

IN THE MATTER OF A HEARING BY  
THE DISCIPLINE COMMITTEE OF THE COLLEGE OF MASSAGE THERAPISTS  
OF BRITISH COLUMBIA CONVENED PURSUANT TO THE PROVISIONS OF  
THE *HEALTH PROFESSIONS ACT* RSBC 1996, c.183

BETWEEN:

College of Massage Therapists of British Columbia

(the "College")

AND:

Leonard Krekic

(the "Respondent")

**REASONS FOR DECISION**  
**(Penalty and Costs)**

**Date and Place of Hearing:**

By written submissions

**Panel of the Discipline Committee (the "Panel")**

Arnold Abramson, Chair  
Elisa Peterson, RMT  
Michael Wiebe, RMT

**Counsel for the College:**

Elizabeth Allan  
Greg Cavouras

**Counsel for the Respondent:**

Scott Nicoll  
Gurleen Randhawa

**Counsel for the Panel:**

Susan Precious

## **Introduction**

1. On August 5, 2022, this panel of the Discipline Committee (the “Panel”) of the College of Massage Therapists of British Columbia (the “College” or “CMTBC”) rendered its Reasons for Decision pursuant to section 39 of the *Health Professions Act*, R.S.B.C. 1996 c.183 (the “Act” or “HPA”) in relation to the allegations set out in the citation dated August 5, 2020 (the “Citation”). The Panel determined that the Respondent committed professional misconduct, committed unprofessional conduct, breached the College’s Bylaws, breached the College’s Consent Standard, breached the College’s Boundaries Standard and breached the College’s Code of Ethics (the “Conduct Decision”).
2. In the Conduct Decision, the Panel requested written submissions on the appropriate penalty and whether costs should be imposed. The College delivered its written submissions on October 7, 2022. On November 4, 2022, the Respondent delivered his written submissions. On November 10, 2022, the College delivered its reply submissions.
3. The College seeks the following:
  - a. an order that the Respondent’s registration be cancelled commencing from the date that he is made aware of the Panel’s order pursuant to section 39(2)(e) of the HPA;
  - b. a direction that the Respondent is not eligible to apply for reinstatement until January 1, 2048, pursuant to section 39(8)(b)(i) of the HPA;
  - c. an order that the Respondent pay a fine in the amount of \$10,000 pursuant to section 39(2)(f) of the HPA<sup>1</sup>; and
  - d. an order that the Respondent pay costs and disbursements the sum of \$95,952.51 pursuant to section 39(5) of the HPA.<sup>2</sup>

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<sup>1</sup> In its original submissions the College sought a fine of \$40,000. In reply, it modified its position in light of the *Re Anderson* decision which was released after the College’s closing submissions and before its reply submissions.

<sup>2</sup> In its original submissions the College sought costs and disbursements \$97,452.51. The College modified its position in reply on review of the Respondent’s submissions. The original figure of \$97,452.51

### **Legal Framework for Penalty and Costs**

4. Having made a determination pursuant to section 39(1) of the Act, the Panel must decide what, if any, penalty is appropriate. Section 39(2) of the Act authorizes the Panel to impose the following penalties:

39 (2) If a determination is made under subsection (1), the discipline committee may, by order, do one or more of the following:

- (a) reprimand the respondent;
- (b) impose limits or conditions on the respondent's practice of the designated health profession;
- (c) suspend the respondent's registration;
- (d) subject to the bylaws, impose limits or conditions on the management of the respondent's practice during the suspension;
- (e) cancel the respondent's registration;
- (f) fine the respondent in an amount not exceeding the maximum fine established under section 19 (1) (w).

5. If the Panel orders a suspension or cancellation, the following additional provisions apply:

39 (8) If the registration of the respondent is suspended or cancelled under subsection (2), the discipline committee may

- (a) impose conditions on the lifting of the suspension or the eligibility to apply for reinstatement of registration,
- (b) direct that the lifting of the suspension or the eligibility to apply for reinstatement of registration will occur on
  - (i) a date specified in the order, or
  - (ii) the date the discipline committee or the board determines that the respondent has complied with the conditions imposed under paragraph (a), and
- (c) impose conditions on the respondent's practice of the designated health profession that apply after the lifting of the suspension or the reinstatement of registration.

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is set out at paras. 9, 188, 193 of the College's submissions, despite reference at para. 34 (d) of the College's reply submission to a reduction in the College's position from \$95,952.51. The Panel sought clarification from the College on this point who confirmed it is seeking the reduced amount of \$95,952.51 from its original position of \$97,452.51.

6. Section 39(5) and (7) authorizes the Panel to award costs to the College in an amount not to exceed 50% of the actual legal costs to the College for the hearing:

39 (5) If the discipline committee acts under subsection (2), it may award costs to the college against the respondent, based on the tariff of costs established under section 19 (1) (w.1).

[...]

(7) Costs awarded under subsection (5) must not exceed, in total, 50% of the actual costs to the college for legal representation for the purposes of the hearing.

### **Jurisdiction over Former Registrant**

7. On October 26, 2020, the Respondent became a former registrant when he resigned his registration with the College.

8. Section 26 of the HPA defines “registrant” to include “former registrant” for the purposes of Part 3 of the Act which deals with “Inspections, Inquiries and Discipline”:

"registrant" includes a former registrant, and a certified non-registrant or former certified non-registrant to whom this Part applies;

9. The Discipline Committee dealt with the jurisdiction of a former registrant in *College of Massage Therapists of British Columbia v. Gill*, 2019 CMTBC 01:

25. The Panel agrees with the rationale above. The interpretation of the HPA should likewise be given a purposive approach having regard to the College’s duty to protect the public. Interpretations that limit the College’s sanctioning powers and encourage members to resign or allow their registration to lapse in order to avoid consequences are contrary to the purpose of the HPA. This is particularly the case, where the College’s registration committee is required to process registration applications and grant registration to individuals who meet the conditions and requirements under section 20(2) of the HPA.

26. The Panel finds, having regard to the words of the statute, their context, and the purpose of the HPA, that the HPA’s reference to “registrant” and “respondent” in sections 37 to 39 includes a “former registrant”. The Panel finds that it may order any of the penalties listed in section 39(2) against a former registrant, including a suspension.

10. This reasoning has been followed in *Re Morgan* (June 8, 2021) and *Re Anderson* (October 20, 2022). The Panel notes this reasoning is consistent with *College of Nurses of Ontario v. Dumchin*, 2016 ONSC 626. The Panel adopts the reasoning in *Re Gill* and finds that it has jurisdiction to impose orders under section 39 against the Respondent.

## General Approach

11. The primary purposes for professional sanctions are to protect the public and preserve the public's confidence in the regulation of the profession.
12. The relevant factors to consider in determining an appropriate penalty are set out in *Law Society of British Columbia v. Ogilvie*, [1999] LSBC 17:
  - a. the nature and gravity of the conduct proven;
  - b. the age and experience of the respondent;
  - c. the previous character of the respondent, including details of prior discipline;
  - d. the impact upon the victim;
  - e. the advantage gained, or to be gained, by the respondent;
  - f. the number of times the offending conduct occurred;
  - g. whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;
  - h. the possibility of remediating or rehabilitating the respondent;
  - i. the impact on the respondent of criminal or other sanctions or penalties;
  - j. the impact of the proposed penalty on the respondent;
  - k. the need for specific and general deterrence;
  - l. the need to ensure the public's confidence in the integrity of the profession;  
and
  - m. the range of penalties imposed in similar cases.
13. *Law Society of BC v. Dent*, 2016 LSBC 05 consolidated the list of relevant factors to consider in determining an appropriate penalty:
  - a. nature, gravity and consequences of conduct;
  - b. character and professional conduct record of the respondent;

- c. acknowledgement of the misconduct and remedial action; and
  - d. public confidence in the legal profession including public confidence in the disciplinary process.
14. Many professional regulation tribunals, including this College's Discipline Committee, have considered the *Ogilvie / Dent* factors. These factors were applied in *Re Gill*, *Re Morgan* and *Re Anderson*. The Panel considers the *Ogilvie / Dent* factors to be the appropriate framework in this case.

***Nature, Gravity and Consequences of Conduct***

15. The College submits that the Respondent's core misconduct is the sexualized touching of six of his patients which, constituted a fundamental violation of the patient and massage therapist relationship. The College notes that the Conduct Decision repeatedly held that the Respondent committed a serious breach of trust. The College underlines the duration and frequency of the Respondent's conduct: "From 2012 to 2019, the Respondent repeatedly victimized his patients, sometimes committing similar acts of misconduct with different patients in a matter of days, and once on the same day." The College submits that the complainants gave compelling evidence about the impact of the Respondent's conduct on them. The College argues that the nature, frequency, duration, and consequences of the Respondent's misconduct are significant aggravating factors and point to the need for a very significant penalty.
16. With respect to the Respondent hugging two of his patients, the College submits that this represents inappropriate non-therapeutic touch. The College submits that this conduct must be viewed in context. The two patients involved were also victims of the sexualized touching by the Respondent. The Respondent hugged Patient 6 for longer and longer periods of time which made her increasingly uncomfortable. With respect to Patient 1, the College notes that she was "not a hugger."
17. The Respondent also made inappropriate personal disclosures and engaged in inappropriate faith-based conversations, including prayer, with three patients. His

conduct was focussed on himself and not for purposes of patient-centred care. His conduct had negative impacts on his patients.

18. The College submits that the Respondent's close personal relationship with Patient 6 was exploitative and focussed on his personal and financial interests to the detriment of a much younger patient. The College argues that the Respondent's inappropriate relationship with Patient 6 was an indefensible breach of trust and abuse of the power imbalance inherent in the therapeutic relationship.
19. The College relies upon *Ontario (College of Pharmacists) v. Rak*, 2018 ONCPDC and argues that the Respondent's breach of a section 35 order is very serious and has indicators of ungovernability. The College argues that the Respondent's conduct amounts to a "significant moral failing" and an "egregious assault on the concept of self-regulation."
20. The College argues that the Respondent's failure to promptly provide records when requested included at least one false statement. The Respondent's conduct frustrated and delayed the College's investigation which undermined the College's ability to regulate the profession of massage therapy in the public interest.
21. The College argues that by practising without insurance, the Respondent exposed his patients to uninsured risk. His conduct is aggravated by the fact that he continued to practise massage therapy after he knew that he had no insurance. The College argues that this demonstrates he can only have been motivated by his financial interests. The College relies upon *Ontario (College of Physiotherapists of Ontario) v. Shah*, 2019 ONCPO 26 to argue that patients are entitled to assume their health care practitioners hold appropriate insurance and a member who fails to do so is not acting in the best interests of their patients by exposing them to significant harm.
22. In sum, the College argues that this is the most important *Ogilvie / Dent* factor in assessing the Respondent's misconduct. As stated in *Law Society of British Columbia v. Ganapathi*, 2021 LSBC 14, the seriousness of the misconduct is the "prime determinant of the sanction imposed." The College argues that the Respondent's misconduct has been extensive in time and nature, and the repeated

sexualized touching of the complainants is the most serious and harmful of the Respondent's conduct. The College underlines that the Respondent's other forms of misconduct are also significant and merit strong denunciation. Taken together, the types of misconduct point to a very significant penalty. The College argues that the Respondent has no regard for the fundamental values of his profession and prioritizes his own interests.

23. The Respondent did not dispute the College's main submissions about the nature and gravity of his conduct. The Respondent argued that a mitigating factor is that the Respondent did not obtain any financial gain from the misconduct. The Respondent submits that the consequences for him have been severe. He is unable to practice as a registered massage therapist, his reputation has been ruined, and the proceedings have resulted in the termination of his marriage and the loss of his primary relationship. His relationship with his children has also been adversely impacted given the limited amount of time he is allowed to spend with them. He argues that his life as he once knew it has been ruined.
24. In reply, the College argues that the Respondent has mischaracterized this factor. Instead of focusing on the nature and consequences of the Respondent's conduct on his patients, he has attempted to re-cast himself as a victim. The College argues the fact that the Respondent may have experienced other negative consequences as a result of his misconduct is his own responsibility, not that of the College, and should not be treated as a mitigating factor.
25. The Panel finds that this is one of the most serious cases to come before the Discipline Committee, if not the most serious case. The nature, gravity and consequences of the Respondent's conduct is at the most serious end of the spectrum. The Respondent committed 27 acts of professional misconduct, seven acts of unprofessional conduct, breached the College's Bylaws 11 times, breached the College's Consent Standard three times, breached the College's Boundaries Standard 12 times and breached the College's Code of Ethics 14 times. The Respondent's conduct involved six patients over a period of eight years.



26. The Panel agrees with the College's submission that the sexual misconduct is the most serious of the Respondent's misconduct. The Respondent's sexualized touching of six patients is a violation of the fundamental relationship between a patient and their massage therapist and a serious breach of trust. The duration, frequency and consequences of the Respondent's conduct are aggravating factors. From 2012 to 2019, the Respondent engaged in repeated occurrences of sexual misconduct, sometimes committing similar acts of misconduct with different patients in a matter of days, and once on the same day.
27. The Panel also finds that the consequences of the Respondent's misconduct are serious. The impact of the Respondent's misconduct on the complainants was profound. The Respondent's actions have had lasting negative effects on the complainants. Patient 1 testified about the impact of the Respondent's conduct upon her intimacy. She testified that it has made her more nervous, and second guess peoples' opinions and recommendations. Patient 1 testified that it has made her not want to pursue massage therapy or see a male practitioner. Patient 3 described experiencing anxiety attacks and other physical symptoms. Patient 4 has not seen a massage therapist since the Respondent, and is taking medication for depression, anxiety and PTSD. Patient 5 feels that she has failed as a mother and has not seen a massage therapist since the Respondent which has affected her physically as she heavily relied upon those treatments. Patient 6 described feeling that the Respondent took advantage of her trust and vulnerability. Patient 2 described the effect of the Respondent's conduct upon her as follows:

Yeah, there was the continued preoccupation with doors locking, like, being locked. There would be intrusive thoughts. I also had a lot of anxiety every time my phone rang because I was so terrified that he would call me. And I knew that he had -- like, I assumed that he had my number and every time my phone rang, I would have this intense anxious feeling of wondering who it was. Was it him? And I was just very startle-y and jumpy. If I was working around my house and something in the dish rack shifted suddenly, I would just jump out of my skin. So I was very hypervigilant and continue to just have distressing thoughts and memories from that day.

[..]

I felt like there was a fundamental sense of betrayal and exploitation because you're so vulnerable when you get a massage and you're agreeing to have a person that, in most cases, you don't know -- I didn't know him -- to use a manual

therapy. Usually, like, you're by yourself in this room with him. Like, it's so vulnerable. And I was so honest with him about how desperate I was, and he was so adamant that he could help me, he used spiritual language, he sort of painted himself as someone that God would use and God had used. He helped his wife. So I just felt a greater sense of trust initially because we shared the same faith community.

So here I am as a desperate patient going to a professional licenced massage therapist who is also a Christian who speaks in spiritual terms who exploited my desperation. The trust that I had in him, he exploited that power imbalance, and he harmed me, and that was truly a huge emotional upset.

Yeah, just fundamentally I trusted him. I believed him when he said that he could help me, and he exploited that and hurt me. And even, like, to this day, I prefer and I try not to see male massage therapists, because I will feel really anxious even at the beginning of a massage appointment with a female. And when I have seen, like, other male practitioners -- I saw a male chiropractor who specialized in treating migraines, and I felt anxious and nauseous and sick and that's, like, years on.

So just all of those factors kind of came together to just really perpetuate the deep sense of betrayal and that he had exploited the trust that I had placed in him.

28. The Panel finds that the seriousness of the Respondent's conduct of hugging his patients must be viewed in context. The two patients he hugged were ones whom he touched sexually.
29. The Panel finds that the Respondent's inappropriate personal disclosures and inappropriate faith-based conversations with three patients was also serious. His conduct was focussed on himself and not his patients. This conduct must also be seen in context as it occurred with patients whom the Respondent touched sexually. The complainants' testimony about feeling manipulated and betrayed was connected to these communications.
30. The Panel finds that the Respondent's personal relationship with Patient 6 was serious. The Respondent's conduct was a breach of trust and abuse of the power imbalance. Patient 6 was much younger and was a patient. The Respondent's close personal relationship was exploitative for his personal and financial gain.
31. The Panel finds that the Respondent's breach of a section 35 order is also very serious. The Panel agrees with the College's submission that it has indicators of ungovernability. It goes to the very heart of self-regulation. It demonstrates the Respondent's prioritization of his personal and financial interests above his patients

and the public, and his flagrant disregard of the College and his professional obligations.

32. The Panel finds that the Respondent's failure to promptly provide records when requested to be serious as it delayed and frustrated the College's investigation, which is one of its core functions as a professional regulator.
33. The Panel finds that the Respondent practising without insurance is serious. He exposed his patients to harm. It is aggravating that the Respondent continued to practice without insurance after he knew that he had no insurance. This demonstrates again his focus on his personal and financial interests.
34. The Panel finds that any personal consequences that the Respondent experienced as of result of his misconduct are not mitigating for the purposes of the assessment of this factor.
35. The Panel finds that the Respondent's conduct was at the most serious end of the spectrum when considering the nature, gravity and consequences of conduct and weighs in favour of the imposition of the most serious penalty.

***Character and Professional Conduct Record of the Respondent***

36. The College notes that the Respondent was born on August 5, 1971 and is currently 51 years old. He initially became a registrant of the College on October 23, 1995. The College submits that he was, at the material times, a senior member of the profession.
37. The earliest misconduct was from late 2011. At that time, the Respondent had been an RMT for more than 16 years. The most recent misconduct was in 2019. At that time, the Respondent had been a RMT for more than 23 years.
38. The College notes that the Respondent testified that he viewed himself as a leader in the profession. He was on the Board of the College and taught continuing education courses.
39. The College submits that the Respondent's age and experience are aggravating factors.

40. The College acknowledges that the Respondent does not have a prior disciplinary record. The College argues that this is not mitigating for several reasons. First, the case concerns fundamental misconduct. Second, the case concerns multiple instances of misconduct involving six patients over several years. This is not a case involving an isolated incident. The only reason that the Respondent does not have a lengthy record is because of the timing of the complaints which were not reported and prosecuted chronologically, and the timing of the hearing. Third, this case involves repeated misconduct that occurred long after the issues were brought to the Respondent's attention.
41. The Respondent pointed out his age and that he graduated from the West Coast College of Massage Therapy in 1995 and began practising that year. He highlights that he took various courses to further his knowledge in massage therapy, his commitment to continuing education, and his reputation amongst his colleagues was that of a skilled and experienced RMT. The Respondent submits that the absence of a prior professional disciplinary history is a mitigating factor.
42. The Panel finds that the Respondent was a senior member of the profession at the material times. While he has no prior disciplinary record, the Panel finds that this is because of the timing of the reporting and prosecution of the complaints. This is not a situation of an inexperienced member of the profession involving an isolated incident. The Respondent engaged in serious, repeated misconduct with multiple patients over many years. The Panel finds that the Respondent's age and experience is an aggravating factor, and the absence of a disciplinary record is not a mitigating factor in this case. Overall, this factor weighs in favour of the imposition of a more serious penalty.

***Acknowledgement of the Misconduct and Remedial Action***

43. The College submits that the Respondent has made no meaningful acknowledgement of his misconduct. Throughout the proceedings, he continued to vigorously deny the allegations which are now proven. On several occasions, the Respondent stated, "I would never" engage in the type of conduct which was at

issue. The College argues that it is difficult to imagine a respondent who has shown less insight and acknowledgment of their misconduct than this one.

44. The Respondent argues that he made several admissions prior to the commencement of the Discipline Hearing which show an acknowledgement of his misconduct. The Respondent argues that he reflected on his actions and made admissions in instances where he felt he could have improved his conduct or done things differently.
45. In reply, the College argues that the Respondent's admissions were not an acknowledgement of misconduct and were not delivered prior to the commencement of the hearing. He provided them by letter dated March 16, 2021, several days after the hearing commenced and the night before the College closed its case. The College submits that far from acknowledging the misconduct, the Respondent repeatedly denied the core issues and tried to deflect or recast them.
46. The Panel recognizes that the Respondent did make some admissions and partial admissions. Those are relevant to the assessment of his acknowledgement of the misconduct. The Respondent's admissions were made during the proceedings and in the Respondent's closing submissions. The core features of the most serious allegations were not admitted. For the most part, the Respondent was resolute in his denial of any professional wrongdoing throughout the proceedings. He displayed little insight into his conduct and no insight into the impact of his conduct on the complainants. The absence of remorse or insight is not an aggravating factor for purposes of the sanctions analysis; however, it may be the absence of a mitigating factor.
47. The Panel finds the Respondent has not taken any remedial steps or efforts to address the wrongs committed. The Panel is not persuaded that the Respondent will conduct himself any differently going forward.
48. The Panel finds that there to be an absence of mitigating circumstances for the purposes of this factor.

***Public Confidence in the Profession Including in the Disciplinary Process***

49. The College notes that this factor involves an assessment of general deterrence, specific deterrence and a review of the range of penalties in other similar cases.
50. The College submits that in respect of general deterrence, registrants should have no doubt that if they engage in sexual misconduct with patients, they will face the most serious penalties. The College relies upon *Re Morgan* which held that for the public to maintain confidence in the College, the message must be clear and unequivocal that sexual touching of patients by registrants will not be tolerated. Registrants should have no doubt that if they engage in sexual misconduct with patients, they will face the most serious penalties that the College has available under its enabling legislation. The College submits that the Respondent's other forms of misconduct also require strong denunciation and deterrence.
51. The College submits that the Respondent's conduct indicates a need for specific deterrence as it spanned several years and did not change despite the inflow of complaints and the Respondent's attendance at several section 35 proceedings. The College submits that the Respondent took steps to conceal his misconduct from the College. The College argues that the Respondent's lack of change and ongoing insistence that he "would never" do the proven conduct indicate a very strong need for deterrence.
52. The College submits that a review of similar cases indicates that cancellation of the Respondent's registration is necessary. In *Re Morgan* a respondent was found to have massaged the breasts of two patients, and the breasts and buttocks of a third patient. The Panel ordered cancellation of registration with no ability to re-apply for five years, and only on completion of remedial education. The Panel ordered a fine of \$5000 and costs of \$20,000, though the parties were in agreement about those figures.
53. The College also relies upon the following cases which were resolved by consent:
  - a. *Re Bodhi Jones* (August 5, 2020): a registrant admitted he touched three complainants inappropriately and in a sexual manner without consent. The

registrant was convicted of three counts of sexual assault. He agreed to cancellation of his registration and that he could not apply for reinstatement for 30 years.

- b. *Re Breault* (December 4, 2019): a registrant admitted that, prior to becoming a registrant of the College but after he applied to do so, he touched a complainant inappropriately and in a sexual manner while conducting a massage. He was subsequently convicted of sexual assault as a result of this conduct. He agreed to cancellation of his registration and that he could not apply for reinstatement for 20 years.
  - c. *Re Brown* (December 19, 2017): a registrant admitted that he had engaged in a sexual relationship with a complainant, sexualized communications with others, and attempted to mislead the College during the investigation. He agreed to cancellation of his registration and that he could not apply for reinstatement for 30 years.
54. The College relies upon the following passage from *Re Morgan* regarding the consent orders:

The Panel has considered the authorities provided by the College. The Panel finds that the consent orders referred to by the College are relevant. While they are not outcomes following a full hearing on the merits, they remain important for the following reasons. Consent orders under section 37.1 of the HPA are reached following the issuance of a citation. A registrant delivering a proposal must admit the nature of the complaint or other matter that is to the subject of the discipline hearing, and consent to an order under section 39(2) or (8). While the proposal is delivered to the Inquiry Committee for acceptance or rejection, if a proposal is accepted, the Inquiry Committee's order is considered to be an order of the Discipline Committee made under section 39. As such, each of the consent orders referred to by the College above are considered to be orders of the Discipline Committee. The consent orders are recent, all involve sexual touching, and all resulted in cancellation.

55. Based upon comparable cases, the College submits that a component of the penalty must include cancellation and a very lengthy prohibition on applying for reinstatement.
56. In terms of public confidence, the College submits that the statutory provisions in Ontario and Alberta are relevant. The *Alberta Health Professions Act* provides that

a person whose license was revoked in whole or in part as a result of a finding of unprofessional conduct in whole or in part on sexual abuse, or a criminal conviction of the same, may never apply for their permit to be reissued or to be reinstated. The *Ontario Regulated Health Professions Act*, 1991 S.O. 1991, c. 18, contains similarly severe penalties for a professional who commits professional misconduct of a sexual nature. The College acknowledges that these provisions are from different legislative regimes, however it argues that the provisions are relevant to the issue of public confidence. The recent legislative changes in those provinces signal a shift in public expectations. The College argues that the Panel should consider these developments in light of the College's ongoing need to preserve public confidence. Public confidence is well-served by the recognition that sexual abuse of patients by registered health professionals is inherently abhorrent and merits the strongest available regulatory response.

57. The College submits that a lengthy period of ineligibility to apply for reinstatement is appropriate pursuant to section 39(8)(b)(i) of the HPA. Specifically, the College submits that the Respondent should not be eligible to apply for reinstatement until January 1, 2048. The College points out that when the Respondent resigned his registration on October 26, 2020, he expressly stated an intention to reinstate at the conclusion of the hearing.
58. The College submits that the Panel should also impose a fine pursuant to section 39(2)(f) of the HPA. The College seeks a fine of \$10,000 in line with the recent decision of *Re Anderson*. The College submits that a fine is necessary for general deterrence for several reasons. First, the misconduct is contrary to the profession's fundamental values, most notably as concerns the sexual misconduct. Second, in some cases the Respondent was motivated by financial gain and even took steps to conceal his misconduct. Third, some of the Respondent's conduct undermines the College's ability to regulate the profession in the public interest. The College submits that there is a real risk that cancellation alone will not provide sufficient deterrent effect because the Respondent is a former registrant. The College is concerned that cancellation alone will not have sufficient consequences on the



Respondent. Likewise, the penalty must be sufficient to uphold the public's confidence in the profession.

59. The Respondent submits that the cancellation of the Respondent's registration and the prohibition of his ability to apply for reinstatement for 25 years is the end of his massage therapy career and likely any career in any related regulated profession. Terminating his career and making it almost impossible for him to find employment in any related regulated profession is the most onerous penalty that can be imposed. The Respondent submits that the College's proposed orders are sufficient to maintain the integrity of the massage therapy profession, will give the public confidence in the proposed disciplinary action, and will sufficiently deter other registrants from committing similar breaches.
60. The Respondent refers to the following cases: *Re Martin*, *Re Anderson* and *Re Romyn* which involved sexually touching with respect to multiple complainants. The Respondent argues that *Re Martin* is distinguishable on the basis that Mr. Martin was found to have engaged in intentional touching. The Respondent says no such finding was made here. Likewise, there was a finding that Mr. Martin pressed his erect penis against the top of the patient's head, which did not occur here. The Respondent also notes that Mr. Martin only resigned after the hearing. The Respondent argues that in *Re Romyn*, the registrant had been convicted of five counts of sexual assault, and the Discipline Committee made findings against Mr. Romyn regarding five patients, one of whom was 16 years old at the time. Mr. Romyn was found to have intentionally looked at a patient's body while she was turning on her back. The Respondent argues no such finding occurred here. The Respondent argues that none of findings against the Respondent in this matter involved criminal convictions or conduct against minors. The Respondent argues that the facts of *Re Anderson* are also distinguishable as Mr. Anderson was found to have massaged the interior walls of a patient's vagina, failed to generate and maintain records for five patients, provided misleading information to the College investigator, removed blackheads, and diagnosed a medical condition.

61. With respect to specific penalties, the Respondent states, "Providing the Panel orders a maximum fine of \$10,000, the Respondent will agree to cancellation of his registration and a 25-year prohibition on him applying for reinstatement." The Respondent also submits that this amounts to a lifetime ban. The Respondent submits the seriousness of this penalty must be recognized. In particular, the order will end his career as an RMT and likely make it impossible for the Respondent to work in any related health profession. The Respondent submits a fine of \$10,000 would be appropriate in light of *Re Anderson*.
62. The Panel finds that there is a need for specific deterrence, general deterrence, and the need to maintain public confidence in the profession in this case. It is imperative to express to the Respondent, to the profession and to the public that the misconduct in this case is unacceptable.
63. In terms of specific deterrence, the Panel finds that the scope of different forms of misconduct, the number of patients involved and the period of years over which the misconduct occurred call for the highest level of specific deterrence. This is particularly the case in view of the Respondent's disregard of the section 35 order, the absence of any change in behaviour despite continuing new complaints against him, and the Respondent's attendance before the Inquiry Committee for section 35 proceedings.
64. In terms of general deterrence, the Panel finds that a strong message must be sent to the profession that sexual touching of patients will not be tolerated, and where this occurs, registrants will be met with the most serious penalties available. Likewise, a strong message must be sent to the profession in respect of the Respondent's other misconduct including engaging in a close personal relationship with a patient for personal and financial gain, disregarding a section 35 order and practicing without liability insurance.
65. The College has statutory duties to at all times serve and protect the public and to exercise its powers and discharge its responsibilities under all enactments in the public interest. The Panel agrees with and adopts the reasoning in *Re Gill*, *Re Morgan* and *Re Anderson* that a central purpose of disciplinary proceedings is to

protect the public and ensure public confidence in the profession. The Panel finds that there is a strong need to uphold public confidence in the integrity of the profession and in the College's ability to regulate the profession in the public interest given heightened societal concerns about sexual misconduct in the health profession context. The Panel agrees with the College's submission that the Ontario and Alberta legislative changes are indicators of that public concern. The Panel finds that there are also broader indicators of that public concern, including in British Columbia, as has been recognized by recently by the Discipline Committee in the *Re Morgan* and *Re Anderson* decisions.

66. The Panel finds that of the cases cited by the parties, *Re Morgan* and *Re Anderson* are the most similar. The Panel is not persuaded by the Respondent's arguments of the distinguishing features in *Re Anderson*. While the Respondent may not have engaged in the same manner of touch, his conduct was at the same end of the spectrum. The cases are also similar in that both respondents engaged not only in sexual misconduct but a range of forms of misconduct, including defying section 35 orders.
67. This is an aggravating factor and favours the imposition of a more serious penalty.
68. The Panel finds that the following reasoning in *Re Anderson* is applies with equal force to this case:
  48. The multiple different forms of misconduct which were repeated over a prolonged period of time have significant public safety and public interest implications. The Panel finds that nothing short of the ultimate penalty of cancellation would be enough to deter the Respondent and other members of the profession from committing these types of serious misconduct, to maintain public confidence in the profession and to protect the public.
  49. As was noted in *College of Nurses of Ontario v Mark Dumchin*, 2016 ONSC 626, the statutory power to impose cancellation against a former registrant is particularly important to "ensure that a member cannot frustrate the disciplinary process by resigning unilaterally" (paragraph 42). Former members must not avoid the consequences of their misconduct and must be held to account for the prime purpose of protecting the public. The Panel also agrees with the reasoning in *Dumchin* that cancellation of former registrants must be viewed in its proper statutory context. It is not the cancellation of a piece of paper confirming one's certificate of registration, rather it is cancellation of entitlement to practice a regulated profession. [...]

69. The Panel finds that nothing short of the ultimate penalty of cancellation would be sufficient in this case.
70. Section 39(8) of the HPA expressly permits the Discipline Committee to impose conditions on a person's eligibility to apply for reinstatement of registration if their registration has been cancelled and to direct that the eligibility to apply for reinstatement of registration will occur on a date specified in the order. This Panel may order that the Respondent not reapply for registration for a specific period of time. Section 54(4) of the College's Bylaws provides that "An Applicant whose practising registration has been cancelled for five (5) consecutive years or more may be restored to practising registration" if they meet certain requirements. This wording indicates that a period of at least five years or more is contemplated by and consistent with the College's Bylaws.
71. Both the College and the Respondent agree that the Respondent should not be eligible to apply for reinstatement until January 2048. While the Respondent characterizes this as a lifetime ban, the Panel does not consider it necessary to address that point as the reinstatement term is not in dispute between the parties. The Panel finds that the eligibility period agreed upon by the parties is appropriate, reasonable and warranted in the very serious circumstances of this case.
72. In *Re Anderson*, the Discipline Committee made the following comments about the imposition of a fine in addition to cancellation:
59. Generally, a fine is not imposed in addition to a suspension or a cancellation because they are viewed as lying at opposing ends of the spectrum of seriousness of penalties. Fines, suspensions and cancellations all have financial consequences for a professional. Typically, they represent alternate forms of penalties with a suspension or a cancellation reserved for the most serious cases. In many cases, the imposition of a fine in addition to a suspension or cancellation will serve no practical purpose. However, there are instances in which a fine is imposed in addition to a suspension or cancellation because it is necessary to further the principles which guide the disciplinary process. This may include, but is not limited to, conduct which has a financial character or failure to cooperate with the College.
60. The Panel finds that this is one of those instances in which it is necessary and appropriate to impose a fine in addition to cancellation in order to further the principles which guide the disciplinary process. In this case, the Respondent is a former registrant and his removal from the profession holds a different reality than it would for a practicing registrant. In addition, the Respondent's misconduct

included both financial and non-cooperation aspects. In terms of a financial aspect, the Respondent delivered massage therapy services while his registration was suspended and defiantly practised outside of his scope of practice. In terms of non-cooperation, the Respondent misled the College regarding his records and obstructed the College investigator. The Panel finds that cancellation alone would not provide sufficient deterrent and would not maintain public confidence in the profession. The Panel finds that it is necessary to also impose a fine of \$10,000 in this case. This is double the amount of the fine in *Morgan*, which also involved a former registrant but in which the conduct was less serious.

73. The College has sought a \$10,000 fine in this case. The College noted in its submissions that:

13. The panel in *Anderson* stated that a fine of \$10,000 was twice the fine of that in *Morgan*, but the fine in *Morgan* was by agreement between the parties and there is no guidance as to how and why the parties arrived at that decision. The fine in *Morgan* is not directly applicable here where there was a 20-day contested hearing concerning much more significant misconduct.

14. The maximum available fine is \$50,000. This has never been awarded by a discipline panel of this College and the circumstances which would dictate a fine of that magnitude are difficult to consider given the decision in *Anderson*.

74. The Panel finds that it is necessary to impose a fine in addition to cancellation in this case for the same reasons as outlined in *Re Anderson* above. Cancellation alone would not provide sufficient deterrent or maintain public confidence in the profession. The Respondent is a former registrant and his misconduct included financial and non-cooperation conduct by violating a section 35 order, practicing without insurance, and engaging in a close personal relationship with a patient for his own personal and financial interests.

75. The parties agree about the imposition of a fine in the amount of \$10,000. Given that the parties agree on the amount of the fine, the Panel is reluctant to impose a higher fine in the circumstances.

76. The Panel wishes to make clear that the list of examples provided in *Re Anderson* in which fines may be appropriate is an open-ended list. There may well be cases and circumstances in future in which up to the maximum available fine is awarded. *Re Morgan*, *Re Anderson* and this case are somewhat unique circumstances. In *Re Morgan* and this case, the parties were agreed upon the fine amount. In all three

cases, there was limited argument with reference to caselaw that has imposed both cancellation and fines.

### **Costs**

77. Sections 39(5) and 39(7) of the HPA authorize the Panel to award costs to the College in an amount not to exceed 50% of the actual legal costs to the College for the discipline hearing:

39 [...]

(5) If the discipline committee acts under subsection (2), it may award costs to the college against the respondent, based on the tariff of costs established under section 19 (1) (w.1).

[...]

(7) Costs awarded under subsection (5) must not exceed, in total, 50% of the actual costs to the college for legal representation for the purposes of the hearing.

78. Section 72 of the College's Bylaws establishes a tariff of costs which is set out at Schedule "F". Section 54 of the College's Bylaws provides that before reinstatement of registration, the Registrar must receive any outstanding debt owed to the College.

79. Section 1(b) of Schedule "F" of the College's Bylaws provides that the College is entitled to all reasonable and necessary disbursements incurred for the purposes of investigating a matter, preparing for a hearing, or conducting a hearing under section 38 of the HPA.

80. *The Regulation of Professions in Canada* by James Casey sets out factors to consider in any costs award:

- a. Legislative provisions differ significantly with respect to the nature of the costs that may be awarded by a discipline committee so the specific provisions must be considered.
- b. The amount of time and expenses associated with the investigation and hearing.
- c. The focus of a costs award is to ensure that a member found to have committed unprofessional conduct bears the costs of the process as

opposed to the membership as a whole. Bearing the burden of an award of costs reflects the consequences of being a member of a self-regulating profession and having engaged in unprofessional conduct.

- d. There is a need to find an appropriate balance by considering the impact of the costs award on the member. Costs should not be punitive in nature.
  - e. Potential costs awards should not be so large as to prevent individuals from raising reasonable defences to allegations of unprofessional conduct.
  - f. The member's personal financial circumstances and the impact of a costs award. In appropriate cases consideration should be given to providing time to pay the costs.
  - g. The impact of the other sanctions imposed should be considered as part of the context.
  - h. Whether there has been "mixed success" in that the member has successfully defended some of the allegations. In particular, it is appropriate to consider the relative seriousness of the allegations which were proven and the relative seriousness of those which were successfully defended. It is also appropriate to consider what proportion of the costs was attributable to the allegations that were successfully defended.
  - i. The extent to which the conduct of each of the parties resulted in costs accumulating or conversely being saved.
  - j. Any other factors considered relevant given the particular circumstances of the case.
81. Where the tariff provides for a minimum and maximum range of units for an item, the Panel has discretion to allow a number within that range. One unit reflects matters upon which little time should ordinarily have been spent. The maximum number of units reflects matters upon which a great deal of time should ordinarily have been spent. This may account for any difficult issues of fact or law, and the importance of any issues to a party or to the public. The value of one unit under the tariff is \$100.

82. The College has prepared a bill of costs in which 350 units are claimed, which amounts to \$35,000. Where tariff items are claimed, the College has claimed the maximum allowable units.
83. In respect of the specific tariff items, the College submits:
- a. The Citation consisted of 10 paragraphs, each of which was the subject of a separate complaint to the College. This involved a substantial amount of work by the College in anticipation of the hearing.
  - b. In terms of investigations and preparation, the College called all six complainants and four lay witnesses. It was prepared to call additional witnesses but did not need to do so as a result of a document agreement and admissions made by the Respondent during the hearing after the College's preparation work already had been completed. All of those witnesses needed to be contacted, interviewed, and prepared for the hearing and any cross-examination by the Respondent.
  - c. The College also prepared for cross-examination of the Respondent, which took four days, and Witness F.
  - d. The College needed to provide detailed and frequent instructions to counsel in this matter, given its scope and complexity as evidenced by the 429-page closing submission. Numerous emails were exchanged, and phone calls and meetings took place in 2020 and through the delivery of the written submissions on October 7, 2022.
  - e. Correspondence and conferences with the Respondent included but were not limited to approaching the Respondent about pre-hearing matters (which ultimately led to a pre-hearing conference in writing), procedural matters with respect to the hearing (both before and during the hearing) and attempts to schedule a continuation of the hearing. There was also a videoconference with independent legal counsel to the Panel to try to find mutually available days for the continuation of the hearing.



- f. On February 22, 2021, the Respondent provided the Book of Documents that he intended to rely upon at the hearing. It contained an index with 30 numbered tabs, and 45 lettered sub-tabs. The College included several of those tabs in its book of documents and communicated with the Respondent about issues related to the other tabs. The Respondent's book of documents was not marked as an exhibit. The College engaged in several communications about the Respondent's outline of anticipated evidence. There were issues with late disclosure of photographs.
- g. The Respondent sought leave at the hearing to use a mannequin during his testimony. Prior notice had not been given to the College. An adjournment and argument were required.
- h. The College's disclosure to the Respondent involved 10 separate investigative files with complaints spanning a period of eight years. The disclosure consisted of 553 documents, all of which had to be reviewed and redacted to remove personal information. The College prepared a 55-tab Book of Documents for the hearing which was entered as an exhibit by consent of the parties. The College provided will say statements for its anticipated witnesses.
- i. The College retained two experts in preparation for the hearing: Trevor Garrecht, RMT and Mark Finch, RMT. The Respondent objected to portions of Mr. Garrecht's report and to the report of Mr. Finch. The College responded to those objections. The College did not call either expert at the hearing.
- j. The Respondent intended to call three experts: Witness A, Mike Dixon, RMT, and Dr. Maryana Apel. The College communicated with the Respondent about admissibility issues. The College challenged Witness A being entitled to give expert evidence. This was the subject of detailed submissions from the parties. The Panel issued a decision on June 18, 2021, which held that Witness A was not permitted to testify as an expert

witness. The College prepared to cross-examine Mr. Dixon (who was called as a witness) and Dr. Apel (who was not called as a witness).

- k. The hearing took 20 days.
84. The College seeks disbursements in the amount of \$62,452.51. The College provided affidavits containing supporting materials for those expenses. The disbursements include expenses of \$40,026.09 for court reporter and transcription fees. The remaining \$22,426.42 is comprised of the following expenses:
- a. Courier charges for delivery of hard copy material to opposing counsel, witnesses and Panel members: \$1,394.43
  - b. Colour photocopies of Book of Documents for counsel and to the Panel, document packages to witnesses and the College's closing
  - c. Submissions for counsel and to the Panel: \$9,091.55
  - d. Binding supplies for hard copy documents: \$1,217.80
  - e. Password protected USBs with College document disclosure: \$50.00
  - f. Reference material for cross-examination of Respondent's experts: \$138.64
  - g. Invoices for expert fees: \$10,534.00
85. The College submits that it is reasonable and necessary to create a transcript record for the purposes of any appeal and, given the length of the hearing and the issues, was reasonable and necessary for the preparation of closing submissions. The College argues that the Respondent can take no issue with this given that he arranged for real-time reporting during the hearing. The College submits that the photocopying, binding and delivery fees of materials are reasonable and necessary given that witnesses, counsel and some members of the Panel required hard copies of the hearing materials.
86. With respect to the College's tariff of costs, the Respondent itemized the start and end times of every break during the hearing days. He submits that at least five of the hearing days were half days based upon the commencement time, adjournment

time, and amount of time taken during the breaks. The Respondent submits that \$30,650 is the maximum that should be ordered with respect to costs.

87. The Respondent states that he does not dispute that the CMTBC incurred disbursements in the amount of \$62,452.51.
88. The Respondent submits that:

A direct result of the impact this matter on his ability to earn an income has resulted in the Respondent filing for bankruptcy. This proceeding has ended his career, made it virtually impossible for him to pursue another career in any related profession, has resulted in the end of his marriage, and has resulted in his personal bankruptcy. Does the Panel seriously believe that they should further penalize the Registrant by imposing a measure of Costs, Disbursements and Penalty that will potentially never allow the Registrant to become debt-free again? The Registrant has no likelihood of any significant earnings potential. A financial penalty that leaves him with no reasonable prospect of payment will only serve to impose yet a further and what would amount to an unreasonable sanction on him.

89. He argues that the amount of costs and disbursements payable should total \$30,000 and that due to his financial situation, he does not have the ability to pay within 30 days and would require a payment plan.
90. The College argues in reply that the Respondent has provided no rationale for the reduction in certain tariffed units claimed by the College. The College argues that the Respondent's break down of the specific times in session during the hearing days lacks any support in caselaw and ignores that there are many reasons for breaks in the proceedings including for the Panel to consider objections by the parties. Counsel and the Panel are required to be present and available during break times in most cases, and often counsel and the Panel are working through breaks in order to be more efficient with hearing time.
91. In respect of November 4, 2022, the College notes that the hearing was stood down at 10:42 a.m. as the Respondent was not prepared to continue that day. The College submits that it was prepared to proceed. The court reporter charged for the full day. Nevertheless, the College agrees that this can be considered a half day hearing for the purpose of the tariff. On October 1, 2021, the hearing adjourned at 11:00 a.m. and while the court reporter charged for a full day, the College agrees that this can be considered a half day hearing for the purpose of the tariff. While the College

contests the Respondent's calculation and evidence, it is also prepared to count October 29, 2021, as a half day hearing for the purpose of the tariff. As such, the College agrees to reduce its costs claim to \$33,500.

92. In reply to the question of disbursements, the College submits the Respondent's rhetorical question above contains no analysis or explanation and is not accordance with the law on costs and disbursements. The College argues that costs and disbursements are distinct from penalties. The Respondent's exposure to costs was well known to him and his financial situation does not change that these expenses were incurred and the Respondent is liable for them. The public and other members of the profession must be considered.
93. In respect of a payment plan, the College submits that the Respondent has not made a proposal. In the absence of a proposal the College submits that the Respondent should award the costs and disbursements payable in 30 days. If payment is not made within that time period, it will be at the College's discretion as to if and when it seeks to enforce the Panel's order.
94. The Panel orders that the Respondent pay costs to the College in the amount of \$33,500. This is reduced from the College's original amount sought to account for the reduction of three full hearing days to three half days. The Panel agrees with both parties that those dates are more properly characterized as half days.
95. With respect to the Respondent's more general challenge about the College costs, the Panel finds that there is no basis for any further reduction. First, the costs regime set out in the HPA and the College's Bylaws does not call for a clinical assessment of the minutes during which the hearing was in progress during full hearing days. There are many reasons for recesses during the hearing days which occur in the ordinary course of disciplinary proceedings. These may include time needed for objections, witness scheduling, preparation of cross-examination of a witness, and preparation of a motion or a response to a motion. All of these occurred in this hearing, and many were at the request of the Respondent. It would be artificial and inaccurate to adopt a stopwatch approach which would exclude time in a day that was spent on these important features of a disciplinary hearing.

96. Second, where the Respondent has reduced certain tariff items claimed by the College, no explanation is provided as to why a reduction is warranted.
97. Third, the Panel finds that this matter unquestionably called for a great deal of time to be spent, it involved difficult issues of fact and law, and was of great importance to the parties and to the public. This was an extremely complex, time-consuming matter. The Citation alone makes clear that the scope of the hearing required preparation of numerous witnesses, multiple experts, extensive documents, events that spanned multiple years, and raised important and complex questions of fact and law. The Panel agrees with and adopts the College's list set out above in paragraph 83 which justifies claiming tariff items at the maximum range.
98. The Panel notes that in the HPA, the provincial legislature expressly provided that the Discipline Committee may award up to 50% of the College's actual legal costs against a respondent. The Affidavit of Ms. Parisotto confirms that the amount claimed by the College does not exceed 50% of the College's actual costs. Because the College's actual costs are tariffed, and use a unit rate of \$100, in most cases, there will already be a substantial reduction from the maximum recoverable under the HPA.
99. The Panel orders that the Respondent pay disbursements in the amount of \$62,452.51 to the College. The Panel finds that the College's disbursements were reasonable and necessary disbursements incurred for the purposes of investigating a matter, preparing for a hearing, and conducting a hearing under section 38 of the Act.
100. The largest portion of the disbursements comprises the court reporter and transcription fees. The Panel does not agree with the College that transcription fees are necessary to create a record in the event of an appeal. That will not be necessary in every case and there is no information before this Panel to suggest that it was necessary in this case. It is also not apparent that amounts incurred for creating an appeal record could in any event be characterized as disbursements incurred for the purposes of investigating this matter; or preparing for or conducting this discipline hearing.

101. Nevertheless, the Panel does find that it was reasonable and necessary for the College to create transcripts for preparing for and conducting this hearing. While this may not necessarily be the case in every discipline hearing, the Panel has no trouble finding that it was necessary and reasonable in this case. This is evident from the fact that the parties both considered it necessary to have real time reporting during the hearing and referred to the reporting several times during witness questioning and objections during the hearing. The Panel finds that the hearing transcripts were necessary for the preparation of the closing submissions. The College's closing submissions were 429 pages and contained extensive exhibit and transcript pinpoint references throughout. These were essential given the number of complainants, the number of different allegations, the differing accounts of the events between the complainants and the Respondent, the extensive inconsistencies in the Respondent's evidence, and the credibility issues involved in this case.
102. The Panel has considered the Respondent's general request that the figure for costs and disbursements be reduced from \$94,452.51 to \$30,000. The Panel finds that the Respondent has provided no explanation as to how he arrived at that figure. The Respondent has pointed to no cases in support of his position. The largest portion of the award is the disbursements, and the Respondent has agreed that the College's disbursements were properly incurred. He failed to point to any disbursements which were not necessary or which were unreasonable.
103. The Panel has considered the factors set out above by Casey. As noted above, the legislative regime contemplates that the College is entitled to a robust costs award and the amount sought by the College is already tariffed and below the maximum permitted under the legislation. As also noted above, the amount of time and expenses that were required for this investigation and hearing were substantial given the complexity of this case. This is not a case where there was mixed success which would justify the reduction of a costs order. The College was overwhelmingly successful. The Panel has considered that the Respondent should bear the costs of this process as opposed to the registrants of the profession as a whole. This reflects the consequences of being a member of a self-regulating profession and

having engaged in misconduct. It is necessary for the College to be able to defray some of the costs associated with prosecuting discipline matters.

104. The Panel recognizes that the impact of this costs award on the Respondent will be significant. The Panel has considered that the Respondent has stated that he has suffered an immense financial loss and filed for bankruptcy. The Panel also notes the Respondent's affidavit evidence that he has obtained various other sources of income. The Panel does not consider this costs order to be punitive in nature. The Panel also does not consider this cost award to be so large that it will prevent other individuals from raising reasonable defences to allegations of unprofessional conduct. The Panel has considered the impact of the sanctions and recognizes that a cancellation with a lengthy eligibility period to apply for reinstatement, along with a fine, carries financial impacts which the Respondent must bear. The Panel also notes though, that the Respondent agreed to all three of those terms.
105. The Panel does consider that the Respondent's conduct resulted in increased costs. This was notable, for example, during the Respondent's direct examination and cross-examination. Despite clear brief questions on direct examination, the Respondent often provided lengthy and unnecessary testimony. On cross-examination, the Respondent was evasive and inconsistent, requiring frequent impeachment.
106. While the Panel recognizes that this is a significant costs award, the Panel has given this careful thought and balanced the necessary factors. The Panel is satisfied that in the circumstances of this case the award is reasonable and proportionate.
107. The Panel appreciates the College's point that the Respondent has requested time to pay any costs award but provided no proposal, however, it is still appropriate for the Panel to consider giving the Respondent time to pay because of his financial circumstances. The Panel considers that a 30-day period within which to pay the costs order is too short in this case and notes that the College allowed a one-year period in *Re Anderson*. The Panel also wishes to allow for the possibility that the parties may still agree to a payment plan. Accordingly, the Panel orders costs to be

paid within one year, or according to a payment plan that is agreed upon in writing between the College and the Respondent.

**Order**

108. The Panel orders that:

- a. the Respondent's registration is cancelled commencing from the date that he is made aware of the Panel's order pursuant to section 39(2)(e) of the HPA;
- b. the Respondent pay a fine in the amount of \$10,000 pursuant to section 39(2)(f) of the HPA within one year from the date of this order;
- c. the Respondent pay costs and disbursements in the amount of \$95,952.51 pursuant to section 39(5) of the HPA within one year from the date of this order, or according to a payment plan that is agreed in writing between the College and the Respondent;
- d. The Respondent must pay all outstanding amounts, including the fine and costs in (b) and (c), to the Registrar before applying for reinstatement of his registration.

109. The Panel directs that the Respondent is not eligible to apply for reinstatement until January 1, 2048, pursuant to section 39(8)(b)(i) of the HPA.

110. The Panel reminds the College of the requirements in section 39(3)(c) of the HPA.

111. The Panel directs pursuant to sections 39.3 of the Act that the Registrar notify the public of the order made herein.



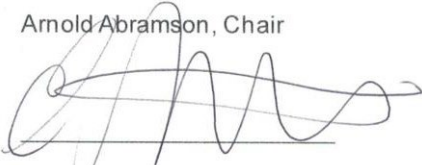
**Notice of Right of Appeal**

112. The Respondent is advised that under section 40(1) of the Act, a respondent aggrieved or adversely affected by an order of the Discipline Committee under section 39 of the Act may appeal the decision to the Supreme Court. Under section 40(2), an appeal must be commenced within 30 days after the date on which this order is delivered.

Dated: December 21, 2022

Handwritten signature of Arnold Abramson in blue ink, written over a horizontal line.

Arnold Abramson, Chair

Handwritten signature of Elisa Peterson in blue ink, written over a horizontal line.

Elisa Peterson, RMT

Handwritten signature of Michael Wiebe in blue ink, written over a horizontal line.

Michael Wiebe, RMT