Date: 2015 04 16
Docket: S-1-CV-2014 000095

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

In the Matter of a Complaint filed Concerning the Practice of Madelene HEFFEL, Registration Number 1373

And in the Matter of an Inquiry into the Complaint conducted by the Board of Inquiry of the Professional Conduct Committee of the Registered Nurses Association of the Northwest Territories and Nunavut

And in the Matter of the *Nursing Profession Act,* S.N.W.T. 2003, c.15, Part 7

BETWEEN:

MADELENE HEFFEL

Applicant

-and-

REGISTERED NURSES ASSOCIATION OF THE NORTHWEST TERRITORIES AND NUNAVUT

Respondent

Appeal of decision of a Board of Inquiry under the *Nursing Profession Act*, S.N.W.T. 2003, c.15

Heard at Yellowknife, NT, on February 12 and 13, 2015

Reasons filed: April 16, 2015

REASONS FOR JUDGMENT OF THE HONOURABLE JUSTICE V.A. SCHULER

Counsel for the Applicant: Austin F. Marshall

Counsel for the Respondent: Brent F. Windwick, Q.C.

Heffel v Registered Nurses Association 2015 NWT SC 16

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REASONS FOR JUDGMENT

[1] This is an appeal from the decision dated May 8, 2014 of a Board of Inquiry of the Professional Conduct Committee of the Registered Nurses Association of the Northwest Territories and Nunavut. The Board of Inquiry ("the Board") found that the Applicant (hereinafter "the Appellant") had treated a patient in a manner that constitutes unprofessional conduct based on an incident involving covering the patient's airway. The Board found that a second allegation of slapping the same patient had not been established on the evidence.

[2] As penalty, the Board ordered that the Appellant be reprimanded and that she complete an advanced practice health assessment course and/or outpost nursing course, pending successful completion of which her licence to practise would be

suspended. The Board also ordered that the Appellant pay costs in the amount of $10,000.00.

Background

[3] The incident that gave rise to the disciplinary proceedings against the Appellant occurred in a small northern community. A 15 year old patient was brought to the nursing station by a police officer and some community members. The patient had been in a lake and was hypothermic. He had reportedly been drinking and there was concern that he was under the influence of other substances. He was in need of emergency care, but was uncooperative, resisted the nurses and would not stay still. The Appellant and two other nurses were all in the room with the patient, who at times was spitting at them and struggling against them. A sedative was administered to him which eventually had the desired effect.

[4] The youth was a ward of the state. Certain things happened during the nurses' care of the patient that prompted two of the nurses to bring the Appellant's actions to the attention of Social Services, following which there were criminal, employment and disciplinary proceedings against the Appellant. The criminal proceedings were stayed. The Appellant was dismissed from her employment and successfully grieved the dismissal. The disciplinary proceedings are the subject of this appeal.

[5] In the disciplinary proceedings, the Appellant faced two charges. The first charge, which was dismissed by the Board of Inquiry, related to an allegation that she struck the patient in the face. The second charge alleged that the Appellant had:

> ... covered a patient's airway using a blanket, or her hand, or both thereby doing one or more of the following:
>
> a. Failing to meet accepted standards of nursing practice;
>
> b. Physically abusing a patient;
>
> c. Engaging in conduct that harms the standing of the nursing profession;
>
> d. Engaging in inhumane or degrading treatment or actions, contrary to the Code of Ethics for Registered Nurses.

[6] The Board found that this charge was made out. It was satisfied that the Appellant did cover the patient's airway with her hand, thus failing to meet accepted standards of nursing practice, which amounted to unprofessional conduct.

The Legislation

[7] The *Nursing Profession Act*, S.N.W.T. 2003, c. 15 ("the NPA"), provides that the Respondent may make bylaws respecting standards for the practice of nursing (s. 11) and may establish a code of rules or standards respecting the conduct of its members (s. 12). It is given a mandate to establish a Professional Conduct Committee (s. 31). The statute sets out a procedure for dealing with complaints about a nurse's actions or conduct. If a complaint is not dismissed at a preliminary stage, it is referred to a Board of Inquiry for a hearing (s. 41). The provisions referred to are clearly for the protection of, and in the interest of, the public.

Standard of Review

[8] This appeal comes before this Court pursuant to s. 54 of the NPA. Under s. 58(1) of the NPA, the Court on hearing an appeal from a decision or order of a Board of Inquiry, may

> (a) make any finding of fact that, in its opinion, should have been made;
>
> (b) make an order that affirms, reverses or modifies the decision or order of the Board of Inquiry;
>
> (c) refer the matter, or any issue, back to the Board of Inquiry for further consideration; or
>
> (d) provide any direction that it considers appropriate.

[9] The first issue is to determine the standard of review, specifically whether this Court should review the Board's decision against a standard of correctness or one of reasonableness: *New Brunswick (Board of Management) v. Dunsmuir*, 2008 SCC 9. First, the Court must consider whether jurisprudence has already determined the applicable standard of review. Although s. 58 of the NPA has not yet been the subject of jurisprudence, appeal decisions under similar legislation

governing tribunals that deal with professional conduct have concluded that a standard of reasonableness applies. In this jurisdiction, Vertes J., in *Bargen v. Northwest Territories (Medical Board of Inquiry)*, 2009 NWTSC 5, considered the standard of review for the finding of a Board of Inquiry that a medical practitioner was guilty of improper conduct pursuant to the *Medical Profession Act*, R.S.N.W.T. 1988, c. M-9. Vertes J. concluded that the standard of review on appeal is one of reasonableness, citing decisions from the Alberta Court of Appeal which have held that reasonableness is the standard under similar legislation: *Huang v. College of Physicians & Surgeons (Alberta)*, [2001] A.J. No 1197 (Alta. C.A.); *Litchfield v. College of Physicians & Surgeons (Alberta)*, [2008] A.J. No. 482 (Alta. C.A.). The decisions of the Supreme Court of Canada in *Association des courtiers et agents immobiliers du Québec v. Proprio Direct inc.*, [2008] 2 S.C.R. 195, 2008 SCC 32 and *Q. v. College of Physicians & Surgeons (British Columbia)*, [2003] 1 S.C.R. 226 also compel the conclusion that where the disciplinary body of a profession is dealing with matters of complaint, conduct or discipline under its statutory mandate to protect the public, the standard of review is reasonableness.

[10] The fact that s. 58(1)(a) of the NPA permits the Court on an appeal and upon reviewing the record of the hearing before the Board of Inquiry, to make any finding of fact that, in its opinion, should have been made, does not change the standard of review. A similar provision is found in Alberta's *Health Professions Act*, R.S.A. 2000, c. H-7. It has been held that the standard of review on an appeal under that statute for a finding of unprofessional conduct and the resulting penalty is reasonableness: *Hunter v. College of Physicians of Alberta*, 2014 ABCA 262.

[11] Accordingly, I find that the standard of review in this case is, for the most part, reasonableness. The only exceptions are, as conceded by the Respondent, where there is a true question of jurisdiction, requiring the tribunal to decide whether its governing legislation authorizes it to decide a particular matter, and where there is a question of law of central importance to the legal system and outside the tribunal's expertise. Those exceptions require use of a standard of correctness. A third exception is where a lack of procedural fairness is alleged. That exception requires that the reviewing court ask whether the specific requirements of fairness have been met in the circumstances, which essentially amounts to a standard of correctness.

[12] Although the Appellant urged the Court to find that a standard of correctness applies to all of the issues raised on this appeal, for the reasons set out above, I do not believe that is correct.

[13] A standard of reasonableness requires that the Court show deference to the Board's decision so long as it falls within a range of possible acceptable outcomes. The rationale for this is the legislative decision to delegate adjudicative powers to the Board to deal with allegations of unprofessional conduct under the NPA. In analyzing whether the Board's decision is reasonable, the Court must look to justification, transparency and intelligibility within the decision-making process and whether the decision is rational and acceptable: *Dunsmuir*. Whether the Court agrees with the Board's decision is not the test under the standard of reasonableness.

[14] I now turn to the errors alleged by the Appellant, in the order they were argued before me.

Did the Board err in finding that the Appellant committed an act that amounts to unprofessional conduct?

[15] Section 32(2)(a) of the NPA includes as an example of unprofessional conduct "practice that fails to meet accepted standards".

[16] The Appellant argues that the evidence before the Board does not support its finding that she failed to meet accepted standards of practice. Specifically, she argues that the Board committed palpable and overriding error in finding that the Appellant held her hand over the patient's mouth and nose for an extended period of time while she was holding his head down, thereby restricting the patient's airway. There was, the Appellant says, no evidence before the Board that she did that. Further, she submits that the Board failed to take into account frailties in the evidence of the Respondent's witnesses.

[17] The Respondent argues that there was evidence before the Board upon which it could make the findings that it did.

[18] In its decision, the Board found that the patient was spitting and was verbally abusive to the witness Ms. Smith, one of the nurses present. He then turned his attention to the Appellant and spat at her. The Board found that the

"slapping" incident recounted by Nurse Smith was accidental contact that occurred when the Appellant turned her head after being spat at by the patient, which resulted in her right hand rising as his head rose off the stretcher. The Board found that, "With Ms. Smith's head at about the level of the patient's thighs, the contact could have appeared and sounded as a slap". The Board found no unprofessional conduct in relation to the slapping incident.

[19] As to the incident for which the Board did find unprofessional conduct, its decision was as follows:

> ... Both Ms. Smith and Ms. Flood [the third nurse present] recounted seeing Ms. Heffel hold her hand or hands over the patient's mouth and nose thereby restricting his airway. This is consistent with them both hearing the patient's vocalizations changing to muffled sounds.
>
> Ms. Heffel's testimony is that her hand remained on the patient's face, forcing his face down and away from her. She also stated she held the patient's head this way for 20 minutes. She described the heel of her right hand on the left side of the patient's face below the level of his nose and her thumb under his chin.
>
> This configuration would require her fingers to be over or on the patient's mouth.
>
> Ms. Heffel does not recall telling the patient, *"If you stop, I'll stop"*. Both Ms. Flood's and Ms. Smith's testimony on this point was credible and compelling. They were able to consistently describe the event and their own reactions to it. It was clear they both found the event unsettling and memorable.
>
> We find, on a balance of probabilities, Ms. Heffel did obstruct the patient's airway with her hand. We also find she did tell the patient, more than once, "if you stop, I'll stop". While it is unlikely the patient's airway was obstructed for the full 20 minutes, Ms. Heffel held his head down, his airway was obstructed for a period of time whereby both other nurses heard the change in his vocalizations and commented *"that is enough"*.

[20] The Board found that by covering the patient's airway with her hand, the Appellant failed to meet accepted standards of nursing practice. Evidence of those standards was presented to the Board in the form of the Respondent's *Standards of Nursing Practice for Registered Nurses*, updated August 2006 ("The Standards"). The Board referred to the standard described as "Application of Knowledge", articulated in The Standards as, "The Registered Nurse bases his/her practice on the application of current knowledge and demonstrates competencies relevant to his/her area of nursing practice". The Board identified the indicators for that

standard as including, "demonstrates critical thinking and sound clinical judgement". No complaint is made about the Board's reference to that standard.

[21] The Board stated:

> We find Ms. Heffel held her hand over the patient's mouth and nose for an extended period of time. In doing so, the patient's airway was restricted. This action clearly demonstrates a lack of *"critical thinking and sound clinical judgement"*. Her actions were excessive to accomplish the purpose of defense and restraint.
>
> By Ms. Heffel telling the patient, *"if you stop, I'll stop"*, her actions were exacerbated. This statement suggests her intent went beyond defensive into the realm of being punitive. Her actions went beyond strictly defensive and may have adversely affected the patient's treatment and welfare. Any restriction or obstruction of the patient's airway could have created unnecessary risk to the patient.
>
> We find Charge #2 is made out. Ms. Heffel's actions constitute unprofessional conduct by failing to meet accepted standards of nursing practice.

[22] The standard of review for findings of fact is palpable and overriding error. Palpable error means error that is plainly seen. A court should not intervene on the basis of findings of fact if there was some evidence upon which the decision-maker could reach the conclusion it did: *Housen v. Nikolaisen*, 2002 SCC 33. Another way of putting this is that the reviewing court can only intervene where the evidence, viewed reasonably, is incapable of supporting the tribunal's findings of fact: *Toronto (City) Board of Education v. O.S.S.T.F., District 15*, 1997 Carswell Ont 244 (S.C.C.).

[23] In *Housen*, the Supreme Court acknowledged the assumption that the trier of fact is in a privileged position to assess the credibility of the witnesses' testimony and the corollary principle that an appeal court is generally in a less favourable position to assess and determine factual matters. Nor is it for the appeal court to weigh the evidence; that task is for the trier of fact.

[24] As to the drawing of inferences, the Court also said that if there is no palpable and overriding error with respect to the underlying facts that the trier of fact relies on to draw the inference, then it is only where the inference-drawing

process itself is palpably in error that an appeal court can interfere with the factual conclusion.

[25] It is clear that the Board did not accept all of the evidence of Ms. Smith and Ms. Flood. It did not accept that the slap Ms. Smith described was an intentional hitting of the patient; instead it accepted that the collision between the Appellant's hand and the patient's face was accidental, as testified by the Appellant. With regard to the second incident, the Board did not accept that the Appellant pinched the nostrils or nose of the patient or held a blanket over his mouth as described by Ms. Flood and Ms. Smith. That clearly indicates that the Board was alive to the weaknesses or potential weaknesses (for example, discrepancies or frailties in recollection and the fact that they spoke with each other after the fact about what they recalled happening) in their evidence. So although the Board did not expressly talk about those weaknesses in its decision, it cannot be said that it paid no attention to them.

[26] Any trier of fact is entitled to accept some, all or none of the evidence of a particular witness. The Board accepted some of Ms. Flood's and Ms. Smith's evidence. It obviously accepted that they saw the Appellant using her hand in the area of the mouth and nose of the patient, that the patient's yelling changed such that his voice was muffled and he was no longer getting words out, and that the Appellant said three or four times "if you stop, I'll stop".

[27] The Board also relied on the evidence of the Appellant herself. She testified that after the collision between her hand and the patient's face, she held her hand on his mouth until she could turn his head so it was facing away from her, at the same time pushing him back down flat on to the stretcher. She testified that his voice did change. She used the heel of her hand to push on his lower jaw to keep his head down so that if he continued to spit it would land on the floor rather than on the nurses. The configuration as I understand it from her testimony is that she was on the patient's left side as he lay on the stretcher, pushing the left side of his face to his right side with her right hand. She testified that she kept his head down this way for 20 minutes. Her cross-examination at the hearing included the following exchange (Record, Volume 1, Tab 4, Day 3, pages 97-98; spelling as in the transcript):

> Madelene Heffel: Okay my fingers were over his mouth, he was spitting through my fingers. When I turned him I took the heal of my hand this way onto his jaw and pushed it over, rotated it

that way. It's hard to demonstrate that with the right, with the hand in the right place when you don't have a face to do it with.

Brent Windwick: But I think I understand you and I'll try to describe it. S [*sic*] this is your right hand and the ah your thumb is at the chin level and is pushing under the chin. The heal of your right hand is ah at, below his nose.

Madelene Heffel: So yeah the heal, this part of my hand..

Brent Windwick: Yes.

Madelene Heffel: Is right be on this side of his chin, right. Now how do I explain it?

Brent Windwick: Its below his mouth.

Madelene Heffel: Yes on the side of his mouth.

Brent Windwick: Okay.

Madelene Heffel: Beside his mouth right.

Brent Windwick: Okay.

Madelene Heffel: On this part of his chin so this under his chin this way about like this if you can imagine it upside down and then this part of my hand is on the point of his chin pushing him over that way.

Brent Windwick: So if you look at, if you think about his face on a sort of vertical axis you're saying that all of your hand was below the mouth line.

Madelene Heffel: Below his ..

Brent Windwick: Or below his nose line.

Madelene Heffel: Below his nose line. Yes.

[28] It is clear from the transcript that the Appellant, during the above exchange, and elsewhere in her testimony, was demonstrating how she had placed her hand

on the patient. It is clear from the testimony of Ms. Flood that she also demonstrated what she said she had seen (Record, Volume 1, Tab 4, Day 2, Page 10). With the benefit of the demonstrations, the Board was in a much better position to assess and understand the evidence than this Court is, having only a transcript of the testimony. The Appellant points out that there was no model on which the witnesses could demonstrate the actions described during the hearing; however it is clear that the witnesses did demonstrate what they saw as best they could.

[29] The Board's ability to see and assess the demonstrations, particularly that of the Appellant, is vital when it comes to the Board's conclusion that the Appellant's description of how she held the patient's head down would require her fingers to be over or on the patient's mouth. In drawing that conclusion, the Board clearly did not accept the Appellant's position that her hand was beside, but not on, the mouth of the patient.

[30] Based on the evidence, including that of the change in the sounds coming from the patient, and bearing in mind that the Board had the benefit of seeing the witnesses, including the Appellant, and observing what they demonstrated, I cannot say that there was no evidence from which the Board could conclude that the Appellant's hand was on the patient's mouth, or that the conclusion was an unreasonable one.

[31] The Appellant also argues that the Board was in error in finding that the words "if you stop, I'll stop" were said in a punitive sense rather than as encouragement to the patient. The Board found those words indicated that the Appellant's intent in putting her hand over the patient's mouth went beyond defensive "into the realm of the punitive". Ms. Flood testified that the Appellant was yelling those words in a very angry tone at the patient; both she and Ms. Smith said the Appellant repeated the words three or four times. This occurred during the period of time when, as found by the Board, she was holding her hand over the patient's mouth. In my view, the words on their own are capable of being considered either punitive or encouraging, depending on the circumstances. Here, based on the evidence it heard, the Board found that they crossed over into the punitive. There is no basis upon which I can re-visit that conclusion as it is not one that is palpably in error, rather, it is a possible conclusion on the evidence.

[32] I have already referred to the issue of credibility above. The Appellant submits that the Board ignored or failed to appreciate weaknesses in the evidence of Ms. Flood and Ms. Smith. Although the Board's reasons in this case are not very detailed as to its findings on credibility, they do indicate that the Board considered the ways in which the evidence of Flood and Smith was consistent as to what they heard and saw and where the Appellant's evidence fit into what they described. The Board's recitation of the evidence of both Flood and Smith includes reference to the fact that they discussed the incident on the following day, so it cannot be thought that the Board ignored that aspect of the evidence. The Board clearly did not accept that, as testified by those nurses, and denied by the Appellant, that the Appellant held a blanket over the patient's head or his mouth or pinched his nostrils. From the fact that the Board dismissed the charge relating to the slapping incident, it is also clear that it was alive to the possibility that the Appellant's actions may have been misinterpreted by the other nurses, or that they had not been able to see clearly from where they were standing. This demonstrates that the Board was aware of potential weaknesses in the evidence.

[33] The Board emphasized the Appellant's description of where her hand was on the patient's face (which, it bears repeating, the Board had the advantage of not only hearing, but also seeing her demonstrate), the evidence of the nurses about the general location of her hand, what she was saying, the changes they heard in the patient's voice, and their mutual horrified reaction at the time of the incident, and from all this, arrived at the conclusion on a balance of probabilities that the Appellant had, for some period of time, restricted the patient's airway.

[34] The Board clearly found some of the evidence credible and reliable and some of it not. This is not a case of a trier of fact wholly accepting or wholly dismissing the evidence of a witness without any analysis of how their evidence fits in the context of the case or the surrounding circumstances. Therefore, I find no merit in the submission that the Board failed to consider various matters which might also have been relevant to credibility; credibility was for the Board to decide and nothing in the record indicates that it made a palpable error in that regard.

[35] Although in argument the Appellant referred to the fact that there was no expert evidence before the Board regarding how to deal with a spitting patient, no authority was cited for the proposition that such evidence is required and that issue was not pursued except in relation to the penalty imposed, as I will refer to later in

these reasons. The Appellant did not maintain the position that what the Board found she had done could not amount to a failure to meet accepted standards of nursing practice and therefore unprofessional conduct.

[36] Accordingly, I find that the Board's finding that the Appellant restricted the patient's airway with her hand, thereby engaging in unprofessional conduct, is not unreasonable.

Were the proceedings before the Board an abuse of process?

[37] The Appellant contends that the proceedings before the Board were an abuse of process because the allegations against her had already been dismissed by an arbitrator dealing with the grievance of the termination of her employment. The arbitrator found that the factual allegations were not made out on the evidence before her.

[38] At the start of the hearing before the Board of Inquiry, the Appellant requested an adjournment in order to make an application to this Court to quash the proceedings on the basis of *res judicata*. The Board declined to read the decision of the arbitrator in the grievance proceeding and dismissed the application for adjournment. In reasons given at a later date, the Board expressed the view that it must proceed with its statutory mandate to hear the complaint and noted that one of the benefits that self-government affords is the opportunity to have conduct complaints reviewed by one's professional peers.

[39] On this appeal, the Appellant did not pursue the issue of *res judicata*, but instead submitted that the proceedings before the Board were an abuse of process because they amounted to re-litigation of facts that had already been determined by the arbitrator.

[40] The Respondent's position is that the nature of the proceedings before the Board were quite different from the proceedings before the arbitrator and therefore do not constitute an abuse of process.

[41] In my view, it does not matter whether one approaches this issue as an argument that the Board erred in not granting the adjournment (even though it was not sought on the ground of abuse of process), or an argument that the proceedings before the Board amount to an abuse of process. For the following

reasons, I find that they do not amount to an abuse of process. If this is a question of whether the Board erred, I would hold that the standard of review is correctness, because the concept of abuse of process is a question of law (*Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, at paragraph 16).

[42] The Appellant's employment with the Sahtu Health and Social Services Authority was terminated as a result of the incidents that occurred involving the patient. The arbitrator who heard the Appellant's grievance of that termination heard evidence from the Appellant and the nurses Ms. Flood and Ms. Smith, who also testified before the Board of Inquiry. All three gave evidence about what the arbitrator called the "slap incident" and the "blanket incident". The arbitrator concluded that the evidence was not "clear, cogent nor convincing" and that the employer had "not proved that on the balance of probabilities Ms. Flood's and Ms. Smith's version is any more plausible than Ms. Heffel's" and accordingly that an employment offence warranting discipline had not been proven.

[43] The Appellant relies on *Toronto (City) v. C.U.P.E., supra*, in arguing that for the Board to proceed with its inquiry on the basis of the same allegations was an abuse of process. In that case, an employee was convicted of sexual assault by a court of criminal jurisdiction. He was dismissed from his employment and grieved the dismissal. The arbitrator who heard the grievance decided that the conviction was *prima facie* evidence of sexual assault, but that the employee had successfully rebutted that evidence in the grievance proceedings and therefore the dismissal was without cause. The Supreme Court of Canada found that the doctrine of abuse of process applied and that the arbitrator erred in allowing the finding of sexual assault to be revisited.

[44] In her decision, Arbour J. made it clear that the doctrine of abuse of process emphasizes the importance of the integrity of the adjudicative process. It is not so much the motive of the party instigating litigation of the same issues as in a previous adjudication, it is preserving the integrity, the credibility of the adjudicative process and the need to bring finality to litigation. Adjudicative process includes courts and tribunals (paragraphs 44 and 45). The arbitrator was required as a matter of law to give full effect to the conviction, which, having been made by a criminal court, and for which all avenues of appeal had been exhausted, must stand with all ensuing legal consequences.

[45] *Toronto (City) v. C.U.P.E.* emphasizes that the criminal court, and not the arbitrator, had jurisdiction to decide whether the criminal offence of sexual assault had been committed. The arbitrator was not entitled to revisit that issue. The issue of the respective jurisdictions and purposes of adjudicative tribunals was also considered in *Miller v. Saskatchewan Psychiatric Nurses' Association*, 1992 CarswellSask 183 (Q.B.). In that case, a nurse was alleged to have sexually assaulted a patient and was dismissed from his employment. His grievance of the dismissal was allowed, the arbitrator holding that there was insufficient evidence of a sexual assault. The nurses' association subsequently held a disciplinary hearing at which it was found that he had sexually assaulted the patient and was therefore guilty of unprofessional conduct. On appeal, the nurse argued that the disciplinary hearing was an abuse of process as it was an adjudication on the same questions the arbitrator had adjudicated on.

[46] The chambers judge on appeal held that the concept of abuse of process did not apply. The reasons he gave apply equally in this case. First, the parties to the two proceedings are not the same. In the grievance arbitration, the parties are the employer and the union on behalf of the nurse. In the disciplinary proceedings the parties are the nurses' association and the nurse. Although the initial issue to be decided is the same in both proceedings - did the nurse do the acts complained of - the ultimate issues are not. In the grievance arbitration, the ultimate issue is whether the nurse's conduct is such as to justify dismissal by the employer. In the disciplinary proceeding, the ultimate issue is whether the nurse's conduct amounts to unprofessional conduct.

[47] In *Miller*, the chambers judge also considered that the two tribunals were not of equal or competent jurisdiction, although he referred to that in connection with arguments based on *res judicata* and issue estoppel, which were not pursued in this case. He noted that the disciplinary proceedings took place pursuant to the statutory duty of the nurses' association. The arbitration proceedings arose as a result of a private contract between two parties, that being the collective bargaining agreement between the employer and Miller's union. The Appellant says that *Miller* should be distinguished on the basis that the union representing her was a union created by legislation (*Union of Northern Workers Act*, R.S.N.W.T. 1988, c. U-1). In my view, that is not a significant distinction on the issue of abuse of process. What is significant is that the ultimate questions to be decided by the two decision-makers are different and neither has jurisdiction to decide the ultimate question that the other has a duty to decide.

[48] *Miller* was decided before *Toronto (City) v. C.U.P.E.* and also before *British Columbia (Workers' Compensation Board) v. Figliola*, [2011] 3 S.C.R. 422; for that reason, the Appellant submits that *Miller* should not be considered good law. *Figliola* is a case where workers had argued unsuccessfully before a Review Officer of the Workers' Compensation Board that the Board's policy on chronic pain was discriminatory on grounds of disability under British Columbia's *Human Rights Code*. The workers then filed a complaint based on the same grounds with the Human Rights Tribunal, which decided that it would proceed to hear the complaints. In the Supreme Court of Canada, the decision of the Human Rights Tribunal was set aside. Abella J. in the majority decision noted that the tribunals had concurrent human rights jurisdiction. She stated that the doctrine of abuse of process "has as its goal the protection of the fairness and integrity of the administration of justice by preventing needless multiplicity of proceedings ..." [at paragraph 31].

[49] In *Figliola* the parties who unsuccessfully argued the discrimination claim before the Review Officer tried to bring the same argument before the Human Rights Tribunal, hoping for a different result. In this case, however, the grievance arbitration was initiated by the Appellant's union at her request; on the other hand, the disciplinary proceeding was initiated by the Respondent pursuant to its mandate to deal with complaints. The same situation applied in *Miller*, which distinguishes it from *Figliola*.

[50] As noted above, in the instant case the tribunals do not have concurrent jurisdiction. They have very different mandates with different questions to decide at the end of the day. I do not accept the argument that *Miller* should no longer be considered good law. Nor do I accept the Appellant's argument based on an arbitrator's ruling in *O.N.A. v. Extendicare (Canada) Inc.*, 2007 CarswellOnt 6721 that *Miller* was not decided on the basis of abuse of process and is therefore inapplicable in this case. *Miller* is not binding on this Court, however I find that the reasoning in it is persuasive.

[51] The decision in *Miller* hinges, in my view, on the fact that the tribunals each served a different purpose, and they were not exercising concurrent jurisdiction. To the same effect is *SUN v. Investigation Committee of the Saskatchewan Registered Nurses Assn.*, 2014 SKQB 27. While *SUN* does not refer to *Toronto*

(City) v. C.U.P.E. or to *Figliola*, on its facts it can be distinguished from the latter two cases and it is on point with the facts in *Miller*.

[52] For the above reasons, I find that the disciplinary proceedings do not constitute an abuse of process.

Appeal of the penalty imposed by the Board

[53] The penalty imposed by the Board is to be reviewed on a standard of reasonableness unless the Board has exceeded its jurisdiction.

[54] Subsection 47(2) of the *Nursing Profession Act* provides for the orders a Board of Inquiry may make on finding unprofessional conduct. The possible orders include a reprimand and also the following:

> (c) suspend the registration and certificate of the nurse until the Committee is satisfied
>
> (i) that the nurse has completed a specified course of studies or obtained supervised practice experience,
>
> ...
>
> (f) direct the nurse to complete a specified course of studies or to satisfy the Committee as to the nurse's competence generally, or in a particular area of practice;

[55] The "Committee" referred to is the Respondent's Professional Conduct Committee: s. 30(1) *Nursing Profession Act*.

[56] At the hearing before the Board, the Respondent took the position that the Board should impose a reprimand on the Appellant and make an order that she complete at her own expense an advanced health assessment course. The Respondent provided two examples of such a course. It proposed that the results of the course completion be provided to the Professional Conduct Committee. It proposed further that the Appellant's suspension should remain in place until completion of the course. On this appeal, counsel clarified for the Court that in fact a suspension had not already been imposed; rather, the Appellant had given an undertaking not to practise as a nurse.

[57] Before the Board, the Appellant opposed the request that she take courses, saying that the need for same was not borne out by the evidence and that her experience and knowledge did not suggest a need for further training. She also submitted that the courses suggested would involve too much expense and time, delaying her return to nursing. She asked that she be reinstated to practice immediately without restrictions.

[58] The Board ordered a reprimand, to be served by its decision. It declined to reinstate the Appellant immediately, saying:

> Keeping in mind our responsibility for the protection of the public, there are deficiencies in [the Appellant's] method of practice that must be addressed. This becomes critical where [the Appellant] could, in the future, find herself dealing with similar circumstances by herself, as is often the case in the northern nursing environment.

[59] As a result, the Board ordered that the Appellant complete an advanced health assessment course and/or outpost-nursing course. It also ordered that she may submit to the Board for determination of appropriateness any proposed course or courses which will fulfill those requirements. Her licence remains suspended until proof of successful completion of the course is provided to the Professional Conduct Committee.

[60] The Appellant raises a number of objections to the Board's order that she complete a course or courses. She submits that the Board erred in making that order when there was no evidence about courses; the Board erred in putting the onus on her to present it with courses for approval; and the Board misinterpreted its authority under s. 47(2)(c)(i). Any one of these errors, the Appellant contends, renders the Board's order unreasonable.

[61] In arguing that the Board erred because there was no evidence about courses, the Appellant points out that the penalty section of the NPA refers to a "specified course of studies". She argues that because the Board did not specify a course of studies, it has not decided the question it must decide, but has decided a different question. In my view there is no merit to this submission. The Board at this stage has simply decided on the nature of the courses that will address the protection of the public. It has not yet decided on the specified course of studies and is waiting for the Appellant's input. This objection is therefore premature.

[62] The Appellant also argues that the Board should have heard expert evidence as to the practices or standards that would or should apply when a nurse is dealing with a violent patient or one who spits. She says that the Respondent's submission to the Board was that as a matter of common sense, the act she was found to have done did not comply with accepted nursing standards. She submits that if it is just a matter of common sense, no training or education, or any course, is required.

[63] The Board was composed of two registered nurses and one layperson representing the public. In his submissions to the Board at the commencement of the hearing, counsel for the Respondent stated that he was not calling any expert evidence and that he would rely on the Board "to use its collective knowledge and experience of nursing practice and conduct" to assess the Appellant's conduct (Record, Volume 1, Day 1, page 24). It was open, of course, to either the Respondent or the Appellant to seek to call expert evidence about how to deal with a violent patient. However, there is no requirement that the Board hear expert testimony.

[64] The Respondent's submission to the Board was not that it could use common sense to assess the Appellant's conduct, but rather that it should use its collective knowledge and experience of nursing practice and conduct. Having found that the Appellant's conduct fell short on this occasion, and noting as it did that in the northern nursing environment there might be occasions when she would be working on her own, it was reasonable for the Board to conclude that some further training or education was required or advisable in the public interest.

[65] I also find no merit in the Appellant's objection that the Board erred in putting the onus on her to look for courses. The Board has given the Appellant the opportunity to have input into the decision it will make, which indicates that it gave some weight to her objection to the courses proposed by the Respondent. I cannot see how this procedure can be characterized as unfair to the Appellant. In effect, the Board has left open the question of what courses are available and appropriate and has retained jurisdiction over that issue.

[66] Section 47 clearly gives the Board the authority to require a nurse who is found to have engaged in unprofessional conduct to take a specified course or courses and to impose or maintain suspension of her licence until the Professional Conduct Committee is satisfied that she has successfully completed the course or

courses. The Board in this case has acted within its jurisdiction in that it has adjourned its decision as to courses pending further information from the Appellant. There is no indication that the Board will be unwilling to hear further from both the Appellant and the Respondent on the suitability of the courses the Appellant proposes, or what the next step should be if she does not propose any courses. Indeed, I understand from the submissions of the Respondent's counsel on this appeal that the Respondent views the issue of courses as being open for further discussion before the Board. None of what has happened thus far results in a loss of jurisdiction by the Board or any unfairness to the Appellant. In fact it is quite the contrary. The Appellant says that she learned only shortly before the penalty hearing that courses would be proposed by the Respondent and the Board has given her a reasonable opportunity to address what they should be. The possibility that the Board would require that she take a course or courses must have been within the Appellant's contemplation because that possibility is included in the penalty section of the NPA.

[67] As set out in section 47(2)(c) of the NPA, it is for the Board to decide what course or courses to order; it is for the Professional Conduct Committee to decide whether it is satisfied as to completion.

[68] In my view, there is a clear connection between the facts found by the Board, the duty to protect the public and the Board's order as to taking a course or courses, which is clearly aimed at improving the Appellant's professional skills. The Board's decision in this regard, as it stands to date, is not unreasonable.

Appeal of the costs order made by the Board

[69] The standard of review for an order for costs made by a board or committee of inquiry dealing with allegations of unprofessional conduct is reasonableness: *C.(K.) v. College of Physical Therapists (Alberta)*, 1999 ABCA 253.

[70] The Respondent asked the Board to order that the Appellant pay costs of $44,816.57, which represented, it said, substantially the costs it had incurred. The Board ordered that the Appellant pay $10,000.00. The Appellant argues that the Board erred in not finding that the figure of $44,816.57 was excessive, in understating the extent of the Appellant's success in relation to the allegations, and in finding that her application to adjourn the hearing originally set for October 2013 was unnecessarily late. The Appellant also submits that the Board erred in

taking judicial notice that the Respondent is not a large organization and that the costs of the disciplinary process would be a burden on its members. She also submits that the costs award is unreasonable because the Respondent produced no previous costs awards of the Board as precedent.

[71] The Respondent argues that the Board considered the appropriate factors in awarding costs. It says that there were no previous costs awards from this jurisdiction on point.

[72] Section 48 of the *Nursing Profession Act* provides as follows:

> 48. The Board of Inquiry may, in addition to the orders that may be made under subsection 47(2), order the nurse to pay to the Association, within the time stated in the order,
>
> (a) all or part of the costs of the hearing; ...

[73] The Board clearly has a discretion under s. 48 with respect to costs. The question is whether the Board acted reasonably in the exercise of that discretion. A helpful list of factors to be considered in awarding costs in a case involving allegations of professional misconduct is found in *Jaswal v. Newfoundland (Medical Board)*, 1996 CarswellNfld 32 (Newf.S.C.T.D.), where the professional involved was a physician:

> 1. the degree of success, if any, of the physician in resisting any or all of the charges;
>
> 2. the necessity for calling all of the witnesses who gave evidence or for incurring other expenses associated with the hearing;
>
> 3. whether the persons presenting the case against the doctor could reasonably have anticipated the result based upon what they knew prior to the hearing;
>
> 4. whether those presenting the case against the doctor could reasonably have anticipated the lack of need for certain witnesses or incurring certain expenses in light of what they knew prior to the hearing;
>
> 5. whether the doctor cooperated with respect to the investigation and offered to facilitate proof by admissions, etc.

> 6. the financial circumstances of the doctor and the degree to which his financial position has already been affected by other aspects of any penalty that has been imposed.

[74] In *C.(K.) v. College of Physical Therapists (Alberta)*, the Court of Appeal said that in addition to success or failure, a discipline committee awarding costs must consider such factors as the seriousness of the charges, the conduct of the parties and the reasonableness of the amounts. It pointed out that costs are not a penalty and should not be awarded on that basis and that when the magnitude of a costs award delivers a crushing financial blow, it should be scrutinized carefully.

[75] The Board considered the factors set out in the cases referred to above as applicable to this case. No complaint is made about the Board's treatment of those factors except as set out herein.

[76] As to the costs of $44,816.57 requested by the Respondent, an itemized list was provided by the Respondent to the Board. The costs claimed pertained to the hearing and did not include the costs incurred for counsel for the Respondent. The Board considered that there was no evidence as to the necessity of some of the costs claimed and no evidence of any increased costs resulting from a lack of cooperation by the Appellant. The issue is, of course, not whether the amount claimed was excessive, but whether the amount ordered is reasonable. The Appellant did not identify any specific aspect of the costs claimed, arguing simply that they are excessive for the time involved in the hearing. I find no basis on which to say that the costs claimed were excessive for a hearing that took up four days and went into a fifth, with a separate teleconference for penalty and costs.

[77] The Board did take into account that the Appellant faced two separate charges, each encompassing a different alleged act (the slap and the covering of the airway). It noted that the same four professional standards were potentially at play for each of the two charges. It took into account that the first charge was dismissed in its entirety.

[78] The Appellant characterizes each of the two charges as involving four allegations of misconduct and says that because, on the charge of covering the patient's airway, the Board found only that she failed to meet accepted standards of nursing practice, that means she was successful in defeating the other three potential bases for a finding of unprofessional conduct. The Respondent argues that this characterization is incorrect.

[79] The second charge against the Appellant was that she

> ... covered a patient's airway using a blanket, or her hand, or both thereby doing one or more of the following:
>
> a. Failing to meet accepted standards of nursing practice;
>
> b. Physically abusing a patient;
>
> c. Engaging in conduct that harms the standing of the nursing profession;
>
> d. Engaging in inhumane or degrading treatment or actions, contrary to the Code of Ethics for Registered Nurses.

[80] At the hearing, the Respondent focused its submissions on item a., failing to meet accepted standards of nursing practice, but also left it up to the Board to decide whether b., c., or d. might apply. The Appellant took the position that if the Board found that the act alleged fit within a., failing to meet accepted standards of nursing practice, that would mean it had found unprofessional conduct and it need not go further to look at the other headings.

[81] It is reasonable to infer from the Board's decision that it analyzed whether there was unprofessional conduct in exactly the way the Appellant had submitted it should. It found that the Appellant did cover the patient's airway with her hand, thereby failing to meet accepted standards of nursing practice. It did not go on to consider whether any of the other items applied. Therefore, although the Appellant was successful in convincing the Board to go no further if it found that a. applied, this does not translate into increased success by way of a finding that the other three items did not apply.

[82] The Board took into account that the Appellant was successful on the slapping charge and it rejected the Respondent's submission that the second charge, which she was found to have committed, was more serious. The Board concluded, "The Member's reasonable success suggests that she ought not to bear too heavy a burden of costs".

[83] The Board also took into account the financial burden on the Appellant, stating that it was aware that the Appellant had not been able to practice for over two years. It balanced that against its awareness that the Respondent is not a large organization, a fact well within its knowledge considering that it is a committee

established by that organization, and not something of which it had to take judicial notice in any event. It acknowledged that the costs would otherwise be borne by the Appellant's professional colleagues, a factor referred to in other cases, for example, *Chuang v. Royal College of Dental Surgeons of Ontario*, [2006] O.J. No. 2300 (Div. Ct.). The Board also rejected the Respondent's submission that the Appellant should be responsible for all the costs as "overstat[ing] as absolute the financial responsibility of an individual member who has faced a disciplinary proceeding".

[84] Nothing in the factors considered by the Board or the way it balanced those factors justifies intervention by this Court.

[85] I find no merit in the submission that the Board somehow erred because the Respondent did not present any precedents for costs awards in cases involving the Respondent. Counsel for the Respondent explained that there were no precedents involving an finding of unprofessional conduct similar to this case and accordingly he submitted cases from other jurisdictions to the Board.

[86] As to the costs of the adjournment of the hearing which had originally been scheduled to take place in October 2013, the Board noted that the only specific cost itemized by the Respondent as relating to the adjournment was a $945.00 cancellation charge. The Board noted that little explanation was offered by the Appellant as to why the application could not have been brought in a more timely manner and found that the Appellant should pay "a portion" of the costs related to it, which I infer means a portion of the $945.00. The Board also noted that no specific costs were claimed resulting from the application to adjourn made unsuccessfully at the commencement of the hearing that did proceed, but inferred that some additional cost was incurred by the time and transcription required for that application .

[87] The Appellant's submissions as to the October adjournment are directed mainly to the reasons for the October adjournment, but do not demonstrate that the Board was in error as to the fact that it could have been brought at an earlier date, thus avoiding the cancellation fee. No submissions were made as to any error in the Board's decision to award some costs as a result of the later unsuccessful adjournment application.

[88] The Board dealt with costs on a global basis. Courts often do the same. It is not possible to extract specific amounts representing the portion of costs attributable to the two adjournment applications. The global amount of $10,000.00 ordered is less than one quarter of the total costs claimed. The Board's analysis,

including the care it took to ensure that the financial implications for both the Appellant and the Respondent were considered and balanced, is a clear path to the amount ordered and its order is within the acceptable range of outcomes. The Board also ordered that the Appellant and the Respondent establish a payment schedule not to exceed three years, again recognizing the financial burden on the Appellant. I find that the Board's order as to costs was reasonable in all the circumstances.

Was there a reasonable apprehension of bias on the part of a member of the Board?

[89] The Appellant alleges a reasonable apprehension of bias on the part of one of the Board of Inquiry members, Ms. Snyder, because of a connection between her and the witness Ms. Flood. The Appellant raised this with the Board shortly after she learned that Ms. Snyder would sit as a member of the Board. Her objection was dismissed by the Board, which found:

> ... Ms. Snyder's consideration of the evidence would not be influenced by her previous, and somewhat remote, interactions with Ms. Flood. The fact that Ms. Snyder and Ms. Flood knew each other is not enough in itself to conclude that there is apprehension of bias.

[90] The Appellant takes the position that the Board erred in finding no apprehension of bias, particularly since Ms. Flood's credibility would be in issue and she would be thoroughly cross-examined. The Appellant also expressed concern that a previous member of the Board of Inquiry had already resigned because she had sat on a committee that dealt with a preliminary issue relating to the Appellant's case.

[91] The Respondent takes the position that the nature of the relationship between Ms. Snyder and Ms. Flood and the passage of time are such that there are no grounds for a reasonable apprehension of bias. The Respondent also submits that the fact that the previous Board member had resigned is irrelevant to whether a reasonable apprehension of bias arises due to the connection between Ms. Snyder and Ms. Flood.

[92] The Respondent takes the position that this issue is a matter of procedural fairness and thus is not subject to a standard of review analysis. The Appellant says that the standard of review is correctness. As mentioned at the beginning of these reasons, in my view this comes down to a question of whether the Board acted correctly in the sense of acting fairly.

[93] The information before the Board was that Ms. Snyder met and worked with the witness Flood approximately ten years prior to the hearing. Although they worked at the same hospital in Yellowknife, they were not on the same unit. During the time they worked at the hospital, which appears to have lasted for a year or two, they had some mutual social engagements which included attending each other's weddings, along with most of the other staff and colleagues from the hospital. Ms. Flood left the hospital 8 or 9 years prior to the hearing and from that time Ms. Snyder had almost no contact with her aside from what were described as very occasional, chance encounters where pleasantries were exchanged.

[94] On cross-examination during the hearing, Ms. Flood stated that she and Ms. Snyder were on each other's Facebook pages but had never communicated on them.

[95] The accepted test for reasonable apprehension of bias was stated by de Grandpré J. in *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369 (at p. 394): "what would an informed person, viewing the matter realistically and practically - and having thought the matter through - conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly."

[96] Similarly, *R. v. R.D.S.*, [1997] 3 S.C.R. 484; *Wewaykum Indian Band v. Canada*, [2003] 2 S.C.R. 259; *R. v. Werner* (2005), 205 C.C.C. (3d) 556 (N.W.T.C.A.); *Boardwalk Reit LLP v. Edmonton (City)*, 2008 ABCA 176.

[97] The cases note that there is a strong presumption of judicial impartiality and the threshold for a finding of real or apprehended bias is high, requiring that there be cogent grounds. Mere suspicion is not enough. As Vertes J.A. noted in *Werner*, the test is not whether a party to the proceeding would reasonably apprehend bias, but whether the reasonable and informed member of the public would apprehend it (at paragraph [14]). The member of the public is one who is reasonable, not a person of "very sensitive or scrupulous conscience".

[98] There is no basis upon which to hold that the presumption of impartiality should be any less strong in the case of a decision-maker who is not a judge, given that the same test for bias applies: *Canadian Union of Postal Workers v. Canada Post Corp.*, [2012] F.C.J. No. 1038; *Zündel v. Citron*, [2000] 4 F.C. 225(C.A.).

[99] The fact that the decision-maker knows a witness involved in the proceedings is not a ground to disqualify a judge from hearing a trial on the basis of apprehension of bias. In *Boardwalk Reit LLP*, Côté J.A. reviewed a number of

cases where judges have been held able to hear trials even though they had professional or social connections with a witness prior to or at the time of the trial; see paragraph [45], in particular *R. v. Quinn*, 2006 BCCA 255; *Ibrahim v. Giuffre* (2000), 258 A.R. 319, aff'd. and adopted (2000), 255 A.R. 388 (C.A.).

[100] The passage of time has been held to be an important factor in determining whether a past relationship or circumstance would give rise to a reasonable apprehension of bias in the mind of a reasonable and informed member of the public: *Wewaykum Indian Band v. Canada*, at paragraph [85]; *Zündel v. Citron*. In the latter case, the Federal Court of Appeal stated that the passage of time may, alone or with other factors, be sufficient to expunge any taint of bias that may exist because of an event or circumstances.

[101] In this case, Ms. Snyder and the witness Flood knew each other and on occasion attended the same social functions eight to nine years prior to the Board of Inquiry's hearing. Their connection in the intervening period before the hearing was limited to a few instances of brief, public encounters where pleasantries were exchanged. Even if there is any taint of bias because of their earlier association through the hospital, in my view the passage of time would operate to expunge it such that the reasonable person would reasonably think that it would not prevent Ms. Snyder from deciding the case fairly.

[102] While the Appellant did not place any emphasis on the evidence that Ms. Snyder and the witness Ms. Flood were "friends" on the social network website Facebook, I will comment on that aspect of the relationship. Counsel did not submit any cases relevant to that issue. My review of cases where the issue has been dealt with indicates that while Facebook "friendship" indicates that the parties know each other, it does not, without more, establish that there is a relationship which would result in a reasonable apprehension of bias according to the accepted test. More evidence is needed.

[103] For example, in *Riach v. Canada (Attorney General)*, 2011 FC 1230, the applicant, a member of the Canadian Forces, grieved the issuance of a Notice of Intent to Recommend Release. His proposed release from the Canadian Forces was based on his personal problems. The applicant made an allegation of reasonable apprehension of bias because the officer who issued the Notice was listed as a friend on the Facebook page of the applicant's former spouse. There was no other evidence about the nature of the friendship or whether the officer and the spouse had discussed the applicant before the Notice was issued. On judicial review, the Federal Court held that the Facebook page was insufficient evidence to conclude that the SAO and the former spouse were friends or to characterize the

nature of the alleged "friendship" and therefore the evidence was insufficient to establish a reasonable apprehension of bias.

[104] A reasonable apprehension of bias was found by the Federal Court to exist in *Canadian Union of Postal Workers v. Canada Post Corp., supra.* In that case, an arbitrator's Facebook page listed as friends federal government ministers with responsibility for the appointment of the arbitrator and of Canada Post, a party to the labour dispute he was appointed to arbitrate. The Facebook page also showed the arbitrator's activities and interests to be connected to the ministers' political party and there was evidence that only two years had elapsed since he had halted his partisan activities. In addition, the arbitrator had previously been counsel for Canada Post in a similar dispute. The Federal Court held that the combined effect of the evidence was such that there was a reasonable apprehension of bias in that the arbitrator might be thought to serve the interests of the political party or the government, even unknowingly.

[105] In this case, Ms. Flood and Ms. Snyder ceased working at the same hospital eight or nine years prior to the hearing. Their connection when they did work at the hospital included some social contact. They had only brief, unplanned contact on a few of occasions after that, which indicates that they did not intentionally maintain a friendship. In that context, being listed as friends on each other's Facebook pages adds nothing of significance.

[106] I find that the fact that another Board member recused herself prior to the issue arising with Ms. Snyder is irrelevant. That circumstance says nothing about whether a reasonable and informed person who thought the matter through would think it more likely than not that Ms. Snyder would decide fairly.

[107] In my view, a reasonable person, informed of the circumstances, who had thought the matter through, would not be concerned that Ms. Snyder, consciously or unconsciously, would be predisposed to favour Ms. Flood's testimony or the Respondent's position, at the hearing, or be otherwise influenced improperly by prior acquaintance with Ms. Flood. The Board was correct in dismissing the Appellant's objection in that regard; it acted fairly.

Ruling on the Appeal

[108] For the reasons given, the appeal is dismissed.

Costs of the Appeal

[109] Costs normally follow the event and I would be inclined to order that the Respondent be awarded costs on a party and party basis. Should counsel wish to make submissions, however, they may do so by arranging a date to appear before me, that date to be prior to April 28. Alternatively, they may file written submissions by the same deadline.

V.A. Schuler
J.S.C.

Dated at Yellowknife, NT this
16th day of April 2015

Counsel for the Applicant: Austin F. Marshall

Counsel for the Respondent: Brent F. Windwick, Q.C.

S-1-CV-2014-000095

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

In the Matter of a Complaint filed Concerning the Practice of Madelene HEFFEL, Registration Number 1373

And in the Matter of an Inquiry into the Complaint conducted by the Board of Inquiry of the Professional Conduct Committee of the Registered Nurses Association of the Northwest Territories and Nunavut

And in the Matter of the *Nursing Profession Act,* S.N.W.T. 2003, c.15, Part 7

BETWEEN:

MADELENE HEFFEL

Applicant

-and-

REGISTERED NURSES ASSOCIATION OF THE NORTHWEST TERRITORIES AND NUNAVUT

Respondent

REASONS FOR JUDGMENT OF
THE HONOURABLE JUSTICE V.A.SCHULER
