

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:

The College of Massage Therapists of British Columbia
(the “College”)

AND:

Jeremy Jakobsze
(the “Respondent”)

REASONS FOR DECISION

Date and Place of Hearing:	December 12, 2022 By videoconference
Panel of the Discipline Committee	Arnold Abramson, Chair (Public Member) Michael Wiebe, RMT Marilynne Waithman (Public Member)
Counsel for the College:	Andrew Gay, K.C. Clayton J. Gallant
For the Respondent:	Unrepresented and did not attend hearing.
Independent Legal Counsel to the Panel:	Fritz Gaerdes

Introduction

1. On November 3, 2021, the College issued a citation pursuant to section 37 of the *Health Professions Act* RSBC 1996, c.183 (the “HPA” or “Act”) naming Jeremy Jakobsze, former RMT, as Respondent (the “Citation”). This panel of the Discipline Committee (the “Panel”) of the College of Massage Therapists of British Columbia (the “College”) conducted a discipline hearing on December 12, 2022 (the “Discipline Hearing” or the “Hearing”) to determine whether the Respondent committed professional misconduct or, alternatively unprofessional conduct, and violations of sections 27, 28 29 and 32 of the CMTBC Code of Ethics as it stood in 2020.

2. For the reasons set out below, the Panel finds that the allegations set out in paragraphs 1 and 2 of the Citation have been proven to the requisite standard. The Panel has determined that by conducting himself in the manner described in paragraphs 1 and 2 of the Citation, the Respondent has committed professional misconduct.

Privacy Order

3. The College seeks an order or direction from the Panel that if any member of the public, including media, requests a copy of the transcript of this proceeding, or any of the exhibits marked in this proceeding, the College will redact the name of the complainant, and any information that may identify her.
4. The College points out that although the facts are not similar, the same kind of order was made by the panel presiding in the case of Steven Anderson, RMT: *The College of Massage Therapists of British Columbia v. Anderson* (May 19, 2021).
5. The College also seeks a direction pursuant to section 39.3(3)(a) of the Act that the Registrar withholds information from public notification necessary to protect the privacy interests of the complainant.
6. Finally, the College seeks a ruling that the Panel will refer to the complainant by her initials in the Panel's reasons in this case.
7. The College submits that as the master of its own process, the Panel is empowered to use initials to protect the privacy of a complainant where the facts justify such a measure.
8. The Panel agrees with the College's submissions.
9. The Panel has a broad discretion to make such orders under section 38(4.2) of the Act which empowers the Discipline Committee to make any direction "it considers appropriate" to ensure the interests of a party are not unduly prejudiced. At common law, a tribunal is also the master of its own procedure and has the power to control its records: *Cambie Hotel (Nanaimo) Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2006 BCCA 119 ("*Cambie Hotel*") at para. 38.

10. The Panel accepts the College submissions that in this case, since the complainant was subject to a lengthy campaign of harassment which includes allegations of mental illness and criminal acts, it is appropriate that her privacy should be protected. The Panel also agrees with the College that there is no pressing public interest in knowing the identity of the victim of the Respondent's attacks.
11. Accordingly, the Panel makes the privacy orders the College seeks, and which are outlined above.
12. The Panel also orders that any identifying information about College staff and its outside counsel contained in these reasons for decision must be redacted before the reasons are published on the College's website or shared with third parties.
13. Additionally, throughout these reasons, in all quotations of the allegations contained in the Citation, the Panel has used the complainant's initials when references are made to her.

The Citation

14. The particulars of the allegations against the Respondent are set out in the Citation as follows (redacted by using the complainant's initials):

...

The purpose of the hearing is to inquire into your conduct as follows:

WHEREAS:

- A. On June 3, 2020 you had an interaction with a prospective patient, ■■■■, following which she made allegations against you which you denied. In particular, she alleged that you were unduly aggressive in your tone and demeanour toward her because she attended at your office without wearing a mask; and you denied these allegations;
- B. You did not provide massage therapy services to ■■■■; and
- C. On June 3, 2020, ■■■■ posted an online review in relation to you, in which she criticized your conduct in connection with her June 3, 2020 attendance at your office and gave you a negative review (the "Online Review"). You posted an online response to the Online Review.

THE ALLEGATIONS AGAINST YOU ARE THAT:

1. Subsequent to June 3, 2020, and following ■■■■ posting the

Online Review, you committed professional misconduct, or alternatively unprofessional conduct, by engaging in unjustified acts of retribution or harassment against [REDACTED], particulars of which are:

- (a) On or about June 4, 2020, you submitted a complaint to [REDACTED]'s professional regulatory body, [REDACTED], including allegations that [REDACTED] engaged in "fraudulent" acts, "theft" and "gender-based harassment" against you, and implying that [REDACTED] had engaged in violations of the Criminal Code, when you had no basis for making such allegations;
 - (b) In July of 2020, shortly after the Registrar of [REDACTED] dismissed your complaint against [REDACTED], which took place on July 7, 2020, you contacted [REDACTED]'s employer by email and by phone and stated to representatives of her employer that [REDACTED] had "mental health" issues or that you were concerned for her mental health, and that she may pose a risk to others, in circumstances where you were not qualified to assess whether she had mental health problems, had no basis for alleging that she had mental health problems or was a risk to others, and had no legitimate basis for contacting her employer in relation to these matters;
 - (c) After seeking a review of the dismissal of your complaint to [REDACTED] by way of application to the Health Professions Review Board ("HPRB"), on October 20, 2020 you wrote to a representative of the HPRB, with a copy to [REDACTED] reiterating your allegation that "there was a substantial cause for concern regarding [REDACTED]'s mental health..." and alleging that [REDACTED] engaged in "hate speech" and should be held accountable for "provenly (sic) false accusations", in circumstances where you were not qualified to assess whether she had mental health problems; and where you had no basis for alleging that she had mental health problems, or had engaged in hate speech, or that it had been proven that [REDACTED] had made false accusations; and
 - (d) You made a complaint to the RCMP against [REDACTED], alleging she engaged in hate speech in relation to you, when there was no basis to allege that [REDACTED] had engaged in criminal conduct relating to hate speech.
2. Following the initiation of an investigation by the Inquiry Committee of the College into your interactions with [REDACTED], you committed professional misconduct, or alternatively

unprofessional conduct, by communicating unprofessionally with staff of the College, particulars of which are as follows:

- (a) On August 31, 2020 you sent an email message to CMTBC Inspector [REDACTED] in which you referred to her, without justification, as an "unprofessional investigator";
- (b) On November 4, 2020 you sent an email message to [REDACTED], the College's Director, Inquiry & Discipline, in which you described [REDACTED], without justification, as "someone with a mental delay";
- (c) On November 5, 2020, in an email message to [REDACTED], you wrote:

"I don't know who touched you when you were 12 or what boy didn't like you in highschool, but it is not my fault that someone hurt you previously in life".

"It is absolutely clear that you have a vendetta against me for unjustified or unclarified reasons".

"You need to stop harassing me and my family to suit your own sexist motives".

"You are unfit to carry out your duties. I will see to it that you are removed from your position".

in circumstances where these statements were made without legitimate professional purpose or justification;

- (d) On November 5, 2020, after the CMTBC Registrar wrote to you stating that your email message referenced above at paragraph (c) was unacceptable and unprofessional, and suggesting that you apologize to [REDACTED], you responded to the Registrar by email asserting that [REDACTED] was "negligent" or "delayed" and "needs to be removed from her position promptly..." and that the Registrar should get his "head straight";
- (e) On November 20, 2020, after you were contacted by CMTBC's legal counsel [REDACTED], you referred to the CMTBC investigation process as a "kangaroo court" and wrote to [REDACTED] that:

"You can be a criminal if you want. Just ask yourself if it's worth it"; and

- (f) On or about December 10, 2020, when completing your 2021 registration renewal declaration to continue your membership in CMTBC, in answer to the question of whether, in the past year, you had been the subject of a complaint, investigation, disciplinary action or finding, you responded "yes" but then, rather than declaring the complaint made against you by [REDACTED], you wrote "I am subject to abuse of power and hate crimes by [REDACTED], [REDACTED] and the inquiry committee".
3. The conduct described above in paragraphs 1 and 2 constitutes a violation of sections 27, 29 and 32 of the CMTBC Code of Ethics as it stood in 2020.
4. The conduct described above in paragraph 2 additionally constitutes a violation of section 28 of the CMTBC Code of Ethics as it stood in 2020.

...

Service of the Citation and Respondent's Non-Attendance of the Hearing

15. The Respondent did not attend the Discipline Hearing and was not represented by counsel. On the first day of the Hearing, the College filed the Citation and affidavits of service. The affidavits of service confirm that the Respondent was properly served with the Citation, that he was advised of the date, time, and place of the Discipline Hearing, and that the Hearing could proceed in his absence should he not attend.
16. Based on this evidence, the Panel was satisfied that the Respondent received the Citation, had notice of the date and time of the Discipline Hearing, and chose not to attend. As such, the Panel was satisfied that the Hearing could proceed in the Respondent's absence pursuant to section 38(5) of the HPA, which provides that "if the respondent does not attend, the discipline committee may (a) proceed with the hearing in the respondent's absence on proof of receipt of the citation by the respondent, and (b) without further notice to the respondent, take any action that it is authorized to take under this Act."

Evidence and Submissions Filed by Parties

17. The Discipline Hearing took place by videoconference, hosted by Charest Reporting.

18. The College filed affidavits of service of the Citation. The College also filed numerous documents in the College's file that are relevant to the allegations set out in the Citation. The College also called one witness, [REDACTED], a College investigator, who provided sworn testimony with respect to the College's investigations of the matters at issue and the documents the College filed and written closing submissions.
19. The Respondent did not attend the Discipline Hearing and did not provide evidence to the Panel.
20. As discussed in more detail below, a few days prior to the commencement of the Discipline Hearing, the Respondent by email provided the Panel with a 22-page document titled "Disciplinary Hearing Response" (the "Response").

Legal Framework

Jurisdiction Over Former Registrants.

21. The Respondent is a former registrant of the College, having resigned his College registration on November 25, 2022.
22. Section 26 of the Act, 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".
23. The Panel is accordingly satisfied that under the Act it has jurisdiction over the Respondent as a former registrant.

Burden and Standard of Proof

24. The College bears the burden of proof and must prove its case on a balance of probabilities. The law on this point is well established. In *F.H. v. McDougall*, 2008 SCC 53, the Supreme Court of Canada held that the applicable standard was on a balance of probabilities and that "evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test". See also *College of Massage Therapists of British Columbia v. Gill* (May 13, 2019) ("*Gill*") at paras. 14-15.

HPA

25. Pursuant to section 39 of the HPA, on completion of a discipline hearing, the Panel must either dismiss the matter or make a determination regarding the Respondent's conduct:

39 (1) On completion of a hearing, the discipline committee may, by order, dismiss the matter or determine that the respondent

- (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.

26. The Panel next turns to the legal principles for the relevant concepts identified in section 39(1) of the HPA and that are applicable to this proceeding.

Failure to Comply with the HPA, a Regulation, or a Bylaw

27. Section 19(1)(k) of the HPA provides the College with the authority to enact bylaws establishing the "standards, limits or conditions" for the practice of the profession of massage therapy.

28. The College has done so through the enactment of the Bylaws. A registrant must not practice massage therapy except in accordance with the Bylaws: HPA, section 19(8).

29. Section 19(1)(l) of the HPA provides the College with the authority to "establish standards of professional ethics for registrants". The College has done so by establishing the Code of Ethics. Pursuant to section 75(1) of the Bylaws, a registrant must comply with the Code of Ethics.

30. Failure to comply with the Code of Ethics constitutes non-compliance with all the following:

- a. the HPA [section 19(8)];
- b. the Bylaws (section 75(1)); and

c. a standard imposed under the Act (see *Gill* at paras. 75-76),
for the purposes of sections 39(1)(a) to (b) of the HPA, set out above.

31. The College submits the Respondent's conduct as set out in the Citation contravened sections 27, 28, 29 and 32 of the Code of Ethics, which read (at the material time) as follows:

27. RMTs must recognize that professional self-regulation is a privilege that each RMT has a continuing responsibility to merit by upholding the honor, dignity and credibility of the profession.

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

29. RMTs must conduct themselves in a manner as to merit the respect of society for the profession, RMTs, and other health care professionals.

...

32. RMTs must protect and maintain personal and professional integrity.

32. For the reasons explained in greater detail below, the Panel agrees with the College's submission in this regard.

Professional Misconduct and Unprofessional Conduct

33. 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.

34. Both terms have been considered by the Courts and have also been described in other disciplinary decisions.

35. In *Klop v. College of Naturopathic Physicians of British Columbia*, 2022 BCSC 2086 (*"Klop"*) the Court held, at paras. 108 and 109, that professional misconduct is

“conduct that arises in the course of practicing a profession” but it is “not limited to conduct occurring in the course of practicing a profession. By definition, it also includes “conduct unbecoming a member of the health profession”: HPA, s. 26. In *The College of Massage Therapists of British Columbia v. Martin*, 2015 CMTBC 01 (“*Martin*”) the discipline panel held, at para 91, that it is a “wide and general term” which encompasses conduct which departs from the expected standards of the profession.

36. Conduct which occurs outside the practice of a profession, often referred to as “off-duty conduct”, can amount to conduct unbecoming “where there is a nexus with the professional practice”: *Klop* at para. 110. Moreover, off-duty conduct can also give rise to discipline “when it has a negative impact on the individual’s ability to carry out their professional obligations or where the conduct has a negative impact on, or conflicts with the core values of, the profession”: *Klop* at para. 110.
37. Unprofessional conduct is broader than professional misconduct and is generally understood to be less egregious: *Martin* at para. 190; and *College of Dental Surgeons of British Columbia re: Kaburda*, 2014 CanLII 96656 (BC CDS) at para. 54. It encompasses conduct “which violates [an] ethical code or rules of profession or such conduct which is unbecoming member of profession in good standing”, along with “off-duty conduct that brings the reputation of the profession into disrepute”: *Klop* at para. 118; and *Millar v. College of Physicians and Surgeons of British Columbia*, [1994] B.C.J. No. 967 (S.C.) at para. 32.
38. The disciplinary body of a profession plays an important role in setting the standards for the profession, and determining whether conduct falls below that standard: *Salway v. Association of Professional Engineers and Geoscientists of British Columbia*, 2010 BCCA 94 (“*Salway*”) at para. 32; and *Erdmann v. Complaints Inquiry Committee*, 2013 ABCA 147 (“*Erdmann*”) at para. 21.
39. In *Salway*, the Court of Appeal confirmed that it is not necessary to find “disgraceful, blatant or cavalier” conduct to make a finding of professional misconduct (para. 32).
40. In assessing the evidence, the Panel must use its own judgment and expertise as to the expected behaviour of registrants, while being guided by the College’s Bylaws

and Code of Ethics. Ultimately, the Panel has wide discretion to determine whether the Respondent's behaviour amounts to professional misconduct or unprofessional conduct: *Strom v. Saskatchewan Registered Nurses' Association*, 2020 SKCA 112 ("*Strom*"), at para. 80.

41. The Panel must interpret its enabling statute broadly and purposively with a view to protecting the public interest in the proper regulation of massage therapy: *Interpretation Act*, R.S.B.C. 1996, c. 238, s. 8; and *Sazant v. College of Physicians and Surgeons of Ontario*, 2012 ONCA 727 ("*Sazant*") at paras. 93-103. The Act provides the Panel with considerable discretion to deal with the myriad circumstances in which the conduct of a massage therapist could negatively impact the public interest or the proper functioning of the profession: *Strom*, at para. 80.
42. The Act is structured to allow health professions to be self-governing: *The College of Physicians and Surgeons of British Columbia v. The Health Professions Review Board*, 2022 BCCA 10 at para. 188. The primary purpose of making a profession self-governing is protection of the public interest through peer regulation: *Sanders v. College of Physicians and Surgeons of British Columbia*, 2018 BCSC 441 ("*Sanders*") at paras. 95-96. The Court has recognized that no one is better placed to assess allegations of professional misconduct than the members of the profession themselves: *Sanders* at para. 97.

Duty to Cooperate

43. The College points out that 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.

44. 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.

45. The Panel agrees with these decisions and finds that there is a duty to cooperate on College registrants, including the Respondent.

Unprofessional Communications

46. Further, the College submits, and the Panel accepts, that professionals are entitled to enjoy, as much as possible, the rights and freedoms of citizens generally, including the right to freedom of speech: *Erdmann* at para. 20. However, as the College also points out, “private behaviour that derogates from the high standards of conduct essential to the reputation of one’s profession cannot be condoned”: *Erdmann* at para. 20; see also, *Sazant* at para. 98.
47. Further, when professionals engage in unprofessional communications with their regulatory body or subject members of the public to verbal abuse, their conduct may constitute professional misconduct: *Rathe v. College of Physicians and Surgeons of Ontario*, 2013 ONSC 821 (“*Rathe*”) at para. 24; and *College of Massage Therapists of British Columbia v. Gaudet* (November 28, 2022) (“*Gaudet*”) at paras. 101-103.
48. In *Foo v. Law Society of British Columbia*, 2017 BCCA 151 (“*Foo*”), a lawyer was disciplined for an inappropriate remark made to a social worker at the courthouse which referred to violence. The comment was meant to be humorous, but the social worker did not take it as such. The hearing panel held that the lawyer’s comment was a “marked departure” from the conduct expected of a lawyer and was therefore professional misconduct (paras. 21-23). This decision was upheld by a review board of the Law Society (paras. 39-44). Mr. Foo challenged the “marked departure” test as being overly vague, but the Court of Appeal rejected that argument and upheld the decisions of the hearing panel and review board. The court held that professional regulatory bodies have a wide latitude to decide what constitutes professional misconduct (paras. 53-54).

49. *Foo* further confirms that a lawyer's right to free speech is not unconstrained, and the lawyer can be sanctioned if his conduct "exceeded the bounds of appropriate conduct" (paras. 73-74).
50. In the present case, the Panel is mindful that the Respondent has a right to free speech. However, for the reasons set out below, the Panel accepts the College's submission that the Respondent's actions and statements crossed the line from legitimate expression to professional misconduct which may be sanctioned by the Panel.

The College's Principal Submissions

51. In summary, the College submits that the evidence establishes that the Respondent committed professional misconduct, or alternatively unprofessional conduct, constituting a contravention of sections 27 to 29 and 32 of the Code of Ethics by:
- a. engaging in unjustified acts of retribution against a prospective patient (paragraph 1 of the Citation); and
 - b. communicating unprofessionally with staff of the College during the investigation (paragraph 2 of the Citation).
52. The Panel now turns to determination of the College's specific allegations in the Citation.

Citation - Paragraph 1:

1. ***"Subsequent to June 3, 2020, and following [REDACTED] posting the Online Review, you committed professional misconduct, or alternatively unprofessional conduct, by engaging in unjustified acts of retribution or harassment against [REDACTED], particulars of which are:***
 - (a) ***On or about June 4, 2020, you submitted a complaint to [REDACTED]'s professional regulatory body, [REDACTED] including allegations that [REDACTED] engaged in "fraudulent" acts, "theft" and "gender-based harassment" against you, and implying that [REDACTED] had engaged in violations of the Criminal Code, when you had no basis for making such allegations;***

- (b) In July of 2020, shortly after the Registrar of ██████ dismissed your complaint against ██████, which took place on July 7, 2020, you contacted ██████'s employer by email and by phone and stated to representatives of her employer that ██████ had "mental health" issues or that you were concerned for her mental health, and that she may pose a risk to others, in circumstances where you were not qualified to assess whether she had mental health problems, had no basis for alleging that she had mental health problems or was a risk to others, and had no legitimate basis for contacting her employer in relation to these matters;**
- (c) After seeking a review of the dismissal of your complaint to ██████ by way of application to the Health Professions Review Board ("HPRB"), on October 20, 2020 you wrote to a representative of the HPRB, with a copy to ██████, reiterating your allegation that "there was a substantial cause for concern regarding ██████'s mental health... " and alleging that ██████ engaged in "hate speech" and should be held accountable for "provenly (sic) false accusations", in circumstances where you were not qualified to assess whether she had mental health problems; and where you had no basis for alleging that she had mental health problems, or had engaged in hate speech, or that it had been proven that ██████ had made false accusations; and**
- (d) You made a complaint to the RCMP against ██████, alleging she engaged in hate speech in relation to you, when there was no basis to allege that ██████ had engaged in criminal conduct relating to hate speech."**

Evidence

53. The sworn testimony and documentary evidence before the Panel establishes the following.
54. On June 3, 2020, the complainant, ██████, attended at the Respondent's business premises for an appointment to obtain massage therapy services.
55. Following the appointment, later the same day, ██████ made a complaint to the College about the Respondent's behaviour. ██████ alleges that the Respondent became

verbally aggressive with her and refused to treat her due to her failure to wear a mask. ■■■ left without receiving treatment from the Respondent.

56. ■■■ also posted a negative online review about the Respondent on Google in which she provided her account of the Respondent's behaviour during the appointment.
57. The Respondent posted a response in which he disagreed with the complainant's version of events.
58. Shortly after their altercation on June 3, 2020, the Respondent sent ■■■ an email indicating she would be charged \$120 for the appointment that did not take place.
59. Subsequently, on the same day, ■■■ replied to the Respondent. In her email, ■■■ apologized for not bringing a mask to the appointment and reiterated that the Respondent acted in a manner that was intimidating and that payment for the appointment would not be made.
60. On June 4, 2020, the day after ■■■ posted her online review, the Respondent submitted a complaint to ■■■'s professional regulatory body, the ■■■. In the complaint to the ■■■, the Respondent alleged that because of her actions during the appointment and her online review, ■■■ was guilty of:
 - a. "Trespassing" for entering the clinic without a mask;
 - b. "Negligence" for "intentionally not bringing" a mask to the appointment;
 - c. "Theft" for "\$120 in lost income and stealing time from other patients";
 - d. "Gender-based Harassment" because she "fraudulently references fear of being physically assaulted based on my sex and physical size";
 - e. "Inciting Harassment" for "posting a sexist and fraudulent 1 star google business review"; and
 - f. "Professional misconduct" for "inciting gender-based harassment against another healthcare professional in public while referencing her professional designation".

61. In his complaint, the Respondent stated that [REDACTED]'s conduct was "vastly and grotesquely heavy handed and illegal". With respect to illegality, the Respondent referred the [REDACTED] to provisions of the *Criminal Code* concerning "Criminal harassment", "Public incitement of hatred", "Willful promotion of hatred" and "Mischief".
62. On June 6, 2020, two days after making a complaint to the [REDACTED], the Respondent made a complaint to the Ridge Meadows RCMP about [REDACTED]. The Respondent tried to convince the RCMP to press charges against [REDACTED] and raised the same *Criminal Code* offences which he cited in his complaint to [REDACTED]: criminal harassment, public incitement of hatred, willful promotion of hatred and mischief. During his communications with the RCMP, the Respondent also alleged that the College was "inept", "crooked" and "corrupt", and that he engaged in a "rant against women".
63. The RCMP determined that the threshold for the alleged offences was not met, and that the matter was not criminal. Accordingly, they took no further action and concluded the file.
64. Following the RCMP complaint, on July 7, 2020, the [REDACTED] notified the Respondent that it was dismissing his complaint. In its letter, the [REDACTED] stated that the Respondent's allegations do not suggest that [REDACTED] breached any standards of practice in her work as a [REDACTED] or engaged in conduct that would otherwise lead to serious regulatory consequences.
65. After the [REDACTED] dismissed his complaint, the Respondent began contacting [REDACTED]'s employer. He provided her employer with a copy of his [REDACTED] complaint and suggested she had "mental health" problems. In the Respondent's correspondence with [REDACTED]'s employer, he suggested that she has Borderline Personality Disorder and he stated:
 - a. "I allege that no sane medical practitioner would react this way after a simple, **polite** conversation regarding her obligation to read intake forms and the need for her to bring/wear a mask to receive treatment" (emphasis in original);

- b. "Notifying you about this issue is not meant to be punitive against her. It is meant to protect those around her from unfair allegations brought on by her alleged mental issues";
- c. "I feel that the event in question was precipitated by a mental health issue"; and
- d. [REDACTED] "may be a risk to others".

66. The Respondent subsequently sought a review of the dismissal of his [REDACTED] complaint to the Health Professions Review Board ("HPRB"). On October 20, 2020, the Respondent wrote the following to a representative of the HPRB, with a copy to [REDACTED] and to the [REDACTED]:

- a. That he had made a disclosure to the office manager of [REDACTED]'s "employer that there was a substantial cause for concern regarding her mental health";
- b. [REDACTED]'s "actions towards him were sufficient to warrant protective measures at work, such as warning males to not be alone with [REDACTED] or for management to not engage in disciplinary actions alone with [REDACTED]", and "cautioning that an open door or multiple people be present for formal interactions" with [REDACTED]
...
- c. it was made clear to him today that [REDACTED]'s office "completely disregarded the warning/complaint regarding a potentially mentally unfit healthcare professional working at their office. This contravenes the HPA section 32.2 – Duty to report suspected danger to the public by both Healthcare Professionals and members of the public (office staff)."
- d. "It is absurd that the college chooses to protect their registrant instead of uphold a higher standard to practice."
- e. [REDACTED]'s "unethical and abusive behaviour used after apologizing for skimming the protocols, not paying attention and making a mistake does not give her a free pass to abuse me professionally and publicly. "
- f. "Serious concerns are arising as to whether the [REDACTED] is fit to govern their registrants if this sort of behavior from a possibly mentally unfit and unethical registrant is deemed not serious enough to warrant an investigation. I will remind everyone that there is a witness."

- g. "I should not have to do this much arguing and complaining, to a [REDACTED] office and regulatory body, to have my voice heard. I was abused in this situation and it is being given a pass because nobody wants to hold a female accountable. It's sickening the low bar in ethics and practice standards that are allowable for [REDACTED]."
- h. "This [REDACTED] worker must be held accountable for her hate speech and provenly [sic] false accusations in a public forum while using her professional designation to bolster believability from the public..."

Analysis and Findings of Fact

- 67. The Panel finds the testimony of the College's investigator, and the above-mentioned documentary evidence about which she provided testimony, to be clear, convincing, and cogent. The Panel accepts this evidence.
- 68. The Panel finds that the Respondent's conduct described in sub-paragraphs (a) to (d) of paragraph 1 of the Citation has been established by the evidence before it, on a balance of probabilities.
- 69. As already noted, a few days prior to the commencement of the Discipline Hearing, the Respondent by email provided the Panel with a 22-page document titled "Disciplinary Hearing Response" (the "Response").
- 70. As also noted, [REDACTED] posted a negative online review about the Respondent on Google in which she provided her account of his behavior during her scheduled appointment with the Respondent. [REDACTED] also made a complaint about the Respondent's behavior to the College.
- 71. The Panel agrees with the College that the Response attempts to provide new evidence and is not admissible. Pursuant to section 38 of the HPA, if the Respondent wanted to provide the Panel with evidence, he should have attended the Discipline Hearing and provided his oral evidence under oath. He should also have made himself available for cross-examination on that evidence by counsel for the College, which he did not.

72. In any event, the Panel has reviewed the contents of the Response and finds that much of the document deals with factual disputes and allegations of bad faith and untruthfulness relating to the complaint that [REDACTED] made to College against the Respondent.
73. For example, on pages 1 to 3 of the Response, under the heading “[REDACTED]’s Formal Complaint to CMTBC” the Respondent provides a lengthy summary of the contents of [REDACTED]’s complaint to the College. On pages 4 to 7, under the heading “[REDACTED] Submitted Professional Misconduct Complaint in Bad Faith”, the Respondent provides an analysis and arguments with respect to several paragraphs in the College’s Investigation Report regarding [REDACTED]’s complaint to the College. At pages 8 to 9 of the Response, under the heading “Mask Use Deposition”, the Respondent alleges that the College Investigator investigating [REDACTED]’s complaint was acting in bad faith, was biased towards him, that [REDACTED] was untruthful, and that the complaint should have been dismissed as vexatious. On pages 10 to 11 of the Response, under the heading “[REDACTED] Not Verbally Abused”, the Respondent outlines his version of events on the day of the mask dispute with [REDACTED], and facts that came to light during the investigation of the complaint. On pages 12 to 13 under the heading, “Financially Motivated Spite Complaint” the Respondent alleges that [REDACTED] made false allegations in both her apology email and in her Google Review, which he argues shows bad faith. On page 15, under the heading “Bad Faith CMTBC Complaint”, the Respondent submits that all 15 allegations in the complaint are false, that [REDACTED] admitted the allegations against him to be false, and that she knowingly submitted false allegations to a regulatory body in bad faith. On page 16 under the heading “Bad Faith Submissions to Health Professions Review Board” the Respondent alleges, amongst other things, that [REDACTED] knowingly produced false statements to the HPRB in her response to his extension of time request. On page 17 under the heading “[REDACTED] Interfering with CMTBC Investigation Report Release Date”, the Respondent alleges, amongst other things, that the CMTBC knew since July that [REDACTED] had lied about her allegations and that the College’s investigation report was withheld from the Respondent until one day after the HPRB’s evidentiary submission deadline (October 29h, 2020).

74. ■■■'s complaint to the College does not form the basis of this Discipline Hearing. It is the Respondent's reaction to ■■■'s Google review, that is, his subsequent complaints to the ■■■■■■■■■■, ■■■'s employer, the RCMP, the HPRB, and his correspondence with College staff and its outside counsel, that form the basis of the allegations in the Citation and the Discipline Hearing. It is totally irrelevant to the Panel's determination of whether the Respondent committed professional misconduct or alternatively unprofessional conduct, and violated sections 27, 29 and 32 of the Code of Ethics as alleged in the Citation, if ■■■ had an ulterior motive or bad faith or provided false information in making the complaint to the College, or whose version of events of what occurred at the Respondent's clinic on the day of the mask incident is correct.
75. The Panel accordingly agrees with the College and finds that all the Respondent's submissions in the Response that deal with issues relating to or concerning ■■■'s complaint to the College, or the College's investigation of that complaint, are irrelevant to the allegations contained in paragraphs 1 and 2 in the Citation. They also do not answer or provide a defense against any of those allegations.
76. Further, in the Response, on page 17 under the heading "■■■ Intervening in HPRB Process", the Respondent submits that ■■■ and subsequently the College have breached confidentiality by allowing the subject matter and documents provided to the HPRB to be entered into evidence for this Disciplinary Hearing. On page 18 under the heading "Breach of Jakobsze's Confidentiality in the Evidence", the Respondent submits that if the open court principle applies and File number 54 "2020-11-05 HD Screen Shot.PDF" is put into evidence unredacted, then his home address and portal password will be made public which is completely unacceptable. On page 19 the Respondent also references a complaint against another RMT.
77. Again, the Respondent's submissions made with respect to these matters are irrelevant to the allegations contained in the Citation. They do not answer the allegations in the Citation, nor do they provide a defense to any of those allegations. The document the Respondent complains breached his confidentiality regarding his home address and portal password was not put into evidence before the Panel.

78. The College submits that the evidence before the Panel establishes that the Respondent committed professional misconduct, constituting a contravention of sections 27 to 29 and 32 of the Code of Ethics, by engaging in unjustified acts of retribution against [REDACTED], a prospective patient after she posted a negative Google review of him.
79. The Panel agrees.
80. The Panel finds that the Respondent's acts of retribution consist of the unjustified complaints he made to [REDACTED]'s professional regulator and her employer, his application to the HPRB for review of her regulator's dismissal of his complaint, as well as his attempt to have the RCMP criminally charge [REDACTED].
81. The Panel accepts the College's submissions and finds that there are several indicators in the Respondent's complaint to the [REDACTED] that reveal he had an agenda that went beyond complaining about an allegedly misleading story in a Google review. First, his reference in the complaint to the provisions of the *Criminal Code* was unnecessary and constitutes an unjustifiable and disproportionate escalation of the matter. Second, in support of his view that [REDACTED] engaged in "Gender-based Harassment", the Respondent wrote in the complaint that [REDACTED] "fraudulently references fear of being physically assaulted based on my sex and physical size". That is untrue. [REDACTED] did not write that she was fearful of being physically assaulted; she wrote that the Respondent was "extremely intimidating". Whatever happened between the two of them, the Respondent had no basis to assert that [REDACTED] was "fraudulently" expressing how she felt, because he could not know how she felt. The Respondent also goes on to allege in the complaint that [REDACTED] was "inciting harassment" by posting a review that was "sexist". The Panel finds that this justification for the complaint is such an obvious stretch that it strongly suggests that the Respondent had decided to engage in a campaign of retribution against [REDACTED] that continued thereafter for a number of months.
82. Further, as noted, on June 6, 2020, two days after making a complaint to the [REDACTED], the Respondent also made a complaint to the Ridge Meadows RCMP about [REDACTED]. The Respondent tried to convince the RCMP to press charges against

█ and raised the same *Criminal Code* offences which he cited in his complaint to █: criminal harassment, public incitement of hatred, willful promotion of hatred and mischief. During his communications with the RCMP, the Respondent also alleged that the College was “inept”, “crooked” and “corrupt”, and he engaged in a rant against women.

83. The Panel agrees with the College and finds that trying to convince the RCMP to lay criminal charges against █ was such an obvious overreaction to what had happened that it should also be regarded as part of a campaign of retribution against █ by the Respondent for posting the negative Google review about him.
84. While the Panel acknowledges that the RCMP report the College filed with the Panel is hearsay since neither of the RCMP officers involved were called as witnesses during the Discipline Hearing, hearsay evidence is admissible in discipline proceedings where it is logically probative of matters in issue and may fairly be regarded as reliable: *Cambie Hotel* at paras. 28-36.
85. The RCMP record was obtained through an information sharing agreement between the College and the RCMP. The Panel agrees with the College’s submission that it is accordingly a reliable document. Further, as the College points out, the document is put into evidence to simply establish what was said by the Respondent to the police, not the truth of what was said. In this context, there is therefore little danger associated with the admission of the record. The Panel accordingly finds the RCMP record admissible as evidence in this Discipline Hearing.
86. The Panel further agrees with the College and finds that the Respondent’s statements to █’s employer and to the HPRB that she had mental health issues and was a risk to others and the public were designed to punish █. It is evident that these statements formed part of an ongoing campaign of retribution by the Respondent against █ for posting the negative Google review. The Respondent had absolutely no basis or justification for providing any opinion or commentary on █’s mental health. It is something about which he has absolutely no knowledge or any expertise in. The evidence before the Panel establishes that before he made these statements, the Respondent and █ had minimal contact.

87. Further, as noted, the Respondent sought a review of the dismissal of his [REDACTED] complaint to the HPRB. He also wrote to a representative of the HPRB that [REDACTED] was mentally unfit and a suspected danger to the public. The Respondent also had no justification for or basis on which to make these statements to the HPRB. The Panel agrees with the College's submission that there are also several indicators in the Respondent's statements to the HPRB that show he was on a campaign of retribution against [REDACTED] rather than pursuing a legitimate complaint. This includes his suggestion that "nobody wants to hold a female accountable" and his reference to "hate speech". Additionally, his suggestion to the HPRB that there were proven false allegations by [REDACTED] is itself false. At no time were [REDACTED]'s allegations ever proven to be false. The Respondent further alleged that [REDACTED] contravened the marketing bylaws of her College. [REDACTED]'s Google review was clearly not marketing. The Panel agrees with the College that this shows that the Respondent was seizing on anything he could think of to attack [REDACTED].
88. The Respondent did not appear at the Discipline Hearing to explain his behaviour. The Panel is accordingly left to assess what the Respondent wrote considering the circumstances in which his statements were written.
89. The Panel finds the circumstances strongly support the notion that the Respondent's actions were acts of retribution against [REDACTED] and were not made in good faith. In particular, the Respondent began making complaints the day after receiving the negative Google review from [REDACTED]. Each of the complaints explicitly references the negative Google review. As one body rejected his complaint, he would move on to another, each time making allegations for which he had no support.
90. The Panel finds that under sections 27, 29 and 32 of the College's Code of Ethics, the Respondent was required to uphold the honour, dignity and credibility of the profession of massage therapy. He had to conduct himself in a manner that merited respect for the profession, and act with integrity. As a regulated professional, the Respondent had a duty to act professionally towards a prospective patient and was required to refrain from engaging in conduct that would bring the profession into disrepute.

91. The Panel agrees with the College's submission and finds that the Respondent's proven retributive conduct following ██████'s Google review markedly departed from these standards set for the profession by the Code of Ethics.
92. The College relies on the case of *Erdmann* in support of its submission that the Respondent's conduct constitutes professional misconduct. In *Erdmann*, an accountant was involved in disputes with the builder of her residential condominium and the condominium board's property management company. During those disputes, the accountant sent emails to a salesperson for the builder and a representative of the property management company in which she threatened to file complaints against them with various agencies, including the Canada Revenue Agency, the Workers' Compensation Board, and the municipality. The Alberta Court of Appeal upheld the discipline tribunal's decision finding that such threats constituted professional misconduct.
93. The College also relies on *Rathe*, in which a physician was disciplined for communications that occurred outside the practice of their profession. The Court upheld the disciplinary body's finding that the physician was guilty of conduct unbecoming when he engaged in a "loud, verbally aggressive, and egregiously profane outburst, while in a state of rage, at a school concert". The Court noted that the physician had a responsibility to control his anger so as not to subject members of the public to verbal abuse.
94. In this case, the Respondent did not simply threaten to file complaints, like the accountant in *Erdmann*, he in fact made complaints in order to punish ██████ for her negative Google review. Moreover, the target of the Respondent's complaints was a prospective patient with whom he had interacted during his practice of the profession as a registered massage therapist, rather than persons whom he was dealing with in his private life, as was the case in *Erdmann* and *Rathe*. The present case is an even clearer example of professional misconduct than *Erdmann* and *Rathe*.
95. In all the circumstances, and based on the abovementioned evidence before it, the Panel finds that the College has proven the allegations in paragraphs 1(a) to (d) of

the Citation to the requisite standard. The Panel also finds that the Respondent's proven conduct falls within the meaning of professional misconduct. Engaging in a campaign of retribution against a prospective patient as the Respondent did, would reasonably be considered by members of the profession to be dishonourable, disgraceful, and unprofessional. It is a marked departure from the standard expected of a registered massage therapist.

96. Accordingly, the Panel determines that by conducting himself in the manner described in paragraphs 1(a) to (d) of the Citation, which conduct has been established by the evidence before the Panel on a balance of probabilities, and which conduct constitutes a breach of sections 27, 29 and 32 of the College's Code of Ethics, the Respondent committed professional misconduct pursuant to section 39(1)(c) of the Act.

Allegations in Paragraph 2 of the Citation:

- 2. Following the initiation of an investigation by the Inquiry Committee of the College into your interactions with [REDACTED], you committed professional misconduct, or alternatively unprofessional conduct, by communicating unprofessionally with staff of the College, particulars of which are as follows:***

(a) On August 31, 2020 you sent an email message to CMTBC Inspector [REDACTED] in which you referred to her, without justification, as an "unprofessional investigator";

(b) On November 4, 2020 you sent an email message to [REDACTED], the College's Director, Inquiry & Discipline, in which you described [REDACTED], without justification, as "someone with a mental delay";

(c) On November 5, 2020, in an email message to [REDACTED], you wrote:

"I don't know who touched you when you were 12 or what boy didn't like you in highschool, but it is not my fault that someone hurt you previously in life".

"It is absolutely clear that you have a vendetta against me for unjustified or unclarified reasons".

"You need to stop harassing me and my family to suit your own sexist motives".

"You are unfit to carry out your duties. I will see to it that you are removed from your position".

in circumstances where these statements were made without legitimate professional purpose or justification;

- (d) On November 5, 2020, after the CMTBC Registrar wrote to you stating that your email message referenced above at paragraph (c) was unacceptable and unprofessional, and suggesting that you apologize to ██████████, you responded to the Registrar by email asserting that ██████████ was "negligent" or "delayed" and "needs to be removed from her position promptly..." and that the Registrar should get his "head straight";***
- (e) On November 20, 2020, after you were contacted by CMTBC's legal counsel ██████████, you referred to the CMTBC investigation process as a "kangaroo court" and wrote to ██████████ that: "You can be a criminal if you want. Just ask yourself if it's worth it"; and***
- (f) On or about December 10, 2020, when completing your 2021 registration renewal declaration to continue your membership in CMTBC, in answer to the question of whether, in the past year, you had been the subject of a complaint, investigation, disciplinary action or finding, you responded "yes" but then, rather than declaring the complaint made against you by ██████████, you wrote "I am subject to abuse of power and hate crimes by ██████████, ██████████ and the inquiry committee".***

Evidence

97. The sworn testimony and documentary evidence before the Panel establishes the following.

98. The College initiated an investigation into the Respondent's conduct because of ■■■'s complaint. During the investigation, the College's staff were required to correspond with the Respondent to provide him with information and request information from him, amongst other things.
99. As part of the College's investigation, the College's investigator wrote to the Respondent to request an interview.
100. In response the Respondent wrote the following to the College investigator on August 31, 2020:
- Having this complaint go to the interview stage is asinine.
I will not attend an interview regarding this matter. Especially not with an investigator that does not come prepared or show the proper amount of professionalism during said interviews.
...
This is not a refusal to cooperate, but a refusal to be investigated by an unprofessional investigators assigned by the CMTBC
101. Subsequently, the College's Director of Inquiry and Discipline sent the Respondent a letter to provide him with an update on the status of the investigation and an opportunity to respond to the allegations in the investigation report. The letter was a required part of the investigative process under the Act. It was sent by both email and Xpresspost although the investigation report was too large to email and so was sent by Xpresspost alone.
102. The Respondent was critical of the fact that the investigation report was sent by Xpresspost, which does not require a signature. On November 4, 2020, in an email exchange with the College's Director of Inquiry and Discipline about the way the report was sent, the Respondent responded to an email by saying: "I'm sorry. I didn't know I was taking (sic) to someone with a mental delay".
103. The next day, on November 5, 2020, the College's Director of Inquiry and Discipline informed the Respondent that a copy of her letter and the investigation report was being sent to him by courier. The Respondent responded by lashing out in a highly offensive manner, stating as follows:

I don't know who touched you when you were 12 or what boy didn't like you in highschool, but it is not my fault that someone hurt you previously in life.

... It is absolutely clear that you have a vendetta against me for unjustified or unclarified reasons.

You need to stop harassing me and my family to suit your own sexist motives. ...

...

You are unfit to carry out your duties. I will see to it that you are removed from your position.

104. At this point, the College's Registrar and Chief Executive Officer intervened in the email exchange. He told the Respondent that the language in his emails was "inappropriate", "offensive" and "simply unacceptable", before addressing his concerns about the way in which the letter was delivered. He also suggested that the Respondent reflect on his conduct and apologize to the College's Director of Inquiry and Discipline for his remarks.
105. On November 5, 2020, instead of apologizing, the Respondent responded to the College's Registrar by asserting that the Director of Inquiry and Discipline was "negligent" or "delayed" and "needs to be removed from her position". He also suggested that the Registrar should get his "head straight". The College's Registrar expressed regret at the Respondent's response and put the Respondent on notice that he would be referring the matter to the Inquiry Committee for their consideration.
106. Shortly thereafter, the College retained outside counsel to represent the College in its dealings with the Respondent.
107. On November 20, 2020, after the College's counsel asked the Respondent to provide clarifications of any corrections to his interview transcript, he responded:

What's the point? You're (sic) kangaroo court has already subverted my rights to have accurate content from the deposition presented to the inquiry committee.

Contrary to the normal precedence of having me review the material and consent to its accuracy/authenticity prior to finalizing of the investigation report.

You can be a criminal if you want. Just ask yourself if it's worth it.

108. On December 10, 2020, the Respondent filled out his 2021 registration renewal declaration with the College. In answer to the question of whether he had been the subject of a complaint, investigation, disciplinary action or finding in the past year, he responded “yes”. Instead of declaring the complaint made against him by [REDACTED], the Respondent wrote that he “was subject to abuse of power and hate crimes” by the College’s Director of Inquiry and Discipline, Registrar, and the Inquiry Committee.

Analysis and Findings of Fact

109. The Panel finds the testimony of the College’s investigator, and the above-mentioned documentary evidence about which she provided testimony, to be clear, convincing, and cogent. The Panel accepts this evidence.

110. The College submits the Respondent’s above-mentioned intemperate responses to the College’s correspondence form the basis for the additional allegations of professional misconduct, or alternatively unprofessional conduct, and constitute breaches of sections 27, 28, 29 and 32 of the Code of Ethics.

111. The College further submits that the Respondent’s communications with the College were highly unprofessional, extremely offensive, and completely baseless. He impugned the investigator’s professionalism merely for requesting an interview with him as part of her role as the College’s investigator.

112. The College also submits that while the Respondent did ultimately attend an interview with the College’s investigator, his response to her request cannot be characterized as professional, as required under the Code of Ethics. He impugned her character, without any justification for doing so, while she was simply fulfilling her role to investigate the complaint against him.

113. The College says the Respondent attacked the College’s Director of Inquiry and Discipline’s intelligence and made deeply offensive comments about her simply because he was upset with the manner in which her correspondence was mailed to him. When the College’s Registrar tried to intervene and asked the Respondent to

reflect on his conduct, the Respondent made similarly insulting comments to him. Finally, when the matter was referred to outside counsel, that counsel became a target for the Respondent's derision as well.

114. The College argues that the Respondent's actions constitute professional misconduct, straying far outside the bounds of professional discourse with one's regulatory body. It relies on the case of *Gaudet* where a registered massage therapist was found guilty of unprofessional conduct for engaging in similarly unprofessional communications with the College. The registered massage therapist in that case "used language that was sarcastic and impertinent" on many occasions in communications to the College, which did 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" (paras. 101-103).
115. The College points out that the sarcastic and impertinent comments in *Gaudet*, which are set out at para. 101 of the Disciplinary Committee's decision, are far less offensive and personal than the ones made by the Respondent to the College's staff in the present case.
116. The College also argues that analogous conduct led to the sanctioning of an engineer in *Association of Professional Engineers and Geoscientists of British Columbia re: Stromotich* (July 3, 2007). A panel of the discipline committee of the Association of Professional Engineers and Geoscientists of British Columbia found that Dr. Stromotich demonstrated unprofessional conduct by emails that he sent to a public official, an engineer, and the complainant's superiors (see p. 6, paras. 26-29). Dr. Stromotich sent these emails, in which he questioned the complainant's competency, after the complainant declined to answer certain questions. Acknowledging that Dr. Stromotich, like any citizen, had a right to correspond with public officials and question their actions, the panel nonetheless affirmed that, as a registrant, he had an obligation to conduct his exchange with "fairness, courtesy and good faith" (see para. 59), a benchmark set out in the Association's code of ethics (para. 58). The panel found that Dr. Stromotich's emails constituted a breach of this standard and were therefore unprofessional conduct (para. 60).

117. The College submits that the Respondent's comments went far beyond a legitimate challenge to the College's staff's actions. He repeatedly insulted and derided them while they were simply fulfilling their statutory functions. His exchanges did not display "fairness, courtesy and good faith", and do not comply with the professional standard embodied in the College's Code of Ethics. His behavior deserves strong censure.
118. The Panel agrees.
119. The Panel finds that the College has proven the allegations in paragraph 2 to the requisite standard.
120. As noted above, section 27 of the Code of Ethics requires RMTs to recognize that professional self-regulation is a privilege and that each RMT has a continuing responsibility to merit by upholding the honour, dignity and credibility of the profession. 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. Section 29 of the Code of Ethics required RMTs to conduct themselves in a manner as to merit the respect of society for the profession, RMTs, and other health care professionals. Section 32 of the Code of Ethics required RMTs to protect and maintain personal and professional integrity.
121. In his Response, on pages 20 to 22 under the heading "CMTBC's Breach in Confidentiality", the Respondent complains about the fact that the College sent out the [REDACTED] investigation report for mail delivery without signature required. He submits the College's Registrar decided to issue a threat to him instead of taking ownership for the College's error in doing so. He submits this is an abuse of power. He also submits the College has not publicly stated where the public or registrants may send complaints about the College. He submits that by submitting the complaint about him to the Inquiry Committee, the College's Registrar has done so in bad faith. He alleges this is a clear message to registrants to never speak out about the College's errors and to never question their actions. The Respondent also alleges that intentionally choosing to withhold from the public and registrants who can discipline the CMTBC can be considered an omission in bad faith. He submits all other

complaints about his conduct alleged by the Inquiry Committee are considered complaints about the College and inadmissible.

122. The Panel does not accept these arguments. They are irrelevant to and do not answer or provide any defense to any of the allegations in the Citation. The Registrar's referral of the Respondent to the Inquiry Committee on the proven facts of this matter was most definitely not an abuse of power but in total compliance with the College's objectives under section 16(2) of the HPA to superintend the practice of the profession; to govern its registrants according to the HPA, the regulations and the bylaws of the college and; importantly, to monitor and enforce standards of professional ethics amongst registrants.
123. Also, the Respondent's perceived lack of a complaint mechanism through which to voice frustration with the College does not permit him to correspond with College staff or others in a way that is contrary to the College's Code of Ethics or that would otherwise constitute professional misconduct or unprofessional misconduct.
124. Further, in the Response, the Respondent also argues that the College's Director of Inquiry and Discipline was not emailing him to respond to an inquiry, request, or direction. She emailed him to advise of the investigation report being sent. Accordingly, the Respondent says her method of communication is not subject to section 27 of the Code of Ethics.
125. The Panel also does not accept this argument. Even if the College's Director of Inquiry and Discipline was not emailing him to respond to an inquiry, request, or direction as the Respondent alleges, the Respondent had a duty pursuant to section 27 to upholding the honour, dignity and credibility of the profession in his correspondence to her. Under section 29 of the Code of Ethics, he was obligated to conduct himself in a manner as to merit the respect of society for the profession, RMTs, and other health care professionals. Under section 32 of the Code of Ethics he was also required to protect and maintain personal and professional integrity.
126. The Panel finds that the Respondent's communications to the College's staff displayed an extreme disregard for his professional obligations under sections 27, 28, 29 and 32 of the Code of Ethics. The Respondent's communications to the

College's staff and its outside counsel showed a complete lack of professionalism and professional and personal integrity. It also showed a lack of respect for the College's staff, its outside counsel, and for the College's role as regulator.

127. The Panel finds the Respondent's conduct as described in subparagraphs (a) to (f) of paragraph 2 of the Citation, which has been established by the evidence before the Panel on a balance of probabilities, contravened sections 27, 28 29 and 32 of the Code of Ethics.
128. 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. In *College of Dental Surgeons of British Columbia re: Kaburda*, 2014 CanLII 96656 a discipline committee panel of the College of Dental Surgeons held that:
- [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.
129. The Panel finds that these statements are equally applicable to the proven facts in this matter. Like the dentist in *Kaburda*, the evidence before the Panel establishes that through his communications to them, the Respondent treated the College's staff and its outside counsel with contempt.
130. The Panel also finds that the conduct would reasonably be considered by members of the profession to be "dishonourable, disgraceful, or unprofessional" as defined by section 26 of the HPA. His proven conduct is a marked departure from the expected standards of the profession as outlined in sections 28, 29 and 32 of the Code of Ethics.
131. The Respondent's proven conduct is of such egregious nature that the Panel also has no hesitation in finding that the Respondent's conduct must also, like the conduct in the *Kaburda* decision, be characterized as professional misconduct.
132. Accordingly, the Panel determines that by conducting himself in the manner described in subparagraphs (a) to (f) of paragraph 2 of the Citation, which conduct

has been established by the evidence before the Panel on a balance of probabilities, and which conduct constitutes a breach of sections 28, 29 and 32 of the College's Code of Ethics, the Respondent committed professional misconduct pursuant to section 39(1)(c) of the Act.

Conduct Order

133. In conclusion, the Panel finds that the College has proven the allegations in paragraphs 1 and 2 of the Citation to the requisite standard. Pursuant to section 39(1)(c) of the HPA, the Panel determines that by having conducted himself in the manner described in paragraphs 1 and 2 of the Citation, which conduct has been proven on a balance of probabilities, the Respondent committed professional misconduct.

Schedule for Submissions on Penalty and Costs

134. The Panel requests that the parties provide written submissions regarding the appropriate penalty and costs.

135. The Panel requests 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 21 days from the date of this order.
- b. Submissions must be delivered by the Respondent to counsel for the College and the Panel no later than 21 days after service on him of the College's penalty and costs submissions; and
- c. Reply submissions may be delivered by counsel for the College to the Respondent and the Panel by no later than 7 days after service of the Respondent's penalty and costs submissions.

136. Submissions for the Panel should be delivered by email to Fritz Gaerdes, counsel for the Panel.

Notice of Right to Appeal

137. The Respondent is advised that under section 40(1) of the HPA, a respondent aggrieved or adversely affected by an order of the Discipline Committee under section 39 of the HPA 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.

Public Notification

138. The Panel directs pursuant to sections 39.3(1)(d) of the HPA, that the Registrar notify the public of the determination made herein.

139. Pursuant to the Privacy Order outlined above, the Panel directs 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 the complainants and other persons affected by the matter. This includes the personally identifying information of College staff and outside counsel. The College may return to the Panel for further direction as to implementation regarding section 39.3(3)(a) if required.

Dated: July 24, 2023



Arnold Abramson, Chair (Public Member)



Michael Wiebe, RMT



Marilynne Waithman (Public Member)