I THE APPLICATION

[1] On June 8, 2017, the Applicant filed an application under the Health Professions Act, R.S.B.C. 1996, c. 183 (the “Act”) with the Review Board, seeking a review of a decision made by the Registration Committee in which the Registration Committee granted the Applicant an extension of time for him to pass his Medical Council of Canada Qualifying Examination part 1 (“MCCQE Part 1”) from August 1, 2017, to June 30, 2018, but did not, at the same time, extend the time for the Applicant to obtain a College of Family Physicians of Canada certificate (“CFPC”) and to become a Licentiate of the Medical Council of Canada (“LMCC”) within five years of commencing practice.

II BACKGROUND

[2] The Applicant is a foreign trained Doctor. In 2012 the Registration Committee of the College granted him registration to practice medicine in British Columbia in the “Provisional-General/Family (Practice) Class.”

[3] The provisional registration was contingent on him passing his MCCQE Part 1 exam within three years of commencing practice in BC and obtaining his LMCC and CFPC within five years.
The Applicant commenced practice in British Columbia on August 1, 2014.

In August 2015 the Applicant noticed personal symptoms which culminated in his being diagnosed with a serious medical condition in December of 2015.

On February 6, 2017, the Applicant contacted the College to request an extension of time to meet the above requirements due to his health concerns. It appears that the Applicant made his request by telephone and that the only information that was provided to the Registration Committee representative was advising that he was suffering from a serious illness, with the date by which he needed to pass the MCCQE (August 1, 2017) looming.

It appears from the College file that the Applicant neither provided, nor was asked to provide any further and/or independent medical information or prognosis, particularly about his prospective ability, or lack of same, to pass any of the required exams or to obtain the required qualifications within the set timelines, particularly the latter ones.

As appears below (para. [14]) the College by-laws stipulate that the Registration Committee must be persuaded there are “exceptional circumstances” in order to extend the imposed deadlines.

On April 27, 2017, the Registration Committee met and decided that the Applicant’s health status did constitute “exceptional circumstances” and accordingly extended his provisional registration to June 30, 2018, to give him additional time to complete the MCCQE Part 1.

The Registration Committee however specifically maintained the date of August 1, 2019, for the completion of the CCFP and the LMCC.

This decision was communicated to the Applicant by letter dated May 9, 2017. ((p. 190 of the Record of the Registration Committee’s decision and the College’s registration file (the “Record”))

On June 8, 2017, the Applicant applied for a review of the Registration Committee decision under s. 50.54 of the Act. His submission is that the date for the completion of the CFPC and the LMCC should have been extended as well.

The Applicant described his rationale for seeking to review the decision as follows: “I feel that fairness and reasonableness require that the second deadline be extended by the same ten months, to June 2020 with my registration extended to that time.”

III DECISION

I have decided that this matter can be adjudicated at Stage 1 based on the file materials and the Applicant’s Statement of Points dated September 8, 2017.
The College By-law subsections 2-14(8), (9) and (10) state:

2-14(8) A registrant granted provisional registration must

(a) if a general/family practitioner, become a licentiate of the MCC within three years of commencing practice in British Columbia,

(b) if a specialist, become a licentiate of the MCC within five years of commencing practice in British Columbia, subject to section 2-21.

(9) The time periods referred to in section 2-14(8)(a) and (b) may be extended by the registration committee in exceptional circumstances. (My emphasis)

(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.

It is unclear why/how the Registration Committee initially told the Registrant he had five years to become a LMCC when the relevant bylaw, 2-14 (8)(a), set out in para. [13], specifies three years. It may be that there was a different by-law in place at the time provisional registration was granted to the Applicant. For these purposes, it is sufficient to note that the Applicant still has two years to obtain the CFPC and LMCC for a total of five years since commencing practice. As the Applicant has been given the benefit of a five year time limit, not three, I have not found it necessary to clarify this area.

I adopt the position taken by the Review Board in Decision No. 2016-HPA-195(b) starting at para. [99] and similarly in 2015-HPA-065(a) paras [229 – 237] that the test for the review is “reasonableness.” Decision 2016-HPA-195(b) specifically rules that the s.50.54(10) requirements for the Review Board to apply in an initial registration review do not apply to applications to extend time or alter conditions once an applicant has obtained provisional registration. I agree with that conclusion.

The decision in very recent Review Board cases, heard together, 2016-HPA-209(b) and 2016-HPA-210(b) also sets out in detail the standard of review the Review Board has to apply when dealing with applications for time extension on the basis of exceptional circumstances. (paras. [48-52])

“Reasonableness” in this context, as discussed and held in the above noted cases, incorporates the concept of Review Board deference to the College, unless the decision is clearly unreasonable or incomprehensible.

In other words, the Review Board may not substitute its opinion for the decision made by the Registration Committee just because it might have come to a different conclusion, unless the decision is not reasonable in the defined sense.
[21] I would analogize to the Review Board’s well-established role in reviewing Inquiry Committee decisions under s.50.6 of the Act. Reasonableness in that context was defined in Review Board Decision No. 2014-HPA-068(a) as follows:

The test the Review Board has traditionally applied to determine reasonableness is whether the Inquiry Committee decision “falls within the range of acceptable and rational solutions, and is, viewed in the context of the whole record, sufficiently justified, transparent and intelligible to be sustained.”

I adopt and apply this reasoning to this application.

[22] In this case the Registration Committee has acceded to the Applicant’s request that the time limit for the Applicant to complete the MCCQE Part 1 be extended by almost a year.

[23] Given the seriousness of the Applicant’s illness and the imminence of the MCCQE deadline, this is a decision that, despite the absence of corroborating medical information, essentially makes itself.

[24] The Applicant has accepted the extension of ten months with respect to this part of the requirements. His complaint about the failure to extend the other time limits is essentially an appeal to logic, or symmetry (if “a” is extended, why not “b”) rather than a supported submission that the standard five-year period should, at this time, also be extended on the basis of exceptional circumstances.

[25] I would again note that the five-year period is the normal by-law maximum period for meeting these requirements, and in the case of the LMCC, may arguably already be two years longer than the by-law sets out.

[26] With respect, and appreciating that this is clearly a stressful time for the Applicant, this application fails to convince me that the Registration Committee was wrong (or perhaps more correctly, unreasonable) to have not found exceptional circumstances to modify the five-year time frame.

[27] As noted, no supporting medical evidence was put before the Registration Committee to suggest why, the applicant’s current difficult medical situation would still be a factor in “exceptional circumstances” for deadlines that are still two years away.

[28] If the Applicant now does not pass the MCCQE Part 1 by June 30, 2018, the question of other time limits may be moot. If the Applicant passes the first hurdle within the modified, required time, he would then, in my view at least, be at liberty to apply for an extension, and receive it, if he was able to then establish exceptional circumstances favoring an extension of the five-year requirements.

[29] In other words, a review of the record shows that the Applicant did not make a medical case to extend the five-year deadlines at all, and certainly not a case that the Committee failed to apprehend or dealt with unreasonably.
I acknowledge that the Registration Committee does not provide explicit reasons for not extending the second deadline, but, in my respectful opinion that is because the time limit is still two years away, is a statutory limit, and is still theoretical unless and until the Applicant passes the MCCQE Part 1 exam. In other words, the application in this regard is clearly, though implicitly, premature and does not, at this time, establish “exceptional circumstances” with respect to that deadline.

I take support for the propositions I have set forth in Paras 28 and 30 from the letter the College Executive Director of Registration services sent to the Applicant’s solicitor dated June 14, 2017 where she stated as follows:

Please note that the Registration Committee cannot make decisions on possible future outcomes. If and or when (the Applicant) were to be in a position where he could not obtain the LMCC and/or the CCFP by the August 1, 2019 deadline, the Registration Committee would review his file at that time to determine if exceptional circumstances exist that would allow for an extension of his registration and licensure.

In my respectful view, it would have been best practice to include this paragraph in the decision itself.

Accordingly, I confirm the Registration Committee’s decision in this case.

In closing, the very recent decision of the three panel members, Review Board Decision No. 2016-HPA-209(b) and 2016-HPA-210(b) dealing with time extension issues has come to my attention, and in particular their non-jurisdictional observations relating to registration issues at a systemic level. They set out their concerns that there seems to be a rash of registration time limit extension cases before the Review Board and that the registration committee decisions not to extend time limits are likely causing considerable personal hardships.

In this case, the Applicant has now been practicing medicine in BC with a full-time case load until he was forced to cut back practice, because of illness and in order to prepare for the MCCQE Part 1 exam.

He is under supervision, but other than a modest concern about how he communicated with patients in the initial evaluation, his supervisor’s reports have been positive. Indeed, the August 2016 report concludes, “a very professional doctor. An asset to our clinic, no concerns at all regards his performance as a doctor here.”

As far as I can tell, the Applicant is serving an underserviced area with complete professional competence; thus the time limits in place appear intended to lighten the supervisory roles of the College and the Applicant’s supervising doctor, rather than to protect the public from substandard care.

One can imagine that the extension of the five-year limit by a further year might well have lightened the Applicant’s stress at this difficult medical time in his life, even if, ultimately, he is able to meet the five-year requirements in the specified time. As
discussed in this decision, it is not within the Review Board's mandate to make such an order, so I join my colleagues in respectfully suggesting that the College examine its by-laws and policies in this regard.

“Leigh Harrison”

Leigh Harrison, Panel Chair
Health Professions Review Board