

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

BETWEEN:

College of Massage Therapists of British Columbia

(the "College")

AND:

Michelle Gaudet

(the "Respondent")

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

**Date and Place of Hearing:**

In writing

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

Arnold Abramson, Chair  
Evan Jeary, RMT  
Rachel Shiu, RMT

**Counsel for the College:**

Andrew Gay, K.C.  
Natasha John

**The Respondent:**

Did not participate

**Counsel for the Panel:**

Susan Precious

## A. INTRODUCTION

1. A panel of the Discipline Committee (the “Panel”) of the College of Massage Therapists of British Columbia (the “College” or “CMTBC”) conducted a hearing pursuant to section 38 of the *Health Professions Act* RSBC 1996 c.183 (the “Act” or the “HPA”), to determine whether Michelle Gaudet (the “Respondent”) violated the College’s Bylaws, violated the College’s Code of Ethics and/or committed unprofessional conduct.
2. On November 28, 2022, the Panel released its decision (the “Conduct Decision”) which found that the allegations set out in the Citation dated January 12, 2022 (the “Citation”) were proved to the requisite standard. The Panel determined that the Respondent committed unprofessional conduct.
3. The Panel set a schedule for written submissions on penalty and costs. The College provided submissions. The Respondent did not provide written submissions. The College served the Respondent with the Conduct Decision, the College’s submissions on penalty and costs, and correspondence setting out the deadlines for delivery of the Respondent’s submissions on penalty and costs. The Panel is satisfied those materials were delivered to the Respondent.
4. The College seeks the following orders:
  - a. The Respondent is reprimanded;
  - b. The Respondent is suspended for four months, to be served commencing the date of the Respondent’s reinstatement in the event that she successfully applies for registration with the College in the future;
  - c. pursuant to s. 39(8) of the Act, a direction that the lifting of the suspension will occur on the date that the board determines that the Respondent has:
    - i. participated in the interview referenced in the Citation; and
    - ii. paid in full the costs awarded by this Panel, if any are ordered and if not paid already;

d. the Respondent shall pay the College costs pursuant to s. 39(5) of the Act in the amount of \$9,872.54<sup>1</sup> within three months of the date of this order; and

e. a direction that the Registrar publish notification of the disposition of this matter pursuant to section 39.3 of the Act.

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

## **B. LAW**

### **Legal Framework**

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

7. 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).

8. 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,

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<sup>1</sup> Elsewhere in its submissions, the College refers to \$9426.29 as the total amount claimed for costs and disbursements. The Panel has reviewed the materials presented and has determined that \$9426.29 is the total amount of costs and disbursements based upon the materials before it.

(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.

9. 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.

10. 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**

11. The Respondent is a former registrant of the College. She voluntarily cancelled her registration as of January 14, 2021.
12. The Panel retains jurisdiction to make any penalty order against a former registrant pursuant to section 39(2) of the Act. Section 26 of the Act defines “registrant” to include a “former registrant” for the purposes of Part 3 of the Act, which governs the College’s inquiry and discipline processes. Part 3 of the Act includes section 39 of the HPA.
13. In *College of Massage Therapists of British Columbia v. Gill* (October 31, 2019), the Discipline Committee confirmed the HPA’s jurisdiction over former registrants and held that a suspension may be ordered against a former registrant. *Re Gill* has been repeatedly followed including in *College of Massage Therapists of British Columbia v. Morgan* (June 8, 2021).

### **Factors in determining the Appropriate Penalty**

14. Courts and discipline panels have identified factors to consider when imposing penalties. *Re Morgan* applied a 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?

15. The *Ogilvie / Dent* approach has been repeatedly applied in professional regulation cases in British Columbia, including by the Discipline Committee in *Re Gill* and *Re Morgan*. The Panel considers that it is the appropriate approach to adopt in this case.
16. The Panel in *Re Gill* confirmed that it is not necessary to consider every factor in each case. This Panel agrees.

**C. ANALYSIS**

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

17. In the Conduct Decision, the Panel found that the Respondent failed to attend an interview mandated by the College and that her responses to the College's communications in respect of that interview were unprofessional and non-responsive. The Panel characterized the Respondent's conduct in both respects as "flagrant" and "serious" and held that such conduct has the potential to thwart the College's public protection mandate.

18. The College submits that the Respondent's conduct is similar to the conduct at issue in *Re Gill* and in the decisions of other regulatory bodies.
19. In *Re 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. The respondent was no longer a registrant at the time of the penalty hearing. 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.
20. In *College of Registered Nurses of British Columbia v. Cunningham* (June 22, 2017), the respondent failed to respond to various communications from the regulator, including failing to acknowledge receipt despite requests to do so. This constituted professional misconduct. The panel observed that the respondent had still not responded to the requests, which continued to impede the regulator's investigation. Accordingly, the panel structured the order to deter the respondent from continuing her failure, ordering that she be suspended until the later of the expiry of a three-month suspension period; or providing a substantive written response to the outstanding investigative requests.
21. In *College of Nurses of Ontario v. McLaughlin*, 2009 CanLII 92102 (ON CNO), the respondent failed to participate in a practice review interview required by the regulator, despite notification and reminders. The panel observed that the respondent's failure to participate demonstrated "a lack of professionalism and an unwillingness to be governed." The respondent resigned before orders were made. Orders included a reprimand, a three-month suspension to take effect from the date the respondent reinstated, renewed, or obtained a new certificate of registration, and conditions imposed on the respondent's reinstatement, including that she complete specified remedial activities, failing which her certificate of registration would remain suspended.
22. In *College of Dental Surgeons of British Columbia re: Kaburda*, 2015 CanLII 60483 (BC CDS), the respondent belittled employees of the regulator investigating a

complaint of the respondent's former patient and refused to provide the regulator with the records, effectively preventing it from investigating the former patient's complaint about the respondent's alleged substandard practice. 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, ordered to serve a six-month suspension commencing from the date of the order, and ordered to produce the records to the investigator, failing which the suspension would continue until he provided the records.

23. The College submits that each of these cases illustrates the serious nature of a respondent's failure to cooperate and the need for remedies that both deter the respondent from such conduct and deter other registrants from not cooperating with the College in its investigations.
24. The Panel finds that the Respondent's conduct was serious. A registrant's duty to cooperate with a College investigation is essential for the functioning of a self-regulating body.
25. There is no information before the Panel as to the consequences (or lack thereof) of the Respondent's conduct.
26. The Panel considers that this factor favours the imposition of a more serious penalty.

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

27. The Respondent became a registrant on November 1, 2007. She has no prior disciplinary record.
28. The College submits that in light of the other factors, including no indication of remorse, or any indication that she understands the importance of cooperation with her professional regulatory body, the Respondent's lack of a prior disciplinary record does not militate in favour of a light penalty.
29. No information was submitted by the Respondent or by the College as to the Respondent's character.



30. The Panel does not agree with the College's position on this factor. The Respondent's absence of any disciplinary record over what is a substantial period of registration is a mitigating factor and weighs in favour of a lesser penalty.

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

31. The College submits that if a respondent is receptive to remediation or rehabilitation, this may mitigate the penalty imposed. However, in this case, the Respondent has not demonstrated any remorse or insight into her behaviour. At the discipline hearing, the Respondent did not dispute that she failed to attend the required interview, but rather sought to excuse this failure. The Respondent failed to acknowledge the unprofessional nature of her communications with the College or accept that she failed to correspond with the College in a professional and responsive manner. The College submits that the absence of an admission or demonstrated remorse is not an aggravating factor but reflects the absence of mitigating circumstances.
32. The Panel agrees with the College's submission. The Panel was not provided with evidence of any remedial or rehabilitative efforts undertaken by the Respondent. The Panel also finds that the Respondent has not acknowledged her misconduct. As such, there is an absence of mitigating circumstances in relation to this factor.

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

33. The College submits that the Respondent's conduct harms the standing of the profession by undermining the College's ability to perform its statutory mandate. The Panel held that registrants have a duty to cooperate with a College investigation. It observed that this duty is critical to the functioning of a self-regulating body and to the College fulfilling its "fundamental and onerous duty to serve and protect the public interest." The College submits that, as in *Re Gill*, the penalty in this case should demonstrate to the profession the seriousness with which the College treats the duty to cooperate and deter others from similar conduct.

34. The Panel agrees with the College's submission. The Panel finds that there is a need for specific deterrence and general deterrence, as well as a need to protect public confidence in the profession in this case. The Respondent needs to understand her obligation to cooperate with the College if she is reinstated in future. There is also a need to send a clear message to the profession of the importance of cooperating with the College. 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 *Re 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."
35. The Panel finds that this factor weighs in favour of the imposition of a more serious penalty.

### **Penalty**

36. The College seeks a formal reprimand pursuant to section 39(2)(a) of the HPA to declare the Respondent's conduct as improper.
37. The College also seeks an order pursuant to sections 39(2)(c) and 39(8) of the HPA suspending the Respondent for four months. The College submits that if the Respondent were to successfully apply for registration in the future, the suspension would commence on the first day that her registration with the College is reinstated. The College further submits that the lifting of that suspension should be conditional on the Respondent participating in the interview referenced in the Citation, and paying in full any costs award resulting from this proceeding if any are ordered and if not already paid.
38. The College submits that this is similar to the penalties ordered in *Re Gill*, *Re Cunningham*, *Re McLaughlin* and *Re Kaburda*. In each of those cases, a suspension was ordered with conditions to address the respondent's ongoing failure to cooperate.
39. The College submits that to account for the Respondent's status as a former registrant in this case, the most suitable order directs that the suspension be served

from the date the Respondent becomes a registrant. *Re McLaughlin*, although a decision flowing from a different legislative framework and jurisdiction in this case, adopted this form of order. The Colleges notes the order proposed is consistent with sections 26, 39(2)(c) and 39(8) of the HPA, which provide that any penalty can be made against a registrant or former registrant and enables suspension of a respondent's registration and the imposition of conditions on the lifting of any suspension.

40. Considering all of the *Ogilvie / Dent* factors, the caselaw outlined above, and the circumstances of this case, the Panel finds that a reprimand and a suspension of four months is necessary to uphold and protect the public interest. The Panel expects that 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 appropriate to order that the suspension be served from the date the Respondent becomes a registrant if she is reinstated in future. The Panel also considers it appropriate in the circumstances to direct that the lifting of that suspension should be conditional on the Respondent participating in the interview referenced in the Citation, and paying in full the costs award resulting from this proceeding if those are not already paid.

### **Costs**

41. As outlined above, section 39(5) of the HPA permits the Panel to award costs against a respondent if a tariff has been adopted as allowed by section 19(1)(w.1). The award is subject to the limitation in section 39(7) of the HPA that costs must not exceed in total 50% of the actual costs of legal representation.
42. Section 72 of the College's Bylaws establishes a tariff of costs pursuant to the HPA, set out in Schedule "F" to the Bylaws.
43. The Bylaws provide that before renewal or reinstatement of registration, the Registrar must receive any outstanding debt owed to the College under the HPA.
44. The College prepared a Bill of Costs setting out the costs it claims. The amount of costs it claims pursuant to the tariff is \$5,150. The number of hearing days is 2.5, including the pre-hearing application by the College.

45. The College claims disbursements for the expenses it incurred in conducting the hearing. The College submitted an affidavit attaching the relevant materials in support of the disbursements it claims. The total amount of disbursements the College claims is \$4,276.29. These disbursements include:
  - a. Charges by counsel for the College for disbursements in the amount of \$1,071.31; and
  - b. Fees paid for court reporter services for the pre-hearing application and hearing in the amount of \$3,204.98.
46. The total amount of costs and disbursements sought by the College is \$9,426.29. The College's materials confirm that this amount is less than 50% of the actual costs to the College for legal representation for the purposes of this matter.
47. The Panel finds the College's costs and disbursements to be reasonable and necessary, and in accordance with the requirements set out in the HPA and the College's Bylaws (including the tariff).
48. The Panel does consider the three-month period for payment of costs to be relatively short in the circumstances of this case and has decided that costs must be paid within six months.

**D. ORDER**

49. The Panel orders:
  - a. The Respondent is reprimanded;
  - b. The Respondent is suspended for four months, to be served commencing the date of the Respondent's reinstatement in the event that she successfully applies for registration with the College in the future;
  - c. pursuant to s. 39(8) of the Act, a direction that the lifting of the suspension will occur on the date that the board determines that the Respondent has:
    - i. participated in the interview referenced in the Citation; and
    - ii. paid in full the costs awarded by this Panel, if not paid already; and
  - d. the Respondent shall pay the College costs pursuant to s. 39(5) of the Act in the amount of \$9,426.29 within six months of the date of this order.

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

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

### **Delivery and Public Notification**

51. The Panel reminds the College of the requirements in section 39(3)(c) of the HPA.
52. The Panel directs that the Registrar publish notification of the disposition of this matter pursuant to sections 39.3 of the Act.

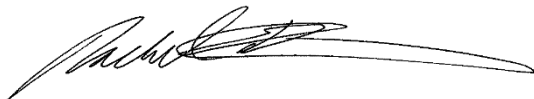
Dated: June 28, 2023



Arnold Abramson, Chair



Evan Jeary, RMT



Rachel Shiu, RMT

