

IN THE MATTER OF A DISCIPLINE HEARING UNDER SECTION 38 OF THE *HEALTH PROFESSIONS ACT*, RSBC 1996, C.183

BETWEEN:

**THE COLLEGE OF COMPLEMENTARY HEALTH PROFESSIONALS
OF BRITISH COLUMBIA**

AND:

RAJA RAMASWAMY, RMT

Discipline Committee Panel Members:	Carol Williams, Chair Elisa Peterson, RMT Doug Steventon, Public Member
Counsel for the College:	Andrew Gay, K.C.
Raja Ramaswamy, RMT:	Not represented and not in attendance
Counsel to the Panel:	Kaitlyn Chewka
Date of Hearing:	November 24, 2025
Date of Decision:	January 14, 2026

DECISION ON LIABILITY

A. Introduction

1. This panel of the Discipline Committee (the “Panel”) of the College of Complementary Health Professionals of British Columbia (the “College”) was convened to hear and decide the allegations against Raja Ramaswamy, RMT (the “respondent”), as set out in the Amended Citation and Notice of Hearing, dated October 1, 2025 (the “Citation”), pursuant to section 38 of the *Health Professions Act*, RSBC 1996, c. 183 (the “Act”).
2. The Citation alleged that on or about April 7, 2021, in the course of providing massage therapy to J.B., a former student of the respondent’s, the respondent pinched and licked the nipple of J.B. without J.B.’s consent and that such conduct constitutes a violation of sections 1, 3, and 15 of the Code of Ethics and Part F of the applicable Bylaws, section

3(a) of the Consent Standard of Practice, as well as professional misconduct, or in the alternative, unprofessional conduct.¹ The discipline hearing proceeded via videoconference on November 24, 2025.

3. For the reasons that follow, the Panel is satisfied, on a balance of probabilities that the respondent pinched and licked the nipple of J.B. without J.B.'s consent and that such conduct constitutes professional misconduct, within the meaning of section 26 of the *Act*, and a violation of sections 1, 3, and 15 of the Code of Ethics and section 75 of the applicable Bylaws.

B. Service of the Citation

4. The discipline hearing was convened on November 24, 2025 at 9:30 a.m. via videoconference. College representatives were in attendance, including counsel for the College. The respondent was not in attendance.
5. Counsel for the College provided the Panel with an affidavit of personal service of Leonard Villegas, a process server for Rapid Taggers Process Serving Ltd. Mr. Villegas deposed that on October 2, 2025 at 3:05 p.m., he served the respondent with a letter dated October 2, 2025 and the Citation by handing the documents to and leaving them with the respondent at 9588-162A Street, Surrey, British Columbia. According to Mr. Villegas, at the time of service Mr. Ramaswamy admitted to Mr. Villegas that he was the person named therein.
6. Section 11.19 of the College's Bylaws (the "Bylaws") provides that if a citation is amended pursuant to Bylaw 11.18(a), the amended citation must be delivered to the respondent by personal service at least 30 days before the date of the hearing, unless otherwise agreed to by the respondent. The Panel, at the discipline hearing, found section 11.19 of the Bylaws was satisfied and the hearing proceeded.

C. Evidence adduced by the College

7. The evidence tendered by the College included the affidavit of Nehal Sawvad, Manager of Licensure with the College, the oral testimony of Liza Szabo, an investigator with the College, and several documents which were identified by Ms. Szabo during her testimony.
8. Ms. Sawvad provided evidence as to the respondent's registration status with the College. The respondent was initially registered with the College of Massage Therapists of British Columbia ("CMTBC") on May 5, 2015 and was a practising registrant of CMTBC on April 7, 2021. She further deposed that on June 28, 2024, CMTBC amalgamated with three other health professional colleges in British Columbia to form the College. The respondent applied to cancel his registration with the College on May 21, 2025 and the College cancelled his registration on May 22, 2025.

¹ In the College's written and oral submissions, Counsel for the College advised that the alleged violation of the Consent Standard of Practice is "superfluous and need not be pursued". The College did not seek an order amending the Citation; however, the Panel has proceeded on the understanding that the College abandoned paragraph 4(b) of the Citation and will not address this allegation further in these reasons.

9. Ms. Szabo testified that she is currently employed as an investigator with the College and that prior to amalgamation she was employed as an investigator with CMTBC and had been in that role since 2017. While employed with CMTBC, Ms. Szabo was assigned to investigate a complaint made against the respondent by an individual who will be referred to as “J.B.” or “Ms. B.” (the “complaint”).² Specifically, J.B. alleged the respondent sexually assaulted her while providing massage therapy. CMTBC received the complaint from J.B. in May 2021.
10. As the assigned CMTBC investigator, Ms. Szabo conducted an interview with J.B. in June 2021. Ms. Szabo testified that through this interview she made observations as to J.B.’s appearance and could identify her.
11. In October 2021, Ms. Szabo became aware that the respondent was criminally charged with sexual assault as against J.B. The charges culminated in a criminal trial, which Ms. Szabo attended. Ms. Szabo testified that the trial was held over several dates in 2023 and completed in August 2023. Ms. Szabo attended the trial and witnessed the complainant in the criminal matter testifying. She confirmed that the individual who testified in the criminal trial regarding the sexual assault committed by the respondent was the same individual who filed the complaint with CMTBC.
12. Ms. Szabo obtained the reasons for judgment in the criminal proceeding, dated October 31, 2023 (Court File No. 106666-2C). She also obtained the Provincial Court Record of Proceedings and Endorsement of Information with respect to Court File No. 106666-2C, which listed the respondent as the accused and indicated that there was a “guilty” finding made on October 31, 2023. The reasons for judgment and the Provincial Court Record of Proceedings and Endorsement of Information were identified by Ms. Szabo and admitted into evidence.
13. Ms. Szabo also identified a third document, the Code of Ethics. She explained that the copy provided during the discipline hearing was the same version that was in force in April 2021, when the sexual assault occurred.

D. Factual findings in the criminal proceeding

14. As will be discussed below, the crux of the College’s position is that the factual findings made by the trial judge in the criminal law proceeding against the respondent are conclusive and binding for the purposes of the College’s discipline proceeding. Given this submission, it is necessary to summarize the factual findings made by the trial judge.
15. The criminal trial was presided over by the Honourable Judge A. Brown of the Provincial Court of British Columbia (the “trial judge”). In that proceeding, the respondent was charged with sexually assaulting J.B. on April 7, 2021. Both J.B. and the respondent were

² During the discipline hearing, Counsel for the College advised there is a publication ban in the criminal proceeding which prohibits the publication of any information that may reveal the identity of J.B. Accordingly, the College asked that the Panel similarly refer to the individual as “J.B.” to protect her identity; the Panel agreed and as such, these reasons will refer to the complainant as “J.B.” or “Ms. B.”.

registered massage therapists; they came to know each other when Ms. B was a student at West Coast College of Massage Therapy between 2018 and 2019 and the respondent was one of her instructors. They reconnected on Facebook in September 2020. J.B and the respondent exchanged a series of Facebook messages that resulted in a meeting between the two individuals on March 25, 2021 and a subsequent meeting on April 7, 2021. The meetings occurred at Ms. B's apartment. The sexual assault was alleged, and subsequently found, to have occurred during the second meeting. In the criminal proceeding, J.B. made two allegations: (i) the respondent sexually assaulted her by pinching and licking her left nipple; and (ii) the respondent sexually assaulted her by massaging her upper thighs unacceptably close to her labia, without her consent.

16. The trial judge received conflicting evidence from J.B. and the respondent with respect to the allegations. As such, the trial judge provided reasons for accepting and rejecting aspects of each of their evidence and made various factual findings. Relevant to this proceeding are the trial judge's findings with respect to the alleged pinching and licking of J.B.'s nipple:

[122] With respect to the breast massage, there are competing versions as to whether Ms. B. requested it because she was sore and had had many such massages or if Mr. Ramaswamy asked if it was okay if he gave her a massage in that part of her body. While Ms. B. agreed that she consented to the breast massage, her evidence was consistent on both direct and cross-examination that it was not something that she requested.

[123] Mr. Ramaswamy, on the other hand, offered three versions of how the breast massage came to be and the discussions that he and Ms. B. had, including that one of those versions reflected her "exact words". I found this inconsistency to be significant, particularly Mr. Ramaswamy's insistence that he recalled Ms. B.'s exact words, even when his earlier, different evidence was put to him on cross-examination. He did not attempt to explain the discrepancy when offered an opportunity to do so.

[124] Mr. Ramaswamy more than once insisted that he recalled certain aspects of his evidence exactly. I do not attribute this to confusion on Mr. Ramaswamy's part because English is his second language and that he was using the word "exactly" outside its literal meaning. It was obvious from his testimony that Mr. Ramaswamy is an intelligent, well-educated and extremely articulate individual. In my view, his use of the word "exactly" meant just what Mr. Ramaswamy intended, that despite having given over 10,000 massages and only making a mental, not written notes of what happened with Ms. B. over two years ago, he had an exact recollection of everything that happened.

[125] Mr. Ramaswamy did not acknowledge that there was anything he could not remember. He testified about the precise order of the massage and the exact words in their conversations. This unwavering certainty over every detail struck me as unbelievable, rehearsed and caused me to question Mr. Ramaswamy's credibility on the material issue of what occurred during the breast massage.

[126] One would expect some variation in the words used, as opposed to exact precision when discussing an event from two years ago in the stressful setting of the courtroom. I heard minor variation in the words Ms. B. used in her evidence on direct and cross-examination to describe what happened during the breast massage, but nothing that I found detracted from the credibility of her narrative about what happened during the massage.

[127] As already noted, Mr. Ramaswamy denied the licking or pinching. Ms. B. was clear and consistent in both direct and cross-examination what happened during the breast massage, including that she opened her eyes and saw what Mr. Ramaswamy did. I accept Ms. B.'s evidence as credible and that it makes sense in the context of the scenario on April 7, starting with the energy healing session that I find had taken on a sexual undertone.

[128] I do not draw a negative inference about Ms. B.'s credibility for her failure to say anything to Mr. Ramaswamy about the nipple pinch or lick after the massage or in her subsequent messages, because to do so would be rooted in stereotypical thinking and prohibited reasoning as to what would be "normal" or "expected" behaviour from someone who just experienced a sexual assault.

[129] I accept Ms. B.'s evidence about the discussion that they had after the massage, because it makes sense when considered alongside her evidence of what happened during the breast massage and her feelings of discomfort about the massage of her gluteal area, and considered in light of Mr. Ramaswamy's evidence.

[130] I find that Mr. Ramaswamy's evidence about the breast/pectoral massage and the discussion that followed is inconsistent and does not make sense. I say this having considered Mr. Ramaswamy's testimony that it was Ms. B. who asked for a breast massage, that she told him she had had many and that since they are both RMT's, she knows about such massages. If all that were true, given Mr. Ramaswamy's testimony that he did the breast/pectoral massage in accordance with RMT standard, there would have been no reason for Ms. B. to tell him afterwards that she felt uncomfortable with the "pectoral work" and he would have had no reason to laugh and point out that he has a wife, all of which he testified to.

17. The trial judge ultimately found the Crown had proven, beyond a reasonable doubt, that the respondent pinched and licked Ms. B.'s nipple without her consent, during the breast massage that he was administering as a registered massage therapist and that such conduct constituted sexual assault; the trial judge found the respondent guilty.

E. Submissions Received

18. The Panel received both written and oral submissions from College counsel in this matter.

19. The College alleged that, on April 7, 2021, while providing massage therapy to J.B., the respondent pinched and licked J.B.'s nipple without her consent. On October 31, 2023, the trial judge found the respondent committed this misconduct and convicted the respondent of sexual assault. The College argued the findings of the criminal court are dispositive of this disciplinary proceeding.
20. In support of this argument, the College relied on the Supreme Court of Canada's decision in *Toronto (City) v. CUPE, Local 79*, 2003 SCC 64 ("*CUPE*"), which similarly involved two parallel proceedings. In *CUPE*, an employee of the City of Toronto was convicted of sexual assault by a trial court and was subsequently fired from his employment. The employee grieved the dismissal and a labour arbitrator, based on the evidence before them, found that the sexual assault had not taken place. The matter proceeded to the Supreme Court of Canada where the key issue was whether CUPE was entitled, either at common law or under a statute, to relitigate the issue decided against the employee in the criminal proceedings.
21. The starting point of the analysis in *CUPE* was section 22.1 of Ontario's *Evidence Act*, which provided that proof that a person has been convicted or discharged anywhere in Canada of a crime is proof, in the absence of evidence to the contrary, that the crime was committed by the person if there was no appeal of the conviction or any such appeal was dismissed or abandoned. This section, with the inclusion of the phrase "in the absence of evidence to the contrary" expressly contemplated, that the validity of a conviction could be challenged in a subsequent proceeding. However, the provision was silent as to when such a challenge was or was not permissible. That issue, according to the Supreme Court of Canada, was to be determined by the application of common law doctrines, including abuse of process.
22. The Supreme Court of Canada described the doctrine of abuse of process with reference to its earlier decisions as follows:
- [35]... This concept of abuse of process was described at common law as proceedings "unfair to the point that they are contrary to the interest of justice" (*R. v. Power*, [1994] 1 S.C.R. 601, at p. 616), and as "oppressive treatment" (*R. v. Conway*, [1989] 1 S.C.R. 1659, at p. 1667). McLachlin J. (as she then was) expressed it this way in *R. v. Scott*, [1990] 3 S.C.R. 979, at p. 1007:
- . . . abuse of process may be established where: (1) the proceedings are oppressive or vexatious; and, (2) violate the fundamental principles of justice underlying the community's sense of fair play and decency. The concepts of oppressiveness and vexatiousness underline the interest of the accused in a fair trial. But the doctrine evokes as well the public interest in a fair and just trial process and the proper administration of justice.
23. With respect to the relitigation that was at issue in *CUPE*, the Court in *CUPE* observed that "Canadian courts have applied the doctrine of abuse of process to preclude relitigation in circumstances where the strict requirements of issue estoppel (typically the privity/mutuality requirements) are not met, but where allowing the litigation to proceed

would nonetheless violate such principles as judicial economy, consistency, finality and the integrity of the administration of justice”: *CUPE* at para. 37, citations omitted.

24. The Court provided the following guidance as to when relitigation ought to be avoided and under what circumstances it may be necessary:

[52] In contrast, proper review by way of appeal increases confidence in the ultimate result and affirms both the authority of the process as well as the finality of the result. It is therefore apparent that from the system’s point of view, relitigation carries serious detrimental effects and should be avoided unless the circumstances dictate that relitigation is in fact necessary to enhance the credibility and the effectiveness of the adjudicative process as a whole. There may be instances where relitigation will enhance, rather than impeach, the integrity of the judicial system, for example: (1) when the first proceeding is tainted by fraud or dishonesty; (2) when fresh, new evidence, previously unavailable, conclusively impeaches the original results; or (3) when fairness dictates that the original result should not be binding in the new context. This was stated unequivocally by this Court in *Danyluk, supra*, at para. 80.

[53] The discretionary factors that apply to prevent the doctrine of issue estoppel from operating in an unjust or unfair way are equally available to prevent the doctrine of abuse of process from achieving a similar undesirable result. There are many circumstances in which the bar against relitigation, either through the doctrine of *res judicata* or that of abuse of process, would create unfairness. If, for instance, the stakes in the original proceeding were too minor to generate a full and robust response, while the subsequent stakes were considerable, fairness would dictate that the administration of justice would be better served by permitting the second proceeding to go forward than by insisting that finality should prevail. An inadequate incentive to defend, the discovery of new evidence in appropriate circumstances, or a tainted original process may all overcome the interest in maintaining the finality of the original decision (*Danyluk, supra*, at para. 51; *Franco, supra*, at para. 55).

[54] These considerations are particularly apposite when the attempt is to relitigate a criminal conviction. Casting doubt over the validity of a criminal conviction is a very serious matter. Inevitably in a case such as this one, the conclusion of the arbitrator has precisely that effect, whether this was intended or not. The administration of justice must equip itself with all legitimate means to prevent wrongful convictions and to address any real possibility of such an occurrence after the fact. Collateral attacks and relitigation, however, are not in my view appropriate methods of redress since they inordinately tax the adjudicative process while doing nothing to ensure a more trustworthy result.

[Emphasis added.]

25. Ultimately, the Court in *CUPE* held that the facts on the appeal “point to the blatant abuse of process that results when relitigation of this sort is permitted”. The Court found that while the arbitrator claimed to not pass judgment on the correctness of the decision of the trial judge, that is exactly what the arbitrator did, which “could only undermine the integrity

of the criminal justice system”. Further, as a result of the conflicting decisions, the Court observed that the City of Toronto would have a convicted sex offender reinstated to an employment position where he would work with the vulnerable young people he had been convicted of assaulting. Finally, the Court found the arbitrator was “considerably less equipped than a judge presiding over a criminal court ... guided by rules of evidence that are sensitive to a fair search for the truth, an exacting standard of proof and expertise with the very questions in issue, to come to a correct disposition of the matter”. For these reasons, the Court found the arbitrator was required, as a matter of law, to give full effect to the conviction.

26. Following *CUPE* and subsequent jurisprudence, the College argued the respondent’s conviction by the trial judge is binding in this disciplinary proceeding because: (i) the respondent was represented by counsel in the criminal proceeding and had the opportunity to mount a complete defence, including testifying in his own defence; (ii) the trial judge made findings of fact with respect to the alleged nipple pinching and licking and that conduct is the same as what was alleged in the Citation; (iii) the trial judge identified the elements of sexual assault and found that the respondent was guilty of sexual assault; (iv) Ms. Szabo testified that the complainant in the criminal proceeding was the complainant in the College’s proceeding; and (iv) none of the exceptions identified in *CUPE* apply.
27. Applying the provisions of the *Act* to the factual findings made by the trial judge, the College submitted that the impugned conduct of the respondent constitutes professional misconduct within the meaning of section 26 of the *Act*. Specifically, it constitutes sexual misconduct, which is defined in the Code of Ethics as including touching of a sexual nature of a patient in the course of providing massage therapy and generally any non-consensual physical contact of a sexual nature. The College also argued the impugned conduct is a violation of sections 1, 3, and 15 of the Code of Ethics and therefore a violation of section 75 of the Bylaws.

F. Analysis

28. Pursuant to section 38 of the *Act*, the Panel must decide the following issues:
 - a. whether the respondent, on or about April 7, 2021, in the course of providing massage therapy to J.B., a former student of the respondent’s, the respondent pinched and licked the nipple of J.B. without J.B.’s consent;
 - b. whether such conduct constitutes professional misconduct or, in the alternative, unprofessional conduct; and
 - c. whether such conduct constitutes a violation of sections 1, 3, and 15 of the Code of Ethics and therefore a violation of Part of the Bylaws.

Burden and standard of proof

29. The law is clear that the College bears the burden of proof in this proceeding and that the standard of proof to be applied is the balance of probabilities: *F.H. v. McDougall*, 2008 SCC 53.

Jurisdiction over the respondent

30. The Panel finds, as a preliminary issue, that it has jurisdiction over the respondent. The conduct at issue in the Citation is alleged to have occurred in April 2021. The Panel accepts the evidence of Nehal Sawvad, Manager of Licensure with the College, that the respondent was initially registered with CMTBC on May 5, 2015 and was a practising registrant of CMTBC on April 7, 2021. While the respondent's registration was cancelled on May 22, 2025, the Panel retains jurisdiction over former registrants for the purposes of Part 3 of the *Act*: see, for example: *Act*, ss. 26, 37, 39.

The factual findings of the trial judge are binding and conclusive

31. After considering the Supreme Court of Canada's decision in *CUPE*, the Panel accepts the College's argument that relitigation of the trial judge's factual findings in the context of this discipline hearing would constitute an abuse of process.

32. Like the grievor in *CUPE*, the respondent was criminally convicted following a trial where he retained and was represented by counsel, was afforded the opportunity to defend himself, and gave evidence in his own defence. The trial judge provided detailed reasons for accepting and rejecting aspects of the evidence proffered by both the respondent and J.B. In particular, the trial judge found, among other things, as follows:

- a. J.B.'s evidence with respect to not requesting the breast massage was consistent on both direct and cross-examination (para. 122);
- b. the respondent, in contrast, provided three different versions of how the breast massage came to be and the trial judge found the inconsistencies to be "significant" (para. 123);
- c. the respondent testified that he recalled J.B.'s exact words even when he had previously provided different evidence (para. 123);
- d. the respondent more than once insisted that he recalled certain aspects of his evidence exactly and did not acknowledge that there was anything he could not remember – the trial judge found the "unwavering certainty" struck them as "unbelievable, rehearsed" and caused them to question the respondent's credibility on the material issue of what occurred during the breast massage (paras. 124-125);
- e. J.B. was clear and consistent in both direct and cross-examination as to what happened during the breast massage, including that she opened her eyes and saw what the respondent did (para. 127); and

- f. J.B.'s evidence was credible and made sense in the context of the scenario on April 7 (para. 127).
33. The trial judge, taking into account all the evidence, found the Crown had proven beyond a reasonable doubt that the respondent pinched and licked J.B.'s nipple without her consent in the course of the breast massage that he was administering as an RMT and that the pinching and licking constitutes a sexual assault.
34. In reaching this conclusion, the trial judge found that sexual assault requires three elements: (i) touching; (ii) that is of a sexual nature: and (iii) without consent (para. 99). The first two elements are objective in nature; the Crown must prove the accused's actions were voluntary and that the touching was sexual in nature (para. 100). The third element is subjective in nature; it requires evidence of the complainant's state of mind toward the touching at the time and specific to the activity in question (para. 102). The trial judge was satisfied the impugned conduct was sexual assault and found the respondent guilty of the offence.
35. The Panel finds that the trial judge's factual findings are conclusive and binding on the Panel in the context of the discipline hearing. This is not a circumstance where relitigation will enhance, rather than impeach the integrity of the judicial system. There is no suggestion the criminal matter was tainted by fraud or dishonesty. There was no indication there was new evidence that was previously unavailable that would conclusively impeach the original results. This is not situation where the stakes of the criminal proceeding were too minor to generate a full and robust response where the stakes in this disciplinary proceeding were more considerable. Based on the information before the Panel, the Panel is not satisfied this is a situation where fairness requires the Panel to relitigate the factual findings made by the trial judge.
36. For these reasons, the Panel finds the factual findings of the trial judge are conclusive and binding on the Panel.

The impugned conduct constitutes professional misconduct under the Act

37. The question before the Panel is whether the impugned conduct constitutes professional misconduct, or in the alternative, unprofessional conduct.
38. While the trial judge made factual findings and a legal determination as to whether the Crown had proven, beyond a reasonable doubt, the elements of the criminal charge of sexual assault under the *Criminal Code*, the Panel is responsible for determining whether the impugned conduct constitutes professional misconduct, or in the alternative, unprofessional conduct under the *Act*. The Panel cannot rely on the substantiation of the criminal charge of sexual assault as being determinative of the question of whether the conduct constitutes professional misconduct under the *Act*. The Panel reaches this conclusion while recognizing the similarities between the elements of sexual assault under the *Criminal Code* and the elements of professional misconduct, as it relates to sexual misconduct, under the *Act*.
39. Professional misconduct is defined under section 26 of the *Act* as follows:

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

40. Professional misconduct is generally understood as conduct that is a marked departure from expected standards for a health professional; it is often understood to be more serious or egregious in nature than unprofessional conduct.
41. One such type of professional misconduct is sexual misconduct. Sexual misconduct is not defined in the *Act*; however, the Code of Ethics defines sexual misconduct as follows:

"sexual misconduct" means:

- a. any form of consensual or non-consensual physical contact of a sexual nature between an RMT and a patient, whether or not this occurs in the course of treatment,
- b. touching of a sexual nature, of a patient by an RMT, in the course of providing massage therapy,
- c. behaviour or remarks of a sexual nature by an RMT towards a patient, or
- d. conduct by the RMT that sexualizes the treatment environment.

42. The relevant section in these circumstances is (b). It includes four elements: (i) touching; (ii) of a sexual nature; (iii) of a patient by an RMT; and (iv) in the course of providing massage therapy. "Sexual nature" is not defined in the *Act* or the Code of Ethics. However, previous panels of the former college (prior to amalgamation) have accepted that criminal law decisions can assist when determining what constitutes "of a sexual nature": see for example: *College of Massage Therapists of British Columbia v. Leonard Krekic*, Decision of Disciplinary Committee, dated August 5, 2022, citing *R. v. Chase*, [1987] 2 SCR 293 ("*Chase*") at para. 11. In *Chase*, the Supreme Court of Canada explained that when considering whether conduct was "of a sexual nature", one can consider:

[t]he part of the body touched, the nature of the contact, the situation in which it occurred, the words and gestures accompanying the act, and all other circumstances surrounding the conduct, including threats which may or may not be accompanied by force... The intent or purpose of the person committing the act, to the extent that this may appear from the evidence, may be a factor in determining whether the conduct is sexual. It must be emphasized, however, that the existence of such a motive is simply one of many factors to be considered, the importance of which will vary depending on the circumstances.

43. Here, based on the factual findings set out above, the Panel is satisfied, on a balance of probabilities, of each element of sexual misconduct. Specifically, the Panel finds the respondent touched J.B. while providing massage therapy to her and that the touching was sexual in nature. The Panel found that the touching was sexual in nature considering the following factors: (a) the part of the body touched (J.B.'s nipple); (b) the nature of the contact (pinching and licking); (c) the situation in which it occurred (under the draping and on the exposed skin of J.B.), and (d) the surrounding circumstances (the lack of consent,

the non-therapeutic nature of the touching, and the former student-instructor relationship between J.B. and the respondent).

44. As sexual misconduct is considered a form of professional misconduct, the Panel is satisfied the respondent committed sexual misconduct when he pinched and licked J.B.'s nipple without her consent in the course of the breast massage that he was administering as a registered massage therapist.³

The impugned conduct also constitutes a violation of the Code of Ethics and the College's Bylaws

45. The College also alleges the impugned conduct violates the Code of Ethics and therefore the College's Bylaws. Specifically, the College argued the conduct contravened sections 1, 3, and 15 of the Code of Ethics, which provide as follows:

An RMT must:

1. Act in the best interest of the patient.
- ...
3. Treat the patient with respect and uphold the patient's dignity.
- ...
15. Refrain from engaging in sexual misconduct with a patient.
- ...

46. Section 75 of CMTBC's Bylaws, as in effect at the relevant time, required every registrant of the College to comply with the Code of Ethics. Accordingly, a breach of the Code of Ethics is a violation of the Bylaws.

47. The Panel is satisfied, on a balance of probabilities, that the impugned conduct constitutes a violation of sections 1, 3, and 15 of the Code of Ethics. The Panel finds it was not in J.B.'s best interests for her nipple to be licked and pinched, without her consent, during the massage therapy treatment. The Panel also finds the respondent failed to treat J.B. with respect and uphold her dignity when he, without her consent, pinched and licked her nipple during the massage therapy treatment session. Finally, for the reasons set out above at paragraphs 37 to 44, the Panel finds the respondent did not refrain from engaging in sexual misconduct with J.B. while providing massage therapy treatment.

48. For these reasons, the Panel is satisfied the respondent violated sections 1, 3, and 15 of the Code of Ethics and that such conduct also contravened section 75 of the Bylaws.

³ Given the Panel's finding that the conduct constitutes professional misconduct, the Panel has not addressed the College's alternative submission that the conduct constitutes unprofessional conduct.

G. Order of the Discipline Committee

49. After considering the evidence tendered at the discipline hearing and the applicable statutory scheme, the Panel has determined that:

- a. the respondent, in the course of providing massage therapy to J.B., a former student, pinched and licked the nipple of J.B. without J.B.'s consent;
- b. that the conduct in paragraph (a) constitutes sexual misconduct, within the meaning of the Code of Ethics, and therefore professional misconduct within the meaning of section 26 of the *Act* (s. 39(1)(c)); and
- c. that the conduct in paragraph (a) violates sections 1, 3, and 15 of the Code of Ethics, as they were in effect at that time, which constitutes a contravention of section 75 of the applicable Bylaws (s. 39(1)(a)).

Submissions on penalty

50. The Panel having made this determination must, pursuant to section 39(2) of the *Act* determine what, if any, order to make in the circumstances. The Panel has not received any submissions on this issue and invites the parties to provide written submissions with respect to what order, if any, is appropriate in the circumstances.

51. The Panel requests that the parties provide written submissions in accordance with the following schedule:

- a. Counsel for the College may provide written submissions regarding the appropriate order no later than January 30, 2026 at 4:00 p.m.;
- b. The respondent may provide written submissions regarding the appropriate order no later than February 18, 2026 at 4:00 p.m.;
- c. If the respondent provides written submissions, Counsel for the College may provide reply submissions, if any, no later than February 20, 2026 at 4:00 p.m.

52. All written submissions must be delivered to the Panel's independent legal counsel, with a copy to the other party. If either party is unable to comply with this schedule or would like to request that an oral hearing be convened with respect to the issue of penalty, the party should contact independent legal counsel as soon as possible who will forward the request to the Panel for consideration.

Publication

53. Pursuant to section 39.3(1)(d), the Panel directs the Registrar of the College to notify the public of the information set out in section 39.3(2) in relation to its determination under section 39(1) of the *Act*.

Notice of right to appeal

54. The respondent is advised that he has the right to appeal the Panel's decision to the BC Supreme Court, pursuant to section 40 of the *Act*. Section 40(2) of the *Act* provides that an appeal must be commenced within 30 days after the date on which the order is delivered to the respondent.

C. Williams

Carol Williams, Chair signed on behalf of the Panel comprised of Elisa Peterson, RMT, and Doug Steventon, Public Member