

CITATION: Peterson v. College of Psychologists of Ontario, 2023 ONSC 4685
DIVISIONAL COURT FILE NO.: 714/22
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ONTARIO

**SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

Backhouse, Schabas and Krawchenko JJ.

BETWEEN:

JORDAN PETERSON

Applicant

– and –

COLLEGE OF PSYCHOLOGISTS OF
ONTARIO

Respondent

)
)
) *Peter J. Henein, Matthew R. Gurlay, Ewa*
) *Krajewska, Brandon Chung, for the*
) Applicant
)
)
)
) *Caroline Zayid, Robin McKechney, Eric*
) *Freeman, Sarah O'Neill, for the Respondent*
)
) Respondent
)
) *John McIntyre, Gregory Ko, for Egale*
) *Canada and JusticeTrans, Intervener*
)
) *Nadia Effendi, Teagan Markin, for Canadian*
) *Civil Liberties Association, Intervener*
)
) *George Avraam, Ahmad Shafey, Juliet*
) *Mestre, for Canadian Constitution*
) *Foundation, Intervener*
)
) *Jonah Arnold, for Association of Aggrieved*
) *Regulated Professionals of Ontario,*
) *Intervener*
)
) *Carolyn Silver, Amy Block, for College of*
) *Physicians and Surgeons of Ontario,*
) *Intervener*
)
) **HEARD at Toronto:** June 21, 2023

REASONS FOR DECISION

SCHABAS J.:

Overview

- [1] When individuals join a regulated profession, they do not lose their *Charter* right to freedom of expression. At the same time, however, they take on obligations and must abide by the rules of their regulatory body that may limit their freedom of expression. This case raises the clash between a regulated clinical psychologist's right to speak in a certain manner and the regulator's power to require the member to moderate that speech.
- [2] The Applicant, Dr. Jordan Peterson, seeks judicial review of a Decision of the Inquiries, Complaints and Reports Committee ("ICRC") of the College of Psychologists of Ontario (the "College"), dated November 22, 2022 (the "Decision"). This Decision ordered Dr. Peterson, as a registered member of the College authorized to practice clinical psychology, to complete a specified continuing education or remedial program (a "SCERP") regarding professionalism in public statements.
- [3] The ICRC's order followed an investigation into language used by Dr. Peterson in public statements earlier in 2022. In its Decision, the ICRC expressed its concern that Dr. Peterson's comments may be "degrading, demeaning and unprofessional." The ICRC concluded that some of the language used in Dr. Peterson's public statements "may be reasonably regarded by members of the profession as disgraceful, dishonourable and/or unprofessional" and posed "moderate risks of harm to the public." The risks of harm identified by the ICRC included "undermining public trust in the profession of psychology" and "may also raise questions about Dr. Peterson's ability to appropriately carry out his responsibilities as a registered psychologist."
- [4] Although Dr. Peterson, in responding to the ICRC's concerns, said that he was taking his own steps to address his public statements, the ICRC Decision requires Dr. Peterson to participate in a "coaching program" directed by the College to "reflect on, and ameliorate [his] professionalism in public statements." Dr. Peterson was advised that failure to complete this program, at his own expense and to the coach's satisfaction, may result in an allegation of professional misconduct and the commencement of disciplinary proceedings by the College.
- [5] I have concluded that the application should be dismissed. In my view, the Decision of the ICRC adequately and reasonably considered Dr. Peterson's statements in the context of the College's statutory mandate to regulate the profession in the public interest. It considered and proportionately balanced the impact of imposing a SCERP on Dr. Peterson's right to freedom of expression protected by s. 2(b) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*"). The order is not disciplinary and does not prevent Dr. Peterson from expressing himself on controversial topics; it has a minimal impact on his right to freedom of expression and meets the requirements of the Supreme Court's framework for balancing the competing considerations set out in *Doré v. Barreau du Québec*, 2012 SCC

12, [2012] 1 SCR 395 ("*Doré*"). Further, in accordance with the Supreme Court's decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 ("*Vavilov*"), the Decision is transparent, logical, and provides a coherent chain of reasoning and is reasonable based on the facts which were before the ICRC.

Background and context

- [6] Dr. Peterson has been registered with the College as a clinical psychologist since 1999. However, he stopped seeing patients in 2017 and no longer has a clinical practice. Rather, as his counsel described him in their written submissions, "he is a prolific author, podcaster, and YouTube content producer who maintains an active social media presence. In his social and political commentary, Dr. Peterson is often colourful and controversial." Nevertheless, Dr. Peterson maintains his membership in the College and refers to himself in his public statements as a clinical psychologist.

- [7] Since at least 2018, the College has received complaints about Dr. Peterson's public statements. Some complaints have been formal, but many were "tweeted" to the College via the social media platform Twitter, and often involved Dr. Peterson's views on topics of social and political interest, including transgender questions, racism, overpopulation, and the response to COVID-19, among others.

- [8] In March 2020, following an investigation of statements made by Dr. Peterson which were alleged to be "transphobic, sexist, racist and [which] were not in keeping with any clinical understanding of mental health", the ICRC did not make any order regarding him. However, at that time the ICRC expressed concern that "the manner and tone in which Dr. Peterson espouses his public statements may reflect poorly on the profession of psychology." The ICRC noted the "importance for a psychologist to conduct themselves in a respectful manner", whether Dr. Peterson identifies himself as a psychologist or not. The ICRC reminded Dr. Peterson of his "responsibility to be cognizant of how his provocative language and tone might impact the public's perception toward the profession of psychology, and that his public utterances may have negative consequences for those struggling with issues directly or tangentially related to his comments." The ICRC concluded with the following advice:

As a registered Member of the College, and in light of your public profile, you may wish to offer your opinions and comments in a respectful tone in order to avoid a negative perception toward the profession of psychology.

- [9] Between January and June 2022, the College received numerous reports about Dr. Peterson's conduct on social media and in his public appearances. The reports again raised concerns about Dr. Peterson's professionalism, including whether his tweets complied with the College's *Standards of Professional Conduct*. The tweets and statements included the following:

- (a) A tweet on January 2, 2022, in which Dr. Peterson responded to an individual who expressed concern about overpopulation by stating: "You're free to leave at any point."
 - (b) Various comments Dr. Peterson made on a January 25, 2022, appearance on the podcast, "The Joe Rogan Experience". Dr. Peterson is identified as a clinical psychologist and spoke about a "vindictive" client whose complaint about him was a "pack of lies." Speaking about air pollution and child deaths, Dr. Peterson said: "it's just poor children, and the world has too many people on it anyways."
 - (c) A tweet on February 7, 2022, in which Dr. Peterson referred to Gerald Butts as a "prik".
 - (d) A tweet on February 19, 2022, in which Dr. Peterson commented that Catherine McKenney, an Ottawa City Councillor who uses they/them pronouns, was an "appalling self-righteous moralizing thing".
 - (e) In response to a tweet about actor Elliot Page being "proud" to introduce a trans character on a TV show, Dr. Peterson tweeted on June 22, 2022: "Remember when pride was a sin? And Ellen Page just had her breasts removed by a criminal physician."
 - (f) A further complaint about Dr. Peterson's January 2, 2022 tweet, in which Dr. Peterson responded to an individual who expressed concern about overpopulation by stating: "You're free to leave at any point." The further complaint provided a link to a 2018 GQ interview in which Dr. Peterson made a similar comment about suicide.
 - (g) Dr. Peterson's tweet posted in May 2022, in which he commented on a *Sports Illustrated* Swimsuit Edition cover with a plus-sized model, tweeting: "Sorry. Not Beautiful. And no amount of authoritarian tolerance is going to change that."
- [10] Dr. Peterson identified himself on Twitter as a "clinical psychologist" in 2022. This appears to be a change from 2020 when, although a member of the College, he stated that he "opted not to advertise this title on his Twitter."
- [11] On March 8, 2022, the Registrar of the College requested the appointment of an investigator. A report of the investigation was completed and provided to a panel of the ICRC (the "Panel") on May 17, 2022. The report was then provided to Dr. Peterson who responded to it on June 21, 2022.
- [12] In July 2022, the College was made aware that Dr. Peterson's Twitter account had been suspended as a result of the Elliot Page comments which had been flagged for violating Twitter's rules against hateful conduct. Dr. Peterson provided a further response to the College on July 20, 2022.

- [13] On July 27, 2022, the Panel released decisions recommending no further action be taken regarding Dr. Peterson's tweet in which it was alleged he encouraged people to commit suicide ("you're free to leave at any point"), finding that, while "provocative and inflammatory" it "could be interpreted as innuendo, a joke, or parody", and did not "rise to the level of disgraceful, dishonourable, or unprofessional conduct." Additionally, a tweet critical of the involvement of the Children's Aid Society in removing children from the Ottawa trucker protest was also found to require no further action.
- [14] However, on August 4, 2022, College staff wrote to Dr. Peterson on behalf of the same Panel of the ICRC about the remaining statements. The letter reviewed the statements, Dr. Peterson's self-identification as a clinical psychologist on his Twitter page and on the Joe Rogan podcast, and raised concerns that the statements may be demeaning, degrading and unprofessional. It referred to and quoted from several provisions in the College's *Code of Ethics*. The letter observed that the Panel recognized Dr. Peterson's "right to freedom of expression" but expressed concern about the significant "impact risks" in this case given that "public statements that are demeaning, degrading, and unprofessional may cause harm, both to the people they are directed at, and to the impacted and other communities more broadly."
- [15] The Panel noted the advice provided in 2020 in concluding that the "recurrence risk" of Dr. Peterson using unprofessional language in the future was moderate. The Panel proposed that Dr. Peterson undertake "to reflect on these issues with a period of coaching" with a person selected by it as a remedial step.
- [16] On September 6, 2022, Dr. Peterson rejected the ICRC's proposal. In a lengthy letter to the College, Dr. Peterson acknowledged that the various social media platforms he utilises "requires careful attention and care to be used appropriately" and that he had "already implemented a solution" to respond to the College's concerns, which included "modification of the tone of my approach." Dr. Peterson stated that he had "surrounded" himself with people to help him monitor his public communications and to provide him with "continual feedback as to the appropriateness of the tone and content of what I am purveying." These people included, Dr. Peterson said, his "expert editorial teams at Penguin Random House" which publishes his books, members of his immediate family "who work professionally with me" and "a very wide network of expert thinkers from the world of theology, psychology, politics and business." He concluded:
- I would say, then, in my defense, that I have already undertaken the remediation of my actions in a manner very much akin to what has been suggested by the ICRC and have done so in an exceptionally thorough and equally exceptionally public and transparent manner, and would like to therefore submit to the ICRC that I have already and plan to continue to atone for what are no doubt my multiplicity of sins in relation to my interaction with the public audience I have the privilege to serve.
- [17] Dr. Peterson also addressed the concern that he identifies himself as a clinical psychologist, stating:

While the notoriety and complexity that has surrounded me since 2016 has made it impossible for me to retain my clinical practice at the standards of practice I regard as crucial, I remain a clinical psychologist (and, indeed, a professor emeritus at the University of Toronto), and am functioning in the broad public space as both (and appear by their own testimony and actions to be helping millions of people). Given that I am still licensed, and still practicing in that more diffuse and broader manner, I think it is appropriate for me to identify myself as a psychologist.

[18] On September 13, 2022, College staff responded on behalf of the ICRC. The Panel considered Dr. Peterson's position that he was able to remediate his conduct through use of his own advisors. These advisors, the Panel stated, were not independent and their review of his communications would not be "from the point of view of the protection of the public interest, nor does it appear to offer any accountability or oversight to the College." As the letter continued, "[n]one of the 'experts' you employ appear to be reviewing your communications through the lens of your obligations as a member of the College to uphold the *Standards of Professional Conduct (2017)*, and the *Canadian Code of Ethics for Psychologists*."

[19] Accordingly, the ICRC stated its concern that "the recurrence risk in this case is high, and the plan you have proposed in your response does not adequately remediate the risk." The ICRC again proposed Dr. Peterson undertake to complete a period of coaching by an independent professional and provided him with the names of two individuals who "have experience working with regulatory bodies, and with members of health Colleges to remediate issues of public communication through the lens of professionalism and public protection."

[20] In a subsequent letter responding to Dr. Peterson's counsel on October 7, 2022, the College referred to the competing interests of Dr. Peterson's right to freedom of expression and his obligations as a regulated professional, stating:

The Panel in no way disagrees that the *Canadian Charter of Rights and Freedoms* guarantees Dr. Peterson a right to freedom of expression. However, the Panel believes that as a Member of the College of Psychologists of Ontario, Dr. Peterson also owes a duty to the public and to the profession to conduct himself in a way that is consistent with professional standards and ethics. The Panel does not believe that Dr. Peterson's public statements are currently in line with professional standards and ethics. The proposed Undertaking would provide Dr. Peterson with the opportunity to better understand the standards and ethical expectations for regulated health professionals who make public statements of various kinds.

[21] On October 21, 2022, Dr. Peterson, through his counsel, declined to sign the undertaking, stating that "[h]e is prepared to vigorously defend his rights to free expression which the College has acknowledged are a factor in these proceedings."

The Decision

- [22] The ICRC released its Decision and Reasons (the “Decision”) on November 22, 2022.
- [23] The ICRC found that Dr. Peterson “appeared to be engaging in degrading comments about a former client and making demeaning jokes” on the “Joe Rogan Experience.” It expressed concern that by referring to Elliot Page as “her” and by their former name, and “by calling Catherine McKenney an ‘appalling self-righteous moralizing thing’...Dr. Peterson may be engaging in degrading, demeaning, and unprofessional comments.” The Panel also stated that referring to the physician who performed Elliot Page's surgery as a “‘criminal’ appears to be inflammatory and unprofessional.” Following reference to the Gerald Butts and *Sports Illustrated* comments, the Panel stated that it “is very concerned that looked at cumulatively, these public statements may be reasonably regarded by members of the profession as disgraceful, dishonourable and/or unprofessional.”
- [24] The Decision continued:
- The Panel is concerned that making public statements that may be inconsistent with the professional standards, policies, and ethics currently adopted by the College poses moderate risks of harm to the public. These potential harms include undermining public trust in the profession of psychology, and trust in the College's ability to regulate the profession in the public interest. Public statements of this nature may also raise questions about Dr. Peterson's ability to appropriately carry out his responsibilities as a registered psychologist. While Dr. Peterson may not currently have an active clinical practice, he continues to be registered and authorized to do so. Furthermore, public statements that are demeaning, degrading, and unprofessional may cause harm, both to the people they are directed at, and to the impacted and other communities more broadly.
- [25] The Panel also said that it was “very concerned” about “recurrence risk”, which it described as “high.” In support of this conclusion the Panel referred to the advice Dr. Peterson received in 2020, the lack of independent advisors who could review his communications “through the lens of his obligations as a member of the College”, and that “Dr. Peterson did not appear to acknowledge any of the Panel’s concerns” about his statements.
- [26] The Panel then set out the terms of the SCERP for Dr. Peterson. It directed that Dr. Peterson enter a coaching program with either one of two individuals identified by the Panel “to review, reflect on and ameliorate his professionalism in public statements.” The coaching program was to begin within three months and be completed within twelve months. Costs associated with the coaching were to be borne by Dr. Peterson.
- [27] The Panel also stated that a failure to comply with the SCERP “may result in an allegation of professional misconduct”, and that unless the coach provided a “final report indicating that the concerns...have been appropriately remediated in the public interest, Dr. Peterson will not be considered to have successfully complied with the SCERP”, which “may constitute professional misconduct.”

Issues and standard of review

[28] The issue in this case is whether the Panel’s decision to order Dr. Peterson to complete a SCERP was reasonable. Dr. Peterson raises two arguments which, he submits, make the decision unreasonable:

(1) that the ICRC failed to conduct an appropriate proportionately-focused balancing of Dr. Peterson’s right to freedom of expression and the statutory objectives of the College as required by the decision of the Supreme Court in *Doré*; and

(2) the Decision fails to meet the standard of “justification, transparency and intelligibility” required by the Supreme Court’s decision in *Vavilov* and is unreasonable having regard to the facts and the legal rights at stake.

[29] There is no dispute that the standard of review is reasonableness, and that the principles set out in *Doré* and *Vavilov* must be applied in reviewing the Decision.

Doré and Vavilov – the legal framework

[30] In *Doré*, the Supreme Court addressed the question of “how to protect *Charter* guarantees and the values they reflect in the context of adjudicated administrative decisions.” (para. 3.) As the Court elaborated in *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32, [2018] 2 SCR 293, at para. 57 (“*Trinity Western*”), the *Doré* framework is “concerned with ensuring that *Charter* protections are upheld to the fullest extent possible given the statutory objectives within a particular administrative context.”

[31] This requires an administrative decision-maker, such as the ICRC, to proportionately balance *Charter* rights and values and its statutory objectives. This is a highly contextual inquiry. A decision-maker must first consider the statutory objectives it is seeking to uphold, and then, secondly, “ask how the *Charter* value at issue will best be protected in view of the statutory objectives.” This requires conducting a proportionality exercise, balancing “the severity of the interference of the *Charter* protection with the statutory objectives.” However, as with the proportionality test under s. 1 of the *Charter*, which will be met if the measure falls within a range of reasonable alternatives, “in the context of a review of an administrative decision for reasonableness, ... decision-makers are entitled to a measure of deference so long as the decision...‘falls within a range of possible, acceptable outcomes’.” (*Doré* at para. 56)

[32] The Supreme Court elaborated on the *Doré* framework in *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12, [2015] 1 SCR 613 (“*Loyola*”), and *Trinity Western*, observing that the *Doré* approach is not to be a “watered-down version of proportionality”, but is to be “robust.” On an application for judicial review, therefore, the role of the Court is to ensure that the administrative decision-maker “proportionately” balanced the impact on *Charter* rights and the statutory objectives which “gives effect, as fully as possible to the *Charter* protections at stake given the particular statutory mandate” (*Loyola*, at para. 39).” As the Court stated in *Trinity Western* at para. 80:

Put another way, the *Charter* protection must be “affected as little as reasonably possible” in light of the applicable statutory objectives (*Loyola*, at para. 40). When a decision engages the *Charter*, reasonableness and proportionality become synonymous. Simply put, a decision that has a disproportionate impact on *Charter* rights is not reasonable.

[33] However, it is also clear that the *Doré* approach still requires deference. A reviewing court need not agree with the outcome, as that would impose a standard of correctness; nor must a decision-maker “choose the option that limits the *Charter* protection *least*”; rather, the question is “always whether the decision falls within a range of reasonable outcomes.” (*Trinity Western*, at para. 81). As Abella J. put it at para. 58 of *Doré*: “If, in exercising its statutory discretion, the decision-maker has properly balanced the relevant *Charter* value with the statutory objectives, the decision will be found to be reasonable.”

[34] *Vavilov* does not change the standard of review which remains, clearly, a test of reasonableness, showing deference to, and respect for, decision-makers and their specialized expertise. Rather, *Vavilov* focuses the reviewing court on “the decision actually made by the decision maker, including both the decision maker’s reasoning process and the outcome.” As the Court continued at para. 83:

The role of courts in these circumstances is to *review*, and they are, at least as a general rule, to refrain from deciding the issue themselves. Accordingly, a court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the “range” of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the ‘correct’ solution to the problem.

[35] A reasonable decision, we are told in *Vavilov* at para. 85, “is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker.” However, reasons “must not be assessed against a standard of perfection”, they need not include all arguments, nor should they “always be expected to deploy the same array of legal techniques that might be expected of a lawyer or judge.” As the Court put it, “‘Administrative justice’ will not always look like ‘judicial justice’ and reviewing courts must remain acutely aware of that fact.” (*Vavilov*, at paras. 91 -92)

[36] Reasons must be read “in light of the history and context of the proceedings in which they were rendered”, including the evidence and submissions of the parties. As the Court continued at para. 94 of *Vavilov*, “[t]his may explain an aspect of the decision maker’s reasoning process that is not apparent from the reasons themselves, or may reveal that an apparent shortcoming in the reasons is not, in fact, a failure of justification, intelligibility or transparency.”

[37] Further, the degree of justification found in reasons, like reasonableness review itself, must reflect the stakes of the decision. As the Court stated at para. 133 of *Vavilov*:

Where the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes. The principle of responsive justification means that if a decision has particularly harsh consequences for the affected individual, the decision maker must explain why its decision best reflects the legislature's intention. This includes decisions with consequences that threaten an individual's life, liberty, dignity or livelihood.

The ICRC applied a *Doré* analysis

- [38] In my view, the ICRC conducted an appropriate, proportionately-focused balancing of Dr. Peterson's right to freedom of expression and the statutory objectives of the College. Consistent with *Doré*, the ICRC approached the matter from the perspective, first, of fulfilling the College's statutory mandate to regulate the practice of psychology in the public interest. This included considering the conduct of Dr. Peterson in light of possible risks to the public. It then considered how to balance the statutory objectives in order to minimise any impact on Dr. Peterson's *Charter* rights.

Consideration of the statutory objectives

- [39] Following a review of the background and specific complaints about Dr. Peterson's conduct, the ICRC referred to the *Canadian Code of Ethics for Psychologists* (the "*Code*"). The *Code* has been adopted by the College and incorporated into the College's *Standards of Professional Conduct, 2017*, (the "*Standards*") and states that information provided to the public must be consistent with the "professional standards, policies and ethics currently adopted by the College." As a registered member of the College, Dr. Peterson is obliged to follow the *Code* and the *Standards*.

- [40] The ICRC identified sections of the *Code* relevant to Dr. Peterson's public statements. The Panel considered "Principle I: Respect for the Dignity of Persons and Peoples." This includes the statement that "[r]espect for the dignity of persons is the most fundamental and universally found ethical principle across disciplines, and includes the concepts of equal inherent worth, non- discrimination, moral rights, and distributive, social, and natural justice." The *Code* continues:

In respecting dignity, psychologists acknowledge that each human being should be treated primarily as a person or an end in him/herself, not as an object or a means to an end, and is worthy of equal moral consideration. In doing so, psychologists acknowledge that all human beings have a moral right to have their innate worth as human beings appreciated and that this inherent worth is not dependent on a human being's culture, nationality, ethnicity, colour, race, religion, sex, gender, marital status, sexual orientation, physical or mental abilities, age, socio-economic status, or any other preference or personal characteristic, condition, or status. As such, psychologists do not engage in unjust discrimination based on such factors and promote non-discrimination in all of their activities.

- [41] Consequently, the *Code* states the requirement that members:

Not engage publicly (e.g., in public statements, presentations, research reports, with primary clients or other contacts) in degrading comments about others, including demeaning jokes based on such characteristics as culture, nationality, ethnicity, colour, race, religion, sex, gender, or sexual orientation.”

- [42] The *Code* also urges members to “strive to use language that conveys respect for the dignity of persons and peoples as much as possible in all spoken, written electronic, or printed communication.”
- [43] The ICRC Panel considered the statements made by Dr. Peterson in the context of the *Code* and expressed concern that a number of them appeared to be degrading, demeaning and unprofessional. The Panel observed that those public statements could undermine public trust in the profession and the College’s ability to regulate it, and also “raise questions about Dr. Peterson’s ability to carry out his responsibilities as a registered psychologist.” The Panel noted that such comments “may cause harm, both to the people they are directed at, and to the impacted and other communities more broadly.”
- [44] Dr. Peterson does not challenge the principles in the *Code*. Although he takes issue with objections to his language on the ground that some of it, at least, was justified based on the facts, his response to the ICRC recognized that he has made errors in his public communication and that he has “already undertaken the remediation of [his] actions.”
- [45] The ICRC’s concerns related to the public interest in members of the College avoiding the use of demeaning or degrading language. In *Trinity Western*, at para. 38, the Supreme Court observed that a regulator’s interpretation of the public interest, based on its expertise, is owed deference. Similarly, in *Dr. Jha v. College of Physicians and Surgeons of Ontario*, 2022 ONSC 769, at para. 147, this Court gave “significant deference” to the expertise of a disciplinary committee to assess whether a member’s conduct was relevant to their suitability to practice, as the members of the committee, which included members of the profession, were “well-situated to assess the harm to the profession, the public, and to the reputation of the profession” by the member’s conduct. The ICRC is made up of a majority of professional members. Deference should also be afforded its assessment of the risk of harm to the public and the profession in this case.
- [46] Dr. Peterson complains that reliance on the *Code* is misplaced in this case where the College is, to quote his argument, “operating at the very margins of its mandate”, as he asserts that his statements are not made in his capacity as a clinical psychologist but are “off duty opinions.” He refers to the statement in the *Code* that “[p]ersonal behaviour [of a member] becomes a concern of the discipline only if it is of such a nature that it undermines public trust in the discipline as a whole or if it raises questions about the psychologist’s ability to carry out appropriately his/her responsibilities as a psychologist.”
- [47] There are at least two responses to this submission. First, Dr. Peterson’s statements are not personal comments made in conversation with friends or colleagues, but public statements to broad audiences. Indeed, Dr. Peterson references his vast following on social media and

his best-selling books. The *Code* explicitly addresses “public statements” and prohibits degrading and demeaning comments by its members when making public statements.

- [48] Second, the argument that Dr. Peterson is speaking in a personal capacity and not as a clinical psychologist is undermined by his own conduct and statements. As the ICRC observed, Dr. Peterson describes himself on his Twitter account as a clinical psychologist, and he identified himself that way on the Joe Rogan podcast. Indeed, as he made clear in his submissions to the ICRC, quoted earlier in these reasons, Dr. Peterson sees himself functioning as a clinical psychologist “in the broad public space” where he claims to be helping “millions of people” and as he put it, he is “still practicing in that more diffuse and broader manner.”
- [49] In short, while his counsel may argue that Dr. Peterson’s comments are “off duty” and outside his role as a psychologist, Dr. Peterson doesn’t see it that way. To the contrary, representing himself as a clinical psychologist when expressing his views is important to him. It also adds credibility to his statements since, as a regulated health professional he holds a position of “trust, confidence and responsibility” in society: *Ross v. New Brunswick School District No. 15*, 1996 CanLII 237 (SCC), [1996] 1 S.C.R. 825, at paras. 44-45. But Dr. Peterson cannot have it both ways: he cannot speak as a member of a regulated profession without taking responsibility for the risk of harm that flows from him speaking in that trusted capacity.
- [50] High standards are imposed on members of the College of Psychologists who, like members of other regulated professions, take on responsibilities to their profession and to the public. As the Supreme Court observed in *Pharmascience Inc. v. Binet*, 2006 SCC 48, [2006] 2 SCR 513, at para. 36, “[t]he importance of monitoring competence and supervising the conduct of professionals stems from the extent to which the public places trust in them.”
- [51] Even when “off duty”, courts have recognized that members of regulated professions can still harm public trust and confidence in their profession by their statements and conduct. As the British Columbia Court of Appeal put it in *Kempling v. British Columbia College of Teachers*, 2005 BCCA 327, 255 DLR (4th) 169, at para. 43, citing the Supreme Court in *Ross*: “When a teacher makes public statements espousing discriminatory views, and when such views are linked to his or her professional position as a teacher, harm to the integrity of the school system is a necessary result.”
- [52] A similar situation arose recently in *Pitter v. College of Nurses of Ontario and Alviano v. College of Nurses of Ontario*, 2022 ONSC 5513, 164 OR (3d) 433, in which two nurses spoke out on social media and at a public gathering against masks and vaccines during the COVID-19 pandemic. Both identified themselves as registered nurses. The College of Nurses’ ICRC identified concerns with certain statements which were misleading and spread what could be dangerous misinformation. As this Court held, at para. 14:

Given its statutory mandate, it was reasonable for the ICRC to be concerned about the Applicants’ statements. As the committee noted, in their public statements, both

Applicants identified themselves as health professionals. Ms. Pitter publicly identified herself as a nurse practitioner and Ms. Alviano publicly identified herself as a registered nurse. This not only put the public at risk of being guided by false information, but also risked impacting the reputation of the profession.

[53] In *Pitter*, the Court upheld the ICRC's direction that the nurses be cautioned and attend remedial education through a SCERP.

[54] Many other professional discipline cases have involved situations in which a member's misconduct in their personal life, or outside the immediate context of practising their profession, has nevertheless resulted in regulatory action. As observed by Copeland J. (as she then was) in *Dr. Jha* at para. 119:

It is well-established that actions of members of a profession in their private lives may in some cases be relevant to and have an impact on their professional lives – including where the conduct is not consistent with the core values of a profession and/or where there is a need for a regulated profession to maintain confidence of the public in the profession and not be seen to condone certain types of conduct by its members: *Wigglesworth* at pp. 562-563; *Sazant v. College of Physicians and Surgeons of Ontario*, 2012 ONCA 727, 113 O.R. (3d) 420 at paras 97-98; *Re Cwinn and Law Society of Upper Canada* (1980), 1980 CanLII 1694 (ON SC), 1980 CanLII 1964, 28 O.R. (2d) 61 (Div. Ct.), leave to appeal refused 28 O.R. (2d) 61n (C.A.); *Adams v. Law Society of Alberta*, 2000 ABCA 240, 82 Alta. L.R. (3d) 21.

[55] Like the legal profession, the health professions recognize limitations on free expression to maintain "boundaries of civility" and professionalism: *Ontario (College of Physicians and Surgeons of Ontario) v. Waddell*, 2020 ONCPSD 9; *Rathe v. College of Physicians and Surgeons of Ontario*, 2013 ONSC 821; *Ontario (College of Physicians and Surgeons of Ontario) v. Wright*, 2018 ONCPSD 19.

[56] Here, the Panel of the College of Psychologists' ICRC – an expert body - reviewed its *Code* and *Standards* and expressed concern that Dr. Peterson's public statements, insofar as they contained degrading and demeaning language, may be inconsistent with its professional standards and could undermine public trust in the profession.

Balancing the statutory objectives and freedom of expression

[57] Turning to the *Charter*, the ICRC acknowledged Dr. Peterson's submission that his "conduct on Twitter is protected by his right to freedom of expression and is unrelated to his practice of psychology." However, as the Panel noted, while Dr. Peterson has a constitutional right to freedom of expression, "as a member of the College of Psychologists, he is also obligated to maintain the professional standards of the College" which "includes ensuring that any public statements made are consistent with the professional standards, policies and ethics currently adopted by the College. This is especially the case where Dr. Peterson identifies himself as a member of the profession."

- [58] Dr. Peterson submits this limited reference to his right to freedom of expression in the Decision was not a sufficient, or proportionate, balancing of his *Charter* rights and the College's statutory objectives, as required by *Doré*. I disagree. It is clear from the "history and context of the proceedings" (*Vavilov*, para. 94) that the Panel was well aware of the importance of the value of freedom of expression and Dr. Peterson's position respecting it, and appropriately balanced freedom of expression with the College's statutory objectives.
- [59] Earlier in the Decision, the ICRC noted Dr. Peterson's submission that his "professional obligations and ethical duties must be balanced alongside his personal rights and freedoms", and that "the protection of freedom of expression is a basic and central tenant [*sic*] of any free and fair democracy, particularly as it applies to public debate and criticism." The Panel also noted Dr. Peterson's reliance on the Supreme Court's decision in *Grant v. Torstar*, 2009 SCC 61, [2009] 3 SCR 640, a defamation case which held at para. 42, that "freedom of expression and respect for vigorous debate on matters of public interest have long been seen as fundamental to Canadian democracy ... all Canadian laws must conform to it."
- [60] In its correspondence with Dr. Peterson prior to the Decision, the Panel had agreed that Dr. Peterson's right to freedom of expression was engaged, but that it was subject to his duty to the public and to the profession to conduct himself in a way that is consistent with professional standards and ethics.
- [61] The Panel was also aware of the ICRC's 2020 decision giving advice to Dr. Peterson, in which that panel of the ICRC had referred to the *Charter*'s guarantee of "rigorous debate" and had concluded that the *Charter* "protects Dr. Peterson's public pronouncements so long as he does not violate provincial or federal laws, which he does not appear to do so in this instance." It was argued by Dr. Peterson's counsel that the 2020 decision, in referring to the guarantee of "rigorous debate" and concluding that whether Dr. Peterson's views reflected poorly on the profession "is a matter of opinion and not fact", showed a greater appreciation of his right to freedom of expression, and engaged in a more appropriate balancing than the 2022 Decision under review. However, as noted, even in 2020 Dr. Peterson was warned about using unprofessional language, with the Panel advising him to "offer [his] opinions and comments in a respectful tone in order to avoid a negative perception toward the profession of psychology."
- [62] The fact that the Decision did not provide a detailed discussion of the value of freedom of expression does not mean the ICRC did not appropriately consider it. Furthermore, the ICRC should not be expected to do so. The ICRC is, essentially, a screening body. It reviews complaints and investigations and, where appropriate, sends cases to a disciplinary hearing for adjudication, in which case its decision is not even subject to judicial review as the process has not run its course: *Volochay v. College of Massage Therapists of Ontario*, 2012 ONCA 541, 111 OR (3d) 561, at para. 68. The ICRC, however, also has other, less serious options available to it to address concerns that may be raised by a complaint or complaints, including directing a SCERP, which is not disciplinary, but remedial.

- [63] The ICRC had, effectively, three options in dealing with Dr. Peterson's case: send the matter to discipline, do nothing, or direct a SCERP. By directing a SCERP, the ICRC pursued a proportionate and reasonable option to further its objective of maintaining professional standards, and which will have a minimal impact on Dr. Peterson's right to freedom of expression. Admittedly, the ICRC Decision is not benign; the direction to submit to a SCERP will be placed on Dr. Peterson's public record with the College, but it is a remedial order, not a disciplinary finding, or even a referral to discipline: *Longman v. Ontario College of Pharmacists*, 2021 ONSC 1610, at para. 45. The Decision simply requires him to have coaching "to review, reflect on, and ameliorate his professionalism in public statements" in order to avoid making demeaning and degrading statements about people that may be harmful to them and to the profession.
- [64] The ICRC Decision does not prevent Dr. Peterson from expressing himself on issues of interest to him and his audiences; rather, the Decision is focussed on concerns over his use of degrading or demeaning language, about which he was given advice in 2020. Requiring coaching following apparently unheeded advice seems a reasonable next step, proportionately balancing statutory objectives against *Charter* rights which are minimally impaired, if they are impaired at all, by the Decision. In *Pitter*, directing a SCERP in similar circumstances was recognized to be a "remedial and educative" response which "minimally impaired" the nurses' rights. This is also the case with Dr. Peterson.
- [65] The result in this case may be contrasted with the results in other professional contexts in which balancing professional, public interest objectives against *Charter* interests of a member has led to what appear to be more serious impairments of *Charter* rights. In *Christian Medical Dental Society v. College of Physicians and Surgeons of Ontario*, 2019 ONCA 393, 147 OR (3d) 398, for example, the Court of Appeal upheld a policy that required physicians to provide an "effective referral" for services they oppose on religious grounds, such as abortion and gender-affirming care. The Court held that the policy struck the appropriate balance between the members' religious beliefs and the public's overriding interest in equitable access to legally available publicly funded health care services.
- [66] In *Trinity Western University v. Law Society of Upper Canada*, 2018 SCC 33, [2018] 2 SCR 453, the Supreme Court upheld the Ontario legal regulator's decision not to accredit TWU's proposed law school, which prohibited same-sex sexual activity among its students. The Court found that the decision represented a proportional balance between the limitation on freedom of religion and the statutory objectives the Law Society sought to promote, including access to the legal profession, diversity within the bar, and prevention of harm to LGBTQ law students.
- [67] Accordingly, I am satisfied that the Panel conducted an appropriate *Doré* analysis. It addressed first its statutory mandate and then considered Dr. Peterson's *Charter* right to freedom of expression. The Decision proportionately balanced the competing interests, protecting the public interest in professionalism in communications by members and prevention of harm, while minimally impairing Dr. Peterson's right to freedom of expression.

The Decision meets *Vavilov*'s requirement of justification, intelligibility and transparency

- [68] Dr. Peterson's counsel also submitted that the Decision did not satisfy the required standard of reasoning set by *Vavilov* by failing to engage with Dr. Peterson's explanations for the comments in issue. I do not agree.
- [69] The ICRC identified language used by Dr. Peterson which it was concerned was degrading or demeaning, or otherwise unprofessional. This concern is entitled to deference: *Trinity Western*, at para. 38; *Dr. Jha* at para. 147. It was not necessary to engage in whether Dr. Peterson's comments were supported by facts or were his honest opinion, as the concern arises from the nature of the language used, not the validity of his opinions. Again, Dr. Peterson is speaking as a regulated professional psychologist – what might be protected by the laws of defamation, such as the defence of fair comment, is not the point.
- [70] The fact that a complaint by a client against Dr. Peterson was unfounded does not mean the ICRC should not be concerned when Dr. Peterson publicly described the client as "vindictive." There is nothing unreasonable about being concerned when a regulated health professional attacks a client or patient, regardless of what they have done. Indeed, in the Joe Rogan podcast, Dr. Peterson referred to the client's reliance on him, noting that she had felt abandoned by him when he closed his clinical practice and stopped seeing her.
- [71] Similarly, while Dr. Peterson's comment on "poor children" may have been sarcastic, it was open to the ICRC to be concerned about him making "demeaning jokes." Sarcasm is commonly used to insult, demean and degrade. The ICRC's concerns with Dr. Peterson addressing Elliot Page as "her" and by their prior name, as well as calling a city councillor a "thing" and a doctor a "criminal" (a term even Dr. Peterson has expressed some regret using), arose from the language Dr. Peterson used, not his personal views. So too with his negative comment on the appearance of a woman on the cover of *Sports Illustrated* and calling Gerald Butts a "prik." On its face, the language raised professionalism concerns, and it was not necessary for the ICRC to engage with Dr. Peterson on his motivation for making those comments.
- [72] Rather, the Panel focused on the harm from the language used, noting, transparently and clearly, its concern that potential harms included "undermining public trust in the profession of psychology, and trust in the College's ability to regulate the profession in the public interest." It expressed concern that "public statements of this nature may also raise questions about Dr. Peterson's ability to appropriately carry out his responsibilities as a registered psychologist" and that "public statements that are demeaning, degrading, and unprofessional may cause harm, both to the people they are directed at, and to the impacted and other communities more broadly."
- [73] The scope and extent of the ICRC's reasons must also be considered in the context of its role as a screening committee. The stakes before the ICRC are not as high as they are before discipline panels, as was the case in *Groia v. Law Society of Upper Canada*, 2018 SCC 27, [2018] 1 S.C.R. 772, *Lauzon v. Ontario (Justices of the Peace Review Council)*, 2023 ONCA 425, and in *Doré* itself. As this Court summarized in *Pitter* at para. 22, the

reasonableness review under *Vavilov* is “expected to reflect the stakes of the decision.” O’Brien J. continued:

Where a decision has a particularly harsh consequence to the individual, there is a higher onus on the decision-maker to explain its decision. The corollary is that where, as here, a screening committee requires a remedial and educative response to a member’s conduct, a reasonableness review permits less detailed reasons.

- [74] As noted earlier, reasons “must not be assessed against a standard of perfection”, they need not include all arguments, nor should we expect or require administrative decision-makers to “deploy the same array of legal techniques that might be expected of a lawyer or judge”: *Vavilov*, paras. 91-92. This is especially the case for a screening decision and the making of a remedial order. The focus on sufficiency of reasons in *Vavilov* should not be inappropriately used as a tool to reduce deference and respect for the role and decisions of expert administrative bodies, having regard to the context in which those decisions are made and their consequences for the individual.
- [75] In any event, the ICRC’s reasons are transparent, intelligible, justifiable, and reasonable. The Panel prepared a 10-page single-spaced Decision. It considered its mandate and engaged in a clear chain of analysis that involved reviewing the factual background, its concerns with the language used by Dr. Peterson, and his responses to the Panel. It considered the advice provided to Dr. Peterson in 2020, the ICRC’s suggestion that Dr. Peterson agree to undertake a program of coaching, his refusal to do so, and the ICRC’s reasons for rejecting Dr. Peterson’s own coaching proposal. The Panel considered the professional regulatory context, the governing rules, the impact of the *Charter*, and Dr. Peterson’s unwillingness to acknowledge the Panel’s concerns.
- [76] Following that transparent and coherent discussion, the panel concluded, reasonably, that Dr. Peterson’s behaviour raised a moderate risk of harm to the public, which the Panel had articulated in its decision, and concluded that it was “very concerned that the recurrence risk in this case was high.” It therefore concluded its chain of analysis by deciding that “it would be appropriate and in the public interest” to require Dr. Peterson to complete a SCERP to address his professionalism in public statements.

Conclusion

- [77] The application for judicial review is dismissed. The applicant shall pay the respondent costs, as agreed, in the amount of \$25,000.

Paul B. Schabas J.

I agree: Backhouse J.

I agree: Krawchenko J.

Released: August 23, 2023

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ONTARIO
SUPERIOR COURT OF JUSTICE

Divisional Court

Backhouse, Schabas and Krawchenko JJ.

JORDAN PETERSON

– and –

COLLEGE OF PSYCHOLOGISTS OF ONTARIO

REASONS FOR DECISION

Schabas J.

Released: August 23, 2023