CITATION: Haulage Network Driving Academy Inc. v. Ontario (Superintendent of Career Colleges), 2025 ONSC 2492
DIVISIONAL COURT FILE NO.: 120/24 JR
DATE: 20250526

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

Backhouse, O'Brien, and Kaufman JJ

BETWEEN:	
HAULAGE NETWORK DRIVING ACADEMY INC.	*Alexander Evangelista,* Counsel for the Applicant
Applicant	
– and –	
ONTARIO (SUPERINTENDENT OF CAREER COLLEGES)	*Sarah Pottle*, Counsel for the Respondent
Respondent	
	HEARD in Toronto: on April 23, 2025

O'BRIEN J.

REASONS FOR DECISION

[1] The central issue on this application for judicial review is whether a discretionary power held by the Superintendent of Career Colleges, to forfeit the security bond a college is required to post, is unconstrained once she has taken certain steps affecting the college's registration. Specifically, is the Superintendent empowered to immediately forfeit a college's security bond every time she issues a proposal to suspend, revoke or refuse to renew the college's registration?

[2] The applicant, Haulage Network Driving Academy Inc., is a family-owned trucking school that, until it stopped operating because of the circumstances giving rise to this matter, had three campuses across Ontario. To operate as a career college in Ontario, Haulage was required by statute to post a security bond. The security bond provides funds to ensure students who are enrolled in the college will be able to complete their training or receive a refund if the college's operations are suspended or the college is closed down. Haulage's total security bond was $97,000.

[3] The Superintendent exercises powers under the *Ontario Career Colleges Act, 2005*, S.O. 2005, c. 28, Sched. L (the Act) and its regulations. On May 25, 2023, following an investigation, the Superintendent issued notices of contravention, suspension and refusal to renew Haulage's registration to operate (the notices). Approximately a week later, on June 1, 2023, the Superintendent deemed Haulage's security bond forfeit.

[4] However, the Superintendent did not give Haulage notice of the decision to forfeit. On June 9, 2023, Haulage initiated an appeal of the Superintendent's decisions to the Licence Appeal Tribunal. Haulage found out about the forfeiture from the Royal Bank of Canada, where its letters of credit had been held, some two weeks later, on June 23, 2023.

[5] The Tribunal heard the appeal over seven days in October 2023. It directed the Superintendent to lift the suspension and not to carry out the notice of proposal to refuse registration. It also directed the Superintendent to register Haulage effective immediately with several conditions in place. After receiving the Tribunal decision, Haulage requested the return of its $97,000 in security. The Superintendent denied this request and asked Haulage to provide a further $10,000 bond.

[6] Haulage submits the Superintendent's decision to forfeit Haulage's security bond was procedurally unfair because the bond was declared forfeit without first notifying Haulage. Haulage also submits the decision was unreasonable.

[7] The Superintendent does not claim she made her forfeiture decision based on the circumstances of this case. She instead submits that in every case where a proposal to suspend, revoke or refuse to renew a career college's registration is issued, she is entitled to immediately declare the college's security forfeit. She submits the immediate forfeiture supports the consumer protection nature of the legislation. She also says Haulage was entitled to a low level of procedural protection. It was not entitled, for example, to delay the forfeiture of its security until after the Tribunal hearing.

[8] The parties agree that, to determine whether the Superintendent violated procedural fairness, the court should apply the factors in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817. There is also no dispute that the standard of review for the Superintendent's decision to forfeit the funds is reasonableness. For the following reasons, I conclude the forfeiture decision was procedurally unfair and unreasonable.

Preliminary Issue: Is the affidavit submitted by Haulage admissible?

[9] Before addressing whether the forfeiture decision should be upheld, the Superintendent has raised a preliminary issue challenging the admissibility of the affidavit filed by Haulage in support of its application. Haulage submits the affidavit falls within various exceptions allowing the admission of evidence to supplement the record on judicial review.

[10] Haulage's affidavit provides disputed evidence on three topics: the proceedings before the Tribunal, the Superintendent's internal directive setting out a progressive compliance model for career colleges, and evidence about the impact of the forfeiture decision on Haulage.

[11] The general rule is that affidavits containing material that was not before the decision maker are not admissible on an application for judicial review. The court has articulated a set of narrow exceptions to this rule. The following material may be admitted:

a. Material that ought to have been included in the record of proceeding (that is, it is properly part of the record pursuant to s. 20 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22);

b. Evidence that was not before the decision maker, but which:

   i. Sets out general background that would assist the court;

   ii. Shows procedural defects that are not apparent from the record or the reasons;

   iii. Shows a complete lack of evidence to support a material finding of fact; or

   iv. Where the evidence is relevant to the exercise of the court's remedial discretion; and

c. Materials that are properly "fresh evidence" on the application.

Humberplex Developments v. Attorney General for Ontario, 2023 ONSC 2962 (Div. Ct.), at para. 15; *Rockcliffe Park Residents Association v. City of Ottawa*, 2024 ONSC 2690 (Div. Ct.), at para. 35; *Lachance v. Ontario (Solicitor General)*, 2023 ONSC 7143 (Div. Ct.) at para. 11.

[12] The disputed evidence here is necessary for the court to assess a determinative issue in this application: whether the Superintendent breached procedural fairness: See *DGN Truck & Forklift Driving School v. Ontario Superintendent of Career Colleges*, 2024 ONSC 5604 (Div. Ct.), at para. 5. The evidence of the progressive compliance model and of the impact of the forfeiture on Haulage are necessary to assess factors informing the level of procedural fairness owed, namely the importance of the decision to Haulage and Haulage's legitimate expectation of procedural protections. The evidence of the Tribunal proceedings is needed to understand the background of what occurred between the parties and, most importantly, informs the remedy the court should order. Therefore, to the extent necessary to assess the issues of procedural fairness and remedy, this evidence is admitted.

Was the Superintendent's forfeiture decision procedurally fair?

[13] Haulage submits the forfeiture decision was procedurally unfair because Haulage did not receive notice of the Superintendent's intention to forfeit the funds. It had no ability to challenge the forfeiture before it occurred. When the Superintendent wrote to Haulage on May 25, 2023, advising that its registration was suspended effective immediately, it notified Haulage that it was entitled to a hearing before the Licence Appeal Tribunal, but not that its security bond would be declared forfeit before that hearing. When the Superintendent wrote to the bank on June 1, 2023 advising it to make payment of Haulage's letter of credit to the Minister of Finance within two days, it did not advise Haulage that it was doing so.

[14] I find the Superintendent's actions to have been procedurally unfair. Applying the *Baker* factors, Haulage was entitled to some degree of procedural fairness as described below:

The nature of the decision and the statutory scheme

[15] Looking at the statutory scheme and the nature of the decision, the most important consideration is that the forfeiture was discretionary rather than mandatory. Subsection 34(1) of *Ontario Regulation 414/06* (the Regulation) provides:

> 34(1) The Superintendent *may* declare the security provided by a career college under section 32 to be forfeited if either of the following events occurs:
>
> 1. A career college has ceased to operate and discontinued all vocational programs before some of the students enrolled in the programs had completed their training.
>
> 2. The Superintendent has issued a proposal to suspend, revoke or refuse to renew a career college's registration. [Emphasis added.]

[16] Only s. 34(1)(2) applies in this case because the Superintendent issued notices to suspend and refuse to renew. But the Regulation states the Superintendent "may" declare the security forfeit once a proposal to suspend, revoke or refuse to renew has been issued. It does not say she *shall* do so once the precondition is met.

[17] Under s. 34(2), the Superintendent has twelve months to declare a security to be forfeited. This period suggests the Superintendent need not act immediately in every case and has time to consider the circumstances.

[18] It is trite law that there is no such thing as absolute and untrammelled discretion: *Restoule v. Canada (Attorney General)*, 2021 ONCA 779, 466 D.L.R. (4th) 1, at para. 192; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 563, at para. 108. An exercise of discretion must, for example, comply with the rationale and any more specific constraints of the statutory scheme under which the discretion was granted: *Vavilov*, at para. 108.

[19] The Superintendent relies on the consumer protection nature of the Act and Regulation to justify her actions. She points, for example, to s. 47(5) of the Regulation, which she submits requires her to exhaust the proceeds from a career college's forfeited security before paying any student claims out of the "General Fund" that is established under the Regulation. She also relies on the requirement in s. 46 of the Regulation, which provides that, where a career college ceases to operate, claims by former students shall be forwarded to the Superintendent within six months of the security being declared forfeit. Considering these statutory provisions, she submits it was within her discretion to act expeditiously for the protection of students.

[20] I agree the Superintendent would be entitled to consider a variety of factors in exercising her discretion, including, importantly, student protection. But considering the wording of s. 34(1) and the twelve-month window to act, student protection does not militate in favour of an immediate decision without any notice to the affected college. The discretionary rather than mandatory nature of the Superintendent's decision, together with the time she had to make the decision, weigh in favour of some notice to Haulage.

Importance of the decision to the affected party

[21] There can be little doubt the forfeiture decision was enormously important to Haulage. The security bond that was forfeited totaled $97,000.

[22] As it turned out, Haulage ceased operations because of the suspension and forfeiture. Its campuses were closed for seven months pending the appeal before the Tribunal. After receipt of the Tribunal's decision in November 2023, counsel for Haulage wrote to the Superintendent requesting the return of the $97,000 security. The Superintendent declined to return the funds and instead requested Haulage pay a further $10,000 security bond. Haulage temporarily reopened two locations but ultimately ceased operations in April 2024 due to financial difficulties caused by the notices and forfeiture. It lost its students, laid off staff and suffered reputational damage. It remains out of operation to date.

[23] In *DGN*, at para. 6, Sachs J. considered a similar situation, where a trucking school was closed. Quoting from *Kane v. Board of Governors of the University of British Columbia*, [1980] 1 S.C.R. 1105, at 1113, she pointed to the "high standard of justice [that] is required when the right to continue in one's profession or employment is at stake." Haulage's loss of the ability to run its school is a devastating impact. This factor points to a higher level of procedural protection.

Legitimate expectations

[24] Haulage submits it had a reasonable expectation the Superintendent would approach any discipline and penalties in a measured manner because of an internal guideline that sets out a "progressive model" for compliance and enforcement.

[25] I agree. The progressive model includes a chart that illustrates the appropriate level of response considering the college's compliance history, risk, and behaviours. It shows a nuanced and individual approach to each college, with various response levels from light green through yellow to dark red depending on the college's compliance history, the degree the college has been responsive to prior communication and enforcement, and the risk to the public. It shows that the Superintendent has a wide range of options available to address compliance and enforcement, ranging from outreach and communication, through to education, inspections and investigations. The most extreme options involve enforcement steps such as notices of revocation and refusal to renew.

[26] In *DGN*, the court relied on the progressive compliance model to find the applicants had a legitimate expectation any discipline action would be progressive. In that case, the Superintendent issued revocations of program approval to the applicant trucking schools. The legitimate expectation of progressive enforcement was one factor supporting the applicants' entitlement to procedural fairness including notice and an opportunity to respond.

[27] The current case is not on all fours with *DGN* on this point. In *DGN*, the Superintendent had revoked program approvals, which was one of the available enforcement measures. In the current case, the forfeiture decision flowed from the notices, but was not itself an enforcement decision. On the other hand, the forfeiture may not have happened if the Superintendent had more carefully examined Haulage's history and conduct in responding to feedback. While the progressive compliance model does not apply directly to the forfeiture, in my view it creates an

expectation that, overall, the Superintendent would take a careful, individualized approach to each college. This supports a legitimate expectation of at least minimal procedural fairness.

The Superintendent's choice of procedure

[28] The final *Baker* factor requires deference to the Superintendent's choice of procedure. Minimal deference is owed in this case. In her submissions, the Superintendent does not say Haulage was entitled to *no* procedural fairness. She instead submits Haulage was owed procedural fairness at the lower end of the spectrum. In response to Haulage's submission that she should have waited until the conclusion of the Tribunal hearing, she states her decision to act more quickly was reasonable in all the circumstances.

[29] However, the Superintendent does not explain why Haulage was not entitled to any notice prior to the forfeiture decision. Little deference therefore is owed to this aspect of her decision.

Conclusion on Baker Factors

[30] Haulage submits that where a college appeals to the Tribunal, the Superintendent should wait until the outcome of an appeal before forfeiting the funds. I do not agree that waiting until the conclusion of the Tribunal hearing is necessarily required in every case. The Superintendent may reasonably conclude that doing so would unfairly prejudice the affected students in the circumstances of the case. In considering whether to exercise her discretion to forfeit funds before a Tribunal hearing, the Superintendent may consider factors such as whether the affected college has commenced an appeal, the timing of the Tribunal hearing, the complexity and strength of the appeal to the Tribunal, the anticipated impact on students of delay, and the anticipated impact on the college in the circumstances of each case. Proceeding with the forfeiture before the outcome of the Tribunal hearing may outweigh waiting for the proceeding to be completed.

[31] Following the hearing in this matter and on the request of counsel for the Superintendent, the court permitted brief written submissions on *Biztech Institute Inc. v. Accreditation Canada*, 2025 ONSC 2455, which was released shortly after this hearing. In *Biztech*, the court denied a stay of the Superintendent's decision to revoke a program approval pending a judicial review of Accreditation Canada's decision to deny Biztech accreditation. Accreditation Canada also brought a motion to stay the judicial review application because the appropriate procedure was through arbitration. The court found the balance of convenience favoured allowing the students fee refunds so they could continue their studies. The Superintendent relies on *Biztech* to say she was entitled to prioritize consumer protection over delaying forfeiture until the conclusion of litigation before the Tribunal.

[32] *Biztech* is not directly on point because it is not about the forfeiture of funds before a Tribunal hearing. More importantly, in *Biztech*, the affected college brought a stay motion, which allowed the court to weigh the circumstances of the case. The Superintendent provided evidence of complaints from students about the impact of not having their fees refunded. This was weighed against having to wait for the outcome of the judicial review or a contemplated arbitration proceeding. The court decided that, in the circumstance, a stay should not be granted.

[33] In the current case, the Superintendent does not rely on any specific weighing of the circumstances. Moreover, Haulage had no opportunity to provide submissions that may have factored into the Superintendent's decision. Had Haulage received notice, it may have brought a stay motion that would have required the weighing of all relevant factors.

[34] Haulage was entitled to some level of procedural fairness before its security was forfeited. Applying the factors above, forfeiture was a discretionary and not mandatory decision that should have involved looking at the circumstances of the individual case including the severe impact on Haulage and the strength of Haulage's appeal. Because of the nature of the decision, the impact to Haulage and its legitimate expectation that the Superintendent's approach would consider its circumstances, Haulage was entitled to notice that the Superintendent intended to forfeit the funds and an opportunity to respond.

Was the Superintendent's forfeiture decision reasonable?

[35] For similar reasons, the Superintendent's forfeiture decision was unreasonable. To be reasonable, a decision must be transparent, intelligible and justified in respect of the facts and the law: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at paras. 15, 85.

[36] Here, the only justification found in the Superintendent's internal memo recommending forfeiture and in its letter to RBC is that Haulage had ceased its operation and discontinued its programs before all students had completed their training. The Superintendent invoked s. 34(1) of the Regulation but did not attempt to justify the immediate forfeiture of the security in the circumstances of the case. Similarly, in this court, counsel did not suggest the court should find justification for the Superintendent's decision in the record. The Superintendent's position instead is that she is entitled to forfeit immediately in every case where notices like the ones in the current case are issued.

[37] The Superintendent's decision regarding whether to forfeit funds is the type of discretionary decision that would attract significant deference from the court. However, as I have set out above, the Superintendent was required to consider the circumstances of the case to determine whether immediate forfeiture was appropriate. Having failed to do so, her decision was unreasonable.

What is the appropriate remedy?

[38] In cases where the underlying decision was procedurally unfair and unreasonable, the appropriate remedy usually would be to quash the decision and remit the matter to the administrative decision-maker.

[39] The problem is that remitting the matter to the Superintendent is highly impractical in this case. *Vavilov* tells us that, in limited scenarios, remitting the matter to the administrative decision-maker is not appropriate. These include where a particular outcome is inevitable and remitting the matter would serve no useful purpose: *Vavilov*, at para. 142. For example, an outcome may be inevitable where the factual and legal constraints are such that no rational chain of analysis could lead to a different result.

[40] As set out above, when the court is determining the appropriate remedy, it may consider information that was not in the record before the decision-maker below. Here, the Tribunal has rendered its decision, and its findings cannot help but inform the assessment of whether the Superintendent could reasonably declare forfeiture of the funds.

[41] The Tribunal's reasons raise serious concerns about the Superintendent's approach to Haulage, including because the investigation into Haulage was tainted by confirmation bias. While the Tribunal agreed there was a lack of clarity in Haulage's administrative processes and documentation, it stated at para. 42 of its reasons: "[N]one of these issues rise to a level of severity that warrants refusal to renew the appellant's registration." It went on to find that the allegations of safety contraventions "were founded upon multiple assumptions *and substantial confirmation bias*" (emphasis added).

[42] The Tribunal expressly noted the absence of a history of non-compliance and Haulage's willingness to respond to feedback. It stated at para. 43 of the decision:

> Prior to issuance of the NOP and other notices on May 25, 2023, the appellant did not have a history of non-compliance, cautions or any other formal corrective action. Although the respondent described the appellant as refusing to acknowledge the inspectors' concerns and generally resistant to change, *the evidence indicates a school that is extremely responsive to the Superintendent's suggestions with a demonstrated record of resolving safety related issues and an ability to respond to and remedy administrative concerns. When the Superintendent identified issues, the appellant either resolved the problems or sought guidance for proposed solutions*. [Emphasis added.]

[43] The Tribunal lifted the immediate suspension of Haulage's operations and found Haulage's proposed action plan represented a reasonable and effective solution to the contraventions the Superintendent had proven.

[44] If the matter were to be remitted now, the Tribunal's findings would constrain the Superintendent's reasoning. In light of these factual and legal constraints, the only reasonable outcome at this point is for the Superintendent to return the funds to Haulage.

[45] This remedy does not mean the Superintendent could not have justified forfeiture after the notices were first issued. She might have been able to do so after providing notice to and receiving submissions from Haulage. But we can no longer return to that moment. Considering the Tribunal's reasons, forfeiture cannot now be justified.

[46] I also am not prepared to limit the remedy to making a declaration rather than ordering the payment of funds. Haulage was wrongly required to pay funds to the Minister of Finance without procedural fairness and based on a decision that was not justified. Its business was shut down. In these dire circumstances, it is in the interests of justice to provide a meaningful remedy.

Disposition

[47] The application is allowed. The Superintendent's decision to declare Haulage's security bond forfeit is quashed. The Superintendent shall return the amount of the forfeited funds to Haulage.

[48] The parties did not reach an agreement on costs, but Haulage's costs were lower than those claimed by the Superintendent. Haulage therefore is entitled to its costs in the amount of $28,000.

O'Brien, J.

I agree

Backhouse, J.

I agree

Kaufman, J

Released: May 26, 2025

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