

CANADA / JUDGMENT

Maroofi v. Health Professions Review Board

2020 BCSC 1243

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Supreme Court of British Columbia

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2020 BCSC 1243 Maroofi v. Health Professions Review Board

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Maroofi v. Health Professions Review Board,

2020 BCSC 1243

Date: 20200807

Docket: S206032

Registry: Vancouver

Between:

Ali Maroofi

Petitioner

And

Health Professions Review Board

and College of Physicians and Surgeons of British Columbia

Respondents

Before: The Honourable Mr. Justice Macintosh

On judicial review from: A decision of the Health Professions Review Board, dated April 2, 2020

Oral Reasons for Judgment

The Petitioner, appearing on his own behalf:

A. Maroofi

Counsel for the Respondent, College of Physicians and Surgeons of British Columbia:

L.C. Fong, Q.C.

Counsel for the Respondent, Health Professions Review Board:

A.M. Latimer

Place and Date of Hearing:

Vancouver, B.C.

August 6, 2020

Place and Date of Judgment:

Vancouver, B.C.

August 7, 2020

- [1] The Petitioner, Dr. Maroofi, is 66. He has a Ph.D., which entitles him to be called doctor, but he is not qualified in this province to be a medical doctor because the Respondents, who regulate the practice of medicine and adjudicate matters having to do with the practice of medicine, have found consistently that Dr. Maroofi is unqualified in several respects.
- [2] The substantive application before me is that of Dr. Maroofi for what is, in essence, judicial review of a decision by the respondent Health Professions Review Board dated April 2, 2020, sometimes referred to in the materials and in these reasons as Decision 212. I will return to Decision 212 below, but first will explain the history which led to it.
- [3] Dr. Maroofi is an "international medical graduate" as that phrase is used in the applicable legislative scheme at the College of Physicians and Surgeons of British Columbia ("College"). The application for judicial review stems from two decisions of the Registration Committee ("RC") of the College, both made in 2016.
- [4] The first, dated January 27, 2016, allowed Dr. Maroofi to re-register in the College's education clinical trainee class for a maximum of 70 consecutive days subject to terms and conditions Dr. Maroofi undertook to comply with while he was a clinical trainee. I call that the "Trainee RC Decision". The second, dated July 21, 2016, refused to grant Dr. Maroofi registration in any of the College's provisional classes due to his not meeting registration requirements under the bylaws. That is the "Provisional RC Decision".
- [5] Dr. Maroofi applied for review of both the Trainee RC Decision and the Provisional RC Decision to the respondent Health Professions Review Board. The Board affirmed both RC Decisions in its decision dated October 26, 2016. Sometimes that is referred to as Decision 32.

- [6] Beginning in 2015, Dr. Maroofi came under separate investigation by the Inquiry Committee of the College based on reports about his conduct and performance as a clinical trainee. On June 20, 2016, the Inquiry Committee issued a decision. It was critical of Dr. Maroofi for unprofessional conduct, substandard clinical skills and contravention of College bylaws regarding liability insurance. However, since the Registration Committee had limited Dr. Maroofi to finishing his time as a clinical trainee during a single 70-day period in a closely supervised community setting, the Inquiry Committee decided to take no action other than to direct the Registrar's staff to convey to Dr. Maroofi the criticisms it had expressed.
- [7] Dr. Maroofi did not apply for judicial review of either the Trainee RC Decision or the Provisional RC Decision, but he did apply for judicial review of the Inquiry Committee's June 20, 2016 decision. Justice Donegan on this Court dismissed Dr. Maroofi's petition with reasons on September 1, 2017, indexed as 2017 BCSC 1558.
- [8] The present application arises from Dr. Maroofi applying to the Review Board in or about October 2019 to re-open Review Board Decision 32 based on allegations of jurisdictional error. The alleged jurisdictional error was based on Dr. Maroofi's assertion that a part of a draft resolution, which College staff provided to the Registration Committee in June 2016 for the Registration Committee to consider should it decide to grant registration to Dr. Maroofi, was in fact a decision of the Registration Committee to grant him provisional registration. Dr. Maroofi alleged that the Provisional RC Decision, on July 21, 2016, was perpetrated by fraud committed by College staff and that it did not reflect the true decision of the Registration Committee to grant him registration. Dr. Maroofi in the same application also sought an extension of time to apply for reviews of more recent refusals by the Registration Committee to consider his ongoing submissions that he should be granted provisional registration. The College opposed Dr. Maroofi's application and brought a cross-application for summary dismissal.
- [9] On April 2, 2020, the Review Board decided against Dr. Maroofi's application in Decision 212, the decision now under review. The Review Board dismissed Dr. Maroofi's application to reopen the Board's 2016 Decision 32 for lack of jurisdiction and for having no reasonable prospect of success. It declined to extend time for Dr. Maroofi to file an application for review based on no reasonable prospect of success, and it granted the College's application for summary dismissal.
- [10] As I noted earlier, it is the Board's 2020 Decision 212 which Dr. Maroofi is seeking to have judicially reviewed on the present application. The issue, given the applicable legislative scheme, is whether Decision 212 was patently unreasonable. Dr. Maroofi has the onus of proving that it was.
- [11] Dr. Maroofi's petition is not and cannot be for judicial review of the 2016 Board Decision 32 because he has greatly exceeded the 60-day limitation period for any judicial review of that decision. A party seeking judicial review of a decision from the Respondent Board must commence the application within 60 days of the date of the decision in accordance with s. 57

of the Administrative Tribunals Act, S.B.C. 2004, c. 45 [ATA], which applies to the Review Board pursuant to s. 50.64 of the Health Professions Act, R.S.B.C. 1996, c. 183 [HPA], and the HPA schedule.

- [12] The statutory regime dictates that the standard of review is patent unreasonableness. Under the HPA, the Review Board has exclusive jurisdiction to determine all those matters and questions of fact, law and discretion arising or required to be determined in a review relating to, among other matters, the Registration Committee refusing a grant of registration under the HPA. Pursuant to the HPA and the ATA, the standard of review with respect to any finding of fact or law or an exercise of discretion within the Review Board's exclusive jurisdiction is whether the finding or exercise of discretion is patently unreasonable: see s. 58 of the ATA. In my view, the findings of the Review Board in the 2020 Decision 212 were correct, and in any event were not patently unreasonable.
- [13] The following provides a further factual context for Dr. Maroofi's application.
- [14] In January of 2012, Dr. Maroofi registered with the College as a clinical trainee. He was registered in the educational clinical trainee class. That is a time-limited registration, and subject to supervision by a full registrant.
- [15] From January 2012 to September 22, 2015, Dr. Maroofi was granted a number of licences in the clinical trainee class. However, at no time was he licensed to independently practise medicine.
- [16] In September 2015, after the College received information about an incident involving Dr. Maroofi, which raised concerns about his professional, personal and clinical judgment, College staff met with him and discovered that he had not held required liability insurance since December 31, 2012. Due to that failure to comply with the College's bylaws, the College immediately cancelled his registration.
- [17] In October and November 2015, the Registration Committee referred various conduct and confidence questions about Dr. Maroofi to the Inquiry Committee.
- [18] On December 16, 2015, Dr. Maroofi asked the College to again consider him for registration and licensing as a clinical trainee.
- [19] On January 27, 2016, the Registration Committee communicated its decision, in the Trainee RC Decision, referred to early in these reasons, to grant Dr. Maroofi registration for the time remaining in his traineeship subject to nine conditions. One condition required that Dr. Maroofi not complete any of his remaining clinical traineeship in a hospital setting.
- [20] Dr. Maroofi asked that the Registration Committee reconsider the condition that prohibited hospital work. He also asked the Registration Committee to consider registering him in a provisional class.

- [21] On June 8, 2016, the Registration Committee advised Dr. Maroofi that it was reaffirming the conditions of registration outlined in the Trainee RC Decision referred to above.
- [22] On July 21, 2016, the Registration Committee advised Dr. Maroofi that he was ineligible for registration in a provisional class for his failure to meet its requirements, and that is as found in the Provisional RC Decision, also referred to above.
- [23] The Provisional RC Decision was in the form of a letter from Corrine de Bruin, executive director of registration services, writing as stated in the letter at the direction of the Registration Committee.
- [24] Dr. Maroofi applied to the Review Board for review of the Registration Committee Decisions, and that resulted in Board Decision 32 on October 26, 2016.
- [25] The Review Board concluded: Dr. Maroofi is not eligible for provisional registration for general/family or specialty practice because he does not meet the mandatory requirements of the College's bylaws, which set out the requirements (para. 67 of the decision). Dr. Maroofi's application suffered from a number of specific deficiencies, and it was found that there was no evidence that there was any reason for the July 21 decision, that is, the Provisional RC Decision, other than to address the various deficiencies in Dr. Maroofi meeting the requirements in various respects as established under the College's bylaws (paras. 68-69). The Trainee RC Decision was reasonable in that the applicant could apply for the 70 consecutive days' reactivation with conditions and limitations to be satisfied as directed by the Registration Committee in light of all the surrounding circumstances and the overriding duty to protect the public interest (para. 74).
- [26] Dr. Maroofi did not seek judicial review of the Board's 2016 Decision 32.
- [27] The two Registration Committee Decisions in 2016 criticized Dr. Maroofi extensively in numerous respects concerning his professional incapacities. The Justice Donegan decision in this Court, referred to earlier in these reasons dismissed Dr. Maroofi's application for judicial review from the two Registration Committee 2016 Decisions on several grounds.
- [28] Dr. Maroofi did not give up. In the fall of 2019, he filed voluminous materials to reopen and reargue the Board's 2016 Decision 32.
- [29] On April 2, 2020, in its Decision 212, the Board dismissed Dr. Maroofi's application to reopen. As noted earlier, that is the decision before me now for judicial review. The Board's reasons, 36 paragraphs in length, are carefully considered and well expressed, and contain no error of fact or law when measured against the voluminous evidentiary filings in front of me. Not only are the reasons not patently unreasonable, as they would have to be to be overturned, they appear to be sound. Dr. Maroofi has been accorded every opportunity to demonstrate procedural or substantive unfairness and legal error in how he has been treated by the Respondents, but I cannot find anything in the treatment he has received that could give rise to judicial relief. In each of the hearings referred to in these reasons, he was accorded procedural fairness. In none of the decisions referred to in these reasons is there any

demonstrated error of fact or law, or any failure of either Respondent to comply with its governing legislative responsibilities.

[30] In reaching the conclusions I have, as expressed above, I adopt the portions of the College submissions as stated in its response to petition, filed July 23, 2020, at paras. 4.13-4.35, where the applicable statutory regime is summarized, and at paras. 5.1-5.10, which set out the legal basis for the position of the College:

B. Statutory background

B1. The College

4.13 The HPA establishes a framework for regulation of designated health professions in British Columbia through colleges created or continued under regulations.

4.14 The College is the regulatory body for the health profession of medicine, under the Medical Practitioners Regulation, B.C. Reg. 416/2008 (the "Regulation").

4.15 The College has a duty to serve and protect the public, and exercise its powers and discharge its responsibilities under all enactments in the public interest: HPA s. 16.

B2. The Registration Committee

4.16 HPA Part 2 governs the existence, duties and powers of colleges, as well as the registration of persons with colleges.

4.17 The responsibility of the RC: The HPA requires that every college establish a registration committee that is responsible, under section 20, for granting registration of a person as a member of that college:

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.

HPA s. 20(1) and (2)

4.18 Registration requirements: The College's objects include, "[16(2)] (c) to establish the conditions or requirements for registration of a person as a member of the college...."

4.19 The HPA authorizes the College board to make bylaws consistent with the duties and objects of the College under section 16, that it considers necessary or advisable, including bylaws to do the following:

- a. establish a class or classes of registrants, including a class of provisional registrants for the purposes of section 20 (4.3);
- b. 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; and
- c. establish requirements respecting maintenance of professional liability protection or insurance coverage by registrants.

HPA s. 19 (1)(i)(m.4) and (o)

4.20 Consequently, the College's bylaws (the "Bylaws")

- a. establish different classes of registration;
- b. establish general registration requirements for all classes of registration (e.g., good character); and
- c. establish registration requirements specific to particular classes of registration.

4.21 Material classes of registration: The Bylaws establish classes of registration. The Bylaws have undergone recent revisions, but they did, and still do, establish a number of different classes of registration, including "educational" classes and "provisional" classes:

- a. "Provisional - family" (Bylaw 2-14, under the most recent Bylaws revised May 29, 2020),
- b. "Provisional - specialty" (Bylaw 2-15), and
- c. "Educational" classes that include the "Clinical Observership" class (Bylaw 2-30), formerly the "Educational - clinical trainee" class.

Bylaw 2-14, 2-15 and 2-30

4.22 The "Educational - clinical trainee" class (now the "Clinical Observership" class) only provides registration for a limited duration not to exceed three (3) years. Time as a clinical trainee allows a person to become familiar with the clinical and ethical requirements of the Canadian medical system.

4.23 The registration review jurisdiction of the Review Board: The HPA establishes the Review Board: HPA Part 4.2, including HPA s. 50.51.

HPA s. 50.51 ("Health Professions Review Board established")

4.24 The Review Board may review any registration decision by a registration committee

- a. that refuses a grant of registration under section 20, or
- b. that grants registration subject to limits or conditions on practice, unless the refusal or the imposition of limits or conditions arise under section 20(2.1) or (3) [neither of which applies in these circumstances].

HPA s. 50.53 ("Powers and duties of review board") esp. (1)(a) (re: power and duty "to review a registration decision")

HPA s. 50.54 ("Review of registration decisions"), esp. (1) and (2) (re: "applicant")

4.25 The Review Board has "exclusive jurisdiction" to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in a review:

50.63(1) The review board has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in a review or an investigation and disposition under this Part and to make any order permitted to be made. (emphasis added)

HPA s. 50.63 ("Exclusive jurisdiction of review board")

4.26 The Review Board has powers to confirm registration decisions, direct the Registration Committee "to make a decision that could have been made," or send a matter back for reconsideration with directions: HPA s. 50.54(9). In very specific circumstances, the Review Board may direct a grant registration with or without conditions: HPA s. 50.54(10).

HPA s. 50.54(9) and (10)

4.27 A party before Review Board has 60 days to apply for judicial review of any final decision of the Review Board.

HPA s. 50.64 and Schedule (adopting s. 57 of the Administrative Tribunals Act, S.B.C. 2004, c. 45 (the "ATA"), which requires that any application for judicial review of a final decision of the tribunal commence within 60 days of the date the decision is issued)

B3. The Inquiry Committee

4.28 To the extent that Dr. Maroofi is (still) disputing criticism by the College's Inquiry Committee from 2016, the nature of the College's investigation and discipline regime is relevant.

4.29 The statutory objects of the College include establishing, monitoring and enforcing standards of practice and professional ethics amongst registrants.

HPA s. 16(2)(d) and (g)

4.30 HPA Part 3 governs, among other things, investigations and disciplinary hearings.

4.31 Investigations: The HPA requires that every college establish an inquiry committee to perform investigations. The College's Inquiry Committee ("IC") investigates matters raised by public complaints, or by the IC itself on its own motion: HP A s. 33(1) and (4). The HPA sets out the kinds of matters that may warrant an investigation. Such matters include contraventions of the HPA or bylaws, professional misconduct or unprofessional conduct, competence, and fitness to practice: HPA s. 33(4).

HPA s. 33(1) (investigation of a matter raised by a complainant)

HPA s. 33(4) (investigation of a matter raised by the inquiry committee on its own motion)

4.32 A registrant under investigation must have an opportunity to provide an inquiry committee with information about the matter: HPA s. 33(5).

HPA s. 33(5)

4.33 Disposition options: The IC may dispose of a matter in one of four ways under HPA s. 33(6):

- a. it may take no action based on satisfactory conduct or competence;
- b. it may take any action it considers appropriate to resolve the matter;
- c. it may request a consensual resolution by means of a voluntary consent or undertaking from the registrant; or
- d. it may send a matter to a hearing of the discipline committee by issuing a citation.

HPA s. 33(6)(a)-(d)

4.34 No right of statutory review for registrants: While the HPA provides complainants with a right of review by the Review Board, respecting dispositions under [s. 33(6)] paragraphs (a), (b), or (c), the HPA does not provide a registrant with any similar right. Said another way, the Review Board does not have jurisdiction to address an IC disposition under s. 33(6)(a), (b) or (c) on application by a registrant.

HPA s. 50.53(1)(c) ("on application by a complainant... to review a disposition of a complaint... under section 32(3), 33(6)(a) to (c), or 37.1")

4.35 Instead, if a matter proceeds to a discipline hearing before the Discipline Committee ("DC"), and the DC issues an order adverse to a registrant, the registrant has a statutory right to "appeal" under the HPA: see HPA s. 40(1).

HPA s. 40(1)

5.1 Dr. Maroofi's Petition is, in substance, an application for judicial review. He seeks relief in the same nature of what he was ultimately seeking from the Review Board, i.e., a grant of registration pursuant to an alleged RC resolution of June 23, 2016, and further or alternatively, an order that the RC (re-)assess his continuing applications for registration.

5.2 A refusal by the RC to grant registration under HPA s. 20, due to Dr. Maroofi not meeting Bylaw requirements in 2016 and still not meeting those requirements, is a matter over which the Review Board has jurisdiction (HPA s. 50.54(1)(a)), and therefore a matter over which it has exclusive jurisdiction (HPA s. 50.63(1)).

5.3 The only exception to this exclusive jurisdiction is the court's supervisory jurisdiction to review exercises of statutory powers by administrative bodies. However, Dr. Maroofi did not apply for judicial review of the 2016 HPRB Decision within the sixty- (60-) day deadline stipulated by ATA s. 57 and the HPA Schedule. Since Dr. Maroofi is only within time to apply for judicial review of the 2020 HPRB Decision, the only relief Dr. Maroofi may now obtain is, at most, an order setting aside all or part of the 2020 HPRB Decision.

B. The standard of review

5.4 The Review Board has exclusive jurisdiction "to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or require to be determined in a review... under this Part and to make any order permitted to be made" (HPA s. 50.63(1)). The Review Board's jurisdiction includes any refusal by the RC to grant registration under HPA s. 20 (HPA s. 50.54(1)(a)).

5.5 The findings and decisions of the Review Board under the 2020 HPRB Decision were all findings relating to fact or law, or exercises of discretion. For example:

- a. A finding about the limits of the Review Board's power to cure a jurisdictional defect, referred to by ATA s. 53(5), related to a question of law concerning the Review Board's powers;
- b. a finding of no reasonable prospect that Dr. Maroofi might establish the RC Briefing as including an actual RC resolution related to a question of fact, or a question of mixed fact and law;
- c. a decision refusing to reopen the 2016 HPRB Decision involved an exercise of discretion;
- d. a finding of no change in the College's "provisional" registration requirements between 2016 and 2019 related to a question of law concerning the RC's home statute (and specifically the College's bylaws);
- e. a finding that Dr. Maroofi's undertakings relating to the Trainee RC Decision had lapsed at the end of his clinical traineeship related to a question of mixed fact and law;

- f. the Review Board's lack of jurisdiction over College staff related to a question of law concerning the Review Board's powers;
- g. the Review Board's lack of jurisdiction over the IC Disposition relating to a question of law concerning the Review Board's powers; and
- h. a decision to grant summary dismissal to the College involved an exercise of discretion.

5.6 For questions falling within the Review Board's exclusive jurisdiction, the standard of review on judicial review is one of patent unreasonableness (ATA s. 58(1)):

Standard of review with privative clause

58 (1) If the Act under which the application arises contains or incorporates a privative clause, relative to the courts the tribunal must be considered to be an expert tribunal in relation to all matters over which it has exclusive jurisdiction.

- (2) In a judicial review proceeding relating to expert tribunals under subsection (1)
 - (a) a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable,
 - (b) questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly, and
 - (c) for all matters other than those identified in paragraphs (a) and (b), the standard of review to be applied to the tribunal's decision is correctness.
- (3) For the purposes of subsection (2) (a), a discretionary decision is patently unreasonable if the discretion
 - (a) is exercised arbitrarily or in bad faith,
 - (b) is exercised for an improper purpose,
 - (c) is based entirely or predominantly on irrelevant factors, or
 - (d) fails to take statutory requirements into account. (emphasis added)

ATA s. 58

C. Grounds for denying the orders sought

5.7 The court should deny the relief sought, on the basis that the 2020 HPRB Decision was wholly correct, and in any event, not patently unreasonable.

5.8 The burden lies on Dr. Maroofi to establish a patently unreasonable error by the Review Board.

5.9 The College further adopts and relies on, inter alia, its submissions to the Review Board - its Response and Application for Summary Dismissal dated December 16, 2019, and its Reply dated February 27, 2020 - to the extent these materials support the Review Board's specific conclusions in the 2020 HPRB Decision.

Kreutz #3, Ex. F (College Response and Cross-Application, Dec. 16, 2019)

- Paras. 10-13 (no "jurisdictional defect", based on Fraser Health, 2014 BCCA 499 at paras. 158 and 169);
- Paras. 16-21 (the RC Briefing did not include a resolution passed by the RC);
- Paras. 31-47 (no change in registration requirements, despite Bylaw amendments in 2019);
- Paras. 48-57 (no new application for registration showing any change in circumstance);
- Paras. 62-64 and 67- 79 (undertakings lapsed and any issue is moot); and
- Paras. 76-78 (no Review Board jurisdiction over Ms. de Bruin).

Kreutz #3, Ex. G (Reply of the College, Feb. 27, 2020).

- Para. 6-18 (the RC Briefing did not include a resolution passed by the RC)

5.10 With respect to the Review Board's power to cure jurisdictional defects, the College expressly pleads and relies on the law set out by the majority panel in Fraser Health Authority v. Workers' Compensation Appeal Tribunal, 2014 BCCA 49.

[Original emphasis.]

- [31] Accordingly, I dismiss the petition. The College is entitled to the lump sum costs it claims of \$1,500. The respondent Board does not seek costs, and I make no costs order in respect of the Board.
- [32] Dr. Maroofi, on July 30 and August 5, brought two further applications, essentially for document production. With one qualification, I adopt the arguments of the College, in its responses of August 4 and August 6, and dismiss those further two applications with no further costs order. The single qualification is that I believe this Court does have a discretion, by its inherent jurisdiction, to order limited document production in proceedings brought by petition. That qualification, however, does not alter my conclusion to dismiss the document applications before me.

"Macintosh J."

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