



**IN THE COURT OF APPEAL
OF NEWFOUNDLAND AND LABRADOR**

Citation: *Seraj v. Memorial University of Newfoundland*,
2022 NLCA 42

Date: July 15, 2022

Docket Number: 202101H0014

BETWEEN:

JAMES SERAJ

APPELLANT

AND:

MEMORIAL UNIVERSITY OF
NEWFOUNDLAND

RESPONDENT

Coram: O'Brien, Butler and Knickle JJ.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador,
General Division 202001G4031
(2021 NLSC 20)

Appeal Heard: February 15, 2022

Judgment Rendered: July 15, 2022

Reasons for Judgment by: O'Brien J.A.

Concurred in by: Butler and Knickle JJ.A.

Counsel for the Appellant: Cletus Flaherty

Counsel for the Respondent: Stephen Penney

Authorities Cited:

CASES CITED:

Agraira v. Canada (Public Safety and Emergency Preparedness), 2013 SCC 36, [2013] 2 SCR 559; *Canada Fluorspar (NL) Inc. v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 9220*, 2022 NLCA 21; *O'Rourke v. Workplace Health, Safety and Compensation Commission*, 2022 NLCA 14; *Mount Pearl (City) v. Workplace Health, Safety and Compensation Review Division*, 2008 NLCA 69, 282 Nfld. & P.E.I.R. 14; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817.

O'Brien J.A.:

OVERVIEW

[1] The appellant, James Seraj, studied medicine at Memorial University of Newfoundland. The record indicates that he struggled in completing the academic requirements of the first and second years of the medicine program.

[2] After failing both the first and second years, Dr. Seraj was required to withdraw from the program in June 2006. As a result, according to Memorial University's records, he was not enrolled in the program during the 2006-2007 academic year.

[3] Following an internal appeal, Dr. Seraj was granted permission to repeat second year studies at Memorial University in the 2007-2008 academic year, commencing in September 2007. He subsequently met all further requirements, graduated from the program, and commenced the practice of medicine in the United States.

[4] In November 2006, when he was not enrolled in Memorial University's medicine program, Dr. Seraj wrote an American licensing examination to qualify to practice medicine in the United States. However, to be eligible to write this exam, Dr. Seraj needed to be enrolled as a student in Memorial University's medicine program on the date the exam was written. He was not, having been required to withdraw from the program in June 2006. Therefore, he was ineligible to write the licensing exam when he did.

[5] The American licensing authority subsequently became aware that Dr. Seraj had written their licensing exam when ineligible to do so. Dr. Seraj submits on appeal that this has negatively affected his ability to undertake further exams and training, resulting in financial loss.

[6] As such, in 2019, Dr. Seraj requested that Memorial University declare that he was enrolled in the medicine program at the time he wrote the American licensing exam in November 2006. He also requested that Memorial University amend its records in this regard and advise the American licensing authority in writing that he was enrolled at Memorial University in the 2006-2007 academic year.

[7] Memorial University refused to do so, stating that their records accurately reflect the fact that Dr. Seraj was not enrolled in the medicine program when he wrote the exam, having had to withdraw in June 2006 as a result of his academic performance.

[8] Dr. Seraj appealed the matter to Memorial University's Senate Committee on Undergraduate Studies in 2019 and was unsuccessful. He further appealed to the Senate Committee on Academic Appeals, and this appeal was dismissed in February 2020.

[9] Dr. Seraj applied to the Supreme Court of Newfoundland and Labrador for judicial review, seeking an order in the nature of *certiorari* with respect to the decision of the Senate Committee on Academic Appeals. The Supreme Court, in 2021, dismissed his application for judicial review (2021 NLSC 20). Dr. Seraj then appealed the decision of the Supreme Court to this Court.

[10] For the reasons that follow, I would dismiss Dr. Seraj's appeal.

Background Information

Dr. Seraj's academic studies at Memorial University

[11] Dr. Seraj began the first year of the medicine program in the 2003-2004 academic year, but failed to meet the academic requirements. As a result, he was required to repeat the first year of studies, and did so in the 2004-2005 academic year. This time he met the requirements, passed first year, and advanced to second year studies.

[12] Dr. Seraj began the second year of the program in 2005-2006, but again failed to meet the academic requirements. As this was his second academic

failure, he was not entitled to repeat second year studies. Rather, pursuant to Memorial University's regulations, he was required to withdraw from the medicine program. He was advised of this in June 2006.

[13] He appealed to the Medical School's Pre-Clerkship Promotions Committee and, in July 2006, that committee confirmed that he must withdraw from the medicine program because of his academic failures.

[14] Dr. Seraj appealed further to the Medical School's Executive Committee, and the appeal was heard in December 2006. He argued that his academic results were affected by extenuating circumstances and that, as a result, he should not be required to withdraw from the program but should be permitted to repeat second year studies.

[15] The Executive Committee indicated that normally the option to repeat a year is offered to a student only once in the medicine program. However, the Committee observed that that this "restriction may be waived if it has been demonstrated that the student's performance has been adversely affected by other factors...." (Executive Committee Correspondence, Appeal Book, Tab 1(D)). The Executive Committee concluded, on December 13, 2006, that Dr. Seraj was "allowed to repeat year 2 of the MD program with academic prejudice ... on the basis of extenuating circumstances that adversely affected the student's performance" (Judicial Review Decision, 2021 NLSC 20, para. 5).

[16] The Executive Committee advised Dr. Seraj that "[t]he next beginning term when you can start will be the fall semester 2007." (Executive Committee Correspondence, Appeal Book, Tab 1(D)). Dr. Seraj repeated second year studies in the 2007-2008 academic year, which began in September 2007.

[17] He completed second year studies and the remainder of the medicine program and graduated from Memorial University.

The United States Medical Licensing Examination Program

[18] Dr. Seraj applied to write, and subsequently wrote, an examination offered by the United States Medical Licensing Examination program (the USMLE program). This examination, the first in a multi-step exam process, is one of a number of requirements to be satisfied in order to qualify to practice medicine in the United States.

[19] To be eligible to write the examination, the USMLE program required that an applicant be officially enrolled in (or a graduate of) an accredited

American or Canadian medical school at two specific points in time: (i.) when the application to write the exam was made, and (ii.) when the exam was written.

[20] There was no issue with Memorial University's medical school being an accredited program. There was also no issue with Dr. Seraj's enrollment status when he applied to take the test; he did so in May 2006 when he was still enrolled in the second year of the program.

[21] However, when he wrote the USMLE program's exam on November 15, 2006, he had already been advised (in June 2006 and again in July 2006) that he was required to withdraw from the medicine program. The USMLE program was not advised that Dr. Seraj had been required to withdraw from the program before he wrote the exam.

[22] In 2010, Dr. Seraj raised the issue as to whether he was eligible to write the USMLE program's exam in November 2006. The issue arose in the context of Dr. Seraj requesting a "retake" of the examination. When informed that he could not retake the exam, Dr. Seraj advised the USMLE program that he was not eligible to write the exam when he wrote it in 2006. While not explicitly stated, Dr. Seraj's contention to the USMLE program that he was not eligible to write the exam appears to reference the fact that he had been required to withdraw from the medicine program, and therefore was not enrolled at the time he wrote the exam.

[23] Correspondence in the record from the USMLE program in 2010 described how Dr. Seraj first raised this issue:

Dr. Seraj applied for a retake of USMLE Step 1 recently and, when informed that he was ineligible for a retake, he replied that he did not meet the eligibility requirements at the time of testing for Step 1 in 2006.

(USMLE program correspondence, Appeal Book, Tab 1(E))

[24] The USMLE program investigated the matter and asked Memorial University, in 2010, for clarification of Dr. Seraj's status when he wrote the exam. Memorial University responded in writing to the USMLE program in 2010 advising that Dr. Seraj "withdrew from medical studies on June 23, 2006 and returned to repeat second year medical studies on September 4, 2007." (University correspondence, Appeal Book, Tab 1(E)). The University confirmed that he "was not enrolled when he took the exam on November 15, 2006." (University correspondence, Appeal Book, Tab 1(E)). After receiving

this information from Memorial University, the USMLE program “put a stop flag on his account” (USMLE program correspondence, Appeal Book, Tab 1(E)).

Inquiry by Dr. Seraj to the Registrar’s Office and response - 2011

[25] In 2011, counsel for Dr. Seraj wrote to the Registrar’s Office at Memorial University, requesting information regarding Dr. Seraj’s enrollment at Memorial University in 2006-2007.

[26] The Registrar’s Office confirmed, in correspondence dated August 5, 2011, that Dr. Seraj was not enrolled in the 2006-2007 academic year. The correspondence indicated that Dr. Seraj “was required to withdraw unconditionally from the program” in 2006, and that following an appeal he “was granted permission to resume his studies in 2007-08” (University correspondence, Appeal Book, Tab 1(A)). The Registrar’s Office correspondence concluded:

While Mr. Seraj might have been actively seeking a medical degree in the 2006-07 academic year, he was doing so through the appeals process, but was not, at that time, in any University program.

(University correspondence, Appeal Book, Tab 1(A))

Appeal to the Senate Committee on Undergraduate Studies - 2019

[27] In May 2019, approximately eight years after the Registrar’s Office 2011 correspondence, counsel for Dr. Seraj wrote to the Senate Committee on Undergraduate Studies at Memorial University.

[28] In a document entitled a “notice of appeal”, counsel referenced the August 5, 2011 correspondence from the Registrar’s Office and purported to appeal a decision made by the Registrar’s Office in that correspondence, stating:

By correspondence dated August 5, 2011 the Office of the Registrar determined that Dr. Seraj withdrew from the Faculty of Medicine’s undergraduate program and was not “enrolled” at the University during the 2006-2007 academic year.

...

Dr. Seraj appeals this decision and states that he did not withdraw from the Program and he remained enrolled throughout the 2006-2007 academic year.

(Notice of Appeal, Appeal Book, Tab 1)

[29] The notice of appeal referenced ongoing difficulties Dr. Seraj was having with the USMLE program because he wrote their exam in 2006, when he was not eligible to do so.

[30] The notice of appeal stated in this respect that “[a]s a result of the representations made by the Faculty of Medicine [i.e., that Dr. Seraj was not enrolled in the medicine program in the 2006-2007 academic year] Dr. Seraj has been flagged for “Irregular Behavior” by USMLE ... and as a result may no longer continue in that program.” (Notice of Appeal, Appeal Book, Tab 1).

[31] While no evidence was provided about the consequences of this for Dr. Seraj, counsel for Dr. Seraj indicated on appeal that this has affected his eligibility to take future exams with the USMLE, and has negatively impacted professional opportunities regarding specialization and income potential.

[32] In his notice of appeal, Dr. Seraj asked Memorial University to change the position articulated in the Registrar’s Office August 5, 2011 correspondence, and to declare that he was enrolled in the medicine program in 2006-2007, amend its records accordingly, and advise the USMLE program in writing of this revised position.

[33] As such, the notice of appeal requested the following relief:

- i. a declaration that Dr. Seraj had not withdrawn from the medicine program in 2006;
- ii. a declaration that Dr. Seraj was enrolled in the program in the 2006-2007 academic year;
- iii. amendments to all University records to reflect that Dr. Seraj had not withdrawn from the program and was enrolled in 2006-2007; and
- iv. that a letter be sent from the Office of the Registrar to the USMLE confirming that he was enrolled in the medicine program in 2006-2007.

[34] Dr. Seraj’s request was denied by the University in October 2019, with the University noting in its written response that the “request for relief cannot be characterized as an academic appeal under the University Regulations” (University correspondence, Appeal Book, Tab 2). The University observed in its response that “Dr. Seraj was successful in his academic appeal to the

Executive Committee of the Faculty of Medicine in December 2006. That appeal is complete and cannot be re-opened” (University correspondence, Appeal Book, Tab 2).

[35] It was further noted that the Registrar’s Office, in its August 5, 2011, correspondence had “relayed information from the University records, but did not make any decision from which an appeal lies within the University” (University correspondence, Appeal Book, Tab 2).

Appeal to the Senate Committee on Academic Appeals - 2019

[36] Dr. Seraj appealed the determination of the Senate Committee on Undergraduate Studies to the Senate Committee on Academic Appeals. He did so in correspondence styled as a notice of appeal, dated November 28, 2019 (Notice of Appeal, Appeal Book, Tab 3).

[37] In this notice of appeal, Dr. Seraj argued that the Senate Committee on Undergraduate Studies had erred by not considering his appeal, and by stating that the Registrar’s Office correspondence was not a decision.

[38] On this latter point, Dr. Seraj’s notice of appeal indicated that “the University records misrepresented his student status and academic classification”, and that “[t]he Registrar’s office decided that there was no error” (Notice of Appeal, Appeal Book, Tab 3).

[39] The claim for relief was principally the same as in the earlier appeal. Dr. Seraj requested the following: that Memorial University declare that he did not withdraw from their program in 2006 and that he was enrolled in 2006-2007; that University records be amended to reflect this; and that the USMLE program be advised that he was enrolled in 2006-2007.

[40] In the alternative, it was requested that the matter be remitted to the Senate Committee on Undergraduate Studies or another University committee for determination. There was an additional request for an opportunity to make oral submissions.

[41] Memorial University replied in writing in February 2020 to advise that a panel of the Senate Committee on Academic Appeals had considered the notice of appeal (University correspondence, Appeal Book, Tab 4). The panel denied the relief requested, again noting that the matter did not engage the application of an academic regulation and that the Registrar’s Office had simply reported information in University records, as opposed to making a decision:

After carefully reviewing the arguments set out in the Notice of Appeal and the University's information related to Dr. J. Seraj's case, the Panel found that:

1. the Office of the Registrar has not made any decisions regarding Dr. J. Seraj; rather, they have consistently and factually reported the information recorded by the University as it relates to Dr. J. Seraj's enrollment status during the 2006-2007 academic year, and
2. there is no academic merit to the matter being appealed.

[42] Having determined that the appeal did not engage an academic regulation, the Committee noted that its terms of reference required that the appeal be dismissed without a hearing:

As such, in accordance with the Committee's Terms of Reference..., specifically clause 10, wherein it states, "Where the matter being appealed is not the application of an academic regulation, the Appeal Panel shall dismiss the appeal without a hearing", the Committee had no recourse but to dismiss this appeal.

(University correspondence, Appeal Book, Tab 4)

Judicial review application in the Supreme Court - 2020

[43] Dr. Seraj applied to the Supreme Court of Newfoundland and Labrador for judicial review, seeking an order in the nature of *certiorari* with respect to the February 2020 decision of the Senate Committee on Academic Appeals.

[44] He argued that the Committee erred in its decision to dismiss the appeal, and that there was a denial of procedural fairness in deciding the appeal without a hearing.

[45] The applications judge dismissed the application for judicial review (para. 33). He concluded that the decision of the Committee was reasonable, and that the Committee's determination of the appeal without holding a hearing was not a denial of procedural fairness (paras. 32-33).

ISSUES

[46] Dr. Seraj argues on appeal that the applications judge erred: by not finding there was a denial of procedural fairness; by applying the wrong standard when considering whether there was a denial of procedural fairness; and by failing to consider whether Dr. Seraj's appeal had academic merit or concerned the application of academic regulations.

[47] The appeal will consider the following issues:

1. Did the applications judge err by applying the wrong standard in deciding whether there was a denial of procedural fairness?
2. Did the applications judge err by concluding that there was no denial of procedural fairness?
3. Did the applications judge err by failing to consider whether Dr. Seraj’s appeal to the Senate Committee on Academic Appeals had academic merit or concerned the application of academic regulations?

ANALYSIS

Standard of Review

[48] The analytical approach to be followed on an appeal of a judicial review of an administrative decision was considered by the Supreme Court of Canada in *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 SCR 559.

[49] In *Agraira*, the Supreme Court of Canada noted that the issue for an appellate court, in considering an appeal from an application for judicial review, “can thus be summarized as follows: Did the application judge choose the correct standard of review and apply it properly?” (para. 47). This is the test to be applied on appeal.

[50] This approach has been followed by this Court, including in two recent decisions, *Canada Fluorspar (NL) Inc. v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 9220*, 2022 NLCA 21, and *O’Rourke v. Workplace Health, Safety and Compensation Commission*, 2022 NLCA 14.

[51] As indicated in *Canada Fluorspar (NL) Inc.*, on an appeal to this Court, “the appellate court must view the matter from the perspective of the applications judge whose function is to determine whether the decision of the administrative tribunal is reviewable on a standard of correctness or reasonableness, and to apply that standard ...” (para. 12). See also *O’Rourke*, at para. 16.

[52] In this regard, “the applications judge’s decision is reviewable by this Court on a standard of correctness” (*Canada Fluorspar (NL) Inc.* at para. 14, citing *Mount Pearl (City) v. Workplace Health, Safety and Compensation Review Division*, 2008 NLCA 69, 282 Nfld. & P.E.I.R. 14, at para. 15).

[53] This is consistent with the direction of the Supreme Court in *Agraira* that the appeal concerns whether the correct standard of review was chosen and applied on the judicial review.

Issue 1: Did the applications judge err by applying the wrong standard in deciding whether there was a denial of procedural fairness?

[54] The applications judge found that the Senate Committee on Academic Appeals did not deny Dr. Seraj procedural fairness when it decided his appeal without an oral hearing.

[55] Dr. Seraj argues that the judge applied a reasonableness standard in this context. He contends that this was an error because reasonableness is not the standard of review that applies to a review concerning procedural fairness.

[56] For the reasons that follow, I would conclude that the judge’s reasons demonstrate that he appreciated that a different standard than reasonableness is engaged when considering procedural fairness, and that he applied the appropriate standard in this instance.

[57] The judge noted that the reasonableness standard of review applied to what he referred to as the “substantive decision” of the Senate Committee on Academic Appeals; that is, the decision to dismiss Dr. Seraj’s appeal (para. 14). The judge noted that this was different from the standard applied in considering the “procedural issue” raised by Dr. Seraj, namely whether procedural fairness required an oral hearing before the substantive decision could be made (para. 15).

[58] The judge stated:

[13] In my view, there are two essential issues here. One, was it reasonable for the committee in February of 2020 to make the decision it did, and secondly, was it an error to determine the appeal without a hearing. ...

[59] Regarding the Senate Committee on Academic Appeals’ decision to dismiss Dr. Seraj’s appeal, the judge referenced the Supreme Court of Canada’s judgment in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019

SCC 65, and observed that “the standard of reasonableness should apply to the substantive decision of the committee” (para. 14).

[60] However, with respect to the standard that applied to the issue of whether an oral hearing was required, the judge stated that this engaged a consideration of the factors and principles set out by the Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817. In the judge’s view, this involved a different and “higher standard of scrutiny by this Court than an application of the standard of reasonableness in respect of any substantive decision” (para. 15). The judge went on to consider the *Baker* factors in deciding the procedural fairness issue.

[61] On appeal, counsel for Dr. Seraj states that the judge used the term “reasonable” when discussing procedural fairness. It is argued that this illustrated the judge’s misapprehension of the appropriate standard, and constituted an error.

[62] However, the judge’s use of the word reasonable must be considered in context. For example, in paragraph 27 the judge referenced *Baker* in his consideration of procedural fairness, and stated “...my own view is that even applying the *Baker* principles that there was no obligation to have a full hearing.” Having directly adverted to the *Baker* principles, later in the same paragraph the judge queried whether it was “reasonable” for no oral hearing to have been held before the appeal was dismissed. The use of the word reasonable in that instance must be read in the context of the judge’s discussion of the *Baker* factors, immediately previous; in that context, the use of the word “reasonable” does not equate to the judge adopting or applying a “reasonableness” standard, as understood in administrative law parlance.

[63] Having reviewed the judge’s decision as a whole I would conclude that, while the judge’s use of the word “reasonable” might rightly be characterized as misplaced or potentially confusing, it is not fatal. On a fair reading of the decision, it does not demonstrate that the judge applied the judicial review standard of reasonableness, as described in *Vavilov* and other cases, when deciding whether there was a denial of procedural fairness. Rather, it is apparent from the reasons that the applications judge explicitly referenced and applied the factors in *Baker* in determining the procedural fairness issue. There was no error in doing so.

Issue 2: Did the applications judge err by concluding that there was no denial of procedural fairness?

[64] In *Vavilov*, the Supreme Court of Canada confirmed that the requirements of procedural fairness are not rigid, but are variable and always context-specific.

[65] To determine whether a duty of procedural fairness has been met requires consideration of the context in which the duty is said to arise. It is not a one-size-fits-all analysis. The Supreme Court in *Vavilov* specifically identified the *Baker* factors as relevant to this analytical framework:

[77] ... The duty of procedural fairness in administrative law is “eminently variable”, inherently flexible and context-specific: *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653, at p. 682; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at paras. 22-23; *Moreau-Bérubé*, at paras. 74-75; *Dunsmuir*, at para. 79. Where a particular administrative decision-making context gives rise to a duty of procedural fairness, the specific procedural requirements that the duty imposes are determined with reference to all of the circumstances: *Baker*, at para. 21. In *Baker*, this Court set out a non-exhaustive list of factors that inform the content of the duty of procedural fairness in a particular case, one aspect of which is whether written reasons are required. Those factors include: (1) the nature of the decision being made and the process followed in making it; (2) the nature of the statutory scheme; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the decision; and (5) the choices of procedure made by the administrative decision maker itself: *Baker*, at paras. 23-27; see also *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, 2004 SCC 48, [2004] 2 S.C.R. 650, at para. 5. ...

[66] Consistent with the Supreme Court’s direction in *Vavilov*, the applications judge considered and applied the *Baker* factors in the context of this dispute. He did so after having reviewed the record and discussing, in substantial detail, the factual circumstances to which these factors would be applied:

[28] Applying the *Baker* factors, set out by the Supreme Court of Canada at paragraphs 23-27, I must first examine the nature of the decision. The nature of the decision was essentially a review of the record and a reporting of what had gone on before. The second *Baker* factor refers to the statutory scheme. That does not help the Applicant in this case because it's accepted that the statutory scheme was valid, and it provides the University with full authority over its proceedings. The Applicant has not challenged the regulatory scheme itself.

[29] The third *Baker* factor, the importance of the decision to the individual must again be considered in light of the record. I accept that this is important to Dr. Seraj, but I have no evidence of how important, or the consequences to him of the decision

of the Senate Committee. I have a couple of comments from counsel on the impact, but those comments are not evidence. Plus I have the fact that even after engaging counsel in 2011 to inquire into this matter, there was no further action or movement on this file on the part of Dr. Seraj until 2019. And that to me says while it may have been important, it wasn't so important that it attracted his attention and required immediate action. We're looking at reviewing a decision of the Senate Committee which essentially was asked to review a decision from 15 years previously and it strikes me that the time that has passed, without evidence, would appear to minimize the factor of the importance of the decision to the individual. So that factor, that *Baker* factor doesn't help the Applicant.

[30] The fourth factor involves his legitimate expectations of the process. I would consider two factors: first, the delay in bringing this matter forward would indicate less urgency, and second, that Dr. Seraj must be taken to have been aware that the Regulations governing the Senate Committee on Academic Appeals do not require a hearing, but make it an optional consideration.

[31] The Fifth and final factor in *Baker* emphasize that the decision-making body's decisions as to procedure must be respected. This factor favours the choice of the Committee not to hold a formal hearing.

[67] Having considered the *Baker* factors in context, the judge concluded that the duty of procedural fairness in this circumstance did not require the Senate Committee on Academic Appeals to hold an oral hearing before deciding Dr. Seraj's appeal. The judge's contextual review of the *Baker* factors informed his conclusion that the Committee's decision was not procedurally unfair, that the Committee did not err in deciding the matter on the basis of the record and written submissions, and that there was no requirement to remit the matter to the Committee for a hearing. The judge, having applied the *Baker* factors in the factual context, concluded:

[32] Those are the factors which must be considered when determining the impact of a decision whether to hold a hearing. I do not think they help Dr. Seraj in his argument that applying the *Baker* factors, a higher level of procedural fairness, including an oral hearing, is required.

[68] The judge also observed that while Memorial University's regulations "provide for oral submissions and a hearing in person, it doesn't require them in all cases" (para. 27). Further, as noted in the February 2020 decision of the Senate Committee on Academic Appeals, the Committee's terms of reference mandate that "[w]here the matter being appealed is not the application of an academic regulation, the Appeal Panel [of the Committee] shall dismiss the appeal without a hearing" (University correspondence, Appeal Book, Tab 4).

[69] In light of the foregoing, as no error has been demonstrated in the judge's analysis or application of the *Baker* factors in this context, there is no basis for appellate intervention regarding the judge's conclusion in this regard.

Issue 3: Did the applications judge err by failing to consider whether Dr. Seraj's appeal to the Senate Committee on Academic Appeals had academic merit or concerned the application of academic regulations?

[70] In its February 2020 decision, the Senate Committee on Academic Appeals stated that what Dr. Seraj was purporting to appeal was not the application of an academic regulation, and that there was no academic merit to the matter. As such, the Committee dismissed the appeal.

[71] On the application for judicial review, Dr. Seraj argued that the Committee erred in making these findings. Stated differently, Dr. Seraj argued that the decision, in administrative law terms, was an unreasonable one.

[72] On appeal to this Court, Dr. Seraj argued that the applications judge erred by failing to consider whether his appeal to the Senate Committee on Academic Appeals "had academic merit or concerned the application of academic regulations".

[73] However, the reasons provided by the judge demonstrate that he did consider these issues. The judge did so by applying the analytical framework outlined in *Vavilov*, and by framing the key issue to be determined on Dr. Seraj's application for judicial review as "whether it was reasonable in the circumstances for the Senate Committee on [A]cademic [A]ppeals to make the decision it did." (para. 13).

[74] The reasonableness standard was described by the Supreme Court in *Vavilov*:

[86] Attention to the decision maker's reasons is part of how courts demonstrate respect for the decision-making process: see *Dunsmuir* [2008 SCC 9, [2008] 1 SCR 190], at paras. 47-49. In *Dunsmuir*, this Court explicitly stated that the court conducting a reasonableness review is concerned with "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes": para. 47. Reasonableness, according to *Dunsmuir*, "is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process", as well as "with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": [*Dunsmuir*, at para. 47]. ...

[75] In determining the issue of whether it was reasonable for the Committee to have dismissed the appeal, the judge was effectively determining whether it was reasonable for the Committee to have found that the appeal did not deal with the application of academic matters, and was therefore not a matter of academic concern for the Committee. This was the basis on which the Committee dismissed Dr. Seraj's appeal in February 2020.

[76] Rather than failing to consider these issues, the judge addressed them, when considering the ultimate issue of whether the Committee's decision to dismiss Dr. Seraj's appeal was a reasonable one. In so doing, the judge chose the correct standard of review on this issue, being reasonableness, and properly applied it.

[77] The judge, at para. 15, noted the Supreme Court of Canada's analytical guidance provided in *Vavilov* with respect to assessing the reasonableness of an administrative decision:

In *Vavilov* the Court reviewed the issue of reasonableness generally in paragraphs 81 through paragraph 108. ... My interpretation is that a determination of reasonableness in these circumstances requires an examination of the context of the decision and a finding that there's a rational chain of analysis as opposed to either an irrational chain or a reasoning process which contains an obvious gap. I would also determine whether the reasons together with the record make it possible to understand the decision maker's reasoning.

[78] Applying this to the present matter, the judge noted "the appeal to the committee must be viewed in the light of the earlier decisions and the Medical School Regulations in effect at the time", and that the "record and the series of decisions that were made in 2006 ... provides the background for the decision of the Committee" (para. 16). The 2006 appeals, referenced by the judge, dealt with whether Dr. Seraj would be required to withdraw from medical studies permanently, or be permitted to re-commence at some later date. Those appeals concerned the application of academic regulations and engaged academic issues in a direct and obvious manner, in contrast to the Committee's view of Dr. Seraj's 2019 appeal.

[79] After providing a detailed outline of the events and considerations that informed the Committee's decision, and after having considered the record and the applicable regulations, the judge ultimately concluded that the Committee's decision was a reasonable one. The judge found, at para. 25, that the "only reasonable inference from the record and a review of the Regulations in effect at

the time is that the Applicant withdrew from the program in June of '06 and re-entered the program in September of '07".

[80] In reaching this conclusion the judge, at para. 25, expressly rejected the submission made by Dr. Seraj to Memorial University that, rather than having been required to withdraw from the medical program in 2006-2007, he was "enrolled in the Program but was placed on administrative leave or other leave of absence" (Notice of Appeal, Appeal Book, Tab 1) during that period:

[Dr. Seraj] submits that in fact he remained enrolled in the program and asked the university to alter its records to show that. He provides no authority for any other approach to this, and in his written submission, I've already mentioned, he referred to some other kind of leave, but there's no authority for that either. In my view, what was done by the Senate Committees in 2019 and 2020 was reasonable. In fact, it would have been unreasonable to expect the university to revise its records to insert a grant of administrative leave in the Applicant's file where no reference or authority had been provided. ...

[81] The judge noted that, as the Committee's decision was reasonable, it should not be disturbed:

[26] In my view, in terms of the substance of this issue, the response of the Senate Committee considering the record, the full examination of Dr. Seraj's case by the various committees at least three times in 2006 considering also the time that had passed and the lack of authority to change the record and perhaps the unreasonableness to ask the record to be changed, all of this was reasonable and the Court should not interfere with it.

[82] There is no basis in the record or the judge's decision on which to interfere with the judge's conclusion that the decision of the Senate Committee on Academic Appeals was reasonable. It has not been shown that the judge erred in this regard.

DISPOSITION

[83] Guided, on appeal, by the analytical framework outlined in *Agraira*, there is nothing to indicate that the judge failed to "choose the correct standard of review and apply it properly" to the issues (*Agraira*, para 47). In the result, for the reasons provided, I would dismiss the appeal.

[84] The respondent, Memorial University of Newfoundland, has been successful on the appeal and is awarded costs of this appeal on column 3 of the Court of Appeal Scale of Costs. The costs determination made by the applications judge, with respect to the application for judicial review in the Supreme Court, is not disturbed.

F.P. O'Brien J.A.

I concur: _____
G.D. Butler J.A.

I concur: _____
F.J. Knickle J.A.