consider whether a person’s knowledge, skills and abilities are substantially equivalent to the standards of academic achievement, competencies or other qualifications established in Part 2 of the Bylaws and to grant registration on that basis.

(4) The duties and powers of the board under section 25.3(2) of the Act are delegated to the registration committee.

The Registration Committee is governed by the Act and the Bylaws. Of note, the Act sets out in s.20(1), (2), (4.3) and (4.4) that:

20 (1) The registration committee is responsible for granting registration, including reinstatement of registration, of a person as a member of its college.

(2) The registration committee must grant registration as a member of its college to every person who, in accordance with the bylaws,

(a) applies to the college for registration,

(b) satisfies the registration committee that he or she meets the conditions or requirements for registration in a class of registrants, and

(c) pays the required fees, if any.

(4.3) If a bylaw under section 19 (1) (i) establishes a class of provisional registrants for the purposes of this subsection, the registration committee may

(a) grant registration in the class for a limited period specified for the registrant by the registration committee,

(b) require the registrant to complete, within the period specified under paragraph (a), any examinations or upgrading of knowledge, skills or
abilities the registration committee considers necessary for the registrant, and

c) impose limits or conditions on the practice of the designated health profession by the registrant.

(4.4) Limits or conditions imposed in accordance with subsection (2.1), (3), (4.2) or (4.3) may be different for different registrants within a class of registrants.

[35]  The Bylaws regarding registration establish “standards of academic achievement, competencies or other qualification.” Some standards are specific and prescriptive. Others are more generally worded, and invite the exercise of judgment and discretion. Bylaw 1-15(3) sets out that “[the] committee has discretion to consider whether a person’s knowledge, skills and abilities are substantially equivalent…and to grant registration on that basis.”

VIII  REASONABLENESS

[36]  As noted above, I have approached this review by asking whether the decision by the Registration Committee is reasonable.

[37]  I note that in Review Board Decision No. 2014-HPA-164(a) at para. [96], the Review Board pointed out that in contrast to complaint disposition reviews conducted under s.50.6(5) of the Act, registration reviews under s.50.54 are not governed by a statutory “reasonableness” standard. What s.50.54 does instead is to impose statutory preconditions in the narrow category of cases where the Review Board proposes to grant the specific remedy of directing the registration committee to grant registration with or without limits or conditions: ss.50.54(9), (10).

[38]  This was also the subject of comment in Review Board Decision No. 2013-HPA-175(a) to 183(a) and 2013-HPA-209(a) at para. [25] and [26]. The Review Board held in those decisions that as there is no legislated standard of review to govern registration reviews generally then, other than for the powers granted under s.50.54(10), “…the standard of review… is a matter for the Review Board to determine within its exclusive jurisdiction.”

[39]  I concur with the reasoning in those decisions in that “…there is good reason for the Review Board to accord the Registration Committee deference on matters of fact and discretion. However, the Review Board is not obliged to grant the Registration Committee deference on questions of law…(and)…in the end Applicants are …entitled to expect that the Review Board will be the body that finally determines whether the Registration Committee has correctly interpreted the Act and the Bylaws.”

[40]  As noted earlier, I am content in this case to apply the standard of reasonableness. In doing so, I note that the deference involved in applying “reasonableness” does not mean absolute submission. Where the Registration Committee had discretion but failed to exercise it, exercised it without a rational foundation, asked the wrong question, fettered its discretion or acted without any
identifiable rationale, the Review Board is entitled to intervene. Any other approach would render the Review Board’s mandate meaningless.

[41] Reasonableness is a deferential standard as set out in Review Board Decision No. 2009-HPA-0039(b) at paras. [56 to 61] which I have adopted here. It is recognized that administrative tribunals are often presented with certain questions for which there may be a range of possible solutions.

[42] As stated in Dunsmuir v. New Brunswick 2008 SCC 9:

A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But, it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law…

[43] The Act in s.50.54(6) confers on the Review Board the obligation to review a decision of the Registration Committee upon receipt of an application for review. It is significant that the Act confines this function on the Review Board - itself a specialized administrative tribunal - rather than a court. This means that the Review Board is to apply its unique statutory perspective and understanding rather than simply attempting to mimic how a generalist court might assess reasonableness if the court were the reviewing body. Reference to Dunsmuir, supra is however helpful in explaining types of qualities that the Review Board looks for in a reasonable decision – justification, transparency and intelligibility.

[44] I would simply add that “justification, transparency and intelligibility” also have some application to the Review Board’s consideration of the process used by the College in dealing with an application for registration. If the process that informed the Registration Committee’s substantive decisions was unfair, deeply flawed and lacked justification and intelligibility, it will be no surprise that the substantive outcomes that resulted would be similarly flawed.

IX DISCUSSION

[45] In responding to the Applicant’s inquiries beginning in 2012 and continuing through to the 2016 Decision Letter, the College and the Registration Committee followed a consistent, thorough and reasonable process which I find was consistent with the Act and with the Bylaws of the College. I find the process that informed the Registration Committee was fair, justified and intelligible.

[46] The College communicated their requirements for the Applicant to obtain registration in BC in the 2012 Letter. These requirements are within the jurisdiction afforded the College under the Act. The 2012 Letter could not have been clearer in setting out the Applicant’s position as set out in para. [4] above.
In the alternative, the writer in the 2012 Letter introduced the possibility that the Applicant consider completing “…an assessment of competency acceptable to the Registration Committee…” in one of the six provinces where such a program was available at that time.

From October 10, 2012, the date of the 2012 Letter, forward, the Applicant must have known that he was not eligible for registration with the College. The fact that the Applicant is now, four years later in BC, complaining that the Registration Committee is unfair and biased is simply without foundation.

In multiple communications with the Applicant between August 2015 and November 2016 the College and the Registration Committee provided consistent responses to the Applicant’s requests. The message today is essentially the same as the message in the 2012 Letter.

The Applicant will likely disagree with my decision as he has with the Registration Committee. Simply stated I find that the Applicant is solely responsible for the situation he finds himself in and for the pressure his situation is causing his family. The Applicant chose to move his family to Canada long after he had received the 2012 Letter. I find that he must have known the hurdles that awaited him in order that he might practice medicine in British Columbia.

I recognize that the Applicant is a Canadian citizen which provides him with the right to live and work in Canada. However, citizenship does not convey any rights to practice medicine other than to avoid the work permit hurdle that would face foreign educated doctors who are not Canadian citizens.

The fact is that the Applicant received his medical training at a foreign institute which is not recognized by the College. The implications of this decision must not have been lost on the Applicant for why else would he sit the MCCEE examinations in 1991 when he was otherwise practicing medicine in a foreign country.

The Applicant objects to the concern expressed in the 2016 Decision Letter “…regarding the inappropriate tone and content of [the Applicant’s] email communication with the College.” Having reviewed the evidence and considered the Applicant’s submissions in response to this concern, I find that the Applicant’s email communication with the College contains instances of inappropriate tone and content. I dismiss the Applicant’s submissions that the Registration Committee’s concern in this regard was without foundation.

The Applicant claims that the Registration Committee treated him in an unfair and unjust manner. I have considered this claim and reject it in its entirety. I find that the College and the Registration Committee have responded to a series of repeated requests from the Applicant in a manner that was always professional, thoughtful and considerate. The Registration Committee is under no obligation to create a program uniquely designed to fit the Applicant’s situation as he has requested. He may be well
qualified to practice medicine, however, under the Bylaws of the College, the Applicant is not qualified to practice in British Columbia.

[55] The Registration Committee clearly set out the basic requirements the Applicant must meet to qualify for the practice of medicine in British Columbia. I considered whether the Registration Committee might have exercised the discretion afforded it under the Bylaws to otherwise provide registration for the Applicant. To exercise discretion, the Registration Committee would need to have some factors in the balance to consider whereby discretion can be exercised to reach a decision which is otherwise not strictly satisfied by the wording of the Bylaws. This matter does not rise to such a level where the exercise of discretion can be used to reach a reasoned decision. In this matter, the Applicant did not provide the Registration Committee with the information that demonstrated he met at least most of the basic requirements to be granted registration, even though he had at least one, the ELP scores, in his possession. I find there was no opportunity for the Registration Committee to make a discretionary judgment in this matter.

[56] In every respect the 2016 Decision Letter set out a decision which is justified, transparent and intelligible. The decision is justified as it is entirely consistent with the College Bylaws as consistently communicated by the College and Registration Committee over the four years this matter has been before them. It is transparent and intelligible as each component of the requirements for registration is clearly communicated, in plain language, with no improper variation or deviation over time.

X CONCLUSION

[57] Based on my findings above, I confirm the disposition as set out in the 2016 Decision Letter.

[58] I confirm that in making this decision, I have carefully considered all the evidence, whether or not it has been specifically referenced herein.

“Lorne R. Borgal”
Lorne R. Borgal, Panel Chair
Health Professions Review Board