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:

Leonard Krekic

(the "Respondent")

**REASONS FOR DECISION**
**(Application of the College)**

| | |
|---|---|
| **Date and Place of Application:** | By written submissions |
| **Panel of the Discipline Committee** | Arnold Abramson, Chair<br>Elisa Peterson, RMT<br>Michael Wiebe, RMT |
| **Counsel for the College:** | Elizabeth Allan<br>Greg Cavouras |
| **Counsel for the Respondent:** | Scott Nicoll<br>Gurleen Randhawa |

## Introduction

1. On August 5, 2020, the College issued a citation (the "Citation") pursuant to section 37 of the *Health Professions Act* RSBC 1996, c.183 (the "HPA" or "Act") naming Leonard Krekic as Respondent.

2. This panel of the Discipline Committee (the "Panel") of the College of Massage Therapists of British Columbia (the "College") has been appointed to conduct a discipline hearing on March 8-12, 15-19 and 22-23, 2021 (the "Discipline Hearing").

3. The College has brought an application seeking the following orders pursuant to sections 38(3) and (4.2) of the HPA:

    a. That the Discipline Hearing be conducted by video-conference in accordance with the "Hearing by Video-Conference Protocol" submitted by the College;

    b. That the Discipline Hearing be held in private; and

    c. That any transcript of the Discipline Hearing that is made available to the public be redacted such that the names and all related identifying information of all non-expert witnesses be withheld.

4. The Respondent opposes all of the orders being sought.

5. The Citation in this matter involves complaints by six former patients of the Respondent (the "Complainants"). The Citation alleges that the Respondent engaged in inappropriate conversation and touched the Complainants inappropriately during the course of treatment.

## Background

6. The College has indicated that it intends to call each of the Complainants as witnesses at the Discipline Hearing. The College also anticipates calling other witnesses. The College has indicated that the testimony of its witnesses will involve information over which the Complainants reasonably expect privacy. This is anticipated to include the Complainants' treatment records.

7. The complaints underlying the Citation have been reported in media articles.

8. Each of the Complainants has requested that the Discipline Hearing be held in private, as follows:

   a. By email dated November 25, 2020 to Elizabeth Allan, one of the College's legal counsel, [redacted] stated, "I am requesting that the hearing be private because of the personal and highly sensitive nature of my complaint and because it involves my medical records."

   b. By email dated December 10, 2020 to Ms. Allan, [redacted] stated, "Thank you for your call today. Due to the nature of my complaint with regards to Mr. Krekic, I would like my name and the information provided to remain private and out of the media."

   c. By email dated December 11, 2020 to Ms. Allan, [redacted] stated, "I am writing to you today to request that my identity be protected and my experience be kept private. I also request that my name not be released during the proceedings of the Krekic case. I desire to keep my privacy because the information that would be exposed is very personal and the issues of the case are sensitive. My privacy was violated during the incident and keeping my identity private would protect me from being further exposed to the public, especially regarding all the intimate details related to my case."

   d. By email dated December 11, 2020 to Ms. Allan, [redacted] stated, "I am writing to you to request that there is a public band [sic] on the hearing against Mr. Krekic. I do not want my name nor my medical information available to the public. This is already a difficult situation for me and I am very uncomfortable. I am well known in the communities [redacted], I do not want my information out there."

   e. By email dated December 11, 2020 to Ms. Allan, [redacted] stated, "Due to the sensitive and private nature of my complaint against Mr. Krekic, I request the hearing be closed."

f. By email dated December 15, 2020 to Ms. Allan, [redacted] stated, "I would like to request that the hearing in regards to the disciplinary actions towards Len Krekic be held in private. Through this process, [redacted] I have strived to keep my name private and out of the public knowledge, and I would like to remain doing so. The purpose of this request is to keep my personal, and private life, such as this, to myself and those close to me whom I trust."

9. [redacted]

10. On March 17, 2020, the Provincial Health Officer ("PHO") declared a public health emergency due to COVID-19. On March 18, 2020, the Province declared a state of emergency, which has been extended approximately every two weeks since that time.

11. The PHO has made several orders and directives. In November 2020, the PHO issued an order suspending social gatherings and events in order to reduce the transmission of COVID-19. The order remains in effect until further notice.

**Legal Framework and Parties Submissions**

***Hearing held in private***

12. The College seeks an order that the Discipline Hearing be held in private pursuant to section 38(3) of the HPA, which provides:

> 38 (3)A hearing of the discipline committee must be in public unless
>
> (a)the complainant, the respondent or a witness requests the discipline committee to hold all or any part of the hearing in private, and
>
> (b)the discipline committee is satisfied that holding all or any part of the hearing in private would be appropriate in the circumstances.

13. The College submits that the requirements of section 38(3) are met because all of the Complainants have requested that the Discipline Hearing be held in private, and that holding the hearing in private would be "appropriate in the circumstances" for the following reasons:

a. The Citation includes allegations of a sexual nature. Each of the Complainants is expected to testify that the Respondent touched them inappropriately. It is reasonable to anticipate that providing such testimony will be uncomfortable and embarrassing for the Complainants. There is no need to add another layer of anxiety and embarrassment for the Complainants by denying them the privacy they have requested.

b. The Complainants' dealings with the Respondent, and the corresponding allegations in the Citation, arise in the context of a patient / therapist relationship, in which the Complainants each had a reasonable expectation of privacy.

c. The Respondent already has been the subject of media attention for events that are at issue in the Citation. The Complainants can reasonably expect that the media will report on the Discipline Hearing.

d. Unlike a court, the Panel has no authority under the HPA to order a publication ban of general application. The only practical way to protect the Complainants' identities and privacy is to conduct the Discipline Hearing in private.

e. Holding the Discipline Hearing in private will not prejudice the Respondent. He remains entitled to avail himself of all of the procedural safeguards in the HPA and available at common law. To the extent that the Respondent anticipates that the Discipline Hearing may vindicate him, and therefore seeks public attendance, the decision and reasons of the Panel will be public as required under section 39.3 of the HPA.

14. The College argues that while discipline hearings are presumptively held in public, that must be read alongside the College's duties in the HPA to serve and protect the public, and to exercise its powers and discharge its responsibilities in the public interest. The College submits that the public interest includes ensuring that those who would complain about misconduct by College registrants are not discouraged from doing so via public disclosure of their health records and personal and intimate details of their complaints.

15. The College submits that the public interest objective of transparency can be served without doing so at the expense of the Complainants. The outcome of the Discipline Hearing will be public, as required by the HPA. Transparency can be enhanced by disclosure of the hearing transcript to any interested member of the public. The College Bylaws contemplate disclosure of the transcript only to those "entitled to attend" the hearing. The Colleges submits that if an order were made to hold the Discipline Hearing in private, members of the public would not constitute those "entitled to attend" the hearing. The College submits that this could be addressed by ordering the transcript be redacted.

16. The College submits that orders that the Discipline Hearing be held in private and that the public transcript be redacted are consistent with prior decisions of this Discipline Committee: *Re Morgan* (December 16, 2019) and *Re Henniger* (October 2020). The College argues that the Respondent fails to meaningfully address the *Morgan* case in his submissions.

17. The Respondent argues that "exceptional circumstances and convincing evidence is required to overturn the presumption that this hearing will be conducted in public." Moreover, he submits that the test for a hearing to be held in private "relies upon the factors listed in" *C.W. v. L.G.M.*, 2004 BCSC 1499. He says those factors inform the second part of the analysis under section 38(3) as to whether such an order would be "appropriate in the circumstances."

18. The Respondent submits that the "emails purported to have been received from the complainants" are unsworn evidence. The Respondent argues section 38(4) of the HPA, dealing with testimony at discipline hearings, requires that the Complainants' requests for the purposes of this application be made under oath. He says that the word "hearing" is not defined in the Act but ought to be interpreted to include the determination of this application. The Respondent submits in the alternative, that if the emails are sufficient evidence, the Respondent should have the opportunity to cross-examine the Complainants.

19. The Respondent submits that it is not appropriate in the circumstances for the Discipline Hearing to be held in private for the following reasons:

    a. The Panel in *CMTBC c. Martin*, 2015 CMTBC 01 adopted the reasoning in *C.W*.
    b. It "is only "appropriate in the circumstances" to order a private hearing when the factors from C.W. are satisfied" and they are not satisfied in this case. The following factors in *C.W*. govern:

> [25] I think the following principles can be distilled from the cases I have referred to:
>
> 1. The principle that the court's process must be open to public scrutiny must give way when it is necessary to ensure that justice is done.
>
> 2. There must be some social value or public interest of superordinate importance in order to curtail public accessibility.

> 3. The onus is on the person seeking to restrict public accessibility to demonstrate that the order is necessary in order to achieve justice. The test is not one of convenience but of necessity.
>
> 4. The mere private interest of a litigant to avoid embarrassment is not sufficient to displace the public interest in an open court process.
>
> 5. The categories of circumstances that may be viewed as constituting a social value of superordinate importance should not be considered closed. They include:
>
> (a) where disclosure of the litigant's name or identity would effectively destroy the right of confidentially, which is the very relief sought in the proceeding;
>
> (b) where persons entitled to justice would be reasonably deterred from seeking it in the court if their names were disclosed;
>
> (c) where the administration of justice would be rendered impracticable if the public were not excluded;
>
> (d) where anonymity is necessary in order to ensure a fair trial;
>
> (e) where anonymity is necessary to protect innocent persons and little public benefit would be served by disclosure of the names of the innocent;
>
> (f) where disclosure of the identity of the plaintiff would cause that person to suffer damages in addition to those already suffered as a result of the wrong for which the plaintiff is seeking compensation.
>
> 6. In my view there must be evidence related to the particular applicant to support the alleged necessity for anonymity rather than mere statements of generality.
>
> 7. Finally, it is my view that the principle of the open court should be displaced only to the extent that it is necessary to preserve the superordinate social value.

c. "Embarrassment or unwanted attention is not enough" to justify a private hearing, there must be "specific evidence of additional harm". The evidence contained in the emails is brief and general and the emails contain no specific information about how a public hearing would impact the Complainants or cause them to suffer further harm. The Respondent relies upon *G.P. v. W.B*. 2017 BCSC 297.

d. All cases of alleged sexual misconduct concern matters that are highly personal and many complainants will prefer the proceedings not to be public. This would lead to all sexual misconduct complaints being heard in private simply on the basis of a request, and will open the door to virtually any type of hearing being held in private.

e. The allegations in this matter are public and the hearing should be public as well. The public is entitled not just to the decision that is ultimately issued but also to the hearing itself. The right to a public hearing is fundamental to the justice system.

20. In reply, the College made a number of arguments, including that the meaning of "hearing" as that term is used in section 38 of the Act applies to the process by which the Discipline Committee "hear[s] and determines a matter set for a hearing by citation." This application deals with preliminary matters and is not hearing or determining the matters in the Citation.

21. The College also notes that there is nothing in the HPA which suggests that the requirement that the Complainants' "request" for a private hearing be provided as sworn evidence.

22. The College argues that there is no basis on which to cross-examine the Complainants' on their requests, and the panel in *Martin* rejected a similar request from that respondent.

***Discipline Hearing held by video-conference***

23. The College seeks an order that the Discipline Hearing be held via video-conference and that the transcript that is publicly available be redacted, pursuant to section 38(4.2) of the HPA, which provides:

> 38 (4.2)The discipline committee may
>
> (a)grant an adjournment of a hearing,
>
> (b)allow the introduction of evidence that is not admissible under subsection (4.1), or
>
> (c)make any other direction it considers appropriate
>
> if the discipline committee is satisfied that this is necessary to ensure that the legitimate interests of a party will not be unduly prejudiced.

24. The College submits that the current status of the COVID-19 pandemic, and the public health orders and guidance that are in place, point to a need to conduct the Discipline Hearing via video-conference.

25. The College estimates that an in-person hearing would require the attendance of no less than 11 people in the hearing location at any one time (three panel members, four lawyers, one hearing reporter, one representative from the College, the Respondent, and one witness). The College points out that the need to perform other tasks such as mark exhibits and meet in breakout rooms, increase the risks of an in-person hearing.

26. The College submits that an order directing the Discipline Hearing proceed by video-conference is consistent with public health guidelines, the "legitimate interest" of the parties, and past decisions of this Discipline Committee (*Re Morgan* and Re *Henniger*). The College submits it would be appropriate to adopt the protocol for a hearing by video-conference which was adopted in *Re Morgan* and *Re Henniger*.

27. The College relies upon the following passage from *Law Society of Ontario v. Regan*, 2020 ONLSTA 15:

> [10] The courts have found that videoconference hearings are necessary and appropriate during the present pandemic. In *Arconti v. Smith*, 2020 ONSC 2782, the court ordered that examinations for discovery take place remotely. In the Australian case of *Capic v. Ford Motor Company of Australia Limited*, [2020] FCA 486, cited with approval in *Arconti*, the court ordered that a six-week trial take place by videoconference. In *Association of Professional Engineers v. Rew*, 2020 ONSC 2589, and *Natco Pharma (Canada) Inc. v. Minister of Health*, 2020 FC 618, judicial reviews were ordered to take place by videoconference. In *4352238 Canada Inc. v. SNC-Lavalin Group Inc.*, 2020 ONCA 303, the Court of Appeal ordered that an appeal be heard in writing without any oral appearance.
>
> [11] Several principles emerge from these decisions. First, and perhaps most important, the administration of justice should not wait for the pandemic to be over. While litigants may be concerned something will be lost in a videoconference hearing, "[s]omething will be lost if court business does not continue, as best as can be managed, during the COVID-19 crisis…": *Rew* at para. 9.
>
> [12] Second, using technology for hearings is here to stay, and legal professionals and litigants must adapt. As Justice Myers said in *Arconti* at paras. 19 and 33:
>
> > In my view, the simplest answer to this issue is, "It's 2020". We no longer record evidence using quill and ink. In fact, we apparently do not even teach children to use cursive writing in all schools anymore. We now have the technological ability to communicate remotely effectively. Using it is more efficient and far less costly than personal attendance. We should not be going back.
> >
> > …

> In my view, in 2020, use of readily available technology is part of the basic skillset required of civil litigators and courts. This is not new and, unlike the pandemic, did not arise on the sudden. However, the need for the court to operate during the pandemic has brought to the fore the availability of alternative processes and the imperative of technological competency. Efforts can and should be made to help people who remain uncomfortable to obtain any necessary training and education. Parties and counsel may require some delay to let one or both sides prepare to deal with unfamiliar surroundings.
>
> [13] Third, the courts have emphasized that there is nothing unfair about a videoconference hearing. As noted in *Arconti* at para. 32, all parties have the same opportunity in a videoconference hearing to participate, be heard, put forward their evidence and challenge the evidence of the other side.
>
> [14] Fourth, the courts recognize that videoconference technology has disadvantages. These can include technical problems like unstable internet, risks like a witness being coached off camera and the decrease in solemnity in a witness sitting in their home rather than in a formal hearing room. These concerns, the courts have held, generally do not outweigh the advantages of proceeding remotely or the effects of delaying proceedings on the administration of justice.
>
> [15] Moreover, many of the disadvantages can be mitigated. For example, the affirmation and oath this Tribunal uses for videoconference hearings requires the witness to promise there is no one with them during their testimony and that they will not look at notes and materials without telling the panel. A participant can be asked to pan their camera around the room to show there is no one there. The Tribunal has produced a guide for parties and counsel to assist with using Zoom technology, and Tribunal staff will conduct a Zoom test session before the hearing upon request.

28. The Respondent agrees with the College's assessment of the number of persons who would be present during the Discipline Hearing at any one time. He argues those individuals can be safely accommodated by using the methods which have been employed by the British Columbia courts for the past several months, including having a larger room with greater distancing, screening, masks, distancing, disinfection and sanitation, amongst others. Video conferencing could be used for non-key witnesses.

29. The Respondent points to the *British Columbia Supreme Court Civil Rules* factors to consider for video deposition, as well as the following civil cases: *1337194 Ontario Inc. v. Whiteley*, 2004 CarswellOnt 2312, *Sacks v. Ross*, 2015 ONSC 6432 for the importance of in-person hearings.

30. The Respondent argues that his ability to assess the witnesses' demeanour and credibility will be impaired if that assessment cannot be performed in person.

31. The Respondent argues that there are certain practical challenges with the College's proposed protocol as well. For instance, documentary evidence not exchanged 14 days prior to the Discipline Hearing can only be admitted with leave of the Panel. There is no provision for attendance of the public.

32. The Respondent concedes that videoconferencing would be appropriate in some less contentious hearings, however, this is not one of them.

33. In reply, the College argues, amongst, others, that the Respondent has not identified any unfairness associated with a hearing by video-conference. The College notes that the Respondent relies upon pre-pandemic caselaw. To the extent the Respondent is inviting the Panel to assess credibility on the basis of demeanour, excessive reliance on demeanour in the assessment of credibility is a reviewable error.

34. With respect to the processes employed by British Columbia courts, the College argues that the Respondent has presented no evidence that the provincial courts are not conducting trials by video-conference due to concerns about the platform rather than a limit of the available technology. Moreover, civil court practices are not binding on this Panel.

35. With respect to the practical issues raised about the proposed protocol, the College says, the 14 day requirement is simply a restatement of the HPA requirement in section 38(4.1). Likewise, nothing in the protocol should be interpreted to limit attendance of the public if that order is not granted.

## Analysis and Findings

### Private hearing

36. In acting as a panel of the Discipline Committee, the Panel discharges its duties and responsibilities under the HPA. The Panel must hear and determine a matter set for hearing by citation pursuant to section 37 of the HPA.

37. Section 38(3) of the HPA stipulates that discipline committee hearings are presumptively held in public. As was expressed in *Morgan*, this Panel "recognizes and appreciates the reasons a hearing is presumptively held in public, many of which are expressed in the "open court principle" which fosters public confidence and understanding in the administration of justice. The Panel also recognizes the importance of a public hearing in the professional regulation context to ensure that discipline procedures are transparent, objective, impartial and fair."

38. Section 38(3) in the HPA expressly contemplates that there will be circumstances where discipline hearings are to be held in private.

39. There are two requirements for a hearing to be held in private. First, the complainant, respondent or a witness must request that the discipline committee hold all or any part of the hearing in private. Second, the discipline committee must be satisfied that holding all or any part of the hearing in private would be appropriate in the circumstances. Both requirements must be met.

***Request for private hearing***

40. The Panel finds that all of the Complainants have made a request for the Discipline Hearing to be held in private.

41. The Panel does not accept the Respondent's position that the Complainants' requests must be made under oath, or that the Complainants ought to be made available for cross-examination on their email requests. The Panel agrees with the reasoning that was set out in the *Morgan* decision:

> 76. The Panel also does not accept the Respondent's position that sworn testimony is required. First, there is nothing in section 38(3) which requires sworn testimony. If that was required, it would have been specifically stated by the legislation. The HPA specifies elsewhere where evidence must be given under oath. Second, the Panel agrees with the reasoning at page 4 of the *Martin* decision which rejected a similar argument that sworn testimony and cross-examination were required prior to the Panel making a section 38(3) determination:
>
> > […] The Panel does not agree with the Registrant's submission that the validity of [redacted] and [redacted] assertions as to the harm they would suffer if required to testify in public should be tested by cross-examination before the Panel makes a discretionary decision under section 38(3) of the Act. One consequence of doing so, in the Panel's view, would be to cause exactly the situation the Registrant's counsel said he wishes to avoid: namely, a consideration of the letters for the truth (or otherwise) of the sexual conduct allegations referred to

> in them - which the Panel considers to be a matter that is appropriately determined only by means of direct witness testimony and cross-examination, and not by means of the contents of the letters.

42. The Panel finds that the meaning of the word "hearing" in section 38(4) of the Act must be interpreted having regard to how that term is used in section 38(1). Section 38(1) is clear that a "hearing" refers to "a matter set for hearing by citation issued under section 37." This application is therefore not a "hearing" for the purposes of section 38(4).

43. The Panel is satisfied that the first requirement of section 38(3) of the HPA has been met.

**Appropriate in the circumstances**

44. The second requirement is that the Panel must be satisfied that holding the hearing in private is appropriate in the circumstances.

45. The Complainants' requested that the Discipline Hearing be held in private because the matters are "sensitive", "private", "personal", and "intimate". They described an already "difficult" and "uncomfortable" situation.

46. The Panel finds that there has been media attention to this matter.

47. While each case will turn on its individual facts, the facts in the *Morgan* case are similar and instructive to this case. The Panel agrees with the approach and reasoning set out in the *Morgan* decision on which a private hearing was appropriate in the circumstances:

> 69. The Panel has considered and is mindful of the *C.W.* decision. However, the Panel does not accept the Respondent's submission that "[i]t is only "appropriate in the circumstances" to order a private hearing when the factors from C.W. are satisfied" [emphasis added]. The Panel finds the factors in *C.W.* are satisfied in any event.
>
> 70. Section 38(3) of the Act provides the Panel with a broad discretion to decide whether holding all or any part of a hearing is appropriate in the circumstances. The Act does not provide any specific criteria by which appropriateness is to be determined. The Panel is to assess appropriateness "in the circumstances".
>
> 71. In considering the circumstances, the Panel notes that both Complainants requested the hearings be held in private because the details of their complaints are highly personal, and they do not want them to be publicly disclosed or available. The Panel recognizes the Complainants' personal privacy interests. The particulars of the allegations in this case are sexual in nature. In addition, the conduct at issue is alleged

> to have occurred during the course of providing massage therapy services and in the context of a confidential therapeutic patient / therapist relationship. The Panel accepts that the hearing will involve a review of the Complainants' clinical records and personal health information. The Panel does not find that the Complainants are requesting the hearing be held in private in order to simply avoid embarrassment or unwanted attention.
>
> 72. The Panel accepts the College's submission, which was uncontested, that the Citation is posted on the College's website in a form that identifies the Respondent but not the Complainants. The Panel has reviewed the media publications and accepts the College's submission that the past media coverage indicates that this hearing is likely to attract the interest of the public and the media. If that occurs, the Complainants' privacy interests would be compromised.
>
> 73. In addition to the Complainants' personal privacy interests, the Panel has also considered that there is a broader social interest in this case, given the sexual allegations. There is a public interest in encouraging the reporting of sexual misconduct and the participation of Complainants and witnesses in proceedings that involve allegations of sexual misconduct. The Panel finds the Supreme Court of Canada's comments in A.B. v. Bragg Communications Inc. at para 25 convincing:
>
> > [25] In the context of sexual assault, this Court has already recognized that protecting a victim's privacy encourages reporting: Canadian Newspapers Co. v. Canada (Attorney General), [1988] 2 S.C.R. 122.

48. The Panel finds that all of the above reasons apply in this case as well.

49. The Panel does not accept the Respondent's argument that holding this Discipline Hearing in private is problematic because all sexual misconduct hearings would be held in private, and it would open the door to all other hearings to be held in private. In that regard, the Panel agrees with the reasoning set out in *Morgan*:

> 78. The Panel does not accept the Respondent's submission that holding this particular hearing in private would open the door to virtually any type of hearing being held in private. First, in order for there to be an order for the hearing to be held partly or completely in private, there must be a request made by one of the closed group of listed individuals in section 38(3). If there is no request, no order will be made as the hearings are presumptively held in public. Second, each request will be considered on its particular facts and circumstances. The relevant interests to balance will express themselves differently in each case and must be taken into account on a case by case basis. Many circumstances would not justify a private hearing. By contrast, the Panel considers the circumstances of this case to be precisely the type of circumstances section 38(3) was intended to address. As indicated above, this case involves allegations of sexual misconduct and this matter has already attracted media attention.

50. The Panel also agrees with the *Morgan* decision that holding the Discipline Hearing in private but releasing a redacted transcript will achieve an appropriate balance:

> 80. The Panel notes that not only is the Citation public, but the HPA requires public notification pursuant to section 39.3 of the HPA of a determination made pursuant to section 39(1) and any orders that follow under section 39.
>
> 81. Moreover, the Panel has considered that the panel in Martin directed that the transcripts of the closed portions of the hearing in that case be made available to the public, at the expense of the person wishing to purchase the transcripts, in redacted form with the names and any information that could reasonably be expected to identify the Complainants withheld. The Panel considers the same direction to be appropriate in these circumstances. This would address the desirability of public scrutiny of the discipline process, and the Respondent's desire that the public that learned of the allegations should also be able to learn the full extent of the matter.
>
> 82. Furthermore, the Panel considered whether a publication ban would be able to achieve the same result with a lesser impact. The College takes the position that in the criminal realm, publication bans are routinely ordered in cases of sexual assault when requested, which allow the Court to protect alleged victims of sexual assault and witnesses while maintaining an open hearing. The College takes the position that the Panel does not have jurisdiction to order a publication ban under the HPA. The Respondent did not challenge this position in his submissions and appears to agree with it. In this regard, the Respondent does not propose a publication ban as an alternate order but instead proposes that redactions be made to the hearing transcript and decision issued by the Discipline Committee after the fact. The Respondent argues such redactions "would be akin to a publication ban". The Panel disagrees. If the hearing were open to the public and the media, the Complainants' identities and personal information could be released prior to and in spite of any redactions that might follow to the transcript and the decision. There would be nothing preventing publication of that information, which would render any subsequent redactions meaningless.

51. The Panel is satisfied that holding the Discipline Hearing in private would be appropriate in the circumstances of this case. This approach allows transparency so that the public may scrutinize the discipline proceeding, it respects the privacy interests of the Complainants, and it fosters the public interest in encouraging the reporting of sexual misconduct and participating in disciplinary hearings relating to those complaints.

**Discipline Hearing by Video-Conference**

52. The College has a public interest mandate pursuant to section 16 of the HPA which includes investigating complaints about registrants and taking disciplinary action in certain circumstances. There is a legitimate interest in ensuring that the Discipline Hearing is conducted in a timely manner in furtherance of the College's public protection mandate. The College must continue to serve its mandate and the Discipline Committee must continue to function during the COVID-19 pandemic.

53. The Panel recognizes that there is a public health emergency, a state of emergency and there are public health orders and guidelines presently in place on gatherings. The Panel finds that holding the hearing by video-conference is the most appropriate course in the circumstances.

54. The Panel finds the passage quoted above in the *Regan* decision to be particularly persuasive. That decision addresses the specific circumstances of this pandemic and many of the arguments that have been raised by the Respondent.

55. The Panel considered the Respondent's point that British Columbia court trials are not presently being conducted via video-conference. The Panel agrees with the College that there is no evidence this is because the courts found that format inherently unfair. In any event, this Panel is not bound by those court processes.

56. The Panel does not accept the Respondent's submission that the ability to assess demeanour and credibility will be impaired. First, the Panel will be able to see and hear all witnesses in order to assess credibility. Second, the Panel agrees with the College's submission that an overreliance on demeanour is inappropriate in the assessment of credibility.

57. The Panel has reviewed the College's proposed protocol and finds it to be useful. The Panel agrees that the 14 day timeline relating to documents mirrors the requirement in the Act. The absence of provision for public participation would be problematic in other hearings, however, this Panel has ordered the Discipline Hearing to be conducted in private, therefore it is not an issue in this instance.

58. Having considered both of the parties' submissions, the Panel has decided the Discipline Hearing will be conducted by video-conference and directs that any transcript of the Discipline Hearing that is made available to the public be redacted such that the names and all related identifying information of all non-expert witnesses be withheld.

**Summary**

59. The Panel directs:

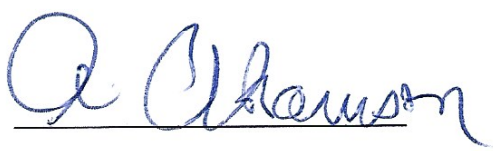
    a. The Discipline Hearing be held in private;

    b. That any transcript of the Discipline Hearing that is made available to the public be redacted such that the names and all related identifying information of all non-expert witnesses be withheld;

    c. The Discipline Hearing be conducted by video-conference; and

    d. The College's Protocol be used for the Discipline Hearing.

Dated: February 17, 2021



Arnold Abramson, Chair

_____

Elisa Peterson, RMT

_____

Michael Wiebe, RMT

**Summary**

59. The Panel directs:

    a. The Discipline Hearing be held in private;

    b. That any transcript of the Discipline Hearing that is made available to the public be redacted such that the names and all related identifying information of all non-expert witnesses be withheld;

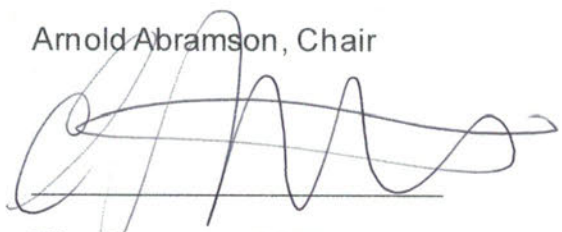
    c. The Discipline Hearing be conducted by video-conference; and

    d. The College's Protocol be used for the Discipline Hearing.

Dated: February 17, 2021

_____

Arnold Abramson, Chair



Elisa Peterson, RMT

_____

Michael Wiebe, RMT

**Summary**

59. The Panel directs:

    a. The Discipline Hearing be held in private;

    b. That any transcript of the Discipline Hearing that is made available to the public be redacted such that the names and all related identifying information of all non-expert witnesses be withheld;

    c. The Discipline Hearing be conducted by video-conference; and

    d. The College's Protocol be used for the Discipline Hearing.

Dated: February 17, 2021

Arnold Abramson, Chair

Elisa Peterson, RMT

Michael Wiebe, RMT