

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:

Michelle Gaudet

(the “Respondent”)

**REASONS FOR DECISION**

**Date and Place of Hearing:**

April 12-13, 2022

By video-conference

**Panel of the Discipline Committee (the “Panel”)**

Arnold Abramson, Chair

Evan Jeary, RMT

Rachel Shiu, RMT

**Counsel for the College:**

Andrew Gay, K.C.

Natasha John

**The Respondent:**

Michelle Gaudet

**Counsel for the Panel:**

Susan Precious

## A. INTRODUCTION

1. A panel of the Discipline Committee (the “Panel”) of the College of Massage Therapists of British Columbia (the “College” or “CMTBC”) conducted a hearing pursuant to section 38 of the *Health Professions Act* RSBC 1996 c.183 (the “Act” or the “HPA”), to determine whether Michelle Gaudet (the “Respondent”) violated the College’s Bylaws, violated the College’s Code of Ethics and/or committed unprofessional conduct.
2. For the reasons that are set out below, the Panel finds that the allegations set out in the Citation dated January 12, 2022 (the “Citation”) were proved to the requisite standard. The Panel has determined that the Respondent committed unprofessional conduct.
3. The particulars of the allegations against the Respondent are set out in the Citation as follows:

### WHEREAS

- A. On October 23, 2018, the Inquiry Committee of the College initiated an investigation into your conduct following your arrest and subsequent criminal charges which you brought to the College’s attention on or about October 16, 2018;
- B. The investigation was subsequently expanded to encompass your fitness to practice massage therapy; and
- C. On October 22, 2020, you were informed that, pursuant to s.65.1 of the Bylaws, the Inquiry Committee required that you attend for an interview with an inspector, which interview was set for December 4, 2020.

### THE ALLEGATIONS AGAINST YOU ARE THAT:

1. You violated s.65.1 of the Bylaws, and in the alternative committed unprofessional conduct, by failing to attend the required interview on December 4, 2020.
2. You violated s.28 of the Code of Ethics, as it stood in 2020, and therefore s.75 of the Bylaws, and in the alternative committed unprofessional conduct, by failing to respond to inquiries, requests and directions from the College in relation to the required interview in a professional, responsive and timely manner. Particulars of this charge include that:
  - a. on or about October 22, 2020, in an email to a representative of the College, you wrote, “I...refuse to speak with you and any other investigators until I can continue paying the lawyer I already have”, you purported to withhold your consent to the College proceeding with its investigation, and you stated “you can all put his [sic] on the back burner until I say”;

- b. on or about October 23, 2020, in an email to a representative of the College, you wrote, "I am not talking with any of you UNTIL I have money for the lawyer I already have" and "I WILL not further speak to you without me having a proper lawyer", following which you failed to provide the College with contact information for a lawyer it could contact directly;
- c. on or about October 27, 2020, in an email to a representative of the College, you wrote, "tell the investigator that they will have to put a hold on their proceedings as I won't be present unless i have counsel present. and you will know when they contact you on my behalf. until then, please stop contacting me. I will not be responding";
- d. on or about October 30, 2020, in an email to a representative of the College, you wrote, "Please stop sending messages until after I retain counsel. If I get any more messages it might lead to me needing to block your email";
- e. on or about December 3, 2020, in an email to a representative of the College, you purported to provide the College with a "final warning" stating, "Do not contact me again personally" without providing the College with contact information for a lawyer it could contact instead; and
- f. on or about December 4, 2020, in an email to a representative of the College, you purported to withhold "consent to any more contact with me prior to my lawyer contacting you" yet failed to provide the College with contact information for a lawyer.

FURTHER TAKE NOTICE that after a hearing under section 38 of the Act, the Panel of the Discipline Committee may make such determinations and orders under section 29 of the Act as it considers to be appropriate.

- 4. The hearing took place via video-conference with Charest Reporting as the hearing administrator.
- 5. Pursuant to a direction from the Panel on March 2, 2022, the College was permitted to adduce its evidence by affidavit. The College introduced the Affidavit #1 of Kate Parisotto (affirmed February 24, 2022), the Affidavit #1 of Michael Apps (affirmed February 24, 2022), the Affidavit of Jeevan Rai (affirmed February 28, 2022), the Affidavit of Vern Law (sworn February 3, 2022), the Affidavit #1 of Margaret Deptuck (affirmed April 12, 2022), the Affidavit #2 of Margaret Deptuck (affirmed April 12, 2022), and the Affidavit #2 of Kate Parisotto (affirmed April 8, 2022). The Affidavit #1 of Ms. Parisotto and the Affidavit #1 of Mr. Apps were the primary affidavits setting out the College's case.
- 6. The Respondent testified on her own behalf.

7. The parties made closing submissions. The Panel's determination takes into account the evidence adduced at the hearing and the parties' oral and written submissions.

**B. SERVICE OF CITATION**

8. Service of the Citation was not raised as an issue. The Panel is satisfied that the Respondent was properly served with the Citation.

**C. LAW**

**Burden of Proof**

9. The College bears the burden of proof and must prove its case on a "balance of probabilities". The leading authority, *F.H. v. McDougall*, 2008 SCC 53, states that the "evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test."

**HPA**

10. Under section 39(1) of the HPA, on completion of a hearing, the Discipline Committee may dismiss the matter, or determine that the Respondent:

39(1)...

- (a) has not complied with this Act, a regulation or a bylaw,
- (b) has not complied with a standard, limit or condition imposed under this Act,
- (c) has committed professional misconduct or unprofessional conduct,
- (d) has incompetently practised the designated health profession, or
- (e) suffers from a physical or mental ailment, an emotional disturbance or an addiction to alcohol or drugs that impairs their ability to practise the designated health profession.

**Jurisdiction over Former Registrant**

11. The Respondent voluntarily cancelled her registration on January 14, 2021. She is a former registrant of the College.

12. The Discipline Committee has jurisdiction over the Respondent as a former registrant under the HPA. Section 26 of the HPA, which applies to Part 3 of the Act dealing with inspections, inquiries and discipline, expressly defines “registrant” for the purposes of that section to include a “former registrant”.

### **Act, Regulation and Bylaws**

13. Section 19 of the HPA provides the College with the authority to enact bylaws establishing the standards and limits for the practice of the profession.
14. Section 19(8) of the HPA requires a registrant to practice the profession in accordance with the College’s bylaws:

Bylaws for college

19 (1) A board may make bylaws, consistent with the duties and objects of a college under section 16, that it considers necessary or advisable, including bylaws to do the following:

..

(k) establish standards, limits or conditions for the practice of the designated health profession by registrants;

..

(8) A registrant must not practice a designated health profession except in accordance with the bylaws of the college.

15. Pursuant to this authority, the College enacted the Code of Ethics and Standards of Practice for the profession of massage therapy.
16. Section 65.1 of the College’s Bylaws that were in force at the material times provided that the Inquiry Committee may require the registrant to attend for an interview by the Inquiry Committee, a panel of the Inquiry Committee, the Registrar or an inspector.
17. Section 75 of the College’s Bylaws requires that every registrant must comply with the Code of Ethics and the Standards of Practice.
18. Accordingly, a violation of the Code of Ethics constitutes a failure to comply with the Bylaws for purposes of section 39(1) of the HPA. A violation of the Code of Ethics also constitutes a failure to comply with a standard imposed under the Act for purposes of section 39(1) of the HPA.

## Code of Ethics

19. The Code of Ethics provided at the material times:

28. Massage therapists must respond to any inquiries, requests and directions from the College in a professional, responsive and timely manner.

## The Duty upon Regulatory Bodies

20. The College submits that the case against the Respondent must be viewed in the context of the College's investigatory obligations. In *Pharmascience Inc. v. Binet*, 2006 SCC 48, the Supreme Court of Canada underlined the important responsibility on self-regulatory bodies in supervising members of the profession:

36 This Court has on many occasions noted the crucial role that professional orders play in protecting the public interest. As McLachlin J. stated in *Rocket v. Royal College of Dental Surgeons of Ontario*, 1990 CanLII 121 (SCC), [1990] 2 S.C.R. 232, "[i]t is difficult to overstate the importance in our society of the proper regulation of our learned professions" (p. 249). The importance of monitoring competence and supervising the conduct of professionals stems from the extent to which the public places trust in them. Also, it should not be forgotten that in the client-professional relationship, the client is often in a vulnerable position. The Court has already had occasion to address this point in respect of litigants who entrust their rights to lawyers (*Fortin v. Chrétien*, [2001] 2 S.C.R. 500, 2001 SCC 45, at para. 17). The general public's lack of knowledge of the pharmaceutical field and high level of dependence on the advice of competent professionals means that pharmacists are another profession in which the public places great trust. I have no hesitation in applying the comments I wrote for this Court in *Finney*, at para. 16, generally to the health field to emphasize the importance of the obligations imposed by the state on the professional orders that are responsible for overseeing the competence and honesty of their members:

The primary objective of those orders is not to provide services to their members or represent their collective interests. They are created to protect the public, as s. 23 of the *Professional Code* makes clear. . . .

The privilege of professional self-regulation therefore places the individuals responsible for enforcing professional discipline under an onerous obligation. The delegation of powers by the state comes with the responsibility for providing adequate protection for the public. *Finney* confirms the importance of properly discharging this obligation and the seriousness of the consequences of failing to do so.

21. The Panel agrees with the reasoning above and finds that the duty to cooperate on registrants must be viewed in light of the public protection role of the College as a health profession regulator.

### **Duty to Cooperate**

22. In *Wise v. LSUC*, 2010 ONSC 1937, the Ontario Superior Court of Justice confirmed the requirement on every registrant to cooperate with their regulator:

[19] It is well recognized that to ensure the effective discharge of the responsibilities of professional regulators, every professional has an obligation to co-operate with the self-governing body: *Artinian v. College of Physicians and Surgeons of Ontario* (1990), 1990 CanLII 6860 (ON SC), 73 O.R. (2d) 704 (Div. Ct.) at 707; *Law Society of Saskatchewan v. Stromberg* (1995), 1995 CanLII 3909 (SK CA), 122 D.L.R. (4th) 433 (Sask. C.A.) at 438; *Adams v. Law Society of Alberta* (2000), 2000 ABCA 240 (CanLII), 82 Alta. L.R. 219 (Alta. C.A.) at 221, para.7.

23. In *James v. Real Estate Council of Alberta*, 2004 ABQB 860, the Alberta Court of Queen's Bench described the duty to cooperate as follows:

[37] Crucial to its ability to regulate is its ability to rely on the co-operation of its members in any investigation of behaviour alleged to be contrary to the rules and code. That co-operation must be provided in all cases, regardless of the view the investigated member has of the merits of the complaint. Needless to say, if his or her view of the merits is right, the complaint will be dismissed, but that is not for the member to decide, nor is it to constitute a reason for the member not to co-operate.

24. In *College of Massage Therapists of British Columbia v. Gill*, 2019 CMTBC 01, the Discipline Committee held that registrants have a duty to cooperate with the College and that a failure to do so may constitute unprofessional conduct. This Panel agrees with these decisions and finds that there is a duty to cooperate on registrants.

### **Professional Misconduct and Unprofessional Conduct**

25. Section 26 of the HPA contains the following definitions:

"professional misconduct" includes sexual misconduct, unethical conduct, infamous conduct and conduct unbecoming a member of the health profession;

[...]

"unprofessional conduct" includes professional misconduct.

26. The term unprofessional conduct is defined in the HPA to include professional misconduct.

27. Unprofessional conduct was described in *Gill* with reference to the following definition from *Millar v. College of Physicians and Surgeons of British Columbia*, [1994] BCJ No. 967: “that which violates ethical code or rules of profession or such conduct which is unbecoming member of profession in good standing.” In *Gill*, the Respondent was found to have demonstrated unprofessional conduct for failing to respond to College communications.
28. In *Salway v. Association of Professional Engineers and Geoscientists of British Columbia*, 2010 BCCA 94, the Court of Appeal held that it is the discipline committee of a professional organization that sets the professional standards for that organization. Those standards may be written or unwritten.
29. Several decisions have confirmed that a registrant’s failure to cooperate with their regulator can amount to professional misconduct or unprofessional conduct. A registrant’s failure to cooperate with their health profession college has been characterized as professional misconduct rather than unprofessional conduct where the conduct is more serious or egregious in nature. The Discipline Committee in *College of Dental Surgeons of British Columbia re: Kaburda*, 2014 CanLII 96656, held that:

[54] The Panel has considered the definitions in section 26 and has decided to characterize conduct that it regards to be of a more serious or egregious nature as professional misconduct, rather than unprofessional conduct, since the definition of that phrase includes unethical conduct and infamous conduct. This is consistent with the approach taken in *Re Duvall, supra*.

...

[63] Dr. Kaburda treated the CDSBC employees and his patient with contempt. His reasons for failing to cooperate with both Ms. K and the CDSBC are without any legal or logical justification, all of which means that the offences as proven are of such an egregious nature that they must be characterized as professional misconduct.
30. Similarly, in *Millar v. College of Physicians and Surgeons of British Columbia*, 1994 CanLII 1010 (BCSC), the Supreme Court reviewed caselaw in which findings of professional misconduct for failure to cooperate were well founded.



31. In *Millar*, the British Columbia Supreme Court upheld the College of Physicians and Surgeons of British Columbia's finding that a physician had committed unprofessional conduct by refusing to submit to a peer review of his practice. The absence of any complaints against the physician did not obviate that finding.
32. In *College of Registered Nurses of British Columbia v. Cunningham* (February 5, 2017), a registrant was found to have committed unprofessional conduct for failing to respond to various requests and notices from the Inquiry Committee in relation to an investigation.
33. In *Gill*, the registrant was found to have breached the Code of Ethics, breached a standard imposed under the HPA, and engaged in unprofessional conduct for failing to respond to the College's communications in a responsive and timely manner over a period of approximately one year.
34. The College notes that in the present case, the Citation has alleged unprofessional conduct rather than professional misconduct. The College seeks determinations from the Panel pursuant to section 39(1) of the HPA that the Respondent failed to comply with the Bylaws and, in the alternative, that she committed unprofessional conduct.
35. The College submits that while there is no written standard or court decision in relation to whether the Respondent's email communications were unprofessional or in violation of the Code of Ethics, this Panel has wide discretion to make that assessment. The Panel agrees. As set out above, *Salway* clarified that a disciplinary panel provides guidance to the profession on what constitutes unprofessional or unresponsive communications.

[30] The jurisprudence, therefore, would seem to dictate that courts adopt a significant degree of deference to disciplinary decisions of professional tribunals concerning the interpretation of their professional standards, regardless of whether those standards are written or unwritten. This degree of deference accords with the reasonableness standard of review.

[...]

[32] The reasonableness standard of review acknowledges that there is "a range of possible, acceptable outcomes which are defensible in respect of the facts and law". Reasonableness requires courts to give deference to a professional body's interpretation of its own professional standards so long as it is justified, transparent

and intelligible. The pre-*Dunsmuir* decisions relied on by the respondent, including *Reddoch*, no longer set the standard for professional misconduct as conduct that is dishonourable, disgraceful, blatant or cavalier. Rather, it is the disciplinary body of the professional organization that sets the professional standards for that organization. So long as its decision is within the range of reasonable outcomes—i.e., it is justified, transparent and intelligible—it is not for courts to substitute their view of whether a member’s conduct amounts to professional misconduct.

36. In *Association of Professional Engineers and Geoscientists of British Columbia re Stromotich* (July 3, 2007), an engineer was found to have demonstrated unprofessional conduct based on emails that he sent to public officials. The Discipline Committee acknowledged the registrant’s right to correspond with public officials and to question their actions but held that a registrant has an obligation to conduct any such exchange with “fairness, courtesy and in good faith” in accordance with the Code of Ethics. A failure to do so is unprofessional conduct.
37. In *Groia v. Law Society of Upper Canada*, 2018 SCC 27, the Supreme Court of Canada overturned a conduct finding against a lawyer and held that registrants should not be sanctioned for advancing good faith reasonable allegations. The Supreme Court of Canada confirmed that the assessment of a registrant’s civility in communications rests with the regulator:

[100] This does not mean that a solitary bout of incivility is beyond reproach. A single, scathing attack on the integrity of another justice system participant can and has warranted disciplinary action: see e.g., *Doré*; *Histed v. Law Society of Manitoba*, 2007 MBCA 150, 225 Man. R. (2d) 74; *Law Society of Upper Canada v. Wagman*, 2008 ONLSAP 14. Be that as it may, it was well within the Appeal Panel’s purview to conclude that, as a general rule, repetitive personal attacks and those made using demeaning, sarcastic, or otherwise inappropriate language are more likely to warrant disciplinary action.

38. The Panel appreciates that the *Groia* case is not directly on point to this case. The statements at issue in *Groia* were made in court and are therefore generally protected by an absolute immunity. Nevertheless, the Panel finds the reasoning useful in this context. The type of inappropriate language described in *Groia* is perhaps even more problematic in a professional regulatory context where a registrant’s communications may impede an investigation.

## D. EVIDENCE

### *Affidavit of Kate Parisotto #1*

39. Ms. Parisotto's Affidavit #1 included the following evidence.
40. The Respondent reported to Kate Parisotto, Deputy Registrar and Director of Inquiry, Discipline & Quality Assurance, by email dated October 16, 2018 that she had been arrested and was criminally charged.
41. By email dated October 17, 2018, Ms. Parisotto requested additional information from the Respondent. The Respondent was advised that as a registrant, she was required to respond to any inquiries, requests and directions from the College in a professional, responsive and timely manner pursuant to the Code of Ethics.
42. On October 23, 2018, the Inquiry Committee decided to initiate an investigation concerning the Respondent on its own motion.
43. The Respondent was advised of the investigation by letter dated November 2, 2018. The Respondent indicated that her lawyer advised her not to speak to anyone regarding the matter due to the upcoming criminal proceedings. Ms. Parisotto offered to postpone the College's interview with the Respondent on specified terms which were set out in her November 2, 2018 letter.
44. The Inquiry Committee agreed to postpone the Respondent's interview, and the option of obtaining further information, when the Respondent agreed to the following terms on February 22, 2019:
  1. You agree to attend an interview with the College investigator and/or respond in writing to the College about the substance of this matter once the criminal proceedings are concluded, if requested to do so by CMTBC.
  2. You will not seek a stay of the College's inquiry and/or discipline proceedings on the basis of any delay resulting from the College agreeing not to require you to attend an interview or respond in writing regarding this matter prior to the conclusion of any criminal proceedings concerning the facts giving rise to this investigation.
45. A December 18, 2019 email from the Respondent to the College prompted the College to be concerned that the Respondent may have a health condition that has the potential to impair her ability to practice massage therapy. By letter dated

January 14, 2019, Ms. Parisotto requested that the Respondent provide further information about her current health condition(s) and the names of the medical practitioner(s) and/or health professional(s) who were overseeing her care at that time.

46. The Respondent's physician, [REDACTED], wrote to the College by letter dated May 22, 2020 and addressed the Respondent's health. The letter expressed concern about the Respondent's mental and physical condition and did not confirm the Respondent's fitness to practice.
47. By letter dated June 17, 2020, Ms. Parisotto informed the Respondent that the Inquiry Committee had expanded the scope of the investigation to include the Respondent's fitness to practice massage therapy. The Respondent was provided with two options. First, the Respondent could provide a letter from another physician confirming her fitness to practice. Second, the Respondent could undergo an independent medical evaluation by a medical practitioner to be selected by, and to be paid by, the College.
48. By email of June 22, 2020, the Respondent wrote to College staff indicating that the College could "get another doctor's thoughts but CMTBC will have to be paying". Ms. Parisotto responded requesting confirmation that the Respondent was exercising the second option outlined above.
49. Beginning on June 25, 2020, Ms. Parisotto made several attempts to schedule a virtual psychological evaluation and an in-person functional capacity evaluation of the Respondent in Prince George. The Respondent would not commit to proposed dates.
50. By letter dated July 8, 2020, Ms. Parisotto wrote to the Respondent indicating that the College learned the criminal charges had been stayed. The College asked for confirmation that this is correct. The College also canvassed the Respondent's availability for a psychological evaluation in the same letter. The Respondent replied the same day confirming the criminal charges had been stayed. The Respondent also indicated that she has not been practicing. As a result, on July 9, 2020, Ms. Parisotto inquired whether the Respondent would change her registration status to

non-practising and indicated that if so, the College could delay the Respondent's assessment until such time as the Respondent sought to return to practising status. By email of July 14, 2020, the Respondent declined.

51. On July 14, 2020, Ms. Parisotto inquired by email whether the Respondent would instead sign an agreement that she would undergo the requested psychological and functional capacity assessments before returning to practice massage therapy.
52. By letter dated July 21, 2020, Ms. Parisotto followed up on the email communications and sought confirmation from the Respondent of the following:
  1. Are you currently practicing massage therapy?
  2. If not, do you currently have any plans to return to the practice of massage therapy?
  3. Will you sign a voluntary undertaking agreeing not to practice massage therapy until you have completed both a psychological evaluation and a functional capacity evaluation?
  4. Can you confirm whether you would attend a virtual psychological evaluation with Dr. Nemetz on August 11 or August 19, 2020 at 9:00 a.m.?
  5. Can you confirm whether you would attend a functional capacity evaluation in Prince George from 9:00 a.m. to 4:00 p.m. on August 13, 2020?
53. On July 24, 2020, the Respondent emailed Ms. Parisotto to advise that she was seeking a new lawyer and "you will have to wait until I do so." A number of further emails followed in which the Respondent requested an extension to respond to Ms. Parisotto's questions. Several extensions were granted to the Respondent until August 31, 2020.
54. On October 1, 2020, Michael Apps, an inspector appointed by the Inquiry Committee wrote to the Respondent seeking to schedule an interview.
55. On October 1, 2020, the Respondent replied to Mr. Apps, stating amongst other things, "I will absolutely not converse anymore with you until I can afford a lawyer."
56. On October 2, 2020, Ms. Parisotto emailed the Respondent advising, "Pursuant to section 65.1 of CMTBC's Bylaws, the Inquiry Committee may require a registrant to attend for an interview with an inspector (or the Inquiry Committee, a panel of the Inquiry Committee, or the College's Registrar). This matter will be referred to the Inquiry Committee, which will consider, at an upcoming meeting in the third week of

October, whether to compel you to attend an interview.” Ms. Parisotto also referred the Respondent to resources for obtaining legal advice.

57. By letter dated October 22, 2020, Ms. Parisotto advised the Respondent that the Inquiry Committee had met and directed that the Respondent attend an interview with an inspector. The interview would be conducted by Mr. Apps and was scheduled for December 4, 2020 at 10:00 am to be held by video conference. Ms. Parisotto also explained the importance of an interview in the investigative process, and notified the Respondent of the potential consequences for failing to attend an interview.

58. On October 22, 2020, the Respondent emailed Ms. Parisotto stating:

I am not getting a cheap lawyer and refuse to speak with you and any other investigators until I can continue paying the lawyer I already have.

Since this matter is not time sensitive and you have until January to refile again for this you I can all put his on the back burner until I say.

This matter has nothing to do with my professional conduct as I have worked 17 years as an RMT and have never once had an issue. So should I decide to not continue to be an RMT I still have 17 years of good will in my life that I could still work unregistered should I choose. This is where I am sitting right now deciding. Because I in no way consent to what you call an investigation. I have absolutely no faith from how the CMTBC has acted since this event first took place that you will somehow whittle any semblance of an ethical attempt.

Take a break, and go find some other victim who wants you to meddle in their lives for now.

59. By email dated October 23, 2020, Ms. Parisotto confirmed to the Respondent that a stay of proceedings is not available to registrants under the HPA. She reiterated that if the Respondent did not attend and participate in the interview, the matter would be referred back to the Inquiry Committee who would likely initiate a new investigation into the Registrant’s failure to attend the interview. Ms. Parisotto noted that this may result in disciplinary action against the Respondent.

60. On October 23, 2020, the Respondent emailed Ms. Parisotto in reply, stating amongst other things:

There will be a stay of proceedings until I can provide the college with a list of victims from the offending RCMP officer the college thinks they are going to interview.

I am not talking with any of you further UNTIL I have money for the lawyer I already have. I have already seen and been through what a discount gets you and I am not interested, so again, you and the rest of your employees can just take a break on pestering me about my assault. Go find another thing to be unethical about.

[...] I WILL not further speak to you without me having a proper lawyer.

Thank you for your time again,

Please do not contact me until you have heard from my lawyer.

61. Ms. Parisotto replied on October 26, 2020, reiterating that a stay of proceedings was not available and asking to clarify whether the Respondent had retained counsel. Ms. Parisotto reiterated the potential consequences to the Respondent if she failed to attend the interview scheduled for December 4, 2020.
62. On October 27, 2020, the Respondent emailed Ms. Parisotto confirming she had legal counsel but had not paid him for a period of time, and:

tell the investigator that they will have to put a hold on their proceedings as I won't be present unless i have counsel present. and you will know when they contact you on my behalf. until then, please stop contacting me. I will not be responding.
63. Later the same day, Ms. Parisotto replied seeking clarification about whether the Respondent did have legal counsel and if so, she requested their contact information in order to communicate directly with counsel. Ms. Parisotto reiterated, "The investigator will be ready and present for the interview scheduled for December 4, 2020 at 10:00 a.m., which you are required to attend. If you do not attend and participate in the interview, this matter will be referred back to the Inquiry Committee, and I anticipate that the Inquiry Committee will initiate a new investigation into the failure to attend the interview, which may result in disciplinary actions against you."
64. On October 30, 2020, the Respondent emailed Ms. Parisotto stating, "Well I'm sorry to hear you are having troubles relaying the message that I have no intention of being present without my counsel retained for this matter. I hope you can figure something out over there." Later that day, the Respondent emailed again stating, "Please stop sending messages until after I retain counsel. If I get any more messages it might lead to me needing to block your email. Thank you for your time."
65. The Respondent emailed Ms. Parisotto several times on December 3, 2020, following a reminder from Mr. Apps about her upcoming interview. The Respondent

indicated that the interview should have been rearranged. She stated, "Otherwise, I hope you guys figure out your scheduling." Mr. Apps replied to the Respondent confirming receipt of her emails and reiterating the potential consequences if she failed to attend the scheduled interview.

66. The Respondent responded to Mr. Apps on December 3, 2020 by email stating, "I'm also glad this is all in email so I can share it all with my registrant friends to inform them how the cmtbc is malfunctioning. Other than seeing the oblivious misuse of CBC and treating registrants like exciting pieces of something to do, this is preciously so shareable." Ms. Parisotto responded to that statement underlining the confidential nature of the investigation and that documents and information obtained in the course of the investigation are not to be disseminated. The Respondent replied on December 3, 2020, "You might not have wanted to email it thru to gmail if you were anticipating it to be held confidential. Bit of a fail on CMTBCs part isn't it." In a further email that day, she added "I might add, that I have on multiple occasions made it quite clear that the college is to refrain from I contacting me privately until I have put them in contact with my lawyer....See you when I have legal representation. Your emails will be sent to my spam folder for the time being because of a continued disregard of My need of legal representation."
67. Later that day, Ms. Parisotto responded that the College had provided the Respondent with ample time to retain counsel and had also provided her with information about legal resources that may assist. Ms. Parisotto noted that as a public interest regulator, the College was unable to put its investigation on hold as the Respondent had previously been advised. The Respondent replied that she was not eligible for subsidized legal representation and already had legal representation. She stated, "this is my final warning; Do not contact me again personally." Ms. Parisotto replied that the College would continue to contact the Respondent until the Respondent advised she had retained legal counsel and provided that counsel's name.



68. On January 13, 2021, Ms. Parisotto wrote to the Respondent to advise that the Inquiry Committee initiated a new investigation into her conduct regarding her failure to attend an interview required by the Inquiry Committee.
69. On January 14, 2021, the Respondent signed and submitted a form requesting to cancel her registration with the College. She requested cancellation of her registration as of January 14, 2021.
70. On January 15, 2021, Ms. Parisotto wrote to the Respondent to advise that the Inquiry Committee retained jurisdiction to investigate the Respondent despite her resignation. The Respondent advised Kate Irvine at the College (who emailed the letter on behalf of Ms. Parisotto) that her email would now be blocked.
71. By letter dated June 18, 2021, Ms. Parisotto advised the Respondent that the Inquiry Committee decided to direct the Registrar to issue a citation in relation to the 2021 investigation into the Respondent's conduct.
72. The Respondent cross-examined Ms. Parisotto during the discipline hearing.

*Affidavit #1 of Michael Apps*

73. Michael Apps is an inspector for the CMTBC appointed pursuant to the HPA. His affidavit sets out the following evidence.
74. On October 1, 2020, Mr. Apps emailed the Respondent to schedule a video conference interview with her in relation to the College's investigation. Mr. Apps was subsequently advised by Ms. Parisotto that the Inquiry Committee later directed that the Respondent was required to attend the interview.
75. On December 1, 2020, Mr. Apps emailed the Respondent reminding her of the scheduled December 4, 2020 interview and providing log in and testing information. The Respondent replied by email of the same date stating, "I am also reminding you of the several emails where I stated I will not be present at this interview. I will not be contacting anyone further from the college until I am able to secure my lawyer for this task. I hope I can count on you and yours to respect this decision."
76. Mr. Apps emailed the Respondent again on December 1, 2020 to advise the Respondent that if she did not attend and participate in the interview, the matter

would be referred back to the Inquiry Committee who would likely initiate a new investigation into the failure to attend the interview. Mr. Apps noted that may result in disciplinary action against the Respondent. The Respondent replied the same day stating, "I think you guys can figure something out. Good luck."

77. On December 4, 2020, Mr. Apps emailed the Respondent at 10:24 am noting that she was not in attendance at the interview. He indicated that he would wait until 10:45 am. The Respondent replied at 10:58 am stating:

As I have mentioned before, I am not present with out my legal counsel.

Sorry to hear that the college couldn't figure out how to cancel their own created appointments.

I do not consent to any more contact with me prior to my lawyer contacting you.

Again, good luck figuring out internal problems,

78. The Respondent did not participate in the interview on December 4, 2020. The court reporter noted the Respondent's non-attendance on the record.
79. The Respondent cross-examined Mr. Apps during the discipline hearing.

### *The Respondent*

80. The Respondent testified at the discipline hearing. She testified that she did respond to College communications. She testified that the College's request for medication information was an "overreach". The Respondent testified that she found the College's emails to be an invasion "of her space". The Respondent testified that this was a traumatic period in her life. The COVID pandemic then began which added additional stress. The Respondent had to shut down her business. The Respondent testified that she did have legal counsel but was dissatisfied with their representation. She testified that she did look for other lawyers to represent her in the College process.
81. The Respondent was cross-examined on her evidence. She acknowledged that she wrote in one communication that she did not want any "cheap lawyers" to represent her. The Respondent testified that she did not qualify for legal assistance. She also acknowledged that there is no income qualification for contacting the Canadian Bar

Association (CBA) Lawyer Referral Service. The Respondent would not readily admit that she did not attempt to follow up on the legal resources provided by Ms. Parisotto, including contacting the CBA. When asked whether the Respondent was of the view that the College should put their investigative process on hold indefinitely until the Respondent paid her legal counsel, she replied “it was a pandemic, I wanted the one [the lawyer] that I had. I also couldn’t afford it and I didn’t qualify for another one.”

## **E. ANALYSIS**

### **Allegation 1: Failure to Attend Interview**

1. You violated s.65.1 of the Bylaws, and in the alternative committed unprofessional conduct, by failing to attend the required interview on December 4, 2020.
82. The Panel accepts all of the evidence of Ms. Parisotto and Mr. Apps set out above and finds that evidence as facts. The evidence was clear and convincing and was unshaken on cross-examination. Both witnesses were credible and reliable. They were clear, specific and consistent. There were extensive documents filed as exhibits to the primary affidavits filed by the College, the authenticity of which was uncontested, and which set out the key events and communications that are at issue in these proceedings.
83. The Inquiry Committee required the Respondent to attend an interview on December 4, 2020 pursuant to its authority under s. 65.1 of the Bylaws. On October 22, 2020, the Respondent was advised of this decision and was notified of the time and place of the interview. The Respondent was reminded of the interview multiple times in the period leading up to the interview. She was also reminded of the consequences of failing to attend the interview. The Respondent was reminded of the interview about 25 minutes into the interview and given the opportunity to attend the interview late. The Respondent did not attend the required interview on December 4, 2020.
84. The Respondent was aware of the scheduled interview as she responded to the communications advising her of the scheduled date and time. The Respondent did not dispute that she failed to attend the December 4, 2020 interview. The

Respondent took the position that the College should put its investigation on hold due to her alleged inability to afford legal counsel.

85. The Respondent's emails to the College indicating that she did not intend to attend the interview are not relevant to this allegation or to any mitigation of her conduct.
86. The Respondent had legal counsel representing her shortly after the investigation was initiated and until early 2020. In the summer of 2020, the Respondent was granted multiple extension requests to allow her to seek legal representation. Ms. Parisotto provided the Respondent with resources to obtain legal advice. The Panel is not satisfied that the Respondent meaningfully pursued any of those resources, if she did so at all. It was clear that the Respondent did not want free or reduced legal advice ("I am not getting a cheap lawyer..."). The Respondent refused to admit that she did not contact the CBA Lawyer Referral Service. The Panel found the Respondent's evidence on that point to be evasive. The Respondent provided no evidence of any efforts or steps which she did undertake in that regard. Moreover, the Respondent provided no evidence of any efforts she made from October 22, 2020 to December 4, 2020 to retain legal counsel. The Respondent did provide some vague testimony about reaching out to two lawyers however that was during the period prior to Ms. Parisotto providing her with the legal resources.
87. The Respondent's failure to retain legal counsel cannot justify her failure to attend the interview or cooperate with the College's requests. Her references to a search for legal counsel continued for many months. The College cannot put its investigations on hold indefinitely as this would defeat its statutory mandate to protect the public. There is no legal right to postpone investigations indefinitely on the basis that the registrant is unrepresented. The Respondent appears to conflate the right to retain counsel with a right to have proceedings halted unless and until one retains counsel and they are present for the proceedings. The Panel does not accept this argument which is unsupported in the caselaw.
88. The right to counsel refers to the principle that the registrant has an opportunity to retain counsel. The question is not whether they ultimately decide to exercise their opportunity. Moreover, the right to counsel is not absolute. It is an opportunity to

retain counsel of a party's choosing who is ready and able to appear according to tribunal's scheduling requirements and in accordance with the requirements of legislation. The Panel is satisfied that the Respondent was provided with that opportunity.

89. The CMTBC has a fundamental and onerous duty to serve and protect the public interest. That duty cannot be fulfilled if its investigative or disciplinary processes are thwarted. Yet, this is exactly what the Respondent's position demands as a registrant could remain unrepresented for years while indefinitely suspending investigative and disciplinary processes. This would violate the CMTBC's public interest mandate and defeat the very foundation of the self regulatory system.

90. The Panel agrees with and adopts the College's submission that:

119. In a very different, but informative, context the Supreme Court of Canada has recognized that the *Charter*-protected right to counsel on arrest or detention in criminal cases must be exercised in a way that is reconcilable to the needs of society – i.e. that it must be exercised diligently without undue delay. Even in that context, where the rights of the accused are at their highest, the Court held that such a "limit on the rights of an arrested or detained person is essential because without it, it would be possible to delay needlessly and with impunity an investigation".

*R. v. Smith*, [1989] 2 S.C.R. 368 at 385 (Book of Authorities, Tab 13)

91. Section 65.1 of the College's Bylaws empowers the Inquiry Committee to require a registrant to attend for an interview. The use of the word "require" is significant and must be read to mean that attendance is mandatory. The Panel finds that the Respondent's failure to attend the interview was a failure to comply with the College's Bylaws for purposes of section 39(1) of the HPA.

92. The Panel finds that the Respondent's conduct also constitutes unprofessional conduct which is consistent with the *Gill*, *Millar*, and *Cunningham* decisions set out above.

93. The Citation has alleged determinations under section 39.1 of the HPA in the alternative. The College reiterated that position for alternate determinations in its closing submissions. While the Panel finds that both a breach of the College's Bylaws and unprofessional conduct are made out in this case, the Panel has decided to make a singular determination given the College's alternate pleading. The Panel

considers the determination of unprofessional conduct to be more appropriate in the circumstances of this case. The Panel considers unprofessional conduct to be more serious than a breach of the College's Bylaws in this case. A registrant's duty to cooperate with a College investigation is critical to the functioning of a self-regulating body. The Respondent's flagrant refusal to attend the mandatory interview is serious and therefore a determination of unprofessional conduct is more appropriate.

94. The Panel finds that the College proved on a balance of probabilities that the Respondent violated s.65.1 of the Bylaws by failing to attend the required interview on December 4, 2020. The Panel has determined pursuant to section 39(1) that the Respondent committed unprofessional conduct.

**Allegation 2: The Respondent's Emails: Failure to Respond in a Professional, Responsive and Timely Manner**

2. You violated s.28 of the Code of Ethics, as it stood in 2020, and therefore s.75 of the Bylaws, and in the alternative committed unprofessional conduct, by failing to respond to inquiries, requests and directions from the College in relation to the required interview in a professional, responsive and timely manner. Particulars of this charge include that:

- a. on or about October 22, 2020, in an email to a representative of the College, you wrote, "I...refuse to speak with you and any other investigators until I can continue paying the lawyer I already have", you purported to withhold your consent to the College proceeding with its investigation, and you stated "you can all put his [sic] on the back burner until I say";
- b. on or about October 23, 2020, in an email to a representative of the College, you wrote, "I am not talking with any of you UNTIL I have money for the lawyer I already have" and "I WILL not further speak to you without me having a proper lawyer", following which you failed to provide the College with contact information for a lawyer it could contact directly;
- c. on or about October 27, 2020, in an email to a representative of the College, you wrote, "tell the investigator that they will have to put a hold on their proceedings as I won't be present. unless I have counsel present and you will know when they contact you on my behalf. until then, please stop contacting me. I will not be responding";
- d. on or about October 30, 2020, in an email to a representative of the College, you wrote, "Please stop sending messages until after I retain counsel. If I get any more messages it might lead to me needing to block your email";
- e. on or about December 3, 2020, in an email to a representative of the College, you purported to provide the College with a "final warning" stating, "Do not contact me again personally" without providing the College with contact information for a lawyer it could contact instead; and

f. on or about December 4, 2020, in an email to a representative of the College, you purported to withhold “consent to any more contact with me prior to my lawyer contacting you” yet failed to provide the College with contact information for a lawyer.

95. For the reasons outlined in relation to allegation 1 of the Citation, the Panel accepts all of the evidence of Ms. Parisotto and Mr. Apps in relation to allegation 2 of the Citation as well and finds that evidence to be facts.
96. The Panel finds that the evidence establishes that the Respondent failed to respond to inquiries, requests and directions from the College in relation to the required interview in a professional, responsive and timely manner. The Panel finds that each of the communications particularized in allegation 2(a) to (f) of the Citation were clearly established in the evidence of Ms. Parisotto and Mr. Apps. The Respondent’s cross-examinations of Ms. Parisotto and Mr. Apps, and the Respondent’s own testimony, did not undermine that evidence.
97. As noted above, section 28 of the Code of Ethics required massage therapists to respond to any inquiries, requests and directions from the College in a professional, responsive and timely manner.
98. The Panel finds that the Respondent failed to comply with the requirements set out in section 28 of the Code of Ethics. The Respondent’s communications to the College displayed a disregard of her obligations as a registrant and of the College’s duties under the HPA. The Respondent’s demands that the College suspend its investigation showed a lack of professionalism and a lack of respect of the College’s role as regulator. This is particularly the case in the communications which occurred after Ms. Parisotto explained to the Respondent that there is no power in the HPA to stay investigative proceedings.
99. On multiple occasions, the Respondent demanded that College representatives cease communicating with her. She indicated that she would not respond or that she would block or otherwise ignore the College’s emails. These emails demonstrate the Respondent’s disregard of her professional obligation to cooperate with and respond to the College, and specifically her obligation to do so under section 28 of the Code

of Ethics. It is not open to a registrant to unilaterally cease communicating with the College.

100. The Respondent's communications, many of which are set out in detail above, demonstrate that she failed to respond to the College's inquiries, requests and directions in a professional and responsive manner. As concerns the timeliness of the Respondent's communications, it is true that the Respondent frequently replied to College emails on the same day, however, the content of the Respondent's replies was neither responsive nor professional, therefore, any timeliness was meaningless. For the most part, the Respondent's replies were to tell the College to suspend their investigation and cease all communications with her. The Panel notes that the Respondent did reply to the College's request for clarification about whether her criminal proceedings had been stayed. She also replied in part to queries about her legal representation.
101. The Panel finds that the Respondent's communications to the College were unprofessional. On many occasions the Respondent used language that was sarcastic and impertinent. For example, the Respondent stated:
  - a. "Because I in no way consent to what you call an investigation. I have absolutely no faith from how the CMTBC has acted since this event first took place that you will somehow whittle any semblance of an ethical attempt."
  - b. "Take a break, and go find some other victim who wants you to meddle in their lives for now."
  - c. "I am not talking with any of you further UNTIL I have money for the lawyer I already have. I have already seen and been through what a discount gets you and I am not interested, so again, you and the rest of your employees can just take a break on pestering me about my assault. Go find another thing to be unethical about."



- d. "Well I'm sorry to hear you are having troubles relaying the message that I have no intention of being present without my counsel retained for this matter. I hope you can figure something out over there."
  - e. "Otherwise, I hope you guys figure out your scheduling."
  - f. "I'm also glad this is all in email so I can share it all with my registrant friends to inform them how the cmtbc is malfunctioning. Other than seeing the oblivious misuse of CBC and treating registrants like exciting pieces of something I to do, this is precious so shareable."
  - g. "You might not have wanted to email it thru to gmail if you were anticipating it to be held confidential. Bit of a fail on CMTBCs part isn't it."
  - h. "So, again, good luck sorting out college problems. And again, this is my final warning; Do not contact me again personally. Thank you very much."
  - i. "Again, I wish you luck in organizing yourselves better in the future."
  - j. "Unless you personally would like my partner to continue paying absurd legal fees and ruin my personal relationship as well, I would suggest the college continue to figure out college problems and not make them mine."
102. The Panel finds that the Respondent's communications are akin to the "sarcastic and otherwise inappropriate" remarks contemplated in the *Groia* decision, and exchanges lacking "fairness, courtesy and in good faith" contemplated in the *Stromotich* decision.
103. The Panel agrees with the College's submission that the Respondent's comments do not set a professional tone in circumstances where she had a professional obligation to cooperation with the College so that it could carry out its statutory duties.
104. The Panel finds that the Respondent's communications particularized in paragraph 2 of the Citation constitute a violation of section 28 of the Code of Ethics and therefore a violation of section 75 of the College's Bylaws by failing to respond to inquiries, requests and directions from the College in relation to the required

interview in a professional, responsive and timely manner. The College has proven allegation 2 of the Citation on a balance of probabilities.

105. The Panel finds that the Respondent's conduct constitutes unprofessional conduct for the reasons outlined in the decisions cited above, and in particular, in the *Gill* decision. The Respondent's communications do not set an appropriate standard for communicating with a registrant's regulatory body in relation to attendance at a mandated interview.
106. As noted above, the College has sought determinations under section 39.1 of the HPA in the alternative. While the Panel finds that both a breach of the College's Bylaws and unprofessional conduct are established in this case, the Panel has decided to make a singular determination. The Panel considers the determination of unprofessional conduct to be more appropriate in the circumstances of this case. The Panel considers unprofessional conduct to be more serious than a breach of the College's Bylaws in this case. A registrant's duty to cooperate with a College investigation is critical to the functioning of a self-regulating body. The Respondent's failure to respond to inquiries, requests and directions from the College in relation to the required interview in a professional, responsive and timely manner was flagrant and serious. The Panel has decided that a determination of unprofessional conduct is appropriate.
107. The Panel finds that the College has proven allegation 2 to the requisite standard and the Panel has determined that the Respondent committed unprofessional conduct.

**F. ORDER**

108. In summary, the Panel finds that the College has proven all the allegations in the Citation to the requisite standard.
109. Pursuant to section 39(1) of the HPA, the Panel has determined that the Respondent:
  - a. Has committed unprofessional conduct in relation to the allegation at paragraph 1 of the Citation; and

- b. Has committed unprofessional conduct in relation to the allegation at paragraph 2 of the Citation.

**Schedule for Submissions on Penalty and Costs**

110. The Panel directs that the parties provide written submissions regarding the appropriate penalty and costs.
111. The Panel directs that the parties provide the written submissions in accordance with the following schedule:
  - a. Submissions must be delivered by counsel for the College to the Respondent and the Panel by no later than December 19, 2022;
  - b. Submissions must be delivered by the Respondent to counsel for the College and the Panel by no later than January 16, 2023; and
  - c. Reply submissions may be delivered by counsel for the College to the Respondent and the Panel by no later than January 23, 2023.

**Notice of Right to 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.

**Delivery and Public Notification**

113. The Panel reminds the College of the requirements in section 39(3)(c) of the HPA.
114. The Panel directs that pursuant to sections 39.3(1)(d) of the Act, the Registrar notify the public of the determination made herein.
115. The Panel directs that pursuant to section 39.3(3)(a) of the Act, the Registrar withhold part of the information otherwise required to be included in the public notification under this section as the Panel considers it necessary to protect the interests of other persons affected by the matter. The College may return to the

Panel for further direction as to implementation regarding section 39.3(3)(a) if required.

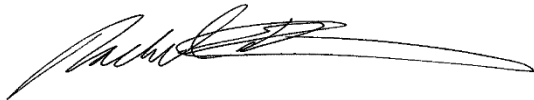
Dated: November 28, 2022

Handwritten signature of Arnold Abramson in cursive script.

Arnold Abramson, Chair

Handwritten signature of Evan Jeary in cursive script.

Evan Jeary, RMT

Handwritten signature of Rachel Shiu in cursive script.

Rachel Shiu, RMT