QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*Chibanda v Medical Board of Australia* [2020] QCAT 362
PARTIES:	**JOHN CHIBANDA** (applicant) **v** **MEDICAL BOARD OF AUSTRALIA** (respondent)
APPLICATION NO:	OCR212-20
MATTER TYPE:	Occupational regulation matters
DELIVERED ON:	2 October 2020
HEARING DATE:	25 September 2020
HEARD AT:	Brisbane
DECISION OF:	Judge Allen QC, Deputy President
ORDERS:	**The application filed on 20 July 2020 is dismissed pursuant to section 47 of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld).**
CATCHWORDS:	PROFESSIONS AND TRADES – HEALTH CARE PROFESSIONALS – MEDICAL PRACTITIONERS – LICENSES AND REGISTRATION – where the applicant previously held special purpose registration pursuant to s 135 of the *Medical Practitioners Registration Act* 2001 (Qld) – where in 2010 the Medical Board of Queensland refused the applicant's application for renewal of his special purpose registration – where in 2010 the applicant applied to the Tribunal to review the decision of the Medical Board of Queensland – where the applicant subsequently withdrew the application for review – where more than 10 years later the applicant applies for review of the same decision – whether the Tribunal has jurisdiction to hear and determine the application – whether the applicant should have leave to make a further application for review of the decision. ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – where the applicant previously held special purpose registration pursuant to s 135 of the *Medical Practitioners Registration Act* 2001 – where in 2010 the Medical Board of Queensland refused the applicant's application for renewal of his special purpose registration – where in 2010 the applicant applied

to the Tribunal to review the decision of the Medical Board of Queensland – where the applicant subsequently withdrew the application for review – where more than 10 years later the applicant applies for review of the same decision – whether the Tribunal has jurisdiction to hear and determine the application – whether the applicant should have leave to make a further application for review of the decision.

ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – where the applicant seeks review of decisions and other relief – where the Tribunal lacks jurisdiction to review decisions or order the relief sought – whether the application should be dismissed as misconceived or lacking in substance

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 9, s 10, s 17, s 19, s 20, s 46, s 47
Health Ombudsman Act 2013 (Qld), s 94
Health Practitioners (Professional Standards) Act 1999 (Qld), s 118, s 120, s 211, s 325
Health Practitioner Regulation National Law (Queensland), s 108, s 199, s 272, s 285
Medical Practitioners Registration Act 2001 (Qld), s 15, s 35, s 77, s 135, s 145, s 147, s 237

Chibanda v Chief Executive, Queensland Health & Anor [2018] QSC 128
Chibanda v Chief Executive, Queensland Health & Anor [2020] QCA 144
Jensen v Queensland Building and Construction Commission [2019] QCATA 11
Khan v Medical Board of Australia [2011] QCAT 639

REPRESENTATION:

Applicant:	Self-represented
Respondent:	Ms J Mansell of Minter Ellison

REASONS FOR DECISION

Introduction

[1] The applicant filed an application to review a decision on 25 July 2020. The Medical Board of Australia (MBA) is named as respondent and decision-maker. The details of the decision to be reviewed are described as "Refusal of registration renewal" with the decision being made "01/2010" and the applicant receiving the decision "01/2010". It is readily apparent from the material filed by the parties that the decision the subject of the application to review is the decision of the Medical Board of Queensland (MBQ) on 18 January 2010 to refuse the applicant's application for renewal of special purpose registration, such decision notified to the

applicant by the MBQ by letter dated 17 February 2010 enclosing an information notice also dated 17 February 2010 (the renewal refusal decision[1]).

[2] In the application to review, the applicant states as follows:

> Decision was unfair due to errors of law in that the board was improperly constituted
>
> Thechair of the decision meetings was conflicted as defined under the Medical Practitioner Registration Act (2001) s 135
>
> Irrelevant issues regarding allegations of misconduct were taken into consideration despite there having been no investigation to verify/substantiate the allegations.
>
> Board,2 years later,advised of investigation findings of guilty despite applicant not having been involved in any such investigations,denying him natural justice.
>
> There was undue inflence since the then State health minister Mr Paul Lucas called for a press conference before the decision,accusing applicant of being a criminal, incompetent,practicing outside his scope,and would be dealt with mercilessly and that the board would look into his registration.A few weeks later, applicant's renewal of registration (which was due) was refused during meetings chaired by the Department of health Chief Health Officer Dr Jeannette Young (ex officio member)
> (spelling and punctuation as per original)

[3] In the application to review, the applicant seeks the following relief:

> 1) Nullification of the board decision due to breach of the Medical Practitioner Registration Act(2001) s 135,and consideration of unproven allegations in making the decision.
> 2) Nullification of findings of guilty of misconduct by applicant when no investigations had been done by the board except relying on a letter from Queensland health,who themselves,after investigations,abandoned those allegations for lack of merit.
> 3) Respondent be ordered not to deny applicant letters of good standing for unsubstantiated allegations of misconduct'
> 4) Restoration of applicant's registration pursuant to the above issues
> 5) Compensation of applicant for lost income secondary to negligence by respondent pursuant to the Civil Liability Act 2003(QLD) s9,s36,s54,s56
>
> (spelling and punctuation as per original)

[4] The renewal refusal decision was also the subject of an application by the applicant to the Tribunal to review the decision filed on 4 March 2010 (OCR 053-10). The applicant had filed an application for a stay of the renewal refusal decision on 25 February 2010. He was legally represented during the course of those proceedings before the Tribunal in 2010. On 26 March 2010 leave was granted for the applicant to withdraw his application for a stay of the renewal refusal decision. On 21 June 2010 the applicant was given leave to withdraw the substantive application for review of the renewal refusal decision.

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[1] For reasons of consistency and to aid understanding, I will adopt the nomenclature used by Davis J in *Chibanda v Chief Executive, Queensland Health & Anor* [2018] QSC 128 when referring to this and other decisions.

[5] Section 46(1) of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld) (*QCAT Act*) provides that an applicant may withdraw the applicant's application before the matter is heard and decided by the Tribunal. Section 46(3) of the *QCAT Act* relevantly further provides:

> If an applicant withdraws an application …, the applicant cannot make a further application … relating to the same facts or circumstances without leave of the tribunal.

[6] The applicant did not seek the leave of the Tribunal prior to filing his application to review (OCR212-20).

[7] In light of these circumstances, the Tribunal made directions for the filing and serving of written submissions regarding any application for leave pursuant to s 46(3) of the *QCAT Act*. Both the parties filed material prior to a hearing on 25 September 2020. At the hearing, the applicant confirmed that he was seeking leave pursuant to s 46(3) of the *QCAT Act*. The applicant made oral submissions and relied further upon the following material:

(a) the application to review a decision (OCR212-20);

(b) an affidavit of the applicant sworn 15 July 2020;

(c) an affidavit of the applicant sworn 11 September 2020;

(d) the applicant's written submissions filed 16 September 2020;

(e) the applicant's response to respondent's reply; and

(f) an email from the applicant on 24 September 2020.

[8] Later that day, subsequent to conclusion of the hearing, the applicant sent another email, the contents of which have also been considered.

[9] The respondent relied upon written submissions filed on 18 September 2020.

Background

[10] Before considering further the applicant's application for leave, some further background facts and circumstances should be noted. A convenient way of doing so is to quote passages from the reasons for judgment of Davis J in *Chibanda v Chief Executive, Queensland Heath & Anor* [2020] QCA 144. The Court of Appeal was hearing an appeal by the applicant against orders of Applegarth J dismissing the applicant's application for judicial review of the renewal refusal decision and other decisions.[2] Davis J stated as follows (footnotes omitted):

> [4] The applicant is a graduate in medicine from the University of Zimbabwe and was registered in that country to practise as a doctor. He came to Australia and was employed in the Northern Territory working at a hospital in Katherine.
>
> [5] In 2007, the applicant was engaged as a Senior Medical Officer by Queensland Health to fill a position at the Emerald Hospital. He was registered by the Medical Board of Queensland for the period 17 September 2008 to 16 September 2009 to work at the Emerald Hospital. That was a "special purpose registration" given under

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2 *Chibanda v Chief Executive, Queensland Health & Anor* [2018] QSC 128.

s 135 of the now repealed *Medical Practitioners Registration Act* 2001 (the *Registration Act*).

[6] On 21 September 2009, Dr Philip Montgomery, the Executive Director of Medical Services for the Central Queensland District of Queensland Health, wrote to the applicant. That letter dealt with several issues:

1. The applicant's clinical privileges for obstetrics and gynaecology had previously been suspended pending the applicant undertaking further training. Dr Montgomery inquired as to the progress of that training.

2. Issues had arisen concerning the professional supervision of the applicant and Dr Montgomery gave directions to the applicant concerning those issues.

3. Seven complaints about the applicant's clinical practice had been received and Dr Montgomery outlined those to the applicant and invited a response.

[7] On 25 September 2009, the applicant responded to Dr Montgomery's letter. Dr Montgomery corresponded again with the applicant by letter of 1 October 2009 making various comments about the applicant's explanation concerning the complaints. Dr Montgomery emphasised the need for the applicant to complete further training and deal with the supervision requirements.

[8] On 4 November 2009, the applicant was suspended from duty on full remuneration pursuant to ss 189 to 191 of the *Public Service Act* 2008. The grounds said to justify the suspension were allegations of "official misconduct" and the decision maker's finding that she "reasonably believe[d] that due to the nature of the allegations against [the applicant] that [the applicant] may be liable to disciplinary action". The decision to suspend the applicant is not one the applicant seeks to judicially review, but the fact that "official misconduct" was alleged is significant, as later explained.

[9] On 7 January 2010, the Medical Board of Queensland wrote to the applicant advising him that investigations were under way in relation to the competency issues raised by Dr Montgomery and a criminal conviction suffered by the applicant in Zimbabwe. On 17 February 2010, the Medical Board of Queensland refused the applicant's application for renewal of his special purpose registration (the renewal refusal decision).

[10] The applicant seeks judicial review of the renewal refusal decision. The applicant seeks relief, not against the Medical Board of Queensland, but against the second respondent, the Medical Board of Australia who, upon the introduction of the National Law, assumed the position previously occupied by the Medical Board of Queensland. No objection to that approach was taken by the second respondent.

[11] Attached to the notification of 17 February 2010 was a document headed "Information Notice: Refusal to Renew as a Special Purpose Registrant". That document:

(a) noted that the applicant was not eligible for general, specialist or special purpose registration under s 138 of the *Registration Act*;

(b) pointed to various factors leading to the conclusion that:

> "In these circumstances, the Board cannot be satisfied that you have made reasonable progress towards being qualified for General, Specialist or Special Purpose Section 138 Registration and that you are fit to practise the profession as a Senior Medical Officer at Emerald Hospital and has decided to refuse your application for renewal of Special Purpose Registration."

(c) contained:

> "**REVIEW RIGHTS AND PROCESS**
>
> Pursuant to Part 7 of the *Medical Practitioners Registration Act 2001*, you may apply for a review of this decision to the Queensland Civil and Administrative Tribunal (QCAT). Chapter 2, Part 1, Division 3 of the *Queensland Civil and Administrative Tribunal Act 2009* contains provisions about a review of this decision to QCAT.
>
> An Application for Review must be in a form substantially complying with the QCAT rules; state the reasons for the application; and be filed in the registry within 28 days after you have been given this notice. You can access forms and further information regarding QCAT at www.qcat.qld.gov.au."

[12] As the applicant then could not lawfully practise medicine, his employment with Queensland Health was terminated. The applicant does not seek judicial review of the decision terminating his employment.

[13] A report was later prepared by the Ethical Standards Unit within Queensland Health. That report is not in evidence, although parts of it are exhibited to an affidavit filed on behalf of the applicant.

[14] The report prompted a memorandum from within Queensland Health dated 20 January 2011. The memorandum records:

> "The Ethical Standards Unit investigation and report on the above matter are now complete. The report is currently being reviewed by the Crime & Misconduct Commission (CMC) and the Health Quality and Complaints Commission (HQCC).
>
> As advised in a letter from the CMC dated 11 November 2010:
>
> *While we have not completed a detailed review of the investigation report, having regard to that report and the advice given to the CMC at the abovementioned briefing (20/10/10), I confirm the CMC:*
>
> - *Is treating the above report as an interim report*
> - *Considers the recommendations identified in Part D of the investigation report are appropriate for consideration by a QHealth decision maker of possible administrative processes against the nominated officers.*
> - *Accordingly, please continue dealing with the matter. We look forward to receiving your further report advising the action proposed by the decision maker, if any,* ***before further dealing with the matter****. (emphasis added)*.

Accordingly, the CMC requires Queensland Health to advise of the decision maker's intentions to deal with this matter, before undertaking any administrative action and/or performance management with the nominated officers."

And:

"**Background**

This report relates to allegations of suspected Official Misconduct against Dr John Chibanda and potentially other officers at CQ HSD.

Allegations against Dr Chibanda arose from concerns about his clinical competence. Ultimately, it became apparent that he may have practiced whilst uncredentialed and in breach of his conditional registration.

In light of these circumstances, the authorised Terms of Reference for this investigation incorporated a risk analysis of identified patients attended to by Dr Chibanda and a systemic review of clinical governance and medical workforce issues."

[15] The memorandum bears the signature of Michael Reid, Director General of Queensland Health, as approving the report. The applicant seeks to judicially review what he says is the decision of the first respondent approving the report (the report approval decision).

[16] On 6 March 2012, a letter was sent to the applicant by the Australian Health Practitioners Regulation Agency (AHPRA) advising that:

"**Board's decision**

Under the delegated authority given by the Board, the Queensland Board of the Medical Board of Australia (the State Board) decided to take no further action on this matter. This decision was made at the Board's meeting on 6 December 2011. The Board's decision was based on its *Investigation Report* which found that on the evidence available:

- There was sufficient evidence on which the Board could form a reasonable belief that your conduct amounts to unsatisfactory professional conduct;
- However, having regard to the objects of the Act and in accordance with section 118 of the Act, the Board should take no further action about the matter and close the complaint as:
    - You are not currently registered;
    - Should you apply for re-registration you must comply with the following:
        - Successfully pass the Australian Medical Council Multiple Choice Questionnaire examination; and
        - Show evidence of your competency by undergoing a PESCI conducted by the ACRRM pursuant to section 46(1)(d) of the MPRA."

[17] The applicant seeks to judicially review what he asserts is a decision to find that "there was sufficient evidence on which the Board could form a reasonable belief that your conduct amounts to unsatisfactory professional conduct" (the finding of misconduct). Unlike the renewal refusal decision, which was a finding of the Medical Board of Queensland, the finding of misconduct was made by the Medical Board of Australia under the National Law. "The Queensland Board" referred to in the letter is a State Board within the Medical Board of Australia. It is not the Medical Board of Queensland.

[18] The application for judicial review was filed on 16 November 2017.

The application for judicial review and the dismissal of the application

[19] The effect of the various decisions made by the respondents is that the applicant ceased to be qualified to lawfully practise medicine and his employment with Queensland Health was terminated.

[20] The application for judicial review was made under Part 3 of the *Judicial Review Act* 1991 (the *JR Act*). Section 20(1) provides:

> "**20 Application for review of decision**
>
> (1) A person who is aggrieved by a decision to which this Act applies may apply to the court for a statutory order of review in relation to the decision."

[21] The applicant is clearly a "person aggrieved" by any reviewable decision made by the respondents which resulted in his deregistration and dismissal. A decision which is reviewable under the *JR Act* is one which is:

> "(a) a decision of an administrative character made, proposed to be made, or required to be made, under an enactment (whether or not in the exercise of a discretion);"

[22] The applicant represented himself both at first instance and on appeal. His application for judicial review did not clearly identify the decisions which he sought to review. When particulars were sought by the respondents, three decisions were identified as those which the applicant challenged. They are:

(a) The renewal refusal decision made on 17 February 2010. That is a decision by the Medical Board of Queensland and, for practical purposes, a decision of the second respondent.

(b) The report approval decision made on 20 January 2011, a decision of the first respondent.

(c) The finding of misconduct notified by the letter of 6 March 2012, a decision of the second respondent.

[23] By s 26 of the *JR Act* an application must be filed within 28 days of notification of the decision, although when the decision is not accompanied by a statement of reasons, the period runs from the time of provision of the reasons. The last in time of the three determinations was the finding of misconduct which was notified to the applicant by the letter of 6 March 2012. It may have been, as Applegarth J observed, that the applicant did not in fact see the

finding of misconduct until 27 November 2012. Even so, the application was, at best, almost five years out of time.

[24] Section 48 of the *JR Act* permits a respondent to apply for summary dismissal of an application for judicial review upon various grounds, including where there is "no reasonable basis for the application … disclosed".

[25] The two respondents sought dismissal of the applicant's application for judicial review because it was filed years out of time and because the proceeding did not disclose a reasonable basis to conclude that the decisions were amenable to judicial review. The applicant cross-applied for an extension of time within which to make the application for review.

[26] In support of his application for an extension of time, the applicant filed three affidavits all sworn by him. In these affidavits, the applicant told of his dealings with the respondents and disputed the finding of misconduct. He also offered reasons why the renewal refusal was unjustified. While the applicant asserted that his dealings with the respondents were difficult, and by inference time consuming, there was no coherent explanation for the delay in filing the application for judicial review.

[27] Applegarth J identified the three decisions which the applicant sought to review. In relation to all three, his Honour found that there was no adequate explanation for the delay in filing the application for judicial review and that justified the dismissal of the application.

[28] As to the report approval decision and the finding of misconduct, his Honour found neither to be reviewable decisions. As to the renewal refusal decision, his Honour found that there was an alternative avenue to seek judicial review which was by way of appeal to the Queensland Civil and Administrative Tribunal (QCAT) which had been embarked upon and abandoned by the applicant, without adequate explanation. His Honour held that it was therefore inappropriate to grant the applicant an extension of time to pursue judicial review.

[11] I will not quote further from the reasons of Davis J (with whom Sofronoff P and Boddice J agreed) in dismissing the applicant's appeal against the decision of Applegarth J except to note his Honour's reasons in refusing an application by the applicant to adduce fresh evidence:

[62] By the evidence which the applicant wishes to have admitted on appeal, the applicant seeks to explain the delay in bringing the application for judicial review and seeks to explain why the QCAT proceedings were abandoned. His submission must be that it was not in "the interests of justice" to dismiss the application even though there was an alternative avenue of review.

[63] The applicant's proposed new evidence makes a series of allegations and assertions attempting to explain the delay in filing the application for judicial review. These include:

(a) the applicant had marital difficulties;

(b) he sought relief in both the QCAT and the Queensland Industrial Relations Commission as a result of his dismissal;

(c) the respondents delayed in releasing relevant documents to him; and

(d) the applicant spent time making his own inquiries into the misconduct allegations.

[64] If the new evidence is admitted, none of it overcomes critical matters:

(a) The refusal to renew the applicant's special purpose registration was made on 17 February 2010, over seven and a half years before the application for judicial review was filed.

(b) An avenue of appeal to QCAT was statutorily provided, therefore enlivening s 13 of the *JR Act*.

(c) An application to QCAT was filed on 25 February 2010.

(d) The QCAT application was subsequently withdrawn on 21 June 2010.

[65] There is nothing in the evidence which satisfactorily explains the seven year delay and nothing which would suggest that it is not in the interests of justice for the judicial review application to be dismissed pursuant to s 13 of the *JR Act*. For those reasons, I would refuse the application to adduce fresh evidence.

[12] Further by way of background, it should be noted that the applicant, by an application to review filed in the Tribunal on 28 March 2017 (OCR071-17), sought review of the "Report on misconduct Queensland Health File Ref: ETHU000389". It is clear from the terms of that application that the applicant sought "nullification" of the report referred to in paragraphs [13]-[15] of the reasons of Davis J quoted above. On 16 June 2017 the Tribunal directed the Principal Registrar to reject the application to review for the reason that the Tribunal had no jurisdiction as the application failed to identify any reviewable decision pursuant to s 17(1) of the *QCAT Act*.

Application to review the renewal refusal decision

[13] Until 16 September 2009 the applicant held special purpose registration pursuant to s 135 of the *Medical Practitioners Registration Act* 2001 (*Registration Act*). He applied for a renewal of that special purpose registration. The MBQ was required to consider those matters specified in s 145 of the *Registration Act* in deciding whether to renew the special purpose registration. If it had decided to renew the special purpose registration, the registration would have remained in force for a period of not more than a year decided by the MBQ when deciding to renew the registration: s 147 of the *Registration Act*. The MBQ decided to refuse to renew the applicant's special purpose registration and, as required by s 77(2) of the *Registration Act*, gave the applicant an information notice about the decision, thus entitling the applicant, pursuant to s 237 of the *Registration Act*, to apply, as provided under the *QCAT Act*, to the Tribunal for a review of the decision. As noted earlier, the applicant exercised that entitlement to apply to the Tribunal for a review of the decision. The applicant was granted leave to withdraw such application on 21 June 2010.

[14] The *Registration Act* was repealed on 1 July 2010 upon the commencement of the Health Practitioner Regulation National Law (Queensland) (National Law). On 1 July 2010 the applicant no longer held registration under the *Registration Act* and no longer had proceedings before the Tribunal with respect to the refusal of the renewal

of his registration under the *Registration Act*. There was no registration or proceedings with respect to his registration subsisting on 1 July 2010 to be saved by the relevant transitional provisions of the National Law.[3] The provisions of the *Registration Act* which originally entitled the applicant to apply to the Tribunal for a review of the renewal refusal decision have been repealed and do not now provide the applicant with such an entitlement to apply to the Tribunal or confer on the Tribunal jurisdiction to hear and determine such an application.

[15] The provisions of the National Law now govern the registration and renewal of registration of health practitioners. Section 199(1)(c) of the National Law provides a right of appeal to the Tribunal by a person subject to a decision by a National Board to refuse to renew the person's registration. The renewal refusal decision was made by the MBQ, not by the relevant National Board, the MBA. Section 199 of the National Law does not provide the applicant with an avenue to appeal the renewal refusal decision. Section 94(2)(b) of the *Health Ombudsman Act* 2013 (Qld) confers jurisdiction on the Tribunal to review an appellable decision under s 199 of the National Law. It does not confer on the Tribunal jurisdiction to review the renewal refusal decision made pursuant to the *Registration Act*. The Tribunal does not have jurisdiction to deal with the applicant's application to review the renewal refusal decision.[4]

[16] Even if the Tribunal had jurisdiction to review the renewal refusal decision, a proper exercise of the discretion pursuant to s 46(3) of the *QCAT Act* would lead to a refusal of leave to bring another application to review the decision.

[17] In *Jensen v Queensland Building and Construction Commission* [2017] QCAT 232 the Appeal Tribunal stated at [12]-[13]:

> … s 46(3) of the *QCAT Act*, … provides the specific bar to a further application relating to the same facts or circumstances without leave of the Tribunal. That might be a reflection of the nature of the QCAT jurisdiction, including the desirability of certainty and finality in relation to decisions impacting public bodies, the strict time limits for bringing applications and the object of having the Tribunal deal with matters in a way that is accessible, fair, just, economical, informal and quick. On that basis, it would seem that considerations such as the merits of the application, the reasons for the initial withdrawal, the reasons for bringing a fresh application, the lapse of time and the issue of prejudice are relevant to the exercise of what appears to be a broad discretion as to whether to grant leave.
>
> Those considerations are not all together dissimilar to the factors to be considered and exercising the discretion to grant an extension of time: whether there has been a reasonable explanation for the delay, the strength of the applicant's case, prejudice to adverse parties, the length of the delay, and, overall, whether it is in the interest of justice to grant and extension.

[18] All such considerations weigh against a grant of leave in this matter.

[19] There is no utility in examining at any length the merits of the application. The applicant has made extensive submissions as to alleged errors of fact or law on the part of the decision maker including denials of procedural fairness, taking into account irrelevant considerations and failing to take into account relevant

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3 *National Law,* s 108, s 272 and s 285; cf *Kahn v Medical Board of Australia* [2011] QCAT 639.

4 See *QCAT Act*, s 9, s 17.

considerations. He complains that the Chief Health Officer, who was an ex officio member of the MBQ,[5] did not declare an interest in the consideration by the MBQ of his application for renewal of registration as required by s 35 of the *Registration Act*. The applicant however advances no coherent argument as to why the Chief Health Officer was conflicted in her decision making as a member of the Registration Advisory Committee of the MBQ and as member of the MBQ. In any event, such matters are entirely irrelevant to the task that the Tribunal would have needed to determine should it had jurisdiction and leave was granted. In its review jurisdiction, the Tribunal is not tasked with finding error on the part of a decision maker; it is not a process of judicial review but rather a fresh hearing on the merits for the purpose of producing the correct and preferable decision.[6] A review of the material filed in the proceedings OCR053-10 and more recently in proceedings OCR212-20 suggest that the applicant's prospects of success in a review of the decision in 2010 were poor. His prospects of doing so now, had the Tribunal had jurisdiction to determine such a matter, can only be characterised as hopeless. The merits of the application weigh against a grant of leave.

[20] As to the reasons for the initial withdrawal of the application in OCR053-10, the applicant contends that at that time he did not have a copy of the minutes of the respondent's decision-meetings and that the application was abandoned due to lack of supporting documents to sustain an argument. Apparently, this is the argument concerning the involvement of the Chief Health Officer in deliberations of the Registration Advisory Committee of the MBQ and of the MBQ. The applicant contends that he only accessed the records of such minutes some two to three years later. He similarly contends:

> Applicant abandoned the matter due to lack of evidence, at the material time, of minutes of deliberations and participants during that process, which would prove difficult to sustain any legal argument.
>
> Minutes of respondent's meetings and the decision-making process only became available to applicant about 3-4 years later.

[21] These contentions cannot be accepted. A consideration of the contents of the file in OCR 053-10 reveals that on 31 May 2010 the respondent filed an affidavit of Jeannette Young, Chief Health Officer, who disposed as to her involvement in the deliberations of the Registration Advisory Committee of the MBQ and of the MBQ resulting in the renewal refusal decision. In her affidavit, Dr Young refers to the copies of the minutes at pages 49-51 of the record book filed in the proceedings by the respondent on 1 April 2010. Those are copies of the very same minutes which the applicant claims he only belatedly received some years later. In any event, for the reasons already discussed, the fact of involvement of Dr Young in the decision-making process was irrelevant to the merits of the applicant's application in 2010 and also to any proposed application now. The reasons for the initial withdrawal do not support a grant of leave.

[22] As for the reasons for bringing the fresh application, the applicant seems not so much concerned with obtaining re-registration by an order of the Tribunal - I suspect the applicant realises there is no realistic prospect of such a result - but more concerned with challenging the subsequent "finding of misconduct"[7] by the MBQ.

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5 *Registration Act*, s 15.
6 *QCAT Act*, s 19, s 20.
7 See *Chibanda v Chief Executive*, *Queensland Health & Anor* [2020] QCA 144 at [17].

The applicant's reasons for bringing the fresh application weigh against a grant of leave.

[23] As to the lapse of time between the withdrawal of the original application and the application for leave to make a fresh application, the applicant refers to him only becoming aware of the contents of the minutes of the MBQ some years after the initial application. I have already considered and rejected such contention. The applicant contends that financial hardship, marital issues and health issues contributed to him further delaying in seeking review of the matter. No doubt the steps taken by the applicant in the Tribunal in 2017 and in the Supreme Court and Court of Appeal in 2018 to 2020 would account for further delay. It appears that the applicant only filed the further application before the Tribunal upon his failure in litigation in the Supreme Court. Ultimately, the delay of more than 10 years between withdrawal of the original application and filing of the fresh application is not satisfactorily explained. This factor also weighs against a grant of leave.

[24] Had the Tribunal had jurisdiction to hear and determine the application, I would have refused the applicant leave pursuant to s 46(3) of the *QCAT Act* to bring such application.

Other relief sought in the application

[25] Only the registration renewal decision is specified in the application to review as the decision to be reviewed. However, relief sought includes "Nullification of findings of guilty of misconduct by applicant" and that the "respondent be ordered not to deny applicant letters of good standing for unsubstantiated allegations of misconduct". This apparently relates to the "finding of misconduct" notified by the letter of the Australian Health Practitioner Regulation Agency of 6 March 2012. It is the decision detailed in the reasons of Davis J in *Chibanda v Chief Executive, Queensland Health & Anor* [2020] QCA 144 at [16] and [17], quoted earlier in these reasons. Davis J refers to relevant legislation in *Chibanda v Chief Executive, Queensland Health & Anor* [2020] QCA 144 at [43]-[46]. The letter constituted notice pursuant to s 120 of the *Health Practitioners (Professional Standards) Act* 1999 (Qld), since repealed. It provided notice of the decision of the MBQ, pursuant to s 118(1)(c)(vii) of the *Health Practitioners (Professional Standards) Act* 1999 (Qld), to take no further action about a disciplinary matter. The *Health Practitioners (Professional Standards) Act* 1999 (Qld), before its repeal, conferred jurisdiction upon the Tribunal to review certain decisions pursuant to that Act.[8] Those decisions did not include a decision pursuant to s 188 of the Act. The Tribunal has never had jurisdiction to review such a decision.[9] Insofar as the application to review purports to seek a review of such a decision, it is misconceived.

[26] The application to review also seeks relief by way of "compensation of applicant for lost income secondary to negligence by respondent" pursuant to ss 9, 36, 54 and 56 of the *Civil Liability Act* 2003(Qld). The Tribunal does not have jurisdiction to hear such claim or provide such relief.[10] Insofar as the application seeks to make such a claim, it is misconceived.

Conclusion

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8 *Health Practitioner (Professional Standards) Act* 1999 (Qld), s 211(1)(b), s 325.
9 *QCAT Act*, s 9, s 17.
10 *QCAT Act*, s 9, s 10.

[27] The applicant's application to review is entirely misconceived and totally devoid of merit. The Tribunal does not now have jurisdiction to hear and determine the application to review the renewal refusal decision. Even if it did, a proper exercise of discretion pursuant to s 46(3) of the *QCAT Act* would lead to a refusal of leave to make such application. The Tribunal does not have jurisdiction to review the other decisions referred to in the application for review or grant the other relief sought by the applicant.

[28] The application to review is misconceived and lacking in substance and should be dismissed pursuant to s 47 of the *QCAT Act*.