On statutory appeal from a decision of the Board of Directors of the Manitoba Chiropractors Association, dated April 5, 2023.

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Dockets: CI 23-01-41367, CI 23-01-41368
(Winnipeg Centre)
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Cited as: 2024 MBKB 3

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

IN THE MATTER OF: ***The Chiropractic Act***, C.C.S.M. c. C100, s. 50

DR. GREGORY STEWART, DC,	)	Kevin D. Toyne
	)	for the appellant
appellant,	)	
	)	
- and -	)	Timothy J. Valgardson
	)	Simone Marcoux
MANITOBA CHIROPRACTORS ASSOCIATION,	)	for the respondent
	)	
respondent.	)	
	)	Judgment Delivered:
	)	January 9, 2024

REMPEL J.

BACKGROUND

[1] ***The Chiropractic Act***, C.C.S.M. c. 100 (the "***Act***") establishes the Manitoba Chiropractors Association (the "MCA") to licence and regulate chiropractors in this province. Like most self-regulated professions, the MCA is governed by a "*board*" that is entrusted to act in the public interest as it performs the duties prescribed in the ***Act*** and its decisions can be appealed to this court.

[2] Part X of the ***Act*** at s. 50(1) allows "*[a]ny person … aggrieved by an order or decision of the board* …" to "*appeal*" to this court "… *within two months* …" of the order or decision in question. Section 50(3) of the ***Act*** in turn provides that an appeal to this court "… *shall be made by originating notice of motion* …" and "… *shall be <u>founded upon the record</u> of proceedings and reports relating thereto and the order or decision of the board in the matter, certified by the registrar*" (emphasis mine).

[3] Oddly, the ***Act*** at s. 50(4) prescribes the mandatory duty of the registrar of the MCA to provide more extensive disclosure than called for in s. 50(3) to any "… *person desiring to appeal* …" the decision of the board and not merely actual appellants. That disclosure is described as "… *a certified copy of all proceedings, reports, orders and papers upon which the board acted in making the order or decision in respect of which the appeal is taken*". At first reading it seems odd that the ***Act*** grants a person who expresses a desire to appeal to the registrar, more extensive disclosure than "… *the record of proceedings and reports relating thereto …*" as set out in s. 50(3).

[4] Part X of the ***Act*** is attached in it's entirely as Schedule "A" to these reasons. Counsel have advised me, in keeping with the Practice Direction of this court dated June 23, 2023, that there is no discrepancy between the English and French versions of the ***Act*** that may impact the proper interpretation of this statute.

ISSUE

[5] The issue before me is what constitutes the "record" upon which the statutory right of appeal under the ***Act*** is founded. Dr. Gregory Stewart (the "Appellant") who is a member of the MCA filed a single complaint (the "Complaint") against two members of the MCA who also sit on the MCA Board (the "Board"). The Complaint was subsequently dismissed by the Board following an investigation and that decision was appealed by the Appellant.

[6] According to the Appellant, the ***Act*** requires me to give an expansive definition to what the record consists of in this statutory appeal and it should include all of the documents and records amassed by the investigator appointed by the MCA during the course of the investigation, including witness statements, that assisted the investigator in reaching their ultimate conclusion. The MCA counters by arguing that the record in this case consists of the report of the investigator and nothing else, apart from the Board's decision to dismiss the Complaint without further investigation or an inquiry, apart from some affidavit evidence to provide context as to the process followed by the Board prior to the dismissal of the Complaint.

[7] My decision as to what constitutes "the record" in this case will be dispositive of a deeper question, namely whether the statutory right of appeal results in a trial *de novo* in this court. The Appellant argues that a trial *de novo* is appropriate because a narrowly defined record, as called for by the MCA, is so sparse that it precludes any meaningful review by this court on an appeal.

DECISION

[8] I am satisfied that given the nature of the Complaint filed by the Appellant, a proper interpretation of the ***Act*** limits the record on appeal to this court to the report of the MCA investigator, the decision of the Board to dismiss the Complaint and some supplementary documents I will refer to in due course. My reasons follow.

CHRONOLOGY

[9] On November 11, 2022, the Appellant filed the Complaint against Dr. Gerald Chartier and Dr. Tricia Kucheravy by way of a letter from his lawyer. The Complaint runs on for some 10 pages and includes 13 multi-page attachments. The Complaint alleges that each of Dr. Chartier and Dr. Kucheravy committed professional misconduct in connection with the investigation of some earlier complaints made against the Appellant that were ultimately dismissed or withdrawn. The exact nature of the misconduct alleged by the Appellant is not easy to tease out of the Complaint due to its convoluted language and lack of precision.

[10] The Complaint includes a vague reference to a "*pre-planned defamatory ambush*" by some Board members including Dr. Chartier, at a meeting of the Board which the Appellant attended some two years earlier in 2020. The allegedly defamatory words used by Dr. Chartier are not identified in the Complaint. The balance of the Complaint against Dr. Chartier, as best I can understand it, pertains

to an alleged conflict of interest when he started to investigate an earlier complaint against the Appellant and the inappropriate delay of this investigation.

[11] From what I can discern, the Complaint also alleges a breach by Dr. Chartier and Dr. Kucheravy of their duty to be "*truthful and forthright*" in their conduct as Board members when earlier complaints were made against the Appellant and then investigated.

[12] The Complaint was referred to the respondent's Complaints Committee. Dr. Chartier and Dr. Kucheravy each provided a response to the Complaint and the Appellant replied to same.

[13] On February 6, 2023, the Complaints Committee of the MCA "closed" the Complaint.

[14] The Appellant objected to this decision and the matter was referred to the MCA's "Investigation Chairman", who recused themself and another member of the Board (Dr. Pascal Breton) investigated the Complaint. I will follow the lead established by counsel and use the term "Investigation Chair" to describe Dr. Breton in these reasons rather than the term "Chairman" employed by the ***Act***.

[15] The affidavit of the Investigation Chair sworn October 24, 2023 in the King's Bench file with respect to the allegation against Dr. Chartier confirms that the file he received at the start of the investigation consisted of some 340 pages of Board meeting minutes, emails, transcripts of Board meetings, and correspondence between counsel retained by the various parties, including the Investigation Chair. Due to the fact the Complaint contained references to

defamatory comments, an audio recording of part of a Board meeting was also in the file.

[16] In his affidavit at para. 27 the Investigation Chair also noted that he distilled what seemed to be the "… *actual complaints …*" in the 10-page letter that constitutes the Complaint into a summary which he added to his ultimate written report that he presented to the Board on April 5, 2023 (the "Chartier Report"). The "*Summary of the Complaint*" section of the Chartier Report reads as follows:

> **Summary of the Complaint**
>
> Dr. Greg Stewart's legal counsel submitted a letter on November 11th, 2022, addressed to MCA legal counsel which included a formal complaint against Dr. Gerald Chartier, alleging professional misconduct on the grounds of abuse of MCA regulatory powers. The allegations of professional misconduct included *a preplanned ambush and defamatory remarks regarding Dr. Greg Stewart at the August 2020 MCA Board meeting; Dr. Gerald Chartier being in conflict of interest in investigating File #20-37; Dr. Gerald Chartier delaying the investigation of File #20-37;* and *Dr. Gerald Chartier having failed to be truthful and forthright with the MCA Board during his investigation in File #20-37.* Regarding file #21-05 Dr. Stewart's legal counsel alleged that Dr. Gerald Chartier *failed to take into consideration previous reviews of Dr. Greg Stewart's website; Dr. Gerald Chartier's appointment as an investigator was improper or illegitimate;* and *Dr. Gerald Chartier is not exercising his powers as Investigation Chair in good faith in his request that Dr. Greg Stewart attend for an interview.*

[17] The Investigation Chair offers a response to the key allegations, including the fact that the defamatory remarks, as alleged, were not contained on the audio recording and the alleged conflict of interest could not have arisen because Dr. Chartier was not the party who made an allegation of unprofessional conduct as alleged by the Appellant.

[18] It is clear from the affidavit of the Investigation Chair that the Board meeting in which the Appellant participated "*became heated*" and tempers flared. Based in part on the legal advice he received, the Investigation Chair decided that there was no basis to conclude Dr. Chartier engaged in professional misconduct, but rather that he and the Appellant merely had a "*personal vendetta*" between themselves.

[19] One of the lay persons on the Board (Adam William Buss) ("Mr. Buss") who attended the Board meeting on April 5, 2023, swore an affidavit on October 24, 2023 in which he stated at para. 9 that the Investigation Chair made a presentation to the Board with respect to the Complaint against Dr. Chartier that included "… *the details of the complaint, the evidence that was available to him and that he considered during the investigation* …" and the presentation of the Chartier Report, which included his recommendation that no further action be taken on the Complaint.

[20] After the presentation, copies of the Chartier Report were distributed to all Board members and a break was called to allow for those in attendance to review it. After the break, a question and answer session with the Investigating Chair ensued. A vote was then taken by the Board members which confirmed that no further action be taken with respect to the Chartier Report and that the Complaint should not be referred to an Inquiry as provided for in the ***Act***.

[21] The affidavits of the Investigation Chair and Mr. Buss on the King's Bench file involving the allegations against Dr. Kucheravy detail a substantially similar

process and confirm that the Board came to the same conclusion that no further action be taken with respect to the Complaint against Dr. Kucheravy.

[22] The summary of the Complaint as against Dr. Kucheravy contained in the report of the Investigation Chair presented at the same Board meeting (the "Kucheravy Report") offers the following summary:

> **Summary of the Complaint**
>
> Dr. Greg Stewart's legal counsel submitted a letter on November 11th, 2022, addressed to MCA legal counsel, which included a formal complaint against Dr. Tricia Kucheravy alleging professional misconduct. The allegations of professional misconduct were regarding the veracity of complaint #22-16 filed by Dr. Tricia Kucheravy against Dr. Greg Stewart. It was alleged by Dr. Greg Stewart's legal counsel that Dr. Tricia Kucheravy's complaint (#22-16) was *frivolous and abusive*. The allegations against Dr. Tricia Kucheravy are that *she only attended certain board meetings to be part of a pre-planned ambush against Dr. Greg* Stewart. Furthermore, it was stated that *Dr. Tricia Kucheravy should have known about the details regarding Dr. Greg Stewart's involvement in the HSC project long before filing her complaint in October of 2022.*

[23] By way of conclusion, the Investigation Chair noted that although Dr. Kucheravy did make conflict of interest allegations against the Appellant, she immediately withdrew the allegations when it was made clear to her that the allegations could not be supported by the facts. Ultimately, the Investigation Chair concluded that the error of Dr. Kucheravy could not form the basis of a misconduct complaint.

[24] The Appellant exercised his statutory right to appeal the decisions of the Board to this court, as well as his statutory rights to disclosure under s. 50(4) of the ***Act*** as I have already set out in these reasons.

[25] The MCA provided the Appellant with copies of the Investigation Chair's reports with respect to Dr. Chartier and Dr. Kucheravy and told the Appellant to make further requests for disclosure in writing, which the Appellant did. The MCA did not provide any of the additional information or documentation requested by the Appellant but it did allow the Appellant to review the files concerning him maintained by the MCA and confirmed that many of the documents requested by the Appellant were in the MCA's possession, but it would not allow the Appellant to make copies of those documents.

THE LITIGATION

[26] The Appellant filed two separate appeals in this court with respect to the Complaint, one with respect to Dr. Chartier and the other with respect to Dr. Kucheravy. The two actions were consolidated when counsel first appeared on the uncontested list to seek a hearing date. By the time counsel appeared on the uncontested list, seven different motions had been filed on each one of the two King's Bench actions.

[27] It was impossible, in my view, for all 14 motions to be argued during the single day set for the contested hearing, so I ordered that argument be limited to the four procedural motions filed by the MCA to strike the notice of application containing the appeal in each action or portions thereof and the subsequent affidavit of the Appellant in support of his claim that I grant the substantive relief he was seeking.

[28] Counsel acknowledge that the two procedural motions of the MCA to strike the originating notices of motion that form the appeals and the Appellant's affidavits were identical in each of the two King's Bench actions and my decisions on these two motions would necessitate a ruling on the substantive questions of whether the statutory right of appeal described in the ***Act*** results in a trial *de novo* where fresh evidence would be permitted or if the appeal was limited to a narrowly prescribed record. For that reason counsel made fulsome arguments as to these substantive questions during the motions to strike.

[29] The originating notices of motion filed by the Appellant seek an order setting aside the decision of the Board to close the Complaint as against Dr. Chartier and Dr. Kucheravy and an order compelling an inquiry with respect to the Complaint under s. 43 of the ***Act***. In the alternative, the Appellant seeks an order "*compelling*" the MCA "*to conduct a proper investigation*" into the Complaint.

[30] Each originating notice of motion appended the Complaint as a schedule. The body of each originating notice of motion also summarized the chronology of the events leading up to the Complaint and the subsequent procedural steps undertaken by the MCA that led to the ultimate decision of the Board to dismiss the Complaint against Dr. Chartier and Dr. Kucheravy. This chronology in the originating notices of motion filed by the Appellant are replete with allegations that the investigation process was improper or inadequate and the ultimate decision of the Board was fundamentally flawed.

[31] The first notice of motion filed by the MCA in each of the two actions (the "First Motion") seeks an order striking the Appellant's originating notices of motion or portions thereof. The focus of the First Motion takes aim at the Complaint itself which is attached as a schedule to that pleading. The MCA argues the Complaint did not form a part of the record of the Board's proceedings because it was not shown to or considered by the Board members prior to the vote at the Board meeting.

[32] Other arguments advanced under the First Motion pertain to the originating notices of motion containing argument, speculation or irrelevant comments and conclusions which are prohibited under the King's Bench Rules.

[33] The second notice of motion filed by the MCA in each of the two actions (the "Second Motion") seeks an order striking the main affidavits filed by the Appellant in each action, which are quite lengthy and introduce as exhibits all kinds of evidence that was never considered by the Board when the ultimate decision of the Board was made to dismiss the Complaint.

[34] The evidence in the affidavit includes, among other things, the Appellant's vitriolic letter of resignation from his position on the Board in 2021, the Complaint with all 13 attached schedules, letters from counsel for Dr. Chartier responding to the Complaint, the reply of counsel for the Appellant to the response of counsel for Dr. Chartier and many other exchanges between counsel for the MCA and the Appellant over various procedural issues including documentary disclosure.

[35] The MCA argues that the affidavits of the Appellant on each file should be struck because they contain a significant amount of evidence which was not before the Board at the time of their ultimate decision and the Appellant never brought a motion requesting that new evidence be admitted to supplement the record.

[36] The common thread running through the First Motion and the Second Motion is the MCA's argument that the statutory right of appeal prescribed by the ***Act*** must be based solely on the record of the proceedings before the Board at the meeting where the ultimate decision was made. This narrowly defined record, according to the MCA, precludes the filing of fresh evidence such as affidavits or other documents such as transcripts of cross-examinations on the affidavit that were never presented to the Board at the meeting.

PURPOSE OF THE *ACT*

[37] An extensive review of all of the provisions of the ***Act*** is important, as it informs the basis for a contextual analysis of its intention or purpose. The mere analysis of the plain meaning of the words of any given statute that are in dispute or at issue is not sufficient for the proper interpretation of the legislation. (See ***Rizzo & Rizzo Shoes Ltd. (Re)***, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27, at para. 20.) Further guidance as to the need to assess the object of an Act and proper context is further examined in ***Rizzo***, at paras. 21-23:

> 21 Although much has been written about the interpretation of legislation (see, e.g., Ruth Sullivan, *Statutory Interpretation* (1997); Ruth Sullivan, *Driedger on the Construction of Statutes* (3rd ed. 1994) (hereinafter "*Construction of Statutes*"); Pierre-André Côté, *The Interpretation of Legislation in Canada* (2nd ed. 1991)), Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) best encapsulates the

> approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:
>
> > Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
>
> Recent cases which have cited the above passage with approval include: *R. v. Hydro-Québec*, 1997 CanLII 318 (SCC), [1997] 3 S.C.R. 213**; *Royal Bank of Canada v. Sparrow Electric Corp.*, 1997 CanLII 377 (SCC), [1997] 1 S.C.R. 411; *Verdun v. Toronto-Dominion Bank*, 1996 CanLII 186 (SCC), [1996] 3 S.C.R. 550; *Friesen v. Canada*, 1995 CanLII 62 (SCC), [1995] 3 S.C.R. 103.
>
> 22 I also rely upon s. 10 of the *Interpretation Act*, R.S.O. 1980, c. 219, which provides that every Act "shall be deemed to be remedial" and directs that every Act shall "receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit".
>
> 23 Although the Court of Appeal looked to the plain meaning of the specific provisions in question in the present case, with respect, I believe that the court did not pay sufficient attention to the scheme of the *ESA*, its object or the intention of the legislature; nor was the context of the words in issue appropriately recognized. I now turn to a discussion of these issues.

[38] This court conducted an analysis of a statute governing conflicts of interest by members of the provincial legislature in ***Dunn v. Struthers et al.***, 2013 MBQB 281 (CanLII), through the lens provided by ***Rizzo***. In ***Dunn*** it was noted, at para. 13:

> [13] Since the hearing of these Applications, the Manitoba Court of Appeal has stated in ***Chan v. Katz***, 2013 MBCA 90, at paragraph 11, "[t]he *Act* [***The Municipal Council Conflict of Interest Act***, C.C.S.M. c. M255], is public interest legislation which must be given a broad and liberal interpretation in accordance with the modern rule of statutory interpretation." Earlier in the year, the Ontario Divisional Court stated in ***Magder v. Ford***, 2013 ONSC 263:

> **34** In our view, the interpretation of the *MCIA* requires a court to apply the modern approach to statutory interpretation adopted by the Supreme Court of Canada in *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 (CanLII), [2002] 2 S.C.R. 559 at para. 26: the words of the statute are to be read in context and 'in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.'

[39] I would also note that ***The Interpretation Act***, C.C.S.M. c. I80, of Manitoba provides, at s. 6:

Rule of liberal interpretation	**Solution de droit**
6 Every Act and regulation must be interpreted as being remedial and must be given the fair, large and liberal interpretation that best ensures the attainment of its objects.	**6** Les lois et les règlements sont censés apporter une solution de droit et s'interprètent de la manière la plus équitable et la plus large qui soit, compatible avec la réalisation de leur objet.

[40] The ***Act*** has all of the hallmarks of a self-regulated profession, which includes the creation of a body that functions under the auspices of a Board and a registrar. The Board consists of credentialed members of a profession to be elected to its governing body and lay persons appointed by the Minister. The Board has the power under the ***Act*** to establish standards for the education, training and competence of persons seeking the right to practice that profession.

[41] Like any other self-regulated profession, the ***Act*** also gives the MCA the power to make rules and establish procedures to manage its affairs, pursue its purpose and carry out its duties with a view to protecting members of the public who seek advice or treatment from a chiropractor.

[42] The authority of the MCA under the ***Act*** includes the power to grant licences to persons seeking to practice as chiropractors and to discipline members for failures to meet the professional standards established by the MCA. The ***Act*** also gives the MCA the ultimate power to suspend or revoke the licence of a chiropractor.

[43] The ***Act*** gives sweeping powers to the Board to take action against a licensed chiropractor who fails to meet professional standards. The "*Standards Committee*" under Part V of the ***Act*** can demand that a chiropractor submit to an inspection of their business records or other documents after giving reasonable notice (s. 29(1)). The Standards Committee can direct that a chiropractor engage in "*refresher training*" under s. 29(3) or direct that a matter be submitted to the Investigation Chair or to the "*inquiry committee*" (s. 29(4)).

[44] The "*Licensing Committee*" established under Part VI of the ***Act*** can refuse an application for a practising licence and permits an aggrieved applicant to "*appeal*" to the Board, which can allow or dismiss the appeal or direct the registrar to issue a licence under terms or conditions (s. 31(3)).

[45] Part VII of the ***Act*** establishes a "*Complaints Committee*". The mandate of this committee is set out in ss. 33(1) and 33(2) as follows:

Receipt and resolution of complaints	***Réception et règlement des plaintes***
33(1) The complaints committee shall receive and review complaints brought against any member and where the committee considers it appropriate, it shall attempt to informally resolve the matter.	**33(1)** Le comité des plaintes reçoit et étudie les plaintes portées contre un membre et lorsqu'il juge cela indiqué, il essaie de régler l'affaire sans formalités.

Reference to investigation chairman

33(2) Where a complainant or the member does not accept the resolution of the complaints committee, or where the committee so determines, the matter shall be referred to the investigation chairman.

Renvoi à l'enquêteur

33(2) L'affaire est renvoyée à l'enquêteur lorsque le plaignant ou le membre n'accepte pas le règlement du comité des plaintes ou lorsque ce dernier en décide ainsi.

[46] The escalation of a complaint that is referred to the Investigation Chair is described in Part VIII of the ***Act*** in ss. 35 and 36(1) as follows:

Reference to investigation chairman

35 Where the complaints committee or the registrar is advised that a member

(a) either before or after he has become a member has been convicted of an indictable offence; or

(b) is alleged to be guilty of professional misconduct, conduct unbecoming a member, professional incompetence or criminal conduct whether in a professional capacity or otherwise; or

(c) is alleged to have demonstrated incompetence, incapacity or unfitness to practise chiropractic or to be suffering from an ailment which might if he continues to practise, constitute a danger to the public;

Renvoi à l'enquêteur

35 Le comité des plaintes ou le registraire renvoie l'affaire à l'enquêteur pour étude et recommandation lorsqu'il apprend qu'un membre, selon le cas :

a) a été déclaré coupable d'un acte criminel, avant ou après son inscription;

b) est soupçonné de faute professionnelle, de conduite indigne d'un membre, d'incompétence ou de conduite criminelle dans l'exercice de sa profession ou autrement;

c) est soupçonné d'avoir fait preuve d'incompétence, d'incapacité ou d'inaptitude relativement à l'exercice de la chiropractie, ou d'être atteint d'une maladie qui pourrait, s'il continuait à pratiquer, constituer un danger pour le public.

the committee or the registrar shall refer the matter to the investigation chairman for his review and recommendation.

Preliminary investigation

36(1) Upon a referral pursuant to section 35, the investigation chairman shall conduct or cause to be conducted a preliminary investigation under his direction and upon the completion thereof he shall review the results

Enquête préliminaire

36(1) Saisi d'une affaire en application de l'article 35, l'enquêteur procède ou fait procéder à une enquête préliminaire sous sa direction et, dès que cette enquête est terminée, il en étudie les conclusions.

[47] The Investigation Chair must submit a written report to the Board after completing their review. Section 40 of the ***Act*** provides:

Action by investigation chairman

40 Upon completing his review the investigation chairman shall report the findings of his review, in writing, together with his recommendations, to the board which shall thereupon

(a) direct that no further action be taken; or

(b) direct that the matter be dealt with by an inquiry pursuant to section 43;

and upon making a direction the board shall notify the complainant and the member who was the subject of the investigation, in writing, sent by registered or certified mail or served personally, of the direction made.

Décision du conseil d'administration

40 À la fin de son étude, l'enquêteur consigne dans un rapport écrit ses conclusions ainsi que ses recommandations et il remet ce rapport au conseil d'administration qui ordonne :

a) qu'aucune autre mesure ne soit prise;

b) qu'une enquête soit conduite conformément à l'article 43.

La décision prise est signifiée par écrit, à personne ou dans une lettre envoyée par courrier recommandé ou par poste certifiée, au plaignant et au membre visé par l'enquête.

[48] Part IX of the ***Act*** describes the power of the Board to establish an "*Inquiry Committee*," which must proceed with all inquiries "*in camera*" under s. 43(13)

and allows the Inquiry Committee to receive testimony under oath under s. 43(6) and to issue subpoenas under s. 43(8). The ***Act*** has strict provisions with respect to the confidentiality of information obtained by persons acting in an official capacity under the ***Act*** and prohibits disclosure of such information, unless required for a prosecution or court action (s. 43(9)). At the completion of an inquiry, the Inquiry Committee has the power to discipline members by way of the revocation or suspension of their licence or to impose some lesser punishment such as a fine or reprimand (s. 47(1)).

[49] Part X of the ***Act***, as I have already noted in these reasons, addresses appeals of any person aggrieved of a decision of the Board to appeal to this court.

[50] When the ***Act*** is read as whole, I am left with no doubt that its overarching purpose is to empower the Board and the various committees to ensure that only qualified and competent persons practice as chiropractors and to regulate the professional conduct of chiropractors with a view to ensuring that they deliver health care services to the public in a safe and competent manner.

[51] Further, it is clear that the ***Act*** is designed in such a way as to permit the Board and the various committees to respond to any concerns that are raised by practitioners or members of the public in a way that is commensurate to the gravity of the concern and responsive to the public interest that the Board function efficiently and effectively to protect the public and the integrity of the profession.

WHAT IS THE RECORD IN THIS CASE?

[52] Section 50(3) of the ***Act*** uses the imperative command "*shall*" to describe the documents upon which an appeal to this court is founded. Those documents are described in that section as "… *the record of proceedings and reports relating thereto and the order or decision of the board in the matter …*".

[53] The language of the ***Act*** does not contemplate anything more expansive than these particular documents in cases where a statutory appeal is filed.

[54] ***Friesen (Brian Neil) Dental Corp. et al. v. Director of Companies Office (Man.) et al.***, 2011 MBCA 20 (CanLII), teaches that the "… *first point of reference …*" in establishing whether a statutory appeal calls for a hearing *de novo* as opposed to a statutory review or appeal on the record "… *is always the legislation itself*" (para. 17). If the statutory appeal defined by a statute is "… *silent as to the possibility of a hearing de novo*" there is a "… *presumption in favor of a review on the record*" (para. 32).

[55] The general principle described in ***Friesen*** in cases where a statute is silent on the scope of an appeal is set out as follows:

> 42 Thus, the general case law on this point suggests that when a statute uses the word "appeal," and nothing in the statute appears to expand the nature and the scope of the appeal hearing, then the appeal will be considered a "true appeal" as opposed to a *de novo* hearing. The fact that the court is given the power to "make any further order it thinks fit" (s. 14(1) of the *BNRA*) will not change that conclusion.

[56] The ***Friesen*** decision expands on an earlier ruling of the Court of Appeal in ***Guinn v. Manitoba***, 2009 MBCA 82 (CanLII), 245 Man. R. (2d) 57, where it was

held that the appeal described in the legislation (***The Farm Lands Ownership Act***, C.C.S.M., c. F35) should be limited to the record, as the legislation did not provide for *de novo* appeals or the filing of new evidence on an appeal (para. 14).

[57] ***Guinn*** allowed for the supplementation of the record on the appeal merely to provide context, at para. 15:

> 15 In certain circumstances in an appeal on the record, the record may be supplemented to more fully constitute the record of the proceedings or to show what evidence was in front of the Board and therefore part of the record. Consequently, such affidavits as that of the Board secretary which sets out which materials were before the Board, or even the affidavit of Guinn which details the representations made before the Board at its hearing are permissible. However, the evidence sought to be adduced here is not part of the record, nor is it needed to constitute or explain the record of the proceedings before the Board.

[58] In ***Santarsieri (Michele) Inc. et al. v. Manitoba (Minister of Finance)***, 2015 MBCA 71 (CanLII), it was noted that the presumption in favour of a review on the record in cases where a statute is silent on the scope of a statutory appeal was described by Steel J.A. in the ***Friesen*** decision as a rebuttable one.

> [34] A presumption having arisen, as it has in this case, Steel J.A. then identified other factors for the court to consider in its analysis. These include the nature of the decision appealed from, the statutory framework and legislative history of the legislation, and the scheme of the legislation as a whole, including the duties and expertise of the original decision maker. Other considerations include whether or not there is a legislative requirement that the administrative entity being appealed from keep a record or give reasons for its decisions.

POSITION OF THE APPELLANT

[59] In the main, the focus of the Appellant's arguments is that if the MCA's position is upheld and his complaints are deemed to be "*true appeals*" then any

judicial scrutiny will in essence be limited to the perfunctory report of the Investigation Chair. As a result the appeal process will be reduced to what is described by the Supreme Court of Canada in ***Canada (Minister of Citizenship and Immigration) v. Vavilov***, 2019 SCC 65 (CanLII), [2019] 4 S.C.R. 653, as little more than "… *a 'rubber-stamping' process or a means of sheltering administrative decision makers from accountability*" (para. 13).

[60] The Appellant argues it is critical that certain key documents form part of the record or a supplemented record to avoid his appeal from becoming a hollow ritual. The documents the Appellant considers crucial to his appeal with respect to the Complaint against Dr. Chartier to this court are:

a) The Complaint;

b) Dr. Chartier's response;

c) His reply to Dr. Chartier's response;

d) The affidavits outlining the nature of the MCA's investigative practices;

e) The scope of documents provided to the Investigation Chair; and

f) The extent of the investigative steps taken or better said, not taken, by the Investigation Chair.

[61] A key argument in favour of an expanded record, according to the Appellant is the fact that the MCA's disclosure obligation under s. 50(4) of the ***Act*** is so much broader than what s. 50(3) defines as the "… *record of proceedings and reports relating thereto and the order or decision of the board in the matter* …". The Appellant argues that the crafting of a disclosure obligation that is broader than

what the ***Act*** defines as the record not only constitutes an effective rebuttal to the presumption of an appeal on the record but it also reflects a clear intention on the part of the legislature to expand the nature or scope of the statutory right of appeal under the ***Act***. Ergo, the Appellant argues that this court should not hollow out the statutory right of appeal by making it completely ineffective and easy to defeat.

POSITION OF THE MCA

[62] The MCA submits that the record for the appeal with respect to the Complaint against Dr. Chartier ought to be limited to what Board members saw or heard at the April 5, 2023 meeting and documents that offer context to what was discussed at that meeting. This includes:

a) Dr. Breton's written report of March 31, 2023;
b) The minutes from the meeting of the Board on April 5, 2023;
c) Dr. Breton's affidavit disclosing what was discussed during the meeting of the Board related to the Complaint;
d) Dr. Breton's transcript of cross-examination, to the extent that it speaks to what was discussed at the meeting of the Board related to the Complaint;
e) Adam Buss' affidavit disclosing what was discussed during the meeting of the Board related to the Complaint; and
f) Adam Buss' transcript of cross-examination, to the extent that it speaks to what was discussed at the meeting of the Board related to the Complaint.

[63] As to the Complaint as against Dr. Kucheravy, the MCA says the record should be limited to:

a) Dr. Breton's written report of March 31, 2023;

b) The minutes from the meeting of the Board on April 5, 2023;

c) Dr. Breton's affidavit disclosing the nature of the discussions during this Board meeting; and

d) Dr. Breton's and Mr. Buss' transcripts of cross-examination, to the extent they address what was discussed at the Board meeting about the Complaint.

ANAYLSIS AND CONCLUSION

[64] I am satisfied that when read as a whole, the framers of the ***Act*** intended to empower the MCA to respond to complaints in a variety of ways depending on their gravity. The flexibility the ***Act*** provides for with respect to complaints is in keeping with good governance and efficiency. The ***Act*** does not contemplate or provide for a one-size-fits-all response to every complaint it receives about one its members. In that sense I cannot agree with counsel for the MCA and the Appellant that the record should be as narrow or as broad as they would like, without proper consideration of the facts and what might be at stake for any given appellant under s. 50(1) of the ***Act***.

[65] If a complaint could result in the revocation of a licence to practice it may well make sense to proceed by way of a formal inquiry as provided for in the ***Act*** which could entail the receiving of evidence under oath. It would also be

reasonable in such a case for an appellant to argue that the record on an appeal should be broader than a case where the most severe outcome would be nothing more than a compulsory refresher course.

[66] Counsel agreed that not every single complaint could or should result in the same kind of investigative process and resolution. A contextual statutory analysis and the scheme of the ***Act*** bear this out. There are strong policy reasons favouring this kind of flexibility into professional complaints under the ***Act***, as they allow for a timelier resolution of a complaint and the cost-effective use of limited resources. That is why the ***Guinn*** decision, from which I have quoted in these reasons, allows for the supplementation of the record "*[i]n certain circumstances …"* (para. 15) and the ***Santarsieri*** decision speaks to "… *the nature of the decision appealed from*…" as one of the factors to be considered when an appellant is faced with the rebuttal of the presumption that a review should proceed on the record (para. 34).

[67] This flexibility also means that the difference between the broad disclosure right potential appellants are entitled to under s. 50(4) of the ***Act*** in contrast to the more limited description of what constitutes the record of an appeal under s. 50(3) is not as odd as would first appear. The ***Act*** provides every chiropractor facing a complaint full disclosure of all the facts that the MCA might array against them in a disciplinary proceeding, but does not require that each disclosed document form part of the record on an appeal. The ***Act*** contemplates less complexity for appeals that have less significant consequences to the party against which complaints are launched.

[68] The case before me primarily involves angry words spoken at a Board meeting. This case is really about Board governance and not actual or potential harm to a patient that calls the competency of a chiropractor into question. The Appellant's displeasure about the conclusion of the Board to take no further action with respect to his Complaint against his colleagues, does not give him the right to dictate the depth and breadth of the record on his appeal or to demand an inquiry under Part IX of the ***Act***.

[69] Given these unique circumstances, I am satisfied that the record on this appeal should be limited to the documents that were before the Board at the April 5, 2023 meeting and that this record be supplemented by the documents I have set out in my summary of the MCA's position earlier in these reasons. The presumption of an appeal limited to the record has not been rebutted in these circumstances.

[70] Given the nature of the Complaint, I cannot agree that the expansion of the record on this appeal to include all of the documents and notes considered by the Investigation Chair, as the Appellant has argued, is in keeping with the purpose of the ***Act***. The trial *de novo* that the Appellant is seeking would result in an unduly complex and costly appeal process that would impede the duty of the MCA to act in an efficient and cost-effective manner in its regulation of the profession in the public interest.

[71] My decision as to the nature of the record in this case will result in the following order with respect to the four procedural motions before me:

a) The Complaint which forms Schedule "A" of the originating notices of motion, constituting the appeal filed by the Appellant (document #1 in both actions), will be struck from the said documents; and

b) The affidavit of the Appellant (document #8 in both actions) will be struck.

[72] I will make no order with respect to striking certain portions of the body of the originating notices of motion, as argued by the MCA, because I am not satisfied that the King's Bench Rules that prohibit argument in pleadings should be strictly applied in cases where a statute requires that an appeal proceed in this court by way of an originating notice of motion.

[73] The parties can speak to costs if they cannot agree, provided they file briefs in advance.

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J.

Schedule "A"

The Chiropractic Act, C.C.S.M. c. C100

Appeal from order of board **50(1)** Any person who considers himself aggrieved by an order or decision of the board relating to (a) a refusal or alteration of registration; (b) the issuance, renewal, suspension or revocation of a licence or permit; (c) a direction pursuant to clause 40(a); (d) a requirement pursuant to subsection 29(3); (e) an inquiry; or (f) restoration of membership; (g) [repealed] S.M. 2018, c. 34, s. 48; may appeal from the order or decision to a judge of the court at any time within two months from the date of the order or decision.	**Appel d'un ordre du conseil d'administration** **50(1)** Toute personne qui s'estime lésée par un ordre ou une décision du conseil d'administration ayant trait à : a) un refus de permettre l'inscription ou à une modification de cette inscription; b) la délivrance, le renouvellement, la suspension ou la révocation d'un permis ou d'une licence; c) une directive prévue à l'alinéa 40a); d) une exigence prévue au paragraphe 29(3); e) une enquête; f) la réintégration d'un membre; g) [abrogé] L.M. 2018, c. 34, art. 48; peut en appeler à un juge du tribunal dans les deux mois qui suivent la date de l'ordre ou de la décision.
Order of judge **50(2)** The judge may, upon hearing of the appeal, make such order or decision relating thereto and as to costs, as the court considers just.	**Ordonnance du juge** **50(2)** Le juge qui entend l'appel peut rendre l'ordonnance ou la décision relative à cet appel et aux dépens y afférents qu'il estime juste.

Method of commencing appeals **50(3)** An appeal shall be made by originating notice of motion returnable before a judge of the court and shall be founded upon the record of proceedings and reports relating thereto and the order or decision of the board in the matter, certified by the registrar.	**Façon d'interjeter un appel** **50(3)** L'appel est interjeté au moyen d'un avis introductif de requête présentable devant un juge du tribunal et il est fondé sur le dossier de la cause, sur les rapports s'y rattachant ainsi que sur l'ordre ou la décision du conseil d'administration portant sur l'affaire, certifié conforme par le registraire.
Registrar shall furnish copy **50(4)** The registrar shall, upon the request of a person desiring to appeal, furnish to that person at the expense of the person, a certified copy of all proceedings, reports, orders and papers upon which the board acted in making the order or decision in respect of which the appeal is taken.	**Copie du dossier** **50(4)** Le registraire fournit à la personne qui désire interjeter appel, à la demande et aux frais de cette dernière, une copie certifiée conforme du dossier de la cause, et des rapports, des ordres et des documents relatifs à l'ordre ou à la décision du conseil d'administration dont il y a appel.
Failure to file transcript of evidence **50(5)** If a transcript of evidence at the hearing is obtainable and the appellant has not filed two copies thereof with the court within 30 days of the date of the filing of the notice of appeal, the appeal shall be deemed to be abandoned unless the court has extended the time for filing of the transcript.	**Défaut de production de la transcription des témoignages** **50(5)** Si l'appelant, lorsqu'il est possible de se procurer la transcription des témoignages rendus à l'audience, n'en dépose pas deux copies au tribunal dans les 30 jours du dépôt de l'avis d'appel, il est réputé s'être désisté à moins que le tribunal n'ait prorogé le délai pour le dépôt de la transcription.