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 Respondent)

Date and Place of Hearing:	By written submissions
Panel of the Discipline Committee (the "Panel")	Arnold Abramson, Chair Elisa Peterson, RMT Michael Wiebe, RMT
Counsel for the College:	Elizabeth Allan Greg Cavouras
Counsel for the Respondent:	Scott Nicoll Gurleen Randhawa
Counsel for the Panel:	Susan Precious

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 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. Specifically, it is alleged that the Respondent massaged or otherwise touched the complainants for non-therapeutic and/or sexual purposes, failed to obtain sufficient consent for treatments, failed to provide appropriate draping, and otherwise acted unprofessionally in various circumstances towards one or more of the complainants named in the Citation.

4. The College applied for a series of orders with respect to the Discipline Hearing pursuant to sections 38(3) and 4.2 of the HPA. The Respondent opposed the College's application.

5. On February 17, 2021, the Panel directed:

    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.

    (the "Panel's Decision")

6. On February 22, 2021, the Respondent filed an application for judicial review of the Panel's Decision.

7. On February 23, 2021, the Respondent brought this application in which he seeks an order that the Discipline Hearing "be stayed pending a court order with respect to the Respondent's Petition No. S-211672 filed in the Vancouver Registry on February 22, 2021" ("the Petition").

8. The College opposes the Respondent's application.

Parties Submissions

9. The Respondent brings this application for a stay of proceedings pursuant to section 38(4.2) of the HPA. The Respondent argues section 38(4.2)(c), which allows the Panel to "make any other direction it considers appropriate", provides the Panel with discretion to order a stay of its own proceedings.

10. The Respondent submits that the HPA does not provide a right of appeal of a decision made pursuant to section 38(3) or 38(4.2). As the Panel's Decision was made pursuant to those provisions, the Respondent submits his "only recourse to appeal the Panel's Orders is to bring a judicial review under *the Judicial Review Procedure Act*, RSBC, c.241" ("JRPA"). He says that he has no alternate remedies, and he filed the judicial review immediately.

11. The Respondent argued that the College delayed in bringing the application to hold the hearing in private and by videoconference. The Respondent advises that he will be bringing an application before the British Columbia Supreme Court on March 5, 2021 to stay the Discipline Hearing, and has scheduled the judicial review to be heard on March 11, 2021 as the parties are "available" on those dates as it is "blocked off for the [Discipline] Hearing."

12. The Respondent submits that applications to stay administrative proceedings are subject to the three prong test set out in *RJR-MacDonald Inc. v. Canada (Attorney General)* [1994] 1 S.C.R. 311 test:

    a. There is a serious issue to be tried;

    b. There must be irreparable harm if the stay is not granted; and

    c. The balance of convenience must favour the imposition of a stay.

13. The Respondent relies upon the *Morgan Decision re Application to Stay* (CMTBC Discipline Committee, July 23, 2020) which applied that test in a similar application.

14. The Respondent argues that the serious issue to be tried is "whether the Panel erred in determining that the Discipline Hearing should be held in private and conducted by way of videoconference."

15. The Respondent argues that he will suffer irreparable harm if the stay is not granted pending the judicial review because he "will have no remedy available to him". He will be prevented from obtaining the remedy he seeks through judicial review. He submits the Petition is the Respondent's "only avenue of appeal and it will not function as a legitimate appeal procedure if the Hearing proceeds prior to the Petition being heard."

16. The Respondent submits that the balance of convenience favours granting a stay because he would suffer greater harm if the Discipline Hearing was not stayed than the College would suffer if the Discipline Hearing was stayed as the College will only experience delay. The Respondent submits "the outcome of the Petition will have a significant impact on the hearing and the way it is conducted."

17. The Respondent relies upon the case of *Q. v. College of Physicians and Surgeons of British Columbia*, 1999 BCCA 53. The Respondent submits that case dealt with a similar privacy issue pending an appeal. The Respondent also relies upon *Armstrong v. B.C. (Min of Health) (No.6)*, 2009 BCHRT 341, in which the British Columbia Human Rights Tribunal stayed its own procedures pending the Court of Appeal's decision.

18. The Respondent submits that the Petition "goes to the very heart of the Hearing and the manner in which it is to be conducted." While it is ideal to proceed with the Discipline Hearing expeditiously, that does not outweigh the Respondent's right to ensure that the Discipline Hearing takes place in the appropriate manner, in accordance with the law, and that the Panel has correctly analysed the competing interests at play.

19. The College submits that a stay of proceedings is the stopping of proceedings in one forum, usually while remedies are pursued in another forum. An adjournment of a proceeding, either generally or to a fixed date, is pausing or rescheduling proceedings for reasons related to the hearing itself.

20. The College submits that in this case, the Respondent's application must fail as this Panel cannot order a stay of its own proceedings, but even if it could, the Respondent has not met the criteria for a stay.

21. The College submits that section 16(1) of the HPA sets out its duty to protect the public, which includes employing discipline procedures that are transparent, objective, impartial and fair. The Registrar issued the Citation pursuant to section 37(1) of the HPA and the Panel is set to hear and determine the matters that are set for hearing pursuant to section 38(1) of the Act. The College's public protection mandate requires that the administration of complaints move forward in a timely and expeditious manner. The public, the profession and complainants all expect the matters before the Discipline Committee will be dealt with in a timely way.

22. The College submits that section 40(1) of the HPA provides that some but not all orders may be appealed to the Supreme Court. Where a decision is appealed to the Supreme Court, section 39(9) permits the Discipline Committee to stay a final order pending the hearing of the appeal. The College submits that narrow circumstance is not engaged here. The Respondent has not brought an appeal under section 40, but he has filed a judicial review application. His recourse to any stay of the Discipline Committee proceedings is therefore under section 10 of the JRPA which permits the court to make an interim order it considers appropriate.

23. While the College takes the position that the Panel does not have the authority to stay or suspend its own proceedings, it also submits that it is unnecessary for the Panel to decide that question for the purposes of this application, as it can consider the Respondent's application to be an adjournment application under section 38(4.2)(a).

24. The College submits the *RJR MacDonald* test is to be used where a court is being asked to stay a tribunal's proceeding, which is different than a tribunal being asked

to stay its own proceeding: *Leger v. Canadian National Railways Company*, 1999 Canlii 19862 and *Malec et al. v. Conseil des Montagnais de Natashuquan*, 2012 CHRT 8. The College submits the correct test for an adjournment is "whether the discipline committee is satisfied that this is necessary to ensure that the legitimate interests of a party will not be unduly prejudiced." This test boils down to an essential question of fairness.

25. The College submits that disrupting an ongoing administrative proceeding at a preliminary stage when there is a subsequent right of appeal offends the rule against prematurity, is undesirable and should be reserved for extraordinary circumstances. The College relies upon *Canada (Border Services Agency) v. C.B. Powell Limited*, 2010 FCA 61. Allowing parties to derail an administrative proceeding before it is complete in order to have the court hear perceived procedural problems would undermine the statutory scheme which provides for a right of appeal once a final decision is made.

26. The College submits there is no unfairness in requiring the Respondent to complete the process set out in the HPA.

27. The College notes that Respondent has the burden of convincing the Panel that the order he seeks is necessary. He suggests he will be subject to the following prejudice if an adjournment is not granted:

    a. "he will have no remedy available to him"; and

    b. "the decision goes to the heart of the Hearing and the matter in which it is to be conducted".

28. The College submits there is no basis to either suggested prejudice. First, the Respondent has remedies. He may apply to the court for a stay of proceedings under JRPA. Second, he has a right of appeal to the Supreme Court of British Columbia following the Discipline Hearing. If that is unsuccessful, he may also have a right of appeal to the Court of Appeal.

29. Second, the College submits that the Panel's Decision does not go to the heart of the Discipline Hearing. The Discipline Hearing will proceed exactly as the HPA and

common law require. The fact that the Complainants "will not be subject to public scrutiny and embarrassment does not impede the Respondent's right to make full answer and defence", and the fact that the Discipline Hearing is proceeding via videoconference during a pandemic does not change the procedural rights available to the Respondent.

30. The College submits that to the extent the *RJR MacDonald* test informs the Panel's assessment, that test is also not met.

31. On the first prong of the test, the College submits that the Respondent's prospects of overcoming the doctrine of prematurity are extremely small. The standard of review is reasonableness, and the court will only intervene if the Panel's Decision was outside of "the range of possible, acceptable outcomes which are defensible in respect of the facts and law."

32. On the second prong, the College submits that the Respondent will not suffer irreparable harm as his alternate remedies remain intact and available to him.

33. On the third prong, the College submits that the balance of convenience must consider the public interest and weighs against granting an adjournment. There is a need for certainty and conclusion to discipline proceedings and lengthy delays undermine the complainants' and the public's confidence in the College's process.

34. In sur-reply submissions, which the Panel has allowed as it addressed narrow factual points which arose in reply, the College submits that there was no delay on its part in bringing the application to hold the hearing in private and by videoconference. The College submits that it had attempted to have the Respondent address those issues in October 2020, however, the Respondent was non-responsive. The Panel then set a timeline of submissions which was tailored to the Respondent's schedule. The College further advised that "The petition is not set to be heard on March 11. The College did not agree to that date and it is inside of the time in which the College is allotted to file response materials."

Analysis and Findings

Section 38(4.2) of the HPA

35. Section 38(4.2) of the HPA provides:

> 38 (4.2)The discipline committee may
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> (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.

36. Whether the Respondent's application is characterized as an adjournment or a stay of proceedings, and whether it is brought pursuant to section 38 (4.2)(a) or 38(4.2)(c), the Panel can only make an order under section 38 (4.2) if it is satisfied that "this is necessary to ensure that the legitimate interests of a party will not be unduly prejudiced."

37. The Panel is not satisfied that an adjournment or a stay pending an order with respect to the Petition is necessary to ensure that the Respondent's interests are not unduly prejudiced. The Panel considers that there is no unfairness in requiring the Respondent to complete the Discipline Hearing in accordance with the tribunal's processes.

38. The Panel does not accept the Respondent's assertion that this "goes to the heart of the Hearing". The fact that the Panel exercised its discretion and found it appropriate that the Discipline Hearing be conducted in private following requests by all of the Complainants whose complaints raise sexual misconduct allegations, and be conducted by videoconference during a pandemic, does not go to the heart of the Discipline Hearing. The Respondent retains all his procedural fairness protections under the HPA and at common law.

39. The Panel does not accept the Respondent's argument that if the Discipline Hearing is concluded before the Petition is heard that the Respondent has no remedy available to him. He retains the ability to seek judicial review and interim relief under

JRPA. He retains the ability to appeal a Discipline Committee determination to the Supreme Court of British Columbia pursuant to section 40 of the HPA.

40. The Panel agrees with the College's submissions on the rule against prematurity. Absent extraordinary circumstances, a tribunal should be permitted to complete its process and render a decision before a judicial review is commenced. The risks of early judicial intervention are significant; including a multiplicity of proceedings, inefficiencies, delays, and the risk of undermining the statutory scheme, which in this case is the HPA.

41. Given the Panel's finding that an adjournment or a stay is not necessary to ensure the legitimate interests of a party will not be prejudiced, the Panel finds it unnecessary to address whether it has the authority under section 38(4.2) to grant a stay of its own proceedings. That legal issue is better left to another time when the parties have fully argued the point, with the benefit of caselaw, which was not done here.

RJR MacDonald

42. The Respondent is correct that the Discipline Committee applied the *RJR MacDonald* test in the *Morgan* decision (July 23, 2020). In that case, the Respondent argued the *RJR MacDonald* test applied and the College agreed that *RJR MacDonald* provided a useful framework for analysis. The question of whether the *RJR test* is the most appropriate test to apply where a tribunal is being asked to stay its own proceedings was not before the Morgan panel.

43. There are two lines of cases on the appropriate test that a tribunal ought to apply in relation to an application to stay its own proceedings. One line has applied the *RJR MacDonald* test. The second line has found that the *RJR MacDonald* test should only be applied where a court is staying the proceedings of a tribunal.

44. In *Mylan Pharmaceuticals ULC v. AstraZeneca Canada, Inc.,* 2011 FCA 312, Mr. Justice Stratas addressed these two lines of cases in the following passages. He distinguishes between a body adjourning its own proceeding and a court staying the

proceedings of a tribunal, and explains why different tests are appropriate in those two scenarios:

> **A. Astra Zeneca's motion for an order staying the appeal**
>
> **(1) The applicable legal test**
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> [3] AstraZeneca submits that the legal test is whether, in all the circumstances, it is in the interests of justice to order the stay. It submits that this test emanates from section 50 of the *Federal Courts Act*, R.S.C. 1985, c. F-7. That section empowers this Court to stay proceedings where "it is in the interests of justice that the proceeding be stayed."
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> [4] On the other hand, Mylan submits that AstraZeneca must satisfy the tripartite test set out in *RJR-MacDonald Inc. v. Canada (Attorney General*), 1994 CanLII 117 (SCC), [1994] 1 S.C.R. 311.
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> [5] In considering this issue, the relief AstraZeneca seeks must be characterized. AstraZeneca is not asking this Court to enjoin another body from exercising its jurisdiction. Rather, it is asking this Court not to hear this appeal until some time later. There is a material difference between these two things and different considerations apply:
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> • *This Court enjoining another body from exercising its jurisdiction*. When we do this, we are forbidding another body from going ahead and exercising the powers granted by Parliament that it normally exercises. In short, we are forbidding that body from doing what Parliament says it can do. As the Supreme Court recognized in *RJR-MacDonald Inc*., this is unusual relief that requires satisfaction of a demanding test. Two parts of that test are particularly demanding. First, there must be persuasive, detailed and concrete evidence of irreparable harm*: Stoney First Nation v. Shotclose*, 2011 FCA 232 at paragraphs 47-49; *Laperrière v. D. & A. MacLeod Company Ltd*., 2010 FCA 84 at paragraphs 14-22. Second, there must be a demonstration, through evidence, of inconvenience that outweighs public interest considerations, such as the right of the other body to discharge the mandate given to it by Parliament: *RJR-MacDonald Inc*., supra at pages 343-347.
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> • *This Court deciding not to exercise its jurisdiction until some time later.* When we do this, we are exercising a jurisdiction that is not unlike scheduling or adjourning a matter. Broad discretionary considerations come to bear in decisions such as these. There is a public interest consideration – the need for proceedings to move fairly and with due dispatch – but this is qualitatively different from the public interest considerations that apply when we forbid another body from doing what Parliament says it can do. As a result, the demanding tests prescribed in *RJR-MacDonald* do not apply here. This is not to say that this Court will lightly delay a matter. It all depends on the factual circumstances presented to the Court. In some cases, it will take much to convince the Court, for example where a long period of delay is requested or where the requested delay will cause harsh effects upon a party or the public. In other cases, it may take less.
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> [6] The conclusion that the *RJR-MacDonald* test does not apply in cases where the Court is deciding not to exercise its jurisdiction until some time later is supported by other cases in this Court*: Boston Scientific Ltd. v. Johnson & Johnson Inc*., 2004 FCA 354; *Epicept Corporation v. Minister of Health*, 2011 FCA 209.

> [7] Mylan cites another authority of this Court and says that it is to the contrary: *D & B Companies of Canada Ltd. v. Canada (Director of Investigation and Research)* (1994), 58 C.P.R. (3d) 342 (F.C.A.).
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> [8] In *D & B Companies*, a party asked the Competition Tribunal to delay its proceedings. The Competition Tribunal refused. It held that the factors relevant to its discretion to delay its proceedings were the same as those set out in *RJR-Macdonald*. A motion was then brought in this Court to stay the Competition Tribunal's proceedings. As an attempt to have this Court enjoin another body from carrying out its mandate, the test in *RJR-Macdonald* was properly applied and the stay was refused.
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> [9] In the course of its reasons in *D & B Companies*, this Court observed that the Competition Tribunal was right to apply the test in *RJR-MacDonald* in order to determine whether it should delay the hearing before it. Mylan relies on this observation.
>
> [10] There are three considerations that reduce the authority of this observation. First, in *D & B Companies*, this Court had to apply the test in *RJR-Macdonald* anyway. So its observation must be seen as obiter. Second, *D & B Companies* can be seen as one where, in the particular circumstances of that case, the Competition Tribunal saw the factors normally canvassed under the *RJR-MacDonald* test to be relevant to the exercise of discretion before it. Third, *D & B Companies* may be explained as a decision by a specialist administrative tribunal – not this Court – about what factors ought to apply to such matters before it, and, in making its observation, this Court appropriately deferred to the tribunal's decision.
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> [11] Because of these three considerations, the observation made by this Court in D & B Companies should not be seen as a statement of general principle, binding in all future cases.
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> [12] As a result, I do not agree with the reasoning of certain Federal Court cases cited by Mylan that follow the observation in *D & B Companies*: *Sawridge Band v. Canada*, 2006 FC 1218 and *Re Zündel*, 2004 FC 198.
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> [13] In any event, the reasoning in *Epicept* and *Boston Scientific* are preferable to that in *D & B Companies*. As explained above, cases such as *Epicept, Boston Scientific* and this case do not involve forbidding another body from doing what Parliament says it can do. As explained above, in such cases the *RJR-MacDonald test* is inapt.
>
> [14] Therefore, as Astra-Zeneca is asking this Court not to hear this appeal until some time later, the *RJR-Macdonald* test does not apply. Rather, we are to ask ourselves whether, in all the circumstances, the interests of justice support the appeal being delayed.

45. While the facts and legislation of the *Mylan* case are different than in this case, the Panel considers the reasoning to be useful and in line with the reasoning expressed in *Malec et al v. Conseil des Montagnais de Natashuquan*, 2012 CHRT 8 and *Leger v. Canadian National Railways Company*, 1999 Canlii 19862 (CHRT), which were relied upon by the College. *Leger* stated:

> The *R.J.R. MacDonald* tests apply to a different situation, namely, where a supervisory court is asked, pursuant to its statutory authority or its inherent jurisdiction, for interim

> injunctive relief. In my opinion, the exercise of the Tribunal's discretion is subject to the rules of procedural fairness and natural justice, and the regime of the Act.

46. Having had the benefit of full arguments from the parties on this issue, having considered the cases provided by both parties and the reasoning by Mr. Justice Stratas above, the Panel considers that it is more appropriate in this case to be guided by the statutory test set out in section 38(4.2) of the HPA than the *RJR MacDonald* test in deciding whether to stay or adjourn the Discipline Hearing pending a court order on the Petition. The *RJR MacDonald* test is demanding and more appropriate in circumstances where a party is asking the court to forbid a tribunal from exercising its statutory powers conferred upon it by the Province.

47. In line with paragraph 10 of *Mylan*, the Panel has chosen to provide the following observations on factors relevant to the *RJR Macdonald* test, recognizing that the Supreme Court of British Columbia will apply that test.

48. The threshold for the first prong of the test is low, however, the Respondent will have to overcome the doctrine of prematurity and the reasonableness standard. The Panel expects those prospects are small.

49. On the second prong, the Respondent will not suffer irreparable harm as his alternate remedies remain intact and available to him, as do all of his procedural fairness entitlements.

50. On the third prong, the Panel does not consider that the balance of convenience weighs in the Respondent's favour. He suggests that any adjournment or stay would be brief because the Petition is scheduled to heard on March 11, 2021. That date is one of the scheduled Discipline Hearing days in this matter. It appears that the College has not agreed to the Petition being heard on that date. As such, at this point, it is not clear that the Respondent will be proceeding with the Petition on March 11, 2021. If the Supreme Court grants a stay of the Discipline Hearing and the Petition is heard on March 11, 2021, the result would be that some or all of the Discipline Hearing would need to be rescheduled. Depending upon the availability of the Panel, the parties, their legal counsel, and the witnesses, that delay could be significant.

51. In *Morgan*, the same argument was made with respect to the *Dr. Q* and *Armstrong cases*. This Panel agrees with the *Morgan* panel's findings that they are not applicable:

> 61. The Panel does not agree that the *Dr. Q* and *Armstrong* decisions are similar to these circumstances. Both *Dr. Q* and *Armstrong* were judicial reviews of final tribunal decisions, not interim or interlocutory tribunal decisions, as is the case in this instance.
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> 62. *Dr. Q* was appealing a final decision of the council of the College of Physicians and Surgeons which had found him guilty of infamous conduct following a four day hearing before the inquiry committee (the regulatory structure was different at that time). He sought an injunction preventing the College from public notification of the case, pending his statutory right of appeal to the Supreme Court pursuant to section 71 of the *Medical Practitioners Act*. The College agreed to stay his penalty pending his appeal but refused to stay the public notice. The Court of Appeal found that the public notice could be issued and anonymized pending the appeal. If Dr. Q lost his appeal, the notice could then be amended to release his name. The Court of Appeal found "If in the present case an injunction is granted, the public interest in knowing the doctor's name will merely be postponed. If Dr. Q. is cleared on appeal then his reputation will not have been ruined in the meantime." In its reasons, the Court of Appeal recognized the importance of confidentiality in the College's process:
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> > 24 While it may be said that the primary goal of the confidentiality is to protect complainants, I think it is also true to say that doctors are intended to be protected. There is a public interest in not damaging professional reputations unnecessarily. The appeal under s. 71 will take place in open court so it can be seen that justice is done.
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> 63. Indeed, the Court of Appeal identified that the legislative regime under the *Medical Practitioners Act* (a predecessor to the HPA, which now governs physicians), was different than criminal proceedings, as it provided that discipline proceedings could be held in camera:
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> > 23. In the present case, the learned chambers judge drew an analogy to the reporting of criminal proceedings. With respect, I do not think that was appropriate. The legislative regime under the *Medical Practitioners Act* provides for confidentiality in the disciplinary process, including *in camera* hearings. There is no parallel in criminal practice and procedure. Rule 15 made pursuant to the Act begins:
> >
> > > 15. All hearings or inquiries shall be held in camera unless the executive committee or the council otherwise directs.
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> 64. While the default has been reversed under the HPA, such that hearings are now presumptively public, the Court of Appeal's point remains relevant: the legislative regime under the HPA is different from criminal and civil proceedings, as the HPA provides that disciplinary hearings may be held in private in appropriate circumstances.
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> 65. In addition, the Panel notes that Dr. Q represents the opposite of the present factual circumstances. Dr. Q was asking for his name to remain private pending his appeal of disciplinary findings against him. In this case, the Respondent is seeking the release of the Complainants' names and identities to the public.
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> 66. For all these reasons, the Panels finds that the Respondent has not met the *RJR MacDonald* test for a stay of proceedings and declines to make that order.

52. The balance of convenience should consider the public interest. The College has a public interest mandate which includes investigative and disciplinary processes for complaints. The Panel agrees with the College that there is a need for certainty and conclusion to discipline proceedings and that lengthy delays undermine the complainants' and the public's confidence in the College's process. The Panel finds these concerns about public confidence to be particularly pressing in cases which involve allegations of sexual misconduct, as is the case here. Indeed, those considerations were particularly important in the Panel's Decision. As was noted in paragraph 47 of the Panel's Decision (citing another *Morgan* decision, which was citing *A.B. Bragg Communications Inc*.), 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:

> 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:
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> > …..
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> > 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:
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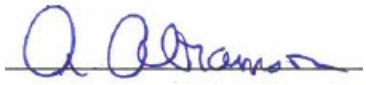
> > > [25] In the context of sexual assault, this Court has already recognized that protecting a victim's privacy encourages reporting: *Canadian Newspapers Co. v. Canada (Attorney General),* [1988] 2 S.C.R. 122.

Conclusion

53. The Panel dismisses the Respondent's application for an order that the Discipline Hearing "be stayed pending a court order with respect to the Respondent's Petition No. S-211672 filed in the Vancouver Registry on February 22, 2021."

Dated: March 4, 2021



Arnold Abramson, Chair

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Elisa Peterson, RMT

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Michael Wiebe, RMT