Health Professions Review Board  
Suite 900, 747 Fort Street, Victoria, BC V8W 3E9  

Applicant v. College of Physicians and Surgeons of British Columbia  

DECISION NO. 2016-HPA-239(a)  

August 24, 2018  

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, (the “Act”) of a registration decision made by registration committee  

BETWEEN: The Applicant  
AND: The College of Physicians and Surgeons of British Columbia  
BEFORE: Roy M Kahle, Panel Chair  
          John M. Orr, Q.C., Panel Member  
          Donald A. Silversides, Q.C., Panel Member  

DATE: Conducted by way of written submissions closing on December 22, 2017  

APPEARING: For the Applicant: Self-represented  
For the College: Michelle Stimac, Counsel  

DECISION ON APPLICATION FOR REVIEW OF A REGISTRATION COMMITTEE DECISION  

I INTRODUCTION  

[1] The Applicant is a physician educated and trained in South Africa. In November of 2001, the College granted the Applicant a temporary license to practice medicine. When the College became subject to the Act on June 1, 2009, her temporary registration was converted to registration in the provisional General/Family practice class. Having failed to meet certain conditions imposed upon her prior to being placed on the full register and having been given several extensions, the provisional licence was not renewed in February of 2010. She then returned to South Africa and continued to practice medicine in that country. Since that date, the Applicant has endeavored to meet the College’s conditions for re-licensure which led to a review of her eligibility for licensure in November 2016. Pursuant to that review the Registration Committee of the College concluded that the Applicant did not meet the requirements for re-registration and re-licensure.
Upon receiving the Applicant’s request for review, the Chair of the Review Board, directed this matter to the mediation stream under Rules 31(1)(a) and 36(1) of the Review Board Rules of Practice and Procedure.

The mediation was unsuccessful and consequently the Registration Committee, on April 27, 2017, met and concluded that there were no exceptional circumstances or additional information which would warrant a reconsideration of its November 22, 2016 decision. Accordingly, the Registration Committee concluded it would not be prepared to grant the Applicant’s request for reinstatement of her registration and licensure in the provisional; general/family class.

The Applicant seeks a review of both the November, 22, 2016 and April 27, 2017 decisions of the Registration Committee (the “Decision”).

This is a Stage 2 review, meaning that it is a review and decision after having provided both parties an opportunity to provide full submissions.

A core element of this review involves whether there were changes in the requirements for registration that justified refusing the Applicant’s request for re-registration and re-licensure in the Provisional: General/Family class of registration in British Columbia. Additionally, the College takes the position that the Review Board does not have jurisdiction on this review as the Applicant has not filed an application form which the College submits is a prerequisite to the Review Board having jurisdiction.

II BACKGROUND

The Applicant’s initial registration and licensure: 2001-2010

On January 12, 2001, the Applicant wrote to a physician in a northern community indicating a desire to practice in that area in response to the physician’s advertisement in the Canadian Medical Association Journal seeking to sell his family practice. On January 17, 2001, both Health Match BC and the northern community physician provided the Applicant’s Curriculum Vitae (“CV”) to the College. Health Match’s letter advised the College Deputy Registrar that the Applicant is “seeking consideration for eligibility.”

On January 18, 2001, the Applicant wrote the College a letter headed “Eligibility For Temporary Registration in British Columbia,” advising the College that she had submitted her CV to the College through Health Match BC for a preliminary assessment of her ability to work in an under-served community. The letter closed with the request that the College advise of her application progress and any further steps necessary to achieve her objective of practicing medicine in BC.

1 Health Match BC is a health professional recruitment service funded by the Government of British Columbia.
On January 26, 2001, the Deputy Registrar of the College wrote to the Applicant indicating that he had received a request from Health Match BC that the College review her CV, and advised the Applicant that she appeared to have all the core components the College required with the exception that she had not taken and passed the examinations of the Medical Council of Canada ("MCC") and either certification with the College of Family Physicians of Canada ("CFPC") or alternatively approved post graduate training, one year of which must be done in Canada. The letter concluded by noting that, "physicians lacking the academic requirements for full registration may be considered for temporary registration in an underserviced area of need in the Province. You cannot make this formal request yourself; the underserviced area must make that application on your behalf." The letter concluded by stating:

I can confirm that if this College was to receive a specific request for your temporary registration in an underserviced area of need in the province, I would be prepared to take that request to the Registration Committee for their consideration.

In granting temporary registration this College is deferring but not waiving the academic requirements for licensure. Therefore, physicians so registered must proceed to the examinations of the Medical Council of Canada to ultimately obtain their L.M.C.C. and possibly the certification examination of the College of Family Physicians of Canada.

We pause here to note that “temporary registration” (now called “provisional registration”) refers to a novel type of licensing developed by the College. While most professions do not allow any professionals to practice until they first satisfy all academic and professional qualifications, temporary registration is an innovation that has allowed foreign trained physicians to practice in underserviced areas of the province without the academic qualifications Canadian trained physicians are required to have before they can practice. Temporary registration allowed certain foreign trained physicians to practice under supervision while the physician pursued the required full Canadian academic and professional credentials, which conditions may be thought of as “conditions subsequent.” The key issue in this case, as in many other cases this Review Board has been required to address, is whether the Registration Committee’s decision-making in connection with the conditions subsequent was fair and reasonable in the circumstances.

On February 8, 2001, the northern community physician wrote to the College Registrar noting that the Applicant had applied to take over his practice and thanking the College for reviewing the CV of the Applicant. The letter closed with, “I am writing to ask that the Registration Committee consider granting temporary registration to (the Applicant).”

On February 14, 2001, the Registration Committee met. On reviewing the credentials of the Applicant, and noting that “(the doctor in the northern community) had requested temporary registration of (the Applicant) to take over his family practice, the Registration Committee made the following recommendation:

The recommendation is to defer the requirement for the M.C.C.E.E. and to grant (the Applicant) temporary registration for the practice of medicine restricted to [the northern
community] and surrounding area under the sponsorship of (the sponsoring physician) for a period not exceeding three months past the next available sitting of the Medical Council of Canada Evaluating Examination.

If (the Applicant) has any intention to remain in British Columbia, or return in the future, she must take and pass the M.C.C.E.E. at the next available opportunity to be considered for an extension. Should she fail the examination, her temporary registration will be terminated.

[13] The resolution also contained the following conditions:

- To be considered for further extension the Applicant must pass the M.C.C.Q.E. Parts I and II leading to becoming a Licentiate of the Medical Council of Canada;
- Due to her lack of one year post graduate training in Canada, she must stay on the temporary register for 5 years working in an area of need. Then subject to a satisfactory assessment by the College, her temporary registration would be considered for advancement to full registration.
- Her other option to obtain full registration would be to obtain certification with the College of Family Physicians of Canada.

[14] On February 16, 2001, the recommendation of the Registration Committee was adopted by the Executive Council of the College (Resolution #01-31).

[15] On February 19, 2001, the College wrote a letter to the northern community physician re: the Applicant. The letter is confusing because it appears in some places to conflate the Applicant and the northern physician. However, its overall meaning is clear. It states that “At the most recent meeting of the Registration Committee and subsequently the Executive Council of the College of Physicians and Surgeons of British Columbia your (sic) application for registration in British Columbia to assume a position in [the northern community] to join the practice of (the sponsoring physician) was considered.” And, “I am pleased to inform you that the Executive Council has agreed to grant temporary registration for the practice of medicine....” The letter concluded with the following:

I have enclosed an application form, a criminal record search authorization form, three reference forms with instructions and a covering letter outlining the entire registration process. Please complete the registration kit and return it to the college so that we can proceed with your registration accordingly. (emphasis added)

[16] The application enclosed with the above noted letter a four-page document entitled APPLICATION FOR REGISTRATION. It required the Applicant to set out her prior education, her current activity/employment, her personal information and required the provision of three references. The Applicant was also required to provide authority to the College to investigate and confirm the information in the application and includes the Applicant’s attestation to the effect that should any of the information disclosed in the application prove to be false or misleading, the College could revoke any license issued.
On February 20, 2001, a medical Clinic in a small coastal community in British Columbia ("coastal community") wrote to the Deputy Registrar advising of its understanding that the Applicant had been accepted to work in an underserviced area, stated that the clinic had been corresponding with the Applicant extensively over the past several weeks, advised that their community was also desperately short of physicians and advised the College that they were prepared to offer employment to the Applicant. The letter concluded with, “I would appreciate knowing definitely from you that (the Applicant) is eligible to practice in British Columbia and that the College would be prepared to provide (the Applicant) with a temporary license to practice in [the coastal community] area.”

On March 28, 2001, the Applicant wrote to the College advising that she did not accept a job offer with the northern community physician and had only requested that Health Match BC forward the request for a preliminary assessment of registration in the northern community. She indicated that, “(I) did at no point in the past instruct (the northern community physician) or Health Match BC to apply to the College for temporary registration...(I) had only requested Health Match BC to forward (my) documentation on to the College for a preliminary assessment for temporary registration.” The Applicant expressed being “perplexed and somewhat disturbed” at having been granted temporary registration for the northern community. She advised the College that she had been offered a temporary position in the coastal community, which was more consistent with her goals of securing a temporary position prior to deciding where she wanted to locate on a permanent basis. She advised that she had notified the coastal community clinic to formally apply for temporary medical licensure for that purpose.

On May 15, 2001, the Registration Committee of the College met. At that meeting the Registration Committee Minutes stated, *inter alia:*

Because the (sponsoring physician in the northern community) requested a temporary registration for the applicant to take over his family practice, her application was considered by the Registration Committee and the Executive Committee in February 2001 (Resolution 01–31). She was approved for temporary registration for the practice of medicine restricted to [the northern community]….

…A request has [now] been received from (the business manager of the medical clinic in the coastal community). The Chief of Staff of [at a hospital in the coastal community] has also written to the College in support of this application.

Given that [the coastal community] is one of the underserviced areas of need in the province... the recommendation is to defer the requirement for the M.C.C.E.E. and to grant (the Applicant) temporary registration for the practice of medicine restricted to the [coastal community] area, under the sponsorship and supervision of a physician to be identified, for a period of one year from a date to be determined. [emphasis added]

The Registration Committee’s May 2001 decision repeated the terms set out in its February 2001 decision:
If (the Applicant) has any intention to remain in British Columbia, or return in the future, she must take and pass the M.C.C.E.E. at the next available opportunity to be considered for an extension. Should she fail the examination, her temporary registration will be terminated.

To be considered for further extension (the Applicant) must pass the MCCQE (Medical Council of Canada Qualifying Examinations) Parts I and II within three years of her arrival;

Furthermore, lacking one year of post graduate training done in Canada, (the Applicant) would be required to remain on the temporary register for a period of five years working in area of need. Then, subject to a satisfactory assessment by the College, her temporary assessment would be considered for advancement to full registration.

Her other option to obtain full registration would be to obtain certification with the College of Family Physicians of Canada.

The above noted recommendation was adopted by the College Council May 16-17, 2001. (Resolution 01-98)

[21] On May 22, 2001, the College advised the coastal community clinic that, “Your request for the temporary registration for (the Applicant) as expressed in your letter of May 8, 2001 was considered by the Registration Committee and subsequently the Council of the College of Physician and Surgeons at their most recent meetings this past week,” AND, “I am pleased to advise you that the Council has agreed to grant (the Applicant) temporary registration for the practice of medicine…”. The letter again enclosed an application form and a covering letter setting out the registration process.

[22] In July 2001, the Applicant submitted the APPLICATION FOR REGISTRATION form to the College with supporting documents.

[23] Subsequent to the filing of the application, a College interview was scheduled for the Applicant in October 2001, at which time she was instructed to bring original documents including birth certificate or passport, Medical Degree (if not in English then translation must be appended to the original document), certificates and/or statements from hospitals where postgraduate training has been undertaken, employment authorization (where applicable), change of name (if applicable) and Certificate of Standing from Health Professions Council of South Africa.

[24] In November 2001, the College granted the Applicant her first Temporary Certificate, valid to February 28, 2002, certifying that the Applicant, “is entitled to practice medicine subject to the following terms and conditions:

For the practice of medicine restricted to [the coastal community], B.C. and surrounding area, under the sponsorship and supervision of (the sponsoring physician) as per Resolution 01-98.

[25] It is important to note at this point that on two occasions, the Registration Committee considered, and the College Council approved the granting of temporary
registration for the practice of medicine prior to having received an “application form” from the Applicant.

[26] There is no evidence to indicate that the Registration Committee made any further qualification decisions prior to the Applicant obtaining her temporary certificate. The application form and other documents appear to have been considered and processed at the staff level as an administrative matter, and clearly did not raise any issues that staff believed needed to be further addressed by the Registration Committee.

[27] On June 13, 2003, the Applicant was notified that she passed the MCC Evaluating Examination. She was advised that her pass was valid for a period of five years from May 1, 2003.

[28] In 2004, the Applicant was unsuccessful in passing the MCC Part 1 examination. On January 19, 2005, the Registration Committee, taking account of the Applicant’s difficult personal circumstances and her excellent supervisory reports, passed a resolution adopted by the council of the College directing that the Applicant’s temporary registration be rescinded if she was unsuccessful in writing the MCCQE Part I examination by May 2005.

[29] On April 18, 2005, the Applicant voluntarily withdrew from the Temporary Register for personal reasons. Up until that withdrawal, the Applicant’s temporary certificate was reissued regularly and without interruption. Effective March 27, 2006, the Applicant’s status was changed to “Temporary Inactive” due to illness.

[30] In January 2007, the Applicant notified the College that she had received a job offer from another family practice, this one in the Fraser Valley, and requested that the College reactivate her licence for this purpose. In March 2007, the College granted the Applicant a new Temporary Certificate entitling her to practice medicine until February 29, 2008, restricted to the Fraser Valley area, under sponsorship of the Health Authority and under the supervision of a named physician.

[31] On January 10, 2008, the Deputy Registrar wrote to the Applicant reminding her that it was expected that she successfully complete her Part 1 MCC examination by the Spring of 2008. On March 1, 2008, her Temporary Certificate was extended to August 31, 2008.

[32] On June 27, 2008, the College’s Executive Council adopted a Registration Committee recommendation which included the following:

[The Applicant] has gone through some very stressful social situations over the last year i.e. divorce and death, and has failed her MCCQE pt 1 three times (?), most recently spring 2008.

She will attempt to write the fall Oct/Nov examination.
The Executive Council of the College would be prepared to extend [the Applicant’s] licensure until December 31, 2008 such that she may complete the Qualifying Part II of the Medical Council of Canada examinations successfully.

[33] In January 2009, the Applicant notified the College that she had again, unfortunately, failed to pass the MCC Part 1 examination. She described her difficult personal and financial circumstances and requested “one final opportunity to extend my licence.” She requested an extension to June 2009 “when I know for sure I will have passed the QE1 exam.”

[34] On January 14, 2009, the Registration Committee passed a resolution adopted by the Executive Council of the College which deferred the requirement to successfully pass the MCCQE Part 1 examination until the spring or fall of 2009 and provided that further extensions would not be considered beyond the Fall sitting of the examinations. During this period, her Temporary Certificates were extended until February 28, 2010.

[35] On February 11, 2010, after learning that the Applicant had failed the Part 1 examination both in the spring and fall of 2009, the Registration Committee met to consider whether to further extend the Applicant’s Temporary Certificate. The relevant extracts from the minutes of that meeting are:

The (Applicant) is currently licensed on the Temporary Registry for the practise of medicine. Her current licensure will expire February 28, 2010.

The (Applicant) had significant and stressful social issues previously, i.e. divorce, death, foreclosure.

The Council of the College and Registration Committee were prepared to defer the requirement for the examinations either to the spring or fall of 2009. Further extensions were not to be considered beyond the fall sitting of the examinations.

It has since come to the College's attention that (the Applicant) had failed the Qualifying Part I examination of the Medical Council of Canada both in the spring and fall of 2010, a total of 5 times.…

The (Applicant) did not report her failures on the MCCQE Pt I to the College. The Committee understood the stressors that have affected the (Applicant)’s attempts on the Qualifying Part I Examination of the Medical Council of Canada. However, the Committee considered that basic medical knowledge should provide a success on that examination within one or two attempts. The fact that the (Applicant) has been given extensions and has now failed the examination five times is of great concern to the Committee.

The Committee understood that the (Applicant) is participating in the Clinical Competence Review Program at the University of British Columbia in the Spring of 2010 and that she will then sit the Qualifying Part I examination of the Medical Council of Canada.

The Committee was prepared to reconsider possible licensure for the (Applicant) in the Provisional Class were she to have a clinical competence review satisfactory to the
Committee that does not identify significant deficiencies, and secondly if she was to pass the Qualifying Part I examination in the Spring.

The Committee also would require that (the Applicant) complete the Qualifying Part II examination of the Medical Council of Canada at the Fall sitting.

It was MOVED and SECONDED:

That the (Applicant’s) request for extension of licensure in the Provisional-Family Practice Class be denied. Were the (Applicant) to provide a clinical competence review satisfactory to the Registration Committee and to pass the Qualifying Part I examination in the Spring, licensure would be reconsidered. (emphasis added)

[36] On February 23, 2010, the College Deputy Registrar wrote to the Applicant advising her that the Registration Committee was not prepared to continue her licensure in British Columbia at that time. However, the letter concluded by noting:

The Committee understands that you are prepared to participate in Dr. Steve Barron’s Clinical Competence Review Program and is supportive of this. The Committee understands further that you will be attempting the Qualifying Part I examination of the Medical Council of Canada in the spring of this year.

The committee was prepared to reconsider licensure in the Provisional class under supervision were you to have a satisfactory clinical competence review, and success on the Qualifying Part I examination of the Medical Council of Canada this spring. However, the Committee wished to stress that if there was such a further application, continuation of licensure would require the successful completion of the Qualifying Part II examination of the Medical Council of Canada within one year following re licensure.

[37] The Applicant’s temporary certificate to practice medicine in BC expired on February 28, 2010. It is noted that despite her lack of success on the examinations, the Applicant received positive supervisor reports throughout the period of her practice in BC.

The Post-Certificate period

[38] After the expiry of her temporary certificate, the Applicant continued to pursue re-registration with the College by attempting to meet the criteria set out for her in the Deputy Registrar’s February 23, 2010 letter. The details relating to these attempts and her interaction with the College are addressed in the substantive analysis of this Review.

[39] For the purpose of addressing what has been called the “jurisdictional” component of the review, we will summarize here the Registration Committee decisions. We note that none of these decisions was preceded by any requirement for an “Application for Registration” form.

[40] On July 20, 2010, the Deputy Registrar wrote to the Applicant advising that in light of an inquiry from the Canadian Medical Protective Association, the Registration
Committee considered both her May 2010 clinical competence review\(^2\) and her failure on the Part I Qualifying Examination six times. The Committee’s July 15, 2010 Minutes state:

The Committee discussed whether licensure would be revisited if (the Applicant) was successful on the examination of the Medical Council of Canada. The Committee was of the view that if she were to pass both the Qualifying Part I and II of the Medical Council of Canada it would be prepared to reconsider licensure depending on her currency in practice at that time.

[41] In October 2012, the Applicant sent an email to the College advising that she was living in Thailand and studying for the Part 1 examination. She asked “Is there any way I can get some form of an answer from someone of senior authority to let me know if I can reactivate my licence without the part 2 of the exam in hand (as I won’t be able to sit this exam now that the new combined exam is in place)?”

[42] On November 14, 2012, the Applicant followed up with a letter to the Registration Committee setting out the same request in greater detail, and with an explanation of her current financial circumstances. College staff placed this letter before the Registration Committee together with other background material, including a memorandum that stated as follows:

(The Applicant) does not appear to have practiced any clinical medicine since February 28, 2010. As of February 2013, she will not be current for clinical practice as a general/family physician as defined in College Bylaw 2-8. Therefore, even if she was successful on the MCCQE Part 1 Examination in the spring of 2013 (following six previous failures) she would be required to undergo a repeat assessment of her competency with … the UBC Clinical Competence Program…. She would then need to enter a period of preceptored re-training, satisfactory to the College, to regain her currency in practice.

[43] On December 13, 2012, the Registration Committee met passed Resolution 12-1031, which set out as follows:

RESOLVED, that (the Applicant’s) request for reinstatement of registration and licensure with the College in the Provisional; General/Family practice class be denied at this time. Any further consideration of registration and licensure would be dependent on her satisfactory completion of the MCCQE Part 1 Exam, a further clinical competency assessment, and a period of preceptored training, to be determined by the Committee, and with a satisfactory report from her preceptor.

(The Applicant) would then be required to obtain the MCCQE Part II/CCFP combined, enhanced examination within 18 months of her reinstatement of registration and licensure for the independent practice of medicine in the Provisional class.

[44] On December 18, 2012, the Deputy Registrar notified the Applicant of the Committee’s December 13, 2012 decision. In the two weeks following this letter, the

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\(^2\) The May 2010 Clinical Competence Review is discussed in more detail below.
Applicant and the Deputy Registrar exchanged correspondence regarding the nature and timing of the required preceptorship as well as the reason for the need to repeat the clinical competency assessment.

[45] On December 23, 2013, in response to the Applicant’s December 17, 2013 letter, the Deputy Registrar wrote to the Applicant reiterating the requirements, set out in Resolution #12-1031, which “must be satisfied in order for you to be eligible to be reinstated for registration and licensure in British Columbia in the Provisional; General/Family Practice class”:

1. You must successfully pass the MCCQE Part 1 examination as an initial requirement for re-registration and re-licensure with the College.
2. You will then be required to complete a competency based practice assessment in British Columbia because of your unsatisfactory April 2010 previously competency assessment which was conducted by Dr. Barron.
3. Following your repeat competency assessment, you may or may not be required to complete a period of formal structured preceptored retraining in British Columbia, prior to being eligible for licensure for independent medical practice.
4. Once you have regained your registration and licensure status with the College, you will be required to obtain the MCCQE Part II examination and the CCFP combined examination within 18 months of your reinstatement of registration and licensure for the independent practice of medicine in British Columbia.

[46] On January 2, 2014, the Applicant wrote to the College advising she has been licenced in South Africa on an unrestricted basis as of 2013. On March 12, 2014, a colleague of the Applicant wrote to the College advising that she has worked as a locum practitioner since her return to South Africa and covered 24 weeks of clinical practice, amounting to more than 960 hours. He stated that “I understand that she will continue to work in South Africa until reactivation of her Canadian medical licence.”

[47] On March 25, 2014, the Deputy Registrar wrote to the Applicant advising her of the pending elimination of the UBC Clinical Competency program. The Applicant travelled to Canada from South Africa to undertake the assessment for a second time. Her overall score was a pass.

[48] More than two years passed, and on August 16, 2016, the Applicant wrote to the Deputy Registrar advising as follows:

As outlined in [the former Deputy Registrar’s] letters, I subsequently successfully completed my second competency exam with Dr. Barron in 2014 (a report was requested to be copied to the College) and I have also successfully completed the MCCQE1 exam in the spring of this year. I was invited by the MCC, to sit the fall Mccqe2 exam, which I will take on the 29-30th October 2016. (sic)

[49] The Applicant’s letter stated that in view of her compliance with the 2012 conditions, her former employer’s willingness to have her return to the clinic and her clinical hours in South Africa, she was confused by advice she had received from Registration Department in July 2016 that “there was confusion about me returning to
work as a South African doctor.” The Applicant followed up with additional correspondence in October 2016.

[50] On October 21, 2016, College staff advised the Applicant as follows:

… under the current legislation, bylaws, policies and procedure, you are not eligible for registration and licensure. Given this, I am taking your registration and licensure information with this College to the Registration Committee meeting for its November 12, 2016 meeting for its review of all the available information and for the Committee to determine if it finds that you would be eligible to apply for registration and licensure in British Columbia.

[51] The “current legislation” in question was College Bylaw 2-15(b), enacted effective January 1, 2012. This bylaw sets out three potential paths to provisional licensure for an applicant with a medical degree. Subparagraph (ii) refers to successful completion of “a minimum of two years of accredited postgraduate training in a foreign jurisdiction recognized by CFPC for the award of certification without examination, with a basic core of 44 weeks, consisting of eight weeks in each of medicine, surgery, obstetrics/gynecology, and paediatrics, and hours weeks in each of psychiatry, emergency medicine, and general/family practice”. The College advised the Applicant that South Africa is not a foreign jurisdiction recognized by CFPC for this purpose.

[52] There followed several pieces of correspondence between College staff and the Applicant up to and including November 17, 2016.

[53] In an internal memorandum, College staff presented the Registration Committee with these options in light of the history of this matter:

(a) Reject licensure (given that her postgraduate training is not recognized by the CFPC, and further because she was on the provisional register for 9 years and exhausted her five years to complete the conditions subsequent),

(b) Review the Applicant’s eligibility under the assessment class of registration if the Applicant applies and is accepted under the PRA-BC Program.\(^3\)

(c) Given the history and correspondence over the past years between the College and (the Applicant) … consider providing (the Applicant) with eligibility for (provisional) registration … subject to (the Applicant), upon registration and licensure, obtaining the MCCQE Part II within one year, and CCFP within 3 years. (The Applicant) would be eligible to sit the CCFP examination after two years of commencement of practice in BC.

[54] The Registration Committee met on November 22, 2016, and denied the Applicant’s request for re-licensing. The Committee, taking into account its public

\(^3\) This is an alternate approach set up by the BC government for entry to the medical profession by foreign applicants falling outside the four countries recognized under bylaw 2-15(1)(b)(ii).
interest duty and “its responsibility to ensure that the College’s registration process objective, fair, transparent and impartial,” determined as follows:

- Since the Applicant’s status was that of “former, cancelled,” effective March 1, 2010, the policy of the College is that applicants “must make a formal application for re-registration and successfully meet the registration requirements that are in effect at the time of their re-registration.” Based on section 2-15 of the Bylaw, in effect since January 1, 2012, the Applicant’s South African medical training disqualifies her from licensure under paragraph (ii).

- In view of the College’s September 2014 policy that the time periods for completion of conditions subsequent commence uninterrupted from the first day of licensure, the Committee also “noted with concern that (the Applicant) was registered on the provisional register from November 1, 2010 to March 1, 2010 (she was temporarily inactive from the period (sic) of April 18, 2005 and March 1, 2007) and within that time period, had not met the requirements for her continued licensure and moreover, has exceeded the five year time limit that she would be permitted to remain on the provisional register.”

- With regard to her future eligibility to write the CFPC exam, the Committee “noted with concern that, on the basis of information provided by the CFPC, (the Applicant) may only be eligible to write the exam once she has met all requirements, including, being in continuous full time active family practice in Canada for a minimum of two years immediately preceding the date of her application”.

The Committee therefore concluded that the Applicant is not eligible for licensure but recognized that “it would be open to the Applicant to apply to the Practice Ready Assessment – BC (PRA) Program should she choose to do so.”

On December 6, 2016, the Executive Director, Registration, wrote a letter to the Applicant setting out the Committee’s reasons. The letter concluded by advising the Applicant that since its decision was made under s. 20(2) and (4.3) of the Act, she had a right to apply to the Review Board for a review.

The Applicant filed an application for review, where a key argument was that she relied on the representations made by the Committee and College regarding the steps that she would need to complete to be eligible for registration. As a result of this process, the College agreed that the application for review should be held in abeyance to allow the Registration Committee to further consider her request.

On April 27, 2017, the Committee concluded as follows:

The Committee acknowledged (the Applicant’s) reliance on the information provided to her in 2012 regarding her eligibility for registration. Nonetheless, the Committee noted that applicants are subject to the requirements which are in place at the time of application and moreover, the registration requirements must be applied consistently to
all applicants applying for registration with the College. The Committee further noted that (the Applicant has) exceeded the five year limit to remain on the provisional register and do not meet the requirements for registration on the full register.

…As an outcome of [the] mediation, College staff agreed to present an option that (the Applicant) proposed to the Committee for its review. (The Applicant) proposed that she would be willing to undergo a period of “Preceptorship Re-Training” for the duration and in the manner directed by the Committee in order to be eligible for registration and licensure in the provisional-general family class. The Committee, upon review of all the information before it, determined that there is no authority in the College bylaws for the Committee to grant a period of “Preceptorship Re-Training” in (the Applicant’s) circumstances.

…While the Committee was empathetic regarding (the Applicant’s) circumstances, it was not able to identify any exceptional circumstances or additional information which would warrant a change in its decision….

[59] The Applicant was notified of this decision in a letter dated May 19, 2017.

[60] This application for review includes consideration of the reconsideration decision.

III IS THERE A RIGHT OF REVIEW?

[61] The first issue before the Review Board is whether the Applicant has a right to seek a review from the Registration Committee’s 2016 and 2017 decisions. For context, we begin by setting out several relevant provisions of the Act:

Registration of person in College

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.

(7) If the registration committee decides, under this section,

(a) to refuse a person’s application for registration, or

(b) to grant a person registration for a limited period or with limits or conditions imposed on the practice of the designated health profession by the person,

the registration committee must, within 30 days of making its decisions, deliver written notice to the person respecting the decision and advising of the person’s right to apply for a review of the decisions under section 50.54 or to appeal the decision to the Supreme Court, as applicable.

Part 4.2 – Health Professions Review Board

Definitions for Part 4.2

50.5 In this Part:

"Registration committee" includes

(a) the registrar or board for a College, as the case may be, and

(b) if a College has established one or more classes of certified non-registrants, the person or committee authorized under the bylaws of the College to certify persons as certified non-registrants;

"registration decision" means a decision made by a Registration committee

(a) to refuse to grant an application for registration as a member of a College under section 20, except for a refusal under section 20 (2.1) or (3),

(b) to grant registration in a class of registrants under section 20 with limits or conditions on the practice of the designated health profession by the registrant, except limits or conditions imposed under section 20 (2.1) or (3), or

(c) if a College has established one or more classes of certified non-registrants, to refuse an application for certification as a certified non-registrant.
Review of registration decisions

50.54 (1) In this section, "applicant" means

(a) a person applying for registration as a member of a college who is refused a grant of registration under section 20, except for a refusal under section 20 (2.1) or (3),

(b) a registrant who is granted registration in a class of registrants under section 20 (2) with limits or conditions on the practice of the designated health profession by the registrant, except limits or conditions imposed under section 20 (2.1) or (3), or

(c) a person applying for certification as a certified non-registrant who is refused certification.

(2) An applicant may apply to the review board for a review of a registration decision.

[62] Also relevant is College Bylaws 2-13, which provides as follows:

General registration and licensure requirements

2-3 (1) An applicant must satisfactorily complete and deliver to the registrar an application for registration in the form established by the registrar under section 1-25 for the purposes of this section.

(2) An applicant for any class of registration, except for emergency registration, must

(a) provide satisfactory evidence of identification, experience, good professional conduct and good character to the registration committee,

(b) provide a letter, in a form satisfactory to the registration committee, dated within 60 days from the date of the application, from the competent regulatory or licensing authority in each other jurisdiction where the applicant is or was, at any time, registered or licensed for the practice of medicine or another health profession

(i) certifying that the applicant’s entitlement to practise medicine or another health profession has not been cancelled, suspended, limited, restricted, or subject to conditions in that jurisdiction at any time, or specifying particulars of any such cancellation, suspension, limitation, restriction, or conditions, and

(ii) certifying that there is no investigation, review, or other proceeding underway in that jurisdiction which could result in the applicant’s entitlement to practice medicine or another health profession being cancelled, suspended, limited, restricted, or subjected to conditions, or specifying particulars of any such investigation, review, or other proceeding,
(c) provide satisfactory evidence of currency in clinical practice under section 2-8(3),

(d) have the ability to speak, read and write English to the satisfaction of the Registration committee,

(e) provide documentary proof that the applicant meets all requirements of the registration class applied for,

(f) provide a signed criminal record check consent form under the Criminal Records Review Act,

(g) provide proof of compliance with section 4-12 as to professional liability coverage or protection, and

(h) pay the applicable fees set out in schedule “A”.

(3) A registrant must practice medicine within the scope of his or her training and recent expertise and must not engage in medical practice that he or she is not competent to perform, and failure to comply with this requirement may result in a finding of unprofessional conduct.

Analysis

[63] The College submits that a person does not become an applicant as contemplated by s. 50.54 of the Act until they have filed a formal application form as identified under bylaw 2-3(1). Consequently, the College submits, the Review Board has no jurisdiction to review a registration decision until a person has completed and filed a formal application form.

[64] In our respectful view, that position does not accord with either the legislation or the practice of the College.

[65] We begin by noting that we are doubtful that this issue is accurately characterized as being an issue as to “jurisdiction.” As the Supreme Court of Canada has noted, true jurisdictional issues are rare. In this case, the question is really one of statutory interpretation as it pertains to standing. Section 50.54(2) of the Act states that: “An applicant may apply to the review board for a review of a registration decision.” The interpretation of this provision, in our view, falls squarely within our exclusive jurisdiction to decide as an issue arising on a review: Act, s. 50.63(1).

[66] To understand s.50.54(2), we begin by noting that section 20 of the Act, which specifically deals with the registration of persons in the College, mandates under subsection (7) that the registration committee must advise the person affected by its

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4 West Fraser Mills Ltd. v. British Columbia (Workers’ Compensation Board), 2018 SCC 22 at para. [23].
decision that they have a right to apply for a review of the registration decision under section 50.54 of the Act.\(^5\) (emphasis added). To repeat, subsection (7) states:

(7) If the registration committee decides, under this section,

(a) to refuse a person’s application for registration, or

(b) to grant a person registration for a limited period or with limits or conditions imposed on the practice of the designated health profession by the person,

the registration committee must, within 30 days of making its decisions, deliver written notice to the person respecting the decision and advising of the person’s right to apply for a review of the decisions under section 50.54 or to appeal the decision to the Supreme Court, as applicable.

[67] Section 20(7) of the Act is consistent with the definition of “registration decision” in s.50.5 of the Act and reinforces the position that “applicant” must be given a broad and generous interpretation. Section 20(7) makes clear that if a person has been refused registration in a decision under this section, the person has a right of review.

[68] Sections 20(7) and 50.54, read together, make it clear that for the purpose of s.50.54(2) a person who is refused registration or granted registration on terms under s.20 is an applicant for the purpose of s.50.54(1) and is entitled to seek review from the Review Board pursuant to s.50.54(2) and s.20(7) of the Act.

[69] Section 50.54 does not define what it is to “apply” for registration, but common sense would dictate that it refers to a process in which the College will have received a request for registration with sufficient information to warrant the matter being placed before the Registration Committee for a decision under s.20 of the Act.

[70] The College takes the position that its bylaw 2-3(1) defines who is an applicant by requiring the satisfactory completion of an application form. In our view, this is literally an argument of form over substance. While it is clearly the case that a person applying for a licence must fill out an application form, this provision does not suggest, nor could it suggest, that an application form is a precondition to receiving a registration decision or being an applicant as a matter of law. Bylaw 2-3 does no more or less than set out one of the general requirements that all applicants for general registration and licensure must meet and for the purpose of that section. However, bylaw 2-3(1) does not define who is an applicant for the purpose of the enabling statute, it does not purport to do so given that it expressly recognizes that a person is an applicant even before he fills out the application form, and it could not explicitly or implicitly impair the mandate of the Review Board under s.50.54 of the Act.

[71] This interpretation of the relevant legislation is consistent with the practices adopted by this College in making provisional registration decisions. In this case the Applicant went through several procedural steps required by the College in the process

\(^5\) That obligation was clearly set out by the Registration Committee in the Decision.
of applying for registration. Amongst other things, she provided her credentials to Health Match BC and then sought out a physician sponsor who in turn submitted a request to the College that the Applicant be granted temporary registration. The Registration Committee subsequently, and without having received a formal application form, approved the request and granted temporary registration eligibility. Moreover, in the post-registration period, while the Applicant sought re-licensure, the Registration Committee on three occasions made registration decisions under s.20 of the Act without having received a new application form. The manner in which the College has made registration decisions reflects the unique nature of this kind of decision-making, which only requires an application form at the back end of the process. There is nothing legally problematic in that provided the Committee has sufficient information on which to base its provisional registration decisions. Clearly, the legislature was of the view that those decisions should be subject to review by the Review Board, even if a particular college did not require an application form at the front end.

[72] The College relies on Review Board Decision No. 2016-HPA-114(a). That decision appeared to have been based on the perception that the College did or should have engaged in a two-stage application and approval process. The first step involved an eligibility assessment by the Registration Committee which was purely administrative and was not reviewable by the Review Board. The second stage comprised of the completion and filing of an application form followed by a final ruling by the Registration Committee, was invoked only if the necessary qualifications were evident. In that process, only a Registration Committee decision, post filing of the application would be reviewable by the Review Board.

[73] It is not clear whether Review Board in 2016-HPA-114(a) had the benefit, as we did in the detailed Record before us, of the multiple examples of the process by which the Registration Committee rendered formal registration decisions without the necessity of receiving a prior application form from the Applicant. Be that as it may, to rule that only Registration Committee decisions made after the filing of an application form are reviewable would frustrate the right of review given that the College’s registration process involves substantive decision-making prior to the completion of the form. In our view, denying the right to a review of a Registration Committee’s decision, even if it is a preliminary eligibility assessment, contravenes the clear wording of sub-section 20 (7) and s.50.54 of the Act, which extends the right of review for registration decisions to all persons applying for registration under s.20 of the Act. To the extent that Decision 2016-HPA-114(a) found to the contrary, we disagree with it as a matter of law.

[74] For these reasons the panel concludes that the filing of a formal application under College bylaw 2-3(1) is not a legal pre-requisite to a person applying to the Review Board for review under s.50.54 (2) of the Act where, as here, the College process involved the Registration Committee making a substantive registration eligibility decision without the necessity of filing an application.

[75] The Registration Committee, on November 22, 2016 and April 27, 2017, made registration decisions finding that the Applicant was not eligible for registration and licensure in British Columbia in the Provisional – general/family class. As the College
itself expressly recognized in its December 2016 letter which notified the Applicant of her right to seek a review, those are registration decisions that entitle the Applicant to a review by this Review Board pursuant to s.50.54(2) of the Act.

IV WERE THE REGISTRATION DECISIONS REASONABLE?

A. Statutory and Bylaw provisions

[76] We begin with a review of the key provisions of the Act and College Bylaws relevant to provisional registration.

[77] Section 20(1) of the Act provides that the Registration Committee is responsible for granting registration of a person as a member of the College. Section 20(2) requires the registration committee to grant registration to every person who, in accordance with the bylaws, applies to the college for registration, pays the required fees and "satisfies the registration committee that he or she meets the conditions or requirements of registration in a class of registrants."

[78] As noted earlier, sections 20(4.3) and (4.4) of the Act specifically address provisional registrants:

20(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.

[79] Section 20(4.3) applies only if a College has passed a bylaw under section 19(1)(i) of the Act. Section 19(1)(i) states:

19(1) A board may make bylaws, consistent with the duties and objects of a college under section 16, that it considers necessary or advisable, including bylaws to do the following:

(i) establish a class or classes of registrants, including, if authorized in accordance with section 12(2)(g.3), a class of restricted or provisional registrants for the purposes of section 20 (4.2) or (4.3), respectively…
Section 19(1) of the Act also includes several provisions allowing the College to make bylaws concerning conditions or requirements for registration:

19(1) A board may make bylaws, consistent with the duties and objects of a college under section 16, that it considers necessary or advisable, including bylaws to do the following:

... (m) establish conditions or requirements for the registration of a person as a member of the college, including the following:

(i) standards of academic or technical achievement;
(ii) competencies or other qualifications;
(iii) requirements for providing evidence of good character;

(m.1) specify academic or technical programs that are recognized by the college as meeting a standard established under paragraph (m) (i);

(m.2) provide for the examinations that may be required, used or relied on by the registration committee in satisfying itself under section 20 that a person meets the conditions or requirements for registration as a member of the college;

(m.3) establish conditions or requirements for eligibility to take examinations referred to in paragraph (m.2) and procedures respecting the conduct of examinations, and authorize a committee established under paragraph (t) or the registrar to establish additional examination procedures consistent with the bylaws;

(m.4) confer discretion on the registration committee, in satisfying itself under section 20 that a person meets the conditions or requirements for registration as a member of the college, to consider whether the person's knowledge, skills and abilities are substantially equivalent to the standards of academic or technical achievement and the competencies or other qualifications established under paragraph (m), and to grant registration on that basis;

We now turn to the College bylaws.

College bylaw 1-15 empowers and defines the composition of the Registration Committee. Bylaw 1-15(3) provides the Registration Committee with the discretion to grant registration to those applicants it considers as having substantially equivalent standards of academic achievement, competencies or other qualifications established in Part 2 of the Bylaws.

College bylaw 2-9(1) sets out the classes of registrants established by the College and includes “provisional, for the purposes of section 20(4.3) of the Act”.

College bylaw 2-14 sets out a process and various conditions regarding provisional registration.

College bylaw 2-14(10) states:
2-14(10) A general/family practitioner granted provisional registration must, within five years of commencing practice in British Columbia, obtain certification with the CFPC, failing which registration is cancelled unless extended by the registration committee in exceptional circumstances.

[86] College bylaw 2-15 imposes further requirements for the grant of provisional registration:

2-15 (1) For the purposes of section 20(2) of the Act, to be granted provisional registration for general/family practice, an applicant must

(a) have a medical degree,

(b) meet one of the following requirements:

(i) have completed a general/family medicine program in Canada after July 1, 2010, but has not passed the CFPC examinations, provide a recommendation from the applicant's Program Director and Chairperson of the Department of Family Medicine, attesting to competence and successful completion of all program requirements, acceptable to the registration committee,

(ii) have successfully completed a minimum of two years of accredited post-graduate training in a foreign jurisdiction recognized by the CFPC for the award of certification without examination, with a basic core of 44 weeks, consisting of eight weeks in each of medicine, surgery, obstetrics/gynecology, and paediatrics, and four weeks in each of psychiatry, emergency medicine, and general/family practice,

(iii) have undergone an assessment of competency acceptable to the registration committee in a Canadian province or territory, and

(c) be legally entitled to live and work in Canada.

(2) An affected applicant may be granted provisional registration for general/family practice if, in addition to the requirements in section 2-15(1), the affected applicant has fulfilled the requirements of section 2-10(3).

[87] With respect to this review, the Act provides in s.50.54(7) that a review is a review on the record but the Review Board may hear evidence that is not part of the record if that evidence is reasonably required by the Review Board for a full and fair disclosure of all matters related to the issues under review.

[88] The Panel finds that it is able to fully and fairly decide the review based on the record provided by the College (the “Record”) for the Applicant and the submissions from the parties and does not require an oral hearing.

[89] The Review Board is given the following remedial authority on a registration review:

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.

B. Standard of Review

[90] The Review Board found in Decision No. 2016-HPA-195(b) that where the
remedy is other than a direction to grant registration, the Review Board must determine
for itself the appropriate standard to apply. The relevant standard may depend on the
nature of the issue. The Panel accepts that reasoning and has applied it to this review.

[91] The issue here is whether the Review Board should interfere with the
Registration Committee’s refusal to grant provisional registration and licensure with the
College in the Provisional: General/Family Practice class at that time. In support of that
decision the Registration Committee relied on the Applicant’s failure to meet the
requirements of College bylaw 2-15(1)(b) (ii) and the Applicant’s violation of the
College’s five-year policy limiting the time an applicant may remain on the provisional
register.

[92] For this kind of question, the Panel finds that it ought not engage in a de novo
assessment that simply substitutes its judgment for that of the Committee. The Panel is
of the view that considerable weight and respect should be given to the rationally
expressed views and conclusions of the Registration Committee. That said, where the
Registration Committee has given reasons that cannot withstand scrutiny, or has
rendered a decision whose rationale is impenetrable, the Review Board may act, and
may thereafter consider what remedy is appropriate. The review function would be futile
if the Review Board was required to uphold a clearly flawed or unintelligible decision:
see e.g., Review Board Decision No. 2015-HPA-065(a) at paras. [230-237]; para. [266].
See also, Review Board Decision No. 2016-HPA-195(b).

C. Submissions of the parties

[93] The Applicant, who is not represented by counsel, filed her Application for
Review on December 29, 2016, and her Statement of Points on August 9, 2017. Her
claim is straightforward. She says that she was given a set of clear conditions in
December 2012 about what she had to do in order to reactive her licence, that those
conditions resulted in “induced expectations,” and that in accordance with those
expectations, she set out to satisfy those conditions and meet those expectations.
When she presented the College with her success in 2016, she was advised that the
“goal posts had shifted.” She argues:

…I relied on the representations made by [the College] as to what would be required of
me to be re-licenced. To deny my request for re-licensure now, and cite the reason
being the fact that I no longer meet the requirements as per section 2-15 Bylaw change
in 2012, goes against the principles of procedural fairness and natural justice....
…I was only made aware of the bylaw change, for the first time, in July 2016. If you read through all of [the Deputy Registrar’s] correspondence in the letters referred to above, no mention of this bylaw change is made applicable to my registration matter.

[94] The Applicant further alleges that the actions of the College have caused her to lose her prior PRA eligibility status under College Bylaw 2-15(1)(b)(iii). She stated that in 2014, her South African Post Graduate Training was accepted by PRA-BC in relation to the pilot program to be launched in April 2015. When that application was submitted to the College in December 2014, it was declined because the Applicant was to follow the process as set out in its correspondence to that date. However, when the Registration Committee denied her application in November of 2016, the Applicant again contacted the PRA only to be advised that their academic requirements had changed in the interim and she was now required to upgrade her South African post-graduate credentials. The Applicant submits:

The CPSBC had from 2012 outlined a series of induced expectations and requirements for me to be re-licensed in BC. I relied on and trusted the representations made by CPSBC, and proceeded to fulfill the requirements as set out. This process took a number of years due to financial setbacks and a weak currency exchange....

There were NO time limits mentioned for these requirements to be met. There were no indication [sic] of bylaws changes forthcoming. To say that I no longer meet the requirements for re-licensure, based on changes that were in effect before I started my correspondence with the CPSBC in 2012, goes against the principles of procedural fairness and natural justice.

Had I known of these never ending goal post changes at the outset, I would have definitely chosen an alternative pathway to my return of practice in Canada (i.e. applying to a residency program in the UK where I had the option to do so in 2012). I ask the board to pay attention to procedural unfairness, and take note of the equitable estoppel in the points to follow.

[95] The Applicant requests that she be granted re-licensure in the Provisional General/Family Practice class, under the supervision of her former supervisor and sponsorship of the approving Health Authority with the proviso that she must pass the CCFP exam in no less than 2.5 years from the date of re-licensure. The Applicant has also offered to undergo a period of preceptorship retraining to prove competency. Additionally, she advised the College that subsequent to the rendering of the Decision she had passed both the MCCQE Part II and NAC examination in the fall of 2017.

[96] The College submits that the Decision ought to be confirmed by the Review Board as it is reasonable and fair. In particular the College submits that:

(a) The creation, enforcement and amendment of requirements for ongoing registration are properly within the jurisdiction and legislative authority of the College;

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6 PRA is an acronym for “Practice Ready Assessment,” which was launched in 2015 and was designed to provide certain foreign trained family practice physicians an alternate pathway to registration.
(b) The Committee applied the appropriate criteria, namely the Act and the Bylaws to the Applicant’s circumstances and determined that she is not eligible as she does not meet the requirements therein;

(c) The Decisions were not arbitrary, the Committee considered relevant factors and the Decisions are supported by the facts and were based on the eligibility requirements in place at the time of the Decision;

(d) The Committee had the authority to make the Decisions, under the Act and the College Bylaws;

(e) The Applicant was afforded procedural fairness as she was informed of the Committee’s reviews and afforded an opportunity to make submissions;

(f) The Decisions were transparent, intelligible and justified by both the facts and law and were clearly communicated to the Applicant.

[97] In support of these submissions, the College relies on several previous Review Board decisions, including Decision No. 2015-HPA-208(a) and Decision No. 2016-HPA-197(a), where the Review Board refused to disturb Committee decisions refusing to allow an extension of licensure in exceptional circumstances.

[98] With respect to the Applicant’s fairness arguments, the College submits that the information provided to the Applicant in 2012 and 2013 was provided by College staff, not the Committee, and was limited to requirements for eligibility, not registration and licensure. The College argues that while the Committee had discretion to grant the Applicant registration (as set out in one of the options staff provided to it), the Committee had the authority to make the decision it did, and it made that decision reasonably. The College states that the Committee could not be fettered by previous decisions or by College staff. The College also notes that given the time gap between 2014 and 2016, it was unrealistic for the Applicant to expect the eligibility requirements to never change. The College states that the Committee’s 2016 and 2017 decisions must be reviewed on their own merits, and that those decisions were reasonable.

[99] The College also argues that the Applicant was accorded a high degree of procedural fairness. Relying on Risseeuw v. Saskatchewan College of Psychologists, 2017 SKQB 8, the College also argues that procedural fairness did not require the Committee to notify her of the criteria that were to be reviewed as “all citizens are taken to know the law.”

[100] With regard to the arguments grounded on “induced expectations,” the College argues that the law of legitimate expectations grounds only procedural rights, not substantive rights: Agraira v. Canada, 2013 SCC 36 at paras. [96-97]. The College argues that there is no foundation for any legitimate expectation of licensure (a substantive right) and no foundation for the position that her registration would be extended indefinitely; rather, the College’s December 13, 2013, and March 25, 2014, letters make clear that any recommendation as to next steps was framed as being preliminary to a review of her eligibility. Any legitimate expectation could relate only to a consideration of her ongoing registration; not a grant of registration.
With regard to the “estoppel” argument, the College cites *Mount Sinai Hospital Centre v. Quebec*, 2001 SCC 41 for the proposition that estoppel cannot confer statutory rights or result in decisions contrary to the policy of the statute: “Circumstances that might otherwise create an estoppel may have to yield to an overriding public interest expressed in the legislative text….” In this regard, the College also refers to a large body of case law from the Tax Court, holding that incorrect staff advice cannot override the law: *Moulton v. Canada*, [2002] TJC No. 80. In reliance on this line of cases, the College submits:

Firstly… the source of the information was not the Committee, and the HPA clearly states that the Committee makes decisions about registration.

Secondly, registration is a statutory right, i.e. the right to practice medicine as conferred by the HPA, and estoppel cannot be used to provide this result.

Thirdly, and arguably most importantly, estoppel cannot be used to create a result that would be contrary to statute or public policy. The College and the Committee’s mandate is public protection and in the context of registration this purpose is fulfilled through the setting of minimum requirements for licensure. To use estoppel to grant licensure where the Committee previously determined that [the Applicant] is not eligible would be to subsume the public policy purpose beneath the estoppel application and to create a result contrary to what is permitted by the HPA.

The Applicant’s reply includes the following:

- Her licence was not cancelled in 2010. It was expired, as recognized by the College itself at that time.
- The College’s characterization of the correspondence as being “preliminary” is disagreed with and inconsistent with the right of review the College itself recognized when it made its decisions.
- The Deputy Registrar, upon whom she relied, was not simply College “staff”. The Applicant also notes that it was College staff who made the decisions that adversely impacted her potential PRA pathway.
- The fact that the Deputy Registrar (from December 2012) directed her to expectations required for relicensure regardless of the bylaws in place in January highlights that the College considered her registration matter a deviation from the norm.

Following receipt of the Applicant’s reply, the panel chair sought and received clarification on questions posed in a memorandum to the parties.

D. Analysis

The Applicant was granted temporary registration for the practice of medicine on November 1, 2001, and this status was converted to a provisional registration under the General/Family practice class on June 1, 2009. After granting the Applicant temporary registration, the registration committee made several registration decisions with respect to the Applicant on January 19, 2005, June 25, 2008, January 14, 2009 and February
11, 2010. On the latter date, the Registration Committee decided not to grant an extension of her provisional licensure. It also decided that if the Applicant provided a clinical competence review satisfactory to the Registration Committee and passed the Qualifying Part I examination in the spring of 2010 her licensure would be reconsidered. The Applicant’s provisional registration and licensure expired on March 1, 2010. The Registration Committee subsequently made registration decisions with respect to the Applicant on July 15, 2010, December 13, 2012 and November 22, 2016.

[105] On July 15, 2010, the Registration Committee met to respond to a request by the Canadian Medical Protective Association (CMPA) as to what the Registration Committee would require for the Applicant to regain licensure with the College. The minutes of the meeting disclose the following:

The committee discussed whether licensure would be revisited if [the Applicant] was successful on the examination of the Medical Council of Canada. The committee was of the view that if she were to pass both the Qualifying Part I and II of the Medical Council of Canada it would be prepared to reconsider licensure depending on her currency in practice at that time.

[106] The Registration Committee met on December 13, 2012 to consider an application by the Applicant for reinstatement of her provisional registration in the general/family practice class.

[107] On December 13, 2012, the Registration Committee passed in the following resolution:

RESOLVED that [the Applicant’s] request for reinstatement of registration and licensure with the College in the Provisional; (sic) General/Family practice class be denied at this time. Any further reconsideration of registration and licensure would be dependent on her satisfactory completion of the MCCQE Part I Exam, a further clinical competency assessment, and a period of preceptored re-training, to be determined by the Committee, and with a satisfactory report from her preceptor.

[The Applicant] would then be required to obtain the MCCQE Part II/CCFP combined, enhanced examination within 18 months of her reinstatement of registration and licensure for the independent practice of medicine in the Provisional class.

[108] The Resolution above was passed nearly one year after College bylaw 2-15(1) was amended on January 1, 2012 by deleting bylaws 2-15(1)(b) and (c) and substituting in their place a new bylaw 2-15(1)(b), and by renumbering the previous bylaw 2-15(1)(d) as 2-15(1)(c).

[109] Prior to the amendment, the deleted bylaws 2-15(1)(b) and (c) provided the following:

2-15(1) For the purpose of section 20(2) of the Act, to be granted provisional registration for general or family practice, an applicant must:

...
(b) have successfully completed a minimum of two years of accredited postgraduate training acceptable to and recognized by the registration committee with a basic core of 44 weeks, consisting of eight weeks in each of medicine, surgery, obstetrics/gynecology, pediatrics and four weeks in each of psychiatry, emergency medicine, and family/general practice,

(c) if the applicant completed a family medicine program in Canada after July 1, 2010 but failed the CFPC examinations, also provide a recommendation from the Program Director and Chairperson of the Department of Family Medicine, attesting to competence and successful completion of all program requirements, acceptable to the registration committee, and

[110] As a result of this amendment, two changes to the requirements for being granted provisional registration for a general/family practice were made. The first change was that instead of there being only one requirement that an applicant must meet, as formerly provided in College bylaw 2-15(1)(b), there were now three alternative requirements and an applicant needed to comply with only one of them. The second change was that the text of the former bylaw 2-15(1)(b), which after amendment became bylaw 2-15(b)(ii) was changed by deleting the words “acceptable to and recognized by the registration committee”, and substituting in their place the words “in a foreign jurisdiction recognized by CFPC for the award of certification without examination” so that the amended bylaw 2-15(1)(b)(ii) read as follows:

2-15 (1) For the purposes of section 20(2) of the Act, to be granted provisional registration for general/family practice, an applicant must

... 

(b) meet one of the following requirements:

... 

(ii) have successfully completed a minimum of two years of accredited postgraduate training in a foreign jurisdiction recognized by the CFPC for the award of certification without examination, with a basic core of 44 weeks, consisting of eight weeks in each of medicine, surgery, obstetrics/gynecology, and pediatrics, and four weeks in each of psychiatry, emergency medicine, and general/family practice,

[111] Before January 2012, post-graduate training in South Africa was recognized by the CFPC for the award of certification without examination but on that date the CFPC withdrew its recognition and the Applicant no longer qualified under bylaw 2-15(1)(b)(ii).

[112] As noted, the registration decision by the Registration Committee on December 13, 2012 was made well after College bylaw 2-15(1)(b)(ii) was amended and the CFPC had ceased to recognize South Africa as a foreign jurisdiction for the award of certification without examination. It is common ground and we agree that at the time
that registration decision was made the Applicant could not meet any of the requirements set out in Bylaw 2-15(1)(b)(ii).

[113] The December 2012 registration decision made by the Registration Committee with respect to the Applicant’s registration was set out in its official minutes (Resolution 12-1031). The Committee’s decision was accurately communicated to the Applicant by the deputy registrar who was then responsible for registration (“Registrar A”) in a letter dated December 18, 2012, which contained the following statements:

Please note that any further reconsideration of registration and licensure would be dependent on your satisfactory completion of the MCCQE Part I Exam, a further clinical competency assessment, and a period of retaining under a preceptorship to regain your currency in practice, to be determined by the Committee, and with a satisfactory report from your preceptor as you will be lacking currency in practice under College bylaw 2-8 of the Health Professions Act (HPA) by February 2013.

If the above conditions have been met, you would then likely be required to obtain the MCCQE Part II/CCFP combined, enhanced examination within 18 months of your reinstatement of registration and licensure for the independent practice of medicine in the Provisional class.

The Committee wishes you luck on your next attempt of the MCCQE Part I Examination and your future endeavors.

[114] After receiving a letter from the Applicant requesting clarification of the requirements for registration, Registrar A wrote a letter to the Applicant dated December 23, 2013 and again accurately set out the Committee’s decision in Resolution 12-1031:

Re: The steps you require to complete prior to being eligible for re-registration as a general/family practitioner in British Columbia

... 

In order to clarify any confusion, I have re-reviewed your College member file and in particular, have closely looked at Resolution #12 – 1031 which was passed by the Registration Committee at its meeting held on December 13, 2012. You have been previously advised concerning the Committee’s Resolution. In short, the following requirements must be satisfied in order for you to be eligible to be reinstated for registration and licensure in British Columbia in the Provisional; General/Family Practice class:

1. You must successfully pass the MCCQE Part I examination as an initial requirement for re-registration and re-licensure with the College.

2. You will then be required to complete a competency-based practice assessment in British Columbia because of your unsatisfactory April 2010 previous competency assessment.
3. Following your repeat competency assessment, you may or may not be required to complete a period of formal structured preceptored retaining in British Columbia, prior to being eligible for licensure for independent medical practice.

4. Once you have regained your registration and licensure status with the College, you will be required to obtain the MCCQE Part II examination and the CCFP combined examination within 18 months of your reinstatement of registration and licensure for the independent practice of medicine in British Columbia.

Once you have passed your MCCQE part I examination, completed a competency-based assessment in British Columbia (to be determined as of July 1, 2014 when the UBC Clinical Competence Program ends) and have completed any required formal preceptored retaining experience in British Columbia, you would then be eligible to be re-registered and licensed for independent medical practice on (sic) the Provisional class of registration.

[115] We are unable to agree with the College that Registrar A’s letters are accurately characterized as being merely the advice of “staff.” To the contrary, they are letters where the Registrar dutifully and accurately communicated the Committee’s decision as set out in Resolution #12-1031, in circumstances where the Committee and its advising College staff must be taken to have implicitly decided to grandfather the Applicant despite the January 2012 bylaw changes.

[116] Acting in good faith and at considerable personal cost the Applicant took the steps she had been informed by the Committee through Registrar A would result in her becoming eligible for provisional registration. These included taking and passing the MCCQE Part I Examination and completing a competency-based practice assessment in British Columbia.

[117] In his December 23, 2013 letter, Registrar A informed the Applicant that prior to being eligible for reregistration and licensure she would be required to demonstrate that she had completed a minimum of 960 hours of direct clinical care, under the authority of a medical regulatory authority, anywhere in the world. The Applicant sent a letter to Registrar A dated December 28, 2013 requesting that he clarify what the College would require to prove that she had completed the 960 hours of direct clinical care. In response to this letter, Registrar A’s administrative assistant sent an email to the Applicant on January 2, 2014, stating that Registrar A was requesting that she provide a letter of attestation from the Applicant’s senior practice associate in South Africa confirming that she had worked at least 960 hours.

[118] On March 19, 2014, the College received an email from the Applicant with which she attached the required letter of attestation with respect to the minimum hours of clinical practice. In response to this email, Registrar A sent a letter to the Applicant

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7 We note that the Deputy Registrar’s December 23, 2013, letter specifically states that “In order to clarify any confusion, I have re-reviewed your College member file and in particular, have closely looked at Resolution #12-1031 which was passed by the Registration Committee at its meeting held on December 12, 2012.” [emphasis added]
dated March 25, 2014 acknowledging receipt of the letter of attestation informing her that it provided the College with independent collaborative documentation to confirm her currency and practice as required by College Bylaw 2-8. He also stated the following in that letter:

As next steps, and as previously stated to you in our letter dated December 23, 2013, you should register for and sit the MCCQE Part One Examination. This examination is presently only available in Canada. The means you would need to travel to Canada. In the meantime, you need to continue working as much as you are able, in South Africa.

... 

I suggest you re-read our detailed December 23, 2013 letter, which summarizes our position with respect to your requirements to complete before we are able to consider you for eventual re-registration and re-licensure with our College.

[119] In his March 25, 2014 letter, Registrar A informed the Applicant that the Clinical Competence Program of BC would end as of April 30, 2014, and that if she was unable to obtain an assessment pursuant to that program before it was ended, the College would need to determine what other options would be available for conducting the assessment required as a condition of becoming eligible. The Applicant was able to be assessed pursuant to that program before it was terminated and the clinical director of the clinical competence program prepared an assessment report dated May 22, 2014.

[120] The May 22, 2014 assessment report contained the following overall interpretation of the Applicant’s clinical competence:

With respect to exam performance, you seem to do better when you have a patient to assess than when you have to work through hypothetical cases with examiners. You also have difficulty with multiple choice exams. You may have some weakness in your general medical knowledge, but since the knowledge base score is derived from the MCQ and the Oral Exam (the two exam formats that you seem to struggle with), this may not be a true representation of your knowledge base. Again, if you pass MCCQE I this time, I would have to conclude that your general medical knowledge is adequate. You did well on the Standardized Patient Encounters and the Patient Management Problems, which suggests that your performance in practice is probably at an acceptable level.

You appear to have adequate history-taking and physical examination skills. Your investigation choices are usually appropriate for common, straightforward problems. You had had some difficulty with investigations in the less common, more complex problems of the Oral Exam. The same comment applies to diagnosis and management. Your doctor-patient communication skills are relatively strong. Your overall scores on new and safety items were adequate.

[121] None of the Registration Committee decisions expressed concern that this assessment was inadequate or substandard.

[122] After this assessment, in the spring of 2016, the Applicant took and passed the MCCQE Part I Examination.
The deputy registrar responsible for registration communicates registration decisions made by the Registration Committee. This is because the Committee’s practice was not to communicate directly with applicants or to provide them with its Minutes. It is obvious from the letters Registrar A sent to the Applicant that he, as a representative of and spokesman for the Registration Committee, understood that the Registration Committee had made a decision as to what path the Applicant must take in order to be eligible for provisional registration in the general/family practice class.

We find that the December 13, 2012 registration decision made by the Registration Committee included a determination that the Applicant would become eligible for provisional registration in the general/family practice class if she complied with the requirements established by the Registration Committee as those requirements were communicated to the Applicant on behalf of the Registration Committee by Registrar A in his December 18, 2012 and December 23, 2013, letters.

We further find that just as the College has submitted before us that the Applicant, practising in South Africa, must be taken to know the law, the Committee and the College’s staff must be taken to have known of the College’s own January 1, 2012 bylaw changes. We find that College staff recommendations and the Committee’s December 2012 decision - both in their content and in the absence of stated time limits - can only be properly and fairly understood as a decision to grandfather the Applicant given her licensing history.

As noted above, the Registration Committee again considered her application for provisional registration in the general/family practice class on November 22, 2016 following the Applicant receiving troubling advice from College staff in July 2016 regarding the “new” rules the status of her South African practice.

As noted above, College staff provided the Committee with a memorandum prior to its November 2016 meeting. While that memorandum, at its very conclusion, offered the Committee the “alternative” of granting provisional registration subject to the Applicant passing her Part II exam within one year and her CCFP within two years of commencing practice (the grandfathering option), that memorandum contained no discussion of the rationale for that approach. Instead, the memorandum highlighted the January 1, 2012, version of College bylaw 2-15, and referenced the September 22, 2014 Committee Policy which dealt with the running of time limits set out in Committee decisions. Neither the staff briefing document, nor the Committee decision itself, meaningfully considered or weighed the significance of the Committee’s December 2012 decision rendered nearly 11 months after the January 1, 2012 bylaw change. The closest the Committee came in its November 22, 2016 decision was in its general statement that, in addition to being “objective, fair, transparent and impartial,” the Committee seeks to apply registration requirements “uniformly and consistently to all applicants wishing to be registered and licensed with the College.” One can only

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8 Record, pp. 364-65
9 Record, pp. 385-89
10 Record, pp. 544-48
assume that the 2012 Registration Committee proceeded on that basis as well, but decided to make an exception in the Applicant’s case.

[128] We pause here to emphasize that the College’s submission before us specifically concedes that “the Committee had the discretion to grant [the Applicant] registration”\(^{11}\) – in other words, to grandfather her. This is an important point. The College agrees that the November 2012 Committee had the authority to make the decision it did on the recommendation of College staff and indeed, as noted above, College staff placed that option on the table again for the 2016 Committee. What the College is essentially arguing is that despite the November 2012 decision, reiterated in 2013, the 2016 Committee had an unfettered discretion to make a fresh decision despite the 2012 decision and despite the Applicant’s actions taken in reliance on that decision.

[129] The Registration Committee’s 2016 minutes reflect two reasons for their conclusion. The first was the effect on the Applicant of a policy adopted by the Registration Committee on September 22, 2014 regarding the calculation of the period of time during which provisional registrants have to fulfill any conditions for full registration. The second was that, applying the January 1, 2012 College bylaw changes, the CFPC no longer recognized the Applicant’s post-graduate training in South Africa for the award of certification without examination. The minutes of the committee’s November 22, 2016 meeting state:

The Committee acknowledged the College’s policy that former registrants are required to make a formal application to the College for re-registration and successfully meet the registration requirements that are in effect at the time of their re-registration. The Committee noted that the College’s requirements for registration and licensure have changed since [the Applicant’s] license was cancelled in 2010. [emphasis added]

[130] In this regard, College staff’s memorandum stated as follows under the heading “Registration Committee’s Consideration”:

Generally when a former registrant applies for eligibility for registration and licensure, the applicant applies under the current legislation, bylaws and policy. Given the current legislation, bylaws and policy, [the Applicant] is not eligible for registration and licensure because of the following:

- her postgraduate training from South Africa is not recognized by the CFPC, and
- she was on the provisional register for a period of over 9 years and has exhausted her five years to complete the mandatory continuing registration and licensure requirements.

[131] The minutes of the Registration Committee meeting on November 22, 2016 contained the following statements regarding the September 22, 2014 policy:

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\(^{11}\) College Statement of Points, para. [132].
The Committee reviewed its policy passed at its meeting on September 22, 2014 which states that the time periods defined for mandatory completion of the LMCC, the CCFP, or RCPSC certification examinations commence on the first day of the registrant’s licensure in British Columbia and continue uninterrupted, until the five year time period has elapsed, regardless of the time spent practicing in British Columbia following the commencement of each registrant’s licensure start date. The Committee noted with concern that [the Applicant] was registered on the provisional register from November 1, 2001 to March 1, 2010 (she was temporarily inactive from the period of April 18, 2005 and March 1, 2007) and within that time period, had not met the requirements for her continued licensure and moreover, has exceeded the five year time limit that she would be permitted to remain on the provisional register. [emphasis added]

[132] The following is the text of the policy resolution that was passed on September 22, 2014:

RESOLVED that all Provisional class registrants, including those planning to conduct short-term locum tenens in British Columbia, are subject to the provisions of College bylaw ss.2 – 14(8), (10) and (11). The time periods defined for mandatory completion of the LMCC and the CCFP or RCPSC certification examinations commence with the first day if a registrant’s licensure in British Columbia following the commencement of each registrant’s licensure start date.

[133] As is apparent, the September 22, 2014 policy resolution did not establish a five year time limit during which a provisional registrant must comply with any conditions for full registration in the general/family practice class. That five year limit was already imposed by Bylaw 2-14(10) which was in effect before the December 13, 2012 registration decision was made. It states:

2-14(10) A general/family practitioner granted provisional registration must, within five years of commencing practice in British Columbia, obtain certification with the CFPC, failing which registration is cancelled unless extended by the registration committee in exceptional circumstances.

[134] Bylaw 2-14(10) does not deal with the issue of what qualifications a person must have in order to become provisionally registered but, instead, imposes a condition subsequent on a person who is already a provisional registrant. As clearly stated in the bylaw, a person granted provisional registration must obtain CFPC certification within 5 years of commencing practice. If they do not, their registration is “cancelled” unless extended by the registration committee in exceptional circumstances.

[135] Significantly, College bylaw 2-14(10) was also in effect when the Committee made its 2012 registration decision. In 2012 when the Registration Committee made its registration decision the Applicant had already exceeded the five year time limit and the Registration Committee was aware of that fact and of the existence of Bylaw 2-14(10). In its place, the Committee designed a specific term that would apply to the Applicant:

(The Applicant) would then be required to obtain the MCCQE Part II/CCFP combined, enhanced examination within 18 months of her reinstatement of registration and licensure for the independent practice of medicine in the Provisional class.
This is further evidence to support the Applicant’s position that the 2012 Registration Committee made a conscious decision to design a set of re-registration requirements unique to the Applicant’s particular circumstances. The 2016 Committee Minutes did not recognize this or give it any meaningful consideration. Instead, it stated that “the College’s requirements for registration and licensure have changed” since [the Applicant’s] licence was cancelled in 2010.” The problem with this statement is that the 2012 Registration Committee knew that too. The 2016 Committee’s reference back to 2010 essentially ignores the significance of the 2012 Decision which was for all intents and purposes made on the same legal basis as the 2016 decision.

The minutes of the November 22, 2016 meeting record the following with respect to the second reason for the committee’s decision that the Applicant was not eligible for re-registration and licensure:

The Committee reviewed its authority pursuant to its governing legislation, the Health Professions Act and the bylaws. In particular it referred to section 2-15 of the bylaws which sets out the requirements for registration and licensure in the provisional class. In particular, to be granted provision registration for general/family practice, an applicant must:

(a) have a medical degree,
(b) meet one of the following requirements:
   (i) have completed a general/family medicine program in Canada after July 1, 2010, but has not passed the CFPC examinations, provide a recommendation from the applicant’s Program Director and Chairperson of the Department of Family Medicine, attesting to competence and successful completion of all program requirements, acceptable to the registration committee,
   (ii) have successfully completed a minimum of two years of accredited postgraduate training in a foreign jurisdiction recognized by the CFPC for the award of certification without examination, with a basic core of 44 weeks, consisting of eight weeks in each of medicine, surgery, obstetrics/gynecology, and paediatrics, and four weeks in each of psychiatry, emergency medicine and general/family practice,
   (iii) have undergone an assessment of competency acceptable to the registration committee in a Canadian province or territory, and
(c) be legally entitled to live and work in Canada.

The Committee noted that effective since January 1, 2012 [the Applicant’s] postgraduate training in South Africa is not recognized by the CFPC for the award of certification without examination as the only countries which are recognized are the United States, Ireland, Australia and the United Kingdom.
As noted above, the November 2012 Committee must be taken to have known that the Applicant’s postgraduate training in South Africa was no longer recognized by the CFPC for the award of certification without examination as of January 1, 2012. Thus, while it was technically correct for the 2016 Committee to state that the College’s registration requirements had changed since 2010, the 2016 Committee, by using that date, entirely ignored the significance of its 2012 decision.

When we use term the “significance” of the 2012 decision, we are not invoking the legal doctrines of estoppel or legitimate expectations. Rather, we are asking the more basic question whether the 2016 Registration Committee reasonably exercised its discretion, confirmed in its 2017 decision. We find that that it was not reasonable, having regard to the purposes of the Act and the “objective, fair, transparent and impartial” operation of the Registration Committee, to grandfather the Applicant and then arbitrarily change its decision two years later based on “consistency” with no explanation as to why the conditions designed by the 2012 Registration Committee were no longer adequate to address any concerns about protecting the public.

We have carefully considered the College’s position that the 2016 Committee cannot be “fettered” by previous Committee decisions. While there is surface appeal to that position, a closer examination of it in this context reveals that an extreme view of the “no fettering” approach can in reality operate a pretext for arbitrariness. It is one thing to say that one Committee is not bound by a general legal or policy conclusion rendered by another. It is another to say that one Committee can simply announce an opposite result for the same Applicant on the same facts despite a considered decision by a previous Committee. There are real problems applying an approach that says that one Committee can exercise its discretion afresh against an Applicant who has acted on the decision, even though there has been no significant change from the circumstances that prevailed when a previous Committee made a decision in the Applicant’s favour. This is not about invoking doctrines of legitimate expectation or estoppel. It is about ensuring that discretion is exercised reasonably.

In this case, the 2012 Committee grandfathered the Applicant and designed special conditions in the public interest to govern her registration. Even though there was no significant change in law or policy between 2012 and 2016, the new Committee simply chose to exercise its discretion differently, a predicament the Applicant faced when she asked to confirm her unique circumstances, was given contrary advice in a phone call to a College staff member in July 2016, and had her file referred again to the Registration Committee.

In our view, exercising discretion reasonably must include recognizing that when the Committee exercises its discretion to impose conditions on an applicant, and a person acts on those requirements, that decision should only reasonably be changed if there are convincing public interest reasons to do so. To find otherwise would be to promote inconsistency and arbitrariness.

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12 Record, p. 600
We agree with the College’s position that a previous Committee decision cannot be considered as creating a perpetual right not to have that decision changed, or to override the Committee’s ongoing duty to protect the public interest. The problem here is that the College has said nothing whatever explaining how the 2012 decision failed to protect the public interest. As noted above, the College has conceded that the 2012 Committee had the authority to make that decision it did and has not offered any suggestion that that decision failed to protect the public interest. In the absence of anything suggesting a risk to the public interest in continuing to apply the 2012 decision to the Applicant, we find the 2016 decision, in merely citing the need to be consistent in dealing with applications, was unreasonable and arbitrary because it merely substituted one Committee’s view for another’s.

We are very conscious of the College’s submissions, reflected in previous Review Board decisions, emphasizing the deference to which the Committee’s registration decisions are due. However, this is not a situation where the Review Board is dealing with a single Registration Committee decision. Here, we have two Registration Committees, both acting in the public interest and reaching opposite conclusions in respect of the same Applicant. For the reasons stated above, we find that it was arbitrary and unreasonable for the 2016 and 2017 to depart from the 2012 public interest registration decision for no reason other than that the latter committee’s somewhat ironic reliance on “consistency” and the fact that it would have exercised the same discretion differently.

V REMEDY

We have considered whether, based on our decision, we should simply direct the Registration Committee to make a decision provisionally registering the Applicant in accordance with the 2012 decision. We have decided not to do that in part because we are unable to find on the material before us that this case meets the very strict test for such a remedy in s. 50.54(10) and (11) of the Act, and in part because we think that the errors made in Registration Committee in 2016 and 2017 diverted them from considering key issues that they were required to consider.

In particular, the Registration Committee did not at its 2016 meeting make any express determination as to whether the 2014 clinical competency assessment required by the committee in 2012 was satisfactory. The minutes and resolution passed at the 2016 meeting also do not deal with the issue as to whether that 2014 assessment would in any event be acceptable to the Registration Committee as provided in College bylaw 2-15(b)(iii). If it was, then the requirements of bylaw 2-15(b) would have been fulfilled because the Applicant was only required to meet one of those requirements even without the grandfathering of the 2012 decision. At the time of the 2016 meeting of the Registration Committee, the Applicant complied with the requirements of 2-15(a) and 2-15(c) so if the Registration Committee had determined the 2014 assessment was
acceptable to them the Applicant would have complied with the requirements of bylaw 2-15.\textsuperscript{13}

[147] Further, when the Registration Committee made its decision on November 22, 2016, it had before it the correspondence sent by Registrar A to the Applicant and its December 13, 2012 registration decision. The Registration Committee failed to make any determination as to whether the Applicant had complied with the requirements the Registration Committee had decided in 2012 would make her eligible for a provisional registration.

[148] Although the Applicant had taken and passed Part I of the MCCQE in the spring of 2016, this fact was not mentioned either in the report by staff to the 2016 Registration Committee or in the minutes of its meeting and the Registration Committee appears not to have considered that by doing so the Applicant had complied with one of the requirements for eligibility established by the Registration Committee in 2012. While this was acknowledged in the Committee’s reconsideration decision (Supplementary Record, p. 102), it does not appear to have been taken into account in connection with a reasonable appreciation of the significance of the Committee’s 2012 decision. The 2012 decision, we note, permitted the Applicant to obtain the MCCQE Part II examination within 18 months after re-commencing provisional registration.\textsuperscript{14}

[149] The Registration Committee at its November 22, 2016 meeting also failed to expressly consider whether if the Applicant did not satisfy the requirements for provisional registration, they should exercise their discretion pursuant to College bylaw 1-15(3) to consider that the Applicant’s knowledge, skills and abilities were substantially equivalent to the standards of academic achievement, competencies or other qualifications established in Part 2 of the Bylaws.

[150] After the application for this review was filed the Registration Committee reconsidered its 2016 registration decision on April 27, 2017. Did that decision cure the unreasonableness we have found in the 2016 decision? At that meeting, the Committee confirmed its 2016 registration decision. The only new information considered by the Committee at this meeting was the fact that the Applicant had passed Part I of the MCCQE and the Committee again appeared to base its decision on the fact that the standards and qualifications for registration and licensure applicable to the Applicant had changed since 2010. The changes it specifically mentioned were that the CFPC no longer recognizes post-graduate training in South Africa for the award of

\textsuperscript{13} In this regard, we note that while the College’s submission (para. 79) states that “At the time of writing, the ‘assessment of competency acceptable to the registration committee’ as stipulated in Bylaws, s. 2-15(b)(iii) is considered to be a ‘Practice Ready Assessment’ in any jurisdiction in Canada”, the PRA is not a legal requirement. The committee is entitled to consider whether another assessment of competency would satisfy the requirement.

\textsuperscript{14} We note that the Applicant has provided us with evidence of the successful results of her MCCQE Part II examination, taken in the fall of 2017, with the test results released on December 4, 2017, subsequent to the reconsideration decision. The report shows a score of 677 out of 950. The score required to pass was 509. The report of the results of that examination by the Medical Council of Canada showed that the Applicant’s performance in each of the four categories exceeded the mean score of all first time takers of that examination who passed.
certification without examination and that the September 2014 policy decision created a new requirement that the Applicant successfully pass all certification examinations within five years. The Committee’s rationale and the information it relied upon other than the Applicant’s success in passing Part I of the MCCQE appeared to be the same as those in the 2016 registration decision. The minutes of the April 27, 2017 meeting record the following:

The Committee acknowledged [the Applicant]’s reliance on the information provided to her in 2012 regarding her eligibility for registration. Nonetheless, the Committee noted that applicants are subject to requirements which are in place at the time of application and moreover, the registration requirements must be applied consistently to all applicants applying for registration with the College.

[151] In our view, it was unreasonable for the Committee in 2017 to give overriding consideration to “consistency” among applicants, and to fail to reasonably recognize the significance or importance of consistency with its 2012 decision, which it erroneously characterized as “the information” provided to her in 2012 regarding her eligibility for registration. We therefore find that the 2017 registration was not reasonable for the same reasons that the 2016 registration decision was not reasonable.

VI ORDER

[152] For all of the reasons set out above, we order that the matter of the registration of the Applicant in the provisional general/family practice class be sent back to the Registration Committee for reconsideration with the following directions:

(a) The Registration Committee must determine whether the Applicant’s May 22, 2014 clinical competency assessment was satisfactory;

(b) The Registration Committee must determine whether the Applicant has complied with the conditions set by the Registration Committee in its December 13, 2012 registration decision;

(c) The Registration Committee must determine whether, if the Applicant has complied with the conditions set by the Registration Committee in its December 13, 2012 decision and in accordance with these reasons, there is any public interest reason not to apply that decision to the Applicant;

(d) If the Registration Committee determines that there is a public interest reason not to apply the 2012 decision, it must determine whether the Applicant has now complied with all of the requirements to be eligible to be provisionally registered in the general/family practice class, including College bylaw 2-15(b)(iii);

(e) If any of the requirements set out in Part 2 of the bylaws for provisional registration of an applicant in the general/family practice class have not been met, the Registration Committee must consider whether it should exercise its discretion in favour of the Applicant pursuant to bylaw 1-15 and if it decides not to exercise its discretion in favour of the Applicant it must provide reasons for that decision; and,
(f) When conducting their reconsideration the Registration Committee must not rely on bylaw 2-14(10) or the September 22, 2014 policy decision as a reason for determining that the Applicant should not be granted provisional registration in the general/family practice class.

[153] The Registration Committee is not limited to the information contained in the Record, and may take into account any additional information available to it while this matter has been before the Review Board, including the Applicant’s December 2017 MCCQE Part II examination results and any other submissions it may invite the Applicant to make.

[154] Finally, while we refrain from imposing a specific time limit for this reconsideration, we direct that the reconsideration process we have ordered be carried out in a timely and expeditious manner.

“Roy M. Kahle”

Roy M. Kahle, Panel Chair
Health Professions Review Board

“Donald A. Silversides”

Donald A. Silversides, Q.C. Panel Member
Health Professions Review Board

“John Orr”

John Orr, Q.C., Panel Member
Health Professions Review Board