

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:

Jeremy Jakobsze

(the "Respondent")

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

**Date and Place of Hearing:**

In writing

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

Arnold Abramson, Chair  
Michael Wiebe, RMT  
Marilynne Waithman (Public  
member)

**Counsel for the College:**

Andrew Gay, K.C.  
Clayton J. Gallant

**The Respondent:**

Unrepresented and did not  
participate.

**Independent Legal Counsel for the Panel:**

Fritz Gaerdes

## 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 a former registrant, Jeremy Jakobsze (the “Respondent”) committed professional misconduct or, alternatively unprofessional conduct, and violations of the CMTBC Code of Ethics in relation to the allegations set out in the Citation dated November 3, 2021 (the “Citation”).
2. On July 24, 2023, the Panel rendered its Reasons for Decision (the “Conduct Decision”) in the discipline proceeding concerning the Respondent. The Panel determined that the Respondent committed professional misconduct pursuant to section 39(1)(c) of the Act.
3. The Panel set a schedule for written submissions on penalty and costs. The College provided submissions. The Respondent did not provide written submissions.
4. The College seeks the following penalty orders:
  - a. a formal reprimand of the Respondent;
  - b. a suspension of the Respondent from practice for ten months; and
  - c. payment of a fine of \$4,000.
5. The College also seeks an order that the Respondent pay costs of \$8,178.83 to the College.
6. Since the Respondent is a former registrant, the College seeks an order that the Respondent’s suspension from practice take effect from the date he is reinstated as a registrant, if ever, and that the lifting of the suspension from practice should also be conditional on him:
  - i. successfully completing the PROBE: Ethics and Boundaries Program, at his sole expense; and
  - ii. paying any outstanding costs and fine ordered by the Panel, to the extent they remain unpaid at the time of his reinstatement.

7. For the reasons that follow, the Panel has decided to grant the orders sought by the College.

## **B. LAW**

### **Relevant Statutory Provisions**

8. Having made a determination under section 39(1) of the HPA, the Panel must decide what, if any, penalty is appropriate.

9. Section 39(2) of the HPA authorizes the Panel to impose the following penalties:

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

(a) reprimand the respondent;

(b) impose limits or conditions on the respondent's practice of the designated health profession;

(c) suspend the respondent's registration;

(d) subject to the bylaws, impose limits or conditions on the management of the respondent's practice during the suspension;

(e) cancel the respondent's registration;

(f) fine the respondent in an amount not exceeding the maximum fine established under section 19 (1) (w).

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

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

(a) impose conditions on the lifting of the suspension or the eligibility to apply for reinstatement of registration,

(b) direct that the lifting of the suspension or the eligibility to apply for reinstatement of registration will occur on

(i) a date specified in the order, or

(ii) the date the discipline committee or the board determines that the respondent has complied with the conditions imposed under paragraph (a), and

impose conditions on the respondent's practice of the designated health profession that apply after the lifting of the suspension or the reinstatement of registration.

11. The Panel has the authority to award costs pursuant to section 39(5) of the HPA subject to the limits imposed in section 39(7):

39...

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

...

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

12. Section 16(1) and 16(2) of the HPA inform the Panel's assessment:

Duty and objects of a college

16 (1) It is the duty of a college at all times

- (a) to serve and protect the public, and
- (b) to exercise its powers and discharge its responsibilities under all enactments in the public interest.

(2) A college has the following objects:

- (a) to superintend the practice of the profession;
- (b) to govern its registrants according to this Act, the regulations and the bylaws of the college;

...

- (d) to establish, monitor and enforce standards of practice to enhance the quality of practice and reduce incompetent, impaired or unethical practice amongst registrants;

...

- (g) to establish, monitor and enforce standards of professional ethics amongst registrants;

...

- (i.1) to establish and employ registration, inquiry and discipline procedures that are transparent, objective, impartial and fair;

### **Jurisdiction over Former Registrants**

13. The Respondent is a former registrant of the College. He resigned his registration on November 25, 2022.

14. Section 26 of the Act defines “registrant” to include a “former registrant” for the purposes of Part 3 of the Act, which governs the inquiry and discipline processes of the College. Part 3 includes section 39.
15. In *College of Massage Therapists of British Columbia v. Gill* (October 31, 2019) (“*Gill*”), a panel of the Discipline Committee accepted that the word “registrant” in section 39 of the Act includes a former registrant such that a suspension may be ordered against a former registrant.
16. The *Gill* decision was followed in *College of Massage Therapists of British Columbia v. Morgan* (October 26, 2021) (“*Morgan*”), in which the panel ordered cancellation of the registration of a former registrant.
17. In *College of Massage Therapists of British Columbia v. Gaudet* (June 28, 2023) (“*Gaudet 2023*”), the panel issued a suspension against a former registrant, to be served commencing on the date of the former registrant’s reinstatement should she successfully apply for registration with the College in the future.
18. Based on section 26 of the Act, and the *Gill*, *Morgan* and *Gaudet 2023* decisions, the Panel finds that it has jurisdiction to order any penalty contemplated under section 39(2) of the Act, including suspension from practice, against the Respondent as a former registrant.

### **Factors in Determining the Appropriate Penalty**

19. The College’s discipline panels in *Morgan* and *Gaudet 2023* identified the relevant factors to consider when imposing penalties. In both *Morgan* and *Gaudet 2023*, the discipline panels applied the following list of four factors from *Law Society of BC v. Dent*, 2016 LSBC 05, which consolidated a longer list of factors that had been outlined in *Law Society of BC v. Ogilvie*, 1999 LSBC 17:

#### **Nature, gravity and consequences of conduct**

- [20] This would cover the nature of the professional misconduct. Was it severe? Here are some of the aspects of severity: For how long and how many times did the misconduct occur? How did the conduct affect the victim? Did the lawyer obtain any financial gain from the

misconduct? What were the consequences for the lawyer? Were there civil or criminal proceedings resulting from the conduct?

**Character and professional conduct record of the respondent**

- [21] What is the age and experience of the respondent? What is the reputation of the respondent in the community in general and among his fellow lawyers? What is contained in the professional conduct record?

**Acknowledgement of the misconduct and remedial action**

- [22] Does the respondent admit his or her misconduct? What steps, if any, has the respondent taken to prevent a reoccurrence? Did the respondent take any remedial action to correct the specific misconduct? Generally, can the respondent be rehabilitated? Are there other mitigating circumstances, such as mental health or addiction, and are they being dealt with by the respondent?

**Public confidence in the legal profession including public confidence in the disciplinary process**

- [23] Is there sufficient specific or general deterrent value in the proposed disciplinary action? Generally, will the public have confidence that the proposed disciplinary action is sufficient to maintain the integrity of the legal profession? Specifically, will the public have confidence in the proposed disciplinary action compared to similar cases?

*(the "Dent factors")*

20. The College's discipline panel in *Gill* adopted additional relevant factors, including the following:

- (a) the age and experience of the member;
- (b) the number of times the offending conduct occurred;
- (c) the impact on the member of criminal or other sanctions or penalties;
- (d) the impact of the proposed penalty on the respondent;
- (e) the need for specific and general deterrence; and
- (f) the range of penalties imposed in similar cases.

21. The panels in *Gill* and *Gaudet 2023* confirmed that it is not necessary to consider every factor in each case. The Panel agrees.

22. The *Dent* factors have been repeatedly applied in professional regulation cases in British Columbia, including by the College's Discipline Committee panels in *Gill, Morgan* and *Gaudet 2023*. The Panel considers it the appropriate approach to also follow in this case.
23. The Panel will now turn to consideration of each of the *Dent* factors, including with reference to the range of penalties imposed in other comparable penalty cases.

### **C. ANALYSIS**

#### ***Nature, gravity and consequences of conduct.***

24. The College points out that the target of some of the Respondent's misconduct was a prospective patient with whom he had interacted during the practice of his profession.
25. The College further submits that the Respondent's conduct towards College staff should be regarded as unacceptable. Such conduct demonstrates that the Respondent is ungovernable, as he has no respect for the regulatory process.
26. The College also submits that the fact that the Complainant, A.A., has not given evidence in this proceeding relating to the consequences of the Respondent's conduct does not militate in favour of a lighter penalty for the following two reasons.
27. First, the Respondent's attacks against A.A. could no doubt have been perpetuated during this hearing had A.A. testified. The Respondent should not benefit from the fact that his own conduct may have acted as a deterrent to A.A.'s participation in this process. Second, it is obvious, even without A.A.'s testimony, that the Respondent's conduct placed a heavy burden on her. He was relentless in his campaign against her, forcing her to respond to a complaint to her regulator, and forcing her to endure the embarrassment of having her mental health questioned in communications to her employer.
28. 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, A.A., 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 A.A.; and
- C. On June 3, 2020, A.A. 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 A.A. posting the Online Review, you committed professional misconduct, or alternatively unprofessional conduct, by engaging in unjustified acts of retribution or harassment against A.A., particulars of which are:
  - (a) On or about June 4, 2020, you submitted a complaint to A.A.'s professional regulatory body, [REDACTED], including allegations that A.A. engaged in "fraudulent" acts, "theft" and "gender-based harassment" against you, and implying that A.A. 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 A.A., which took place on July 7, 2020, you contacted A.A.'s employer by email and by phone and stated to representatives of her employer that A.A. 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 A.A., reiterating your allegation that "there was a substantial cause for concern regarding A.A.'s mental health..." and alleging that A.A. 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 A.A. had made false accusations; and

- (d) You made a complaint to the RCMP against A.A., alleging she engaged in hate speech in relation to you, when there was no basis to allege that A.A. 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 A.A., 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 A.A., you wrote "I am subject to abuse of power and hate crimes by ██████████, ██████████ 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.

29. The Panel found that the College proved 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 determined that by having conducted himself in the manner described in

paragraphs 1 and 2 of the Citation, the Respondent committed professional misconduct.

30. With respect to the allegations in paragraph 1 of the Citation the Panel held in the Conduct Decision that:

- (a) The Respondent's reference to the *Criminal Code* in his complaint to A.A.'s professional regulator was an "unjustifiable and disproportionate escalation of the matter" (at para. 81);
- (b) The Respondent was untruthful when he wrote that A.A. "fraudulently" referenced a fear of being physically assaulted by Mr. Jakobsze (at para. 81);
- (c) The Respondent made allegations against A.A. that were an "obvious stretch" (at para. 81);
- (d) The Respondent's attempt to have the police lay charges against A.A. was an "obvious overreaction" that "should also be regarded as part of a campaign of retribution against A.A...." (at para. 83);
- (e) The Respondent's allegation made to A.A.'s employer and to the HPRB that A.A. had mental health issues and was a risk to others was "designed to punish A.A." and was part of his "ongoing campaign" (at para. 86);
- (f) The Respondent made "false" statements to the HPRB and was "seizing on anything he could think of to attack A.A." (at para. 87); and
- (g) In total, the Respondent's conduct was "dishonourable, disgraceful, and unprofessional" and constituted a marked departure from the standard expected of a registered massage therapist (at para. 95).

31. With respect to the allegation in paragraph 2 of the Citation, the Panel held in the Conduct Decision that:

- (a) The Respondent's statements went "far beyond a legitimate challenge to the College's staff's actions", as he "repeatedly insulted and derided them while they were simply fulfilling their

statutory functions” (at paras. 117-118);

- (b) The Respondent did not display “fairness, courtesy and good faith” and did not comply with the professional standard embodied in the College’s Code of Ethics (at paras. 117-118).
- (c) The Respondent’s communications with College staff “displayed an extreme disregard for his professional obligations under sections 27, 28, 29 and 32 of the Code of Ethics” (at para. 126); and
- (d) Mr. Jakobsze demonstrated a “complete lack of professionalism and professional and personal integrity” and a lack of respect for the College’s role as regulator (at para. 126).

- 32. Based on the above findings, the Panel concluded that the Respondent’s conduct deserved strong censure and was “of such egregious nature that the Panel has no hesitation in finding that the Respondent’s conduct must... be characterized as professional misconduct” (at paras. 117-118 and 131).
- 33. Accordingly, the Panel finds that the nature and gravity of the Respondent’s proven conduct was serious. The Panel therefore finds that this Dent factor favours the imposition of a more serious penalty.

***Character and professional conduct record of the Respondent***

- 34. The Respondent became a registrant on June 1, 2010. He did not place evidence of his character before the Panel for its consideration.
- 35. Section 39.2 of the Act provides that the Panel may consider any action previously taken under Part 3 of the HPA respecting a registrant (which includes a former registrant).
- 36. The College submits the Respondent has a prior disciplinary history which is relevant to the penalty that should be imposed in this case.
- 37. On April 18, 2016, the Inquiry Committee of the College issued a warning letter to the Respondent concerning a failure to obtain informed consent when treating a female patient. The Respondent was advised that the letter would form part of his

permanent file at the College and would be considered by the Inquiry Committee in determining the appropriate action to be taken if another complaint was received.

38. On December 18, 2017, the College's Inquiry Committee issued the Respondent a letter of expectation containing remedial advice and a recommendation to take remedial coursework based on inappropriate and unprofessional communications that he engaged in with WorkSafeBC staff members. The Respondent was again advised that the letter would form part of his permanent file at the College and would be considered by the Inquiry Committee in determining the appropriate action to be taken if another complaint was received.
39. On December 21, 2018, the College's Inquiry Committee issued the Respondent another warning letter concerning the sexual content of his communications with a female patient. The letter advised the Respondent, amongst other things, that the Inquiry Committee expected that he would communicate professionally and appropriately with patients going forward. The Respondent was again advised that the letter would form part of his permanent file at the College and would be considered by the Inquiry Committee in determining the appropriate action to be taken if another complaint was received.
40. The College submits that the Respondent's misconduct in this case is part of a pattern of inappropriate and unprofessional communications with female patients and others. It says he was given several warnings about the misconduct, along with chances and recommendations to address the behaviour but despite these warnings, the Respondent has continued to engage in highly inappropriate communications with others.
41. The College argues that in these circumstances, a strong sanction is both necessary and appropriate to denounce the Respondent's misconduct and deter future misbehaviour.
42. The Panel agrees with and accepts the College's submissions in this regard. The Panel finds that the Respondent's past disciplinary record weighs in favour of the imposition of a more serious penalty.

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

43. The College argues that if a respondent is remorseful and receptive to remediation or rehabilitation, this may mitigate the penalty imposed. It submits that to date the Respondent has not demonstrated any remorse or insight into his behaviour.
44. The College further submits that the Respondent did not personally attend the discipline hearing but instead delivered a 22-page document titled “Disciplinary Hearing Response” (the “Response”). The College argues that the Response demonstrates a lack of insight into his misconduct. It submits that rather than confront his own behaviour following A.A.’s online review, the Respondent sought to further attack A.A.’s claims. He alleged that A.A. was a liar and filed her complaint with the College in bad faith, and that the College’s investigator acted in bad faith, without any basis for making these serious allegations.
45. The College submits that the Respondent could have used the Response to address his own behaviour and express remorse but failed to do so.
46. The Panel was not provided with evidence of any remedial or rehabilitative efforts undertaken by the Respondent.
47. The Panel finds there was neither an acknowledgment of the misconduct nor any remedial action taken by the Respondent. The Panel finds this constitutes neither an aggravating factor nor a mitigating factor. Accordingly, this *Dent* factor is neutral, it does not assist or adversely impact the Respondent.

### ***Public Confidence in the Profession***

48. The College submits that the Respondent’s conduct harms the standing of the profession. It points out that the Panel found the Respondent’s conduct to be a “marked departure” from the standard expected of a registered massage therapist (para. 130 of the Conduct Decision). The College says that engaging in a campaign of retribution against a prospective client for authoring a negative review is chilling and points out that that the Panel found that the misconduct was dishonourable and disgraceful (para. 130). The College submits it is conduct which harms the reputation of the profession in the eyes of the public.

49. The College argues that it is critical to public confidence that the governing body of a self-regulated profession be able to effectively exercise regulatory control over its members. This means that members must cooperate with the regulator and always communicate with the regulator in a professional manner.
50. The College further submits the Respondent's conduct undermined the College's regulatory function. He refused to communicate professionally with College staff and its external legal counsel, instead engaging in irrelevant, vindictive personal attacks. It argues this erodes public confidence in self-regulation and should be met with strong condemnation.
51. The College submits the Panel correctly observed that the Respondent's conduct demonstrated an "extreme disregard for his professional obligations" and that his communications showed a "complete lack of professionalism" (para. 126 of the Conduct Decision). It says it was apt of the Panel to view the Respondent's conduct as including a failure to cooperate (paras. 128-129 of the Conduct Decision), because clearly his unprofessional communications with College staff were antithetical to cooperation.
52. The College points to *Gaudet 2023*, in which the panel held that there is "a need to send a clear message to the profession of the importance of cooperating with the College". The College argues that the same can clearly be said of the need to ensure communications with the College are professional in content and tone.
53. The College further submits that, as in *Gill*, the penalty in this case should demonstrate to the profession the seriousness with which the College treats the duty to cooperate with the College and the importance of professional communication.
54. The Panel agrees with and accepts these submissions.
55. The Panel finds that in this case there is a need for specific deterrence and general deterrence, as well as a need to protect public confidence in the profession. The Respondent needs to understand his obligation to cooperate with the College and communicate in a professional and respectful manner if he is reinstated in future.

56. There is also a need to send a clear message to the profession of the importance of cooperating with the College, and to communicate with College staff and third parties retained by the College in a professional and respectful manner. The requirement to cooperate with the College is critical to the College's ability to regulate the profession and act in the public interest. A lack of cooperation risks undermining public confidence in the College's ability to regulate the profession. As the Panel held in *Gill*: "The public must have confidence that members of the profession will cooperate with their regulators and will be held to account when they fail to do so."
57. The Panel accordingly finds that this *Dent* factor weighs in favour of the imposition of a more serious penalty.

### **Penalty**

58. The College seeks a formal reprimand under section 39(2)(a) of the Act to declare the Respondent's conduct improper. It submits that the same order was made in *Gaudet 2023*.
59. The College seeks an order under sections 39(2)(c) and 39(8) of the HPA suspending the Respondent from practice for ten months.
60. The College seeks an order imposing a fine in the amount of \$4,000. The College submits that the Panel has the jurisdiction to order a fine along with a suspension under section 39(2)(f) of the Act. It points out that the maximum amount of the fine under section 71 of the Bylaws is \$50,000.
61. The College submits that a significant penalty is required to communicate to the Respondent and other registrants that the College considers his professional misconduct to be serious, and that this type of conduct is unacceptable for a professional. It says a significant penalty is required to ensure the public confidence in our system of self-regulation is maintained.
62. The College argues that the penalty it proposes is supported by the case law. In this regard it refers the Panel to *Gill* and *Gaudet 2023* as well as the *Gaudet* conduct decision (November 28, 2022), which involved unprofessional communications with the College.



63. In *Gill*, the respondent acknowledged, but did not substantively respond to, many of the College's requests for information in respect of his Standard First Aid/CPR-C certification. This constituted a breach of the Code of Ethics and unprofessional conduct. In *Gill* the respondent was reprimanded, suspended for three months and prohibited from seeking reinstatement of registration until the later of: (a) the completion of his three-month suspension; or (b) delivery to the College of written responses to outstanding questions.
64. In *Gaudet*, the respondent communicated with the College in a manner that was "sarcastic and impertinent". In that case, the respondent was resisting the College's attempt to interview her as part of an investigation, on the basis that she could not afford to hire a lawyer to represent her. She eventually told the College to stop contacting her. The Panel found that Ms. Gaudet's comments did not set a "professional tone" and ordered a reprimand, a 4-month suspension from practice and ordered that she attend an interview before reinstatement.
65. The College submits the findings of the Panel in the Respondent's case justifiably go further and are more serious. It argues that unlike Ms. Gaudet, the Respondent was vindictive, making highly inappropriate personalized attacks on individuals, including both a prospective client and College staff, which constitutes a more serious form of professional misconduct. The College submits that the present case therefore demands a more serious penalty.
66. The College also relies on *College of Dental Surgeons of British Columbia re: Kaburda*, 2015 CanLII 60483 ("*Kaburda*"). In *Kaburda*, the respondent belittled employees of the regulator who were investigating a complaint by the respondent's former patient. The respondent also refused to provide the regulator with records, effectively preventing it from investigating the former patient's complaint. Among other considerations was the respondent's history of failing to comply with orders imposed by the regulator by the court, and a lack of remorse or any other mitigating factors. The respondent was reprimanded, ordered to pay a fine of \$10,000, and ordered to serve a six-month suspension commencing from the date of the order.

67. In none of the above cases were there a combination of highly unprofessional attacks against a prospective client and highly unprofessional communications with College staff. The College submits that the penalty in this case must reflect the totality of the misconduct which carried on for many months and which the Panel found to be “egregious”, “disgraceful” and “dishonourable” (at paras. 130-131 of the Conduct Decision).
68. The College argues that at the high end of the penalty spectrum, several decisions support the proposition that sending improper and offensive communications can constitute grounds for licence cancellation in appropriate circumstances. For example, in *Association of Professional Engineers and Geoscientists of British Columbia re: Chrysanthous* (August 16, 2018), the respondent sent a series of disturbing emails to Translink staff and board members, local politicians and others. The emails contained allegations of dishonesty and personal and professional impropriety about the recipients, as well as threats of violence. The respondent had no prior disciplinary history and was an experienced engineer at the time he sent the emails. However, he failed to acknowledge or apologize for his behavior. The discipline committee ordered cancellation of the respondent’s membership.
69. Similarly, in *Association of Professional Engineers and Geoscientists of British Columbia re: Halarewicz* (January 18, 2019), the respondent sent a series of “crude, sexist, lewd, demeaning and profoundly disrespectful emails to female staff members at the Architectural Institute of British Columbia”, and repeatedly refused to cooperate with the regulator when his conduct was investigated. While the respondent had no disciplinary history, his conduct was repeated and prolonged, extending over a period of approximately two years, and he failed to acknowledge or apologize for his misconduct. The discipline committee ordered cancellation of the respondent’s membership.
70. The College does not seek cancellation in this case. However, it relies on the two authorities in which cancellation was ordered to demonstrate the range of penalties in cases of this nature, along with the serious nature of the misconduct at issue.

71. The College also points out that the combination of a suspension and fine was used in *Kaburda*. The College says that in this case, due to the past warnings the College issued in relation to the Respondent's inappropriate communications, and due to the seriousness of the findings in this case, a highly deterrent penalty is appropriate.
72. The College further submits that to account for the Respondent's status as a former registrant, if he were to successfully apply for registration in the future, the suspension would commence on the first day that his registration with the College is reinstated. The College also argues that the lifting of the suspension should be conditional on the Respondent successfully completing the PROBE: Ethics and Boundaries Program, at his sole expense; and paying in full any costs and fine that remain outstanding from this proceeding, if any.
73. The College submits that the order proposed is consistent with the language of the Act, which provides that any penalty can be made against a registrant or former registrant (section 26) and enables suspension of a respondent's registration (section 39(2)(c)) and the imposition of conditions on the lifting of any suspension (section 39(8)).
74. The Panel accepts the College's submissions.
75. The Panel finds that in this case there is a need for specific deterrence, general deterrence, and the need to maintain public confidence.
76. The Panel has considered the cases provided by the College. Although the Panel is not bound by these cases, penalties in other comparable cases are helpful to establish a range of sanctions by which to assess the current case.
77. The Panel accepts the College's submission that the present case is significantly more serious than either *Gaudet* or *Gill*.
78. Considering all the *Dent* factors as they pertain to the circumstances of this case and the caselaw outlined above, the Panel finds that a reprimand and a suspension of ten months is appropriate and necessary to uphold and protect the public interest. The Panel expects this sanction to achieve a specific and general deterrent effect, and to maintain confidence in the integrity of the profession. The Panel has decided

it is also appropriate to order that the suspension be served from the date the Respondent becomes a registrant if he is reinstated in future.

79. The Panel further considers it appropriate in the circumstances to direct that the lifting of a suspension from practice is conditional on the Respondent successfully completing the PROBE: Ethics and Boundaries Program, at his sole expense and paying in full any costs and fine that remain outstanding from this proceeding, if any. The Panel notes that a comparable order was made by the panel in *Gaudet 2023*. The Panel agrees with the College that such a condition is justified by the seriousness of the ethical deficits evident in the Respondent's conduct in this case combined with the past history of warnings issued by the College.

### **Costs**

80. Costs are not part of the penalty. Rather, they are awarded to the regulatory body so that the membership does not bear the entire cost of conducting the discipline proceeding which was brought about by the misconduct of a single member.
81. Pursuant to s. 39(5) of the Act, the Panel may award costs to be paid by the Respondent to the College based on the tariff of costs established by bylaw.
82. Pursuant to s. 39(7) of the Act, the costs awarded under s. 39(5) must not exceed, in total, 50% of the actual costs to the college for legal representation for the purposes of the hearing. The evidence before the Panel confirms that the 50% threshold has not been exceeded.
83. Section 72 of the Bylaws establishes a tariff of costs, set out in Schedule "F". Schedule "F" provides, in part, as follows:
1. The costs of the College for any investigation or inquiry under section 33 of the Act, and of a party to prepare for and conduct a hearing under section 38 of the Act, consists of
    - a. costs assessed under the following tariff, and
    - b. all reasonable and necessary disbursements incurred for the purposes of investigating a matter, preparing for a hearing, or conducting a

hearing under section 38 of the Act.

2. The value of a unit under this tariff is \$100.
  3. Where this tariff provides for a minimum and maximum range of units for an item, the committee has discretion to allow a number within that range, and, in deciding on the appropriate number of units to assess, a committee
    - a. must take into account the principle that one unit reflects matters upon which little time should ordinarily have been spent, and the maximum number of units reflects matters upon which a great deal of time should ordinarily have been spent, and
    - b. may account for any difficult issues of fact or law, and the importance of any issues to a party or to the public.
  4. Where the tariff provides a number of units per day, but the time spent during a day is not more than three hours, only half the number of units per day should be allowed for that day.
84. The College prepared a Bill of Costs setting out the costs claimed. The amount of costs claimed pursuant to the Tariff, as set out in the Bill of Costs, is \$4400.
85. The College submits that it seeks units toward the high end of the range for Item 1 in the Tariff for two reasons. First, this matter involved investigation, conferences, instructions etc. in relation to two matters: the Respondent's conduct toward A.A., and then his conduct toward the College. Second, the College concluded it was necessary to involve outside counsel to assume responsibility for communicating with the Respondent. The Panel accepts the College's submission that this was appropriate in view of the content of the Respondent's communications with College staff. As indicated in the affidavit evidence placed before the Panel, the cost of retaining outside counsel was high – much higher than the value of 20 units in Item 1 of the Tariff – and the College has appropriately not sought recovery of amounts paid to outside counsel to avoid any prospect of double-recovery.
86. The College claims disbursements for the expenses it incurred in conducting the hearing. The total amount of disbursements the College claims is \$3,778.83. These disbursements include:
- (a) expenses incurred by counsel for the College in the amount of

\$2,815.50, including fees paid for court reporter services for preparation of interview transcripts; and

- (b) expenses incurred directly by the College in the amount of \$963.33 paid to Charest Legal Solutions Inc. for transcription of the hearing.

87. Accordingly, the total amount of costs sought by the College is \$8178.83. As indicated, this amount is less than 50% of the actual costs to the College for legal representation for the purposes of this matter. The College submits that \$8178.83 should be awarded as costs in this case.
88. The Panel agrees.
89. The College proved the allegations in the Citation. The allegations were serious. The Respondent did not admit his misconduct. In the absence of an admission, it was necessary for the College to pursue the discipline hearing considering the prolonged and serious nature of the Respondent's misconduct. Due to the serious nature of the misconduct in question, the pursuit of the discipline hearing was also in the public interest and in furtherance of the College's public protection mandate.
90. Further, the College's witnesses provided relevant evidence in relation to the alleged conduct. The Panel finds that the hearing was diligently pursued and prosecuted by the College.
91. The Panel also finds the College's units claimed for legal costs to be reasonable in the circumstances. The Panel is satisfied that the total amount of tariff units claimed for each step of the proceeding is reasonable and rationally connected to the length and level of difficulty to conduct those steps.
92. The Panel is further satisfied that the expenses were reasonable and reasonably incurred for the preparation and conduct of the discipline hearing.
93. The Panel finds that the final amount of costs the College claims is reasonable and not so large as to be punitive to the Respondent. To the contrary, the costs are reasonable in all the circumstances.

## **D. ORDERS**

94. In summary, the Panel makes the following orders:
- (a) The Respondent is reprimanded;
  - (b) The Respondent is suspended for ten months, to be served commencing the date of his reinstatement in the event that he applies for registration with the College and is successfully reinstated in the future;
  - (c) pursuant to s. 39(8) of the Act, a direction that following the completion of the ten months suspension, the lifting of the suspension is conditional on the discipline committee or the board determining that the Respondent:
    - i. successfully completing the PROBE: Ethics and Boundaries Program, at his sole expense; and
    - ii. paid in full the costs and fine awarded by this Panel, if any are ordered and remain unpaid at the time of reinstatement;
  - (d) The Respondent is fined \$4,000;
  - (e) The Respondent shall pay the College costs pursuant to s. 39(5) of the Act in the amount of \$8178.83;
  - (f) The Respondent shall pay the above fine and costs within six months of the date of this order; and
  - (g) a direction that the Registrar publish notification of the disposition of this matter pursuant to section 39.3 of the Act in accordance with the privacy protections referenced at paragraphs 3-8 of the Conduct Decision.

### **Notice of Right to Appeal**

95. 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.

### **Public Notification and Privacy Orders**

96. The College submits that a publication order should be made in this case.

97. The College further submits that the same orders and directions concerning privacy as were made in the Conduct Decision should apply to the Panel's decision on penalty and costs. This includes that A.A. continues to be identified solely by her initials.
98. The Panel accepts these submissions and directs that the Registrar publish notification of this determination on penalty and costs pursuant to sections 39.3 of the Act. The Panel also directs that the complainant A.A. will continue to be identified solely by her initials.
99. The Panel further directs 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.
100. 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.

Dated: September 19, 2023



Arnold Abramson, Chair (Public Member)



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Michael Wiebe, RMT



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Marilynne Waithman (Public Member)