

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:

Steven Anderson

(the “Respondent”)

REASONS FOR DECISION

Penalty and Costs

Date and Place of Hearing:

By written submissions

Panel of the Discipline Committee (the “Panel”)

Marilynne Waithman, Chair
Deborah Charrois, LL.B., LL.M
Evan Jeary, RMT

Counsel for the College:

Andrew Gay, K.C.
Katrina Labun

For the Respondent:

Steven Anderson

Independent Legal Counsel to the Panel:

Susan Precious

Introduction

1. On May 18, 2022, this panel of the Discipline Committee (the “Panel”) of the College of Massage Therapists of British Columbia (the “College” or “CMTBC”) rendered its reasons for decision pursuant to section 39 of the *Health Professions Act*, R.S.B.C. 1996 c.183 (the “Act” or “HPA”). The Panel found that the Respondent committed multiple acts of professional misconduct and unprofessional conduct and that he violated the HPA, the College’s Bylaws, and Standards established by the College pursuant to the HPA. Apart from one charge that the College did not pursue, and one charge that the Panel found unnecessary to determine, the Panel found that all of the allegations in the Citation were proved to the requisite standard (the “Conduct Decision”).
2. In the Conduct Decision, the Panel set a schedule for written submissions on the appropriate penalty and costs to be imposed. The College delivered its written submissions on June 17, 2022. The Respondent delivered his written submissions on July 21, 2022. The College delivered its reply submissions on July 25, 2022.
3. The College seeks the following orders:
 - a. Cancellation of the Respondent’s registration with no ability to reapply for registration with the College for 20 years;
 - b. A fine in the amount of \$40,000;
 - c. Costs in the amount of \$54,946.67; and
 - d. Payment of any outstanding amounts, including the fine and costs in (b) and (c), to the Registrar before applying for registration.
4. The Respondent’s submissions were not all relevant to the Panel’s determination of penalty and costs. Many of the Respondent’s submissions were devoted to his disagreement with the Conduct Decision. The last paragraph of the Respondent’s submissions is relevant to the assessment of penalty and costs and states:

With respect to the penalties; a 20 year ban on returning to Massage Therapy is essentially a lifetime ban, given my age and health challenges. Over the past 42 months, my business has been decimated by loss of clientele, loss of associates (resulting in a 300% increase in my overhead), COVID related reductions due to fitness closures, and increased costs due to inflation. Any payments that I could manage would need to be flexible, especially in the current climate of rising interest rates.

5. In reply, the College indicated that it does not object to a payment schedule for amounts the Panel may order against the Respondent. The College submits that the final payment for any amounts owing ought to be one year from the date of the Panel's decision and if the Respondent fails to make any payments in accordance with a schedule, the College seeks an order that amounts owing are due as of the default date.

Legal Framework for Penalty and Costs

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

7. If the Panel orders a suspension or cancellation of the Respondent's registration, the following provisions also apply:

39 [...]

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

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

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

(i) a date specified in the order, or

(ii) the date the discipline committee or the board determines that the respondent has complied with the conditions

imposed under paragraph (a), and

(c) 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) If an order under subsection (2) is appealed under section 40, the discipline committee, on application of the respondent under this section, may, by order,

(a) stay the order made under subsection (2) pending the hearing of the appeal, and

(b) impose limits or conditions on the practice of the designated health profession by the respondent during the stay.

Jurisdiction over former registrants

8. As noted in the Conduct Decision, the Discipline Committee has jurisdiction over the Respondent as a former registrant under the HPA. Section 26 of the HPA, which applies to Part 3 of the Act dealing with inspections, inquiries and discipline, expressly defines "registrant" for the purposes of that section to include a "former registrant".
9. The Discipline Committee has the power to suspend or cancel the registration of a former registrant. This issue was recently dealt with in two CMTBC decisions:

College of Massage Therapists of British Columbia v. Gill 2019 CMTBC 1 and *College of Massage Therapists of British Columbia v. Morgan* (June 8, 2021). The Panel agrees with and adopts the reasoning set out in *Gill*:

25. The Panel agrees with the rationale above. The interpretation of the HPA should likewise be given a purposive approach having regard to the College's duty to protect the public. Interpretations that limit the College's sanctioning powers and encourage members to resign or allow their registration to lapse in order to avoid consequences are contrary to the purpose of the HPA. This is particularly the case, where the College's registration committee is required to process registration applications and grant registration to individuals who meet the conditions and requirements under section 20(2) of the HPA.

26. The Panel finds, having regard to the words of the statute, their context, and the purpose of the HPA, that the HPA's reference to "registrant" and "respondent" in sections 37 to 39 includes a "former registrant". The Panel finds that it may order any of the penalties listed in section 39(2) against a former registrant, including a suspension.

Factors in Determining the Appropriate Penalty

10. The relevant factors to consider in determining an appropriate penalty are set out in *Law Society of British Columbia v. Ogilvie*, [1999] LSBC 17:
 - a. the nature and gravity of the conduct proven;
 - b. the age and experience of the respondent;
 - c. the previous character of the respondent, including details of prior discipline;
 - d. the impact upon the victim;
 - e. the advantage gained, or to be gained, by the respondent;
 - f. the number of times the offending conduct occurred;
 - g. whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong, and the presence or absence of other mitigating circumstance;
 - h. the possibility of remediating or rehabilitating the respondent;
 - i. the impact on the respondent of criminal or other sanctions or penalties;
 - j. the impact of the proposed penalty on the respondent;
 - k. the need for specific and general deterrence;
 - l. the need to ensure the public's confidence in the integrity of the

profession; and

m. the range of penalties imposed in similar cases.

[the “*Ogilvie* factors”]

11. *Law Society of BC v. Dent*, 2016 LSBC 05 held that it is not necessary to consider each *Ogilvie* factor in every case and that the factors can be consolidated. In *Dent*, the following consolidated list was suggested:
 - a. Nature, gravity and consequences of conduct;
 - b. Character and professional conduct record of the respondent;
 - c. Acknowledgement of the misconduct and remedial action; and
 - d. Public confidence in the legal profession including public confidence in the disciplinary process.
12. The *Ogilvie / Dent* factors have repeatedly been applied by the Discipline Committee, including in the *Gill* and *Morgan* decisions. The Panel finds that is the appropriate approach in this case as well.

Nature, Gravity and Consequences of Conduct

13. The College submits that this is one of the most serious cases to ever come before the Discipline Committee. The Panel found that the Respondent committed numerous acts of very serious misconduct as well as violations of the Act, the Bylaws, and Standards imposed by the College. The College submits that the misconduct was deliberate, egregious, repeated and had a severe impact upon the victims.
14. The College notes that the Respondent was found to have engaged in sexual misconduct in relation to three patients. The College submits that sexual misconduct is at the most serious end of the spectrum of misconduct and is particularly grievous in the context of massage therapy since physical touch is the primary treatment modality. The College relies upon the following passage from *College of Massage*

Therapists of British Columbia v. Martin, 2015 CMTBC 01 at page 10, which was adopted in *Morgan*:

In the Panel's view, the case for general deterrence and denunciation of the type of conduct engaged in by the Former Registrant is perhaps even stronger in the context of massage therapy than in any other health profession. While some other health professions may incorporate touch to a greater or lesser degree either directly, or as incidental to the diagnosis or treatment of a patient, none does so to a greater degree than massage therapy, in which physical touch is the primary treatment modality. Members of the massage therapy profession must understand that there will be no tolerance for sexual touching, whether such touching is overt and clearly sexual in nature, or of the "disguised" kind referred to in *Romyn*, and found by the Panel in this case, that masquerades as therapeutic contact. Likewise, members of the public must feel confident that any treatment provided by a massage therapist is provided solely in the best interests of the patient, and for no other purpose. For any patient to feel during and after massage therapy as the complainants did in this case - fearful, anxious, apprehensive, and violated - is a wrong that this Panel must denounce in the strongest terms as a matter of justice to the complainants, protection of the public, denunciation of the conduct, and the upholding of the integrity of the entire profession.

15. The College submits that the Respondent's conduct had serious negative impacts upon the three patients. A.A. described feeling "frozen" while the Respondent inserted his finger into her vagina without consent. After the treatment, she sat in her car and cried. She described thinking about the incident every day. She testified that the experience affected her relationship and that she would not let anyone get close to her. B.B. testified feeling uncomfortable and confused during the treatment sessions in which the Respondent massaged in the area of her vulva. B.B. described feeling "frozen" when the Respondent massaged closer to her vaginal opening. After the treatment, she was shaking and trying not to cry. B.B. described a significant impact upon her life and her mental health, including feeling shame and embarrassment. C.C. described feeling "frozen" and "terrified". C.C. testified that because of the experience she has had a difficult time seeing any medical professional who is male. In addition, the experience affected her intimate relationships and her ability to trust others.
16. The College submits that the Respondent's conduct in exceeding his scope of practice by performing internal massage and making a medical diagnosis is serious misconduct which suggests ungovernability. This is particularly the case with the

internal massage as the Respondent knew that internal massage was outside of his scope of practice and prohibited for members of the profession. The College argues that the Respondent subjected patients to a highly invasive procedure without qualification and without informed consent. The College submits this conduct puts the public at risk.

17. The College submits that the Respondent's conduct in misleading the College about his records and obstructing the investigator also constitutes serious misconduct. It was repeated, deliberate and found by the Panel to demonstrate a "lack of honesty and integrity." The Panel found in the Conduct Decision that the Respondent's conduct was far more serious than the conduct in the *Gill* matter.
18. Overall, the College submits that the nature and gravity of the Respondent's misconduct, including his multiple acts of sexual misconduct, his hubris in believing that he was above the law and could exceed his scope of practice, the nature of his violations of the Act and Bylaws, the fact that his misconduct was repeated numerous times, and the significant negative impact on his victims all weigh in favour of the most serious penalty.
19. The Respondent vehemently objects to the characterization of his conduct as being one of the "most serious" and "egregious" cases. He did acknowledge there was hubris on his part.
20. The Panel finds that this is one of the most serious cases to ever come before the Discipline Committee. The nature and gravity of the conduct is at the most serious end of the spectrum for several reasons. First, sexual misconduct is a particularly serious form of misconduct because of the breach of trust and abuse of patients. The particular forms of sexual misconduct in this case were at the most serious end of the spectrum because of the areas involved and the manner of touch. Second, the Respondent engaged not only in sexual misconduct but in multiple different forms of misconduct, all of which are the most serious kinds of professional violations. The Respondent delivered massage therapy services while his registration was suspended pursuant to a section 35 order. The Respondent practised outside of his scope of practice by performing internal massage work. The

Respondent made a medical diagnosis. The Respondent misled the College regarding his records during the investigation by withholding his original records and creating new typewritten records which were materially different from his original documentation. The Respondent obstructed the College investigator contrary to the HPA and failed to respond to inquiries and directions from the College in a professional and responsive manner contrary to the Code of Ethics. Third, the Respondent engaged in multiple instances of misconduct involving many different patients and extending over a period of years.

21. The Panel also finds that the consequences of the Respondent's conduct are serious. The impact of the Respondent's conduct on the complainants was profound. It is evident to this Panel that the Respondent's actions have had lasting negative effects on the complainants. The Respondent's conduct also had negative consequences for the College. The Respondent's provision of misleading records and withholding of his original records made it more difficult for the investigator to perform her duties.
22. The Panel finds that this is an aggravating factor that weighs in favour of a more serious penalty.

Character and Professional Conduct Record of the Respondent

23. The College notes that the Respondent became a registrant in 1992. He was a senior member of the profession. He was an instructor at West Coast College of Massage Therapy in the 1990s. He was involved in lobbying efforts on behalf of the College which took place in the late 1990s and early 2000s.
24. The College submits that this factor weighs in favour of a more serious penalty. As a senior member of the profession and a former massage therapy instructor, the Respondent ought to have known better.
25. The College submits that there is no reason to believe that the Respondent has any prospect of remediation. On the contrary, his conduct during the investigation and

disciplinary processes demonstrates that he is not likely to change his behaviour. The College submits that this factor weighs in favour of a more serious penalty.

26. The College confirms that the Respondent has no prior disciplinary record however submits that the absence of one should not be a mitigating factor in this case. The College argues that the Respondent's pattern of conduct dates back to at least 2014 and the absence of a record is more properly viewed as delayed reporting.
27. The Panel finds that the Respondent had no prior disciplinary record before this matter but agrees with the College's submission that this should not be a mitigating factor in this case. The absence of a disciplinary record is not due to the absence of misconduct but rather due to delayed reporting of sexual misconduct that dates back to 2014. The Respondent's misconduct extended from 2014 to 2019. The Respondent has been registered since 1992. As a senior member of the profession, there are no mitigating circumstances of inexperience in this case.
28. The Panel finds that this is an aggravating factor which weighs in favour of a more serious penalty.

Acknowledgement of the Misconduct and Remedial Action

29. The College submits that the Respondent has not acknowledged his misconduct or taken any remedial action. The College submits that while the Respondent admitted to some of the conduct at issue, he persistently denied that he did anything wrong. The College submits that the Respondent's testimony demonstrates a total lack of insight into his professional and ethical obligations and disregard for the impact that his conduct had upon the complainants. Moreover, the Respondent attempted to conceal his conduct by fabricating treatment records years after the fact and withholding his original treatment records.
30. The College acknowledges that the absence of an admission or demonstrated remorse is not an aggravating factor but is the absence of a mitigating factor.

Accordingly, the College submits that this factor does not mitigate in favour of a less serious penalty.

31. The Panel finds that the Respondent acknowledged some of the conduct however he did not admit that his conduct amounted to any wrongdoing. To the contrary, the Respondent has remained steadfast in his defiance. The Respondent's written submissions reiterate that treatment of blackheads below the dermis remains in his scope of practice and he argues that the College's informed consent requirements are excessive.
32. There was no information before the Panel that the Respondent has undertaken any remedial action. To the contrary, the Panel finds that the Respondent has demonstrated no insight and has not learned from his behaviour. The Panel is not persuaded that the Respondent will conduct himself any differently going forward.
33. The Panel agrees with the College and finds that the absence of an admission or remorse is not an aggravating factor but is the absence of a mitigating factor. This factor does not weigh in favour of a less serious penalty.

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

34. The College submits that it has a statutory duty to serve and protect the public and to exercise its powers and discharge its responsibilities under all enactments in the public interest pursuant to section 16 of the Act. The imposition of a serious penalty in the face of repeated and deliberate conduct is necessary both to protect the public and maintain public confidence in the profession. The College relies upon the following passage from *Morgan*:

26. Public confidence in the profession and in the disciplinary process is essential. The public must have confidence that members of the profession will be held to account. The Panel agrees with the Discipline Committee findings in *Gill*:

48. The Panel agrees that a central purpose of disciplinary proceedings is to protect the public and ensure public confidence in the profession. 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. The Panel finds this factor favours a more serious penalty.

27 . The Panel also agrees that a message of general deterrence should be sent to the profession that sexual misconduct will not be tolerated.

35. The College submits that other similar cases imposed cancellation and that would be the only appropriate penalty in this case.
36. In *Morgan*, the Discipline Committee ordered cancellation and other penalties against the respondent who was found to have demonstrated sexual misconduct in relation to three patients. The respondent was not permitted to reapply for reinstatement for a period of five years, and only upon completion of remedial education. A fine of \$5000 was ordered. The Discipline Committee in *Morgan* referred to the following consent orders which were reached under section 37.1 of the HPA at paragraph 31 of that decision:
 - a. *Re Bodhi Jones* (August 5, 2020): a registrant admitted that he touched three complainants inappropriately and in a sexual manner without consent. The registrant was convicted of three counts of sexual assault. He agreed to the cancellation of his registration and that he could not apply for reinstatement for 30 years.
 - b. *Re Breault* (December 4, 2019): a registrant admitted that, prior to becoming a registrant of the College but after he applied to do so, he touched a complainant inappropriately and in a sexual manner while conducting a massage. He was subsequently convicted of sexual assault as a result of this conduct. He agreed to the cancellation of his registration and that he could not apply for reinstatement for 20 years.
 - c. *Re Brown* (December 19, 2017): a registrant admitted that he had engaged in a sexual relationship with a complainant, sexualized communications with others and that he attempted to mislead the College during the investigation. He agreed to the cancellation of his registration and that he could not apply for reinstatement for 30 years.

37. The College also notes the recent matter of *Re Desrochers* (May 4, 2022). A registrant entered into a consent order in which he admitted that he undraped the breasts of seven female patients without their informed consent or when undraping was not necessary, that he massaged the breasts or chest of four patients without informed consent, that he engaged in unprofessional communications with four patients, and that he performed breast examinations on two occasions when doing so was outside the scope of practice of massage therapy. He agreed to the cancellation of his registration with no eligibility to reapply for five years.
38. The College submits that the *Morgan, Desrochers, Brown, Breault* and *Bodhi Jones* decisions are all recent matters involving sexual misconduct in which cancellations and lengthy periods of ineligibility to apply for reinstatement were ordered.
39. The College submits that cancellation is the most serious penalty available to the Panel and ought to be imposed in this case. The College submits that pursuant to section 39(8) of the Act, if the Panel orders cancellation it may impose conditions on the ability to reapply for registration; direct that the eligibility to reapply for registration will occur on a specific date or upon satisfaction of certain conditions and impose conditions upon the Respondent's practice that may apply after any reinstatement.
40. The College submits that the Respondent ought not to be eligible to reapply for registration for 20 years. The lengthy duration of the prohibition is necessary to reflect the seriousness of the misconduct in the case. The College notes that reinstatement following cancellation would not be automatic as the Respondent would have to meet the requirements of the Registration Committee. This includes section 54 of the College's Bylaws which sets out specific requirements for individuals whose registration has been cancelled for five or more years and stipulates that a disciplined person may be restored to practising registration by the Registration Committee if they satisfy the requirements for reinstatement and satisfy the Registration Committee that reinstatement will not pose an undue risk to public health or safety, or otherwise be contrary to the public interest.
41. The College also seeks the imposition of a fine of \$40,000 which is 80% of the maximum fine available under section 71 of the College Bylaws. The College

submits that a fine should be imposed in addition to cancellation to promote public confidence in the integrity of the profession and general deterrence.

42. The College submits that general deterrence is an important remedial goal and is particularly important in this case because:
 - a. This case involved an egregious abuse of a power imbalance. The Respondent's patients relied upon him as a professional to act in their best interests and he abused their trust and vulnerability. A clear and strong message must be sent to the profession that this type of abuse of power will be met with a strong penalty.
 - b. This case involved blatant acts of acting beyond scope. This conduct puts the public at risk and must be deterred in the strongest terms with the sternest penalties.
 - c. This case involved attempted deception of the College in relation to clinical records. The College cannot fulfil its public interest mandate if registrants provide misleading information and documents. Complete cooperation and honesty are vital to the integrity of the self-governing system.
 - d. There is a real risk that cancellation will not provide a sufficient deterrent effect. The College argues that because the Respondent is not a current registrant, cancellation is "nominal". The College elaborated that, "There is no question that cancellation is important, both for the message it sends and because it permits restrictions relating to the timing of any re-application for membership. However, general deterrence is very much a matter of perception. For example, if a senior member of the profession were to conclude that serious penalty can be avoided by retiring or resigning, cancellation is not a sufficient deterrent. A fine is a more tangible and direct deterrent that will have far greater force in this context." The College submits that there is a risk that a penalty without a significant fine will erode the public's confidence in the integrity of the profession as the public would likely consider the cancellation of a non-registrant's registration as symbolic.

43. The College submits that having regard to the totality of the circumstances and the unique features of this case, the totality of the Respondent's actions justifies the imposition of a fine in addition to cancellation.
44. The Panel finds that there is a need for specific deterrence, general deterrence, and the need to maintain public confidence in the profession in this case. There is a strong need to express to the Respondent and to other members of profession that this conduct is unacceptable.
45. The Panel finds that there is also a strong need to maintain public confidence in the profession's ability to address this unacceptable conduct. The College has dual statutory duties to at all times serve and protect the public and to exercise its powers and discharge its responsibilities under all enactments in the public interest. The Panel agrees with and adopts the reasoning in *Gill and Morgan* that a central purpose of disciplinary proceedings is to protect the public and ensure public confidence in the profession. 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.
46. This is an aggravating factor and favours the imposition of a more serious penalty.
47. In sum, the first, second and fourth *Ogilvie / Dent* factors are aggravating factors which favour the imposition of a more serious penalty. The third factor is not a mitigating factor in favour of the Respondent.
48. The multiple different forms of misconduct which were repeated over a prolonged period of time have significant public safety and public interest implications. The Panel finds that nothing short of the ultimate penalty of cancellation would be enough to deter the Respondent and other members of the profession from committing these types of serious misconduct, to maintain public confidence in the profession and to protect the public.
49. As was noted in *College of Nurses of Ontario v Mark Dumchin*, 2016 ONSC 626, the statutory power to impose cancellation against a former registrant is particularly important to "ensure that a member cannot frustrate the disciplinary process by

resigning unilaterally” (paragraph 42). Former members must not avoid the consequences of their misconduct and must be held to account for the prime purpose of protecting the public. The Panel also agrees with the reasoning in *Dumchin* that cancellation of former registrants must be viewed in its proper statutory context. It is not the cancellation of a piece of paper confirming one’s certificate of registration, rather it is cancellation of entitlement to practice a regulated profession. To that end, the Panel does not agree with the College’s submission that cancellation of a former registrant is “nominal”. It is the application of the ultimate penalty and it is the removal of an individual’s entitlement to practice a regulated profession going forward.

50. The College seeks an order that the Respondent not be permitted to reapply for registration for 20 years. The Respondent characterizes this as a “lifetime ban”.
51. Unlike in some other jurisdictions, the HPA does not prescribe or contemplate the permanent cancellation of registration. As the Discipline Committee noted in *Morgan*, “In Ontario, a registrant may not apply for reinstatement before five years and in Alberta a registrant is permanently prohibited from reapplying” (paragraph 34). In *Morgan*, the Discipline Committee also held that “The Panel agrees with the College that a permanent prohibition on the Respondent’s ability to apply for reinstatement may not be compatible with the HPA.” This Panel agrees that a permanent prohibition may not be compatible with the HPA.
52. As noted above in these reasons, section 39(8) of the HPA expressly permits the Discipline Committee to impose conditions on a person’s eligibility to apply for reinstatement of registration if their registration has been cancelled and to direct that the eligibility to apply for reinstatement of registration will occur on a date specified in the order. It is therefore open to the Panel to order that the Respondent not reapply for registration for a specific period of time.
53. Section 54(4) of the College’s Bylaws provides that “An Applicant whose practising registration has been cancelled for *five (5) consecutive years or more* may be restored to practising registration” if they meet certain requirements. This wording

indicates that a period of at least five years and possibly more is contemplated by and consistent with the College's Bylaws.

54. The Panel is not bound by past decisions but they are important for the Panel to consider. The eligibility periods in the consent orders in the *Desrochers, Brown, Breault and Jones* matters range from 5 to 30 years. In *Morgan* that period was 5 years. While *Morgan* was a written decision following a discipline hearing, there was a joint submission on penalty and costs in that case. In all of those cases, the appropriate period after which the respondent could apply for reinstatement was not an issue which was argued before the Discipline Committee. As a result, this Panel does not have the benefit of reasons why those specific periods were thought to be appropriate in those specific cases.
55. The Respondent has argued that due to his age and length of career, 20 years would be akin to permanent cancellation. The Panel has carefully considered that argument. While the Panel appreciates that a lengthy period of time could be tantamount to a permanent cancellation, the Panel also finds that to focus exclusively on the Respondent's age and stage of his career would displace consideration of the *Ogilvie / Dent* factors which guide the selection of the appropriate penalty in disciplinary matters.
56. The Bylaws permit an eligibility period of more than five years, and the Panel considers that a period of more than five years is appropriate as this case is far more serious than the *Morgan* case. The Panel has decided that the Respondent cannot apply for reinstatement before 15 years. The Panel finds that this length of time is not a permanent cancellation, is consistent with both the HPA and the College's Bylaws, reflects the seriousness of this matter, and is consistent with the principles underlying the assessment of regulatory penalties.
57. The Panel wishes to make clear that this condition does not mean that the Panel has ordered a cancellation of the Respondent's registration for a period of 15 years or that the Respondent will be entitled to practise the profession again after 15 years. The condition means that the Respondent may only submit a reinstatement application after 15 years. If the Respondent chooses to apply for reinstatement, he

will be required to meet all of the applicable registration requirements. Those requirements presently include, amongst others, satisfying the Registration Committee that an applicant is of good character, that they are fit to practise the profession, that they do not pose an undue risk to public health or safety, and that the grant of registration is not otherwise contrary to the public interest. Section 20(2.1) of the HPA expressly provides that, after giving the person the opportunity to be heard, the Registration Committee may refuse to grant registration, grant it for a limited period, or grant it with limits or conditions, if the person's entitlement to practice a regulated health profession was previously cancelled in British Columbia or another province or a foreign jurisdiction.

58. The College has requested the imposition of a fine in addition to the cancellation of the Respondent's registration. Section 39(2) of the HPA expressly permits the Discipline Committee to impose more than one of the penalties listed in that section. The section provides that the Discipline Committee "may, by order, do *one or more* of the following."
59. Generally, a fine is not imposed in addition to a suspension or a cancellation because they are viewed as lying at opposing ends of the spectrum of seriousness of penalties. Fines, suspensions and cancellations all have financial consequences for a professional. Typically, they represent alternate forms of penalties with a suspension or a cancellation reserved for the most serious cases. In many cases, the imposition of a fine in addition to a suspension or cancellation will serve no practical purpose. However, there are instances in which a fine is imposed in addition to a suspension or cancellation because it is necessary to further the principles which guide the disciplinary process. This may include, but is not limited to, conduct which has a financial character or failure to cooperate with the College.
60. The Panel finds that this is one of those instances in which it is necessary and appropriate to impose a fine in addition to cancellation in order to further the principles which guide the disciplinary process. In this case, the Respondent is a former registrant and his removal from the profession holds a different reality than it would for a practicing registrant. In addition, the Respondent's misconduct included

both financial and non-cooperation aspects. In terms of a financial aspect, the Respondent delivered massage therapy services while his registration was suspended and defiantly practised outside of his scope of practice. In terms of non-cooperation, the Respondent misled the College regarding his records and obstructed the College investigator. The Panel finds that cancellation alone would not provide sufficient deterrent and would not maintain public confidence in the profession. The Panel finds that it is necessary to also impose a fine of \$10,000 in this case. This is double the amount of the fine in *Morgan*, which also involved a former registrant but in which the conduct was less serious.

Costs

61. Sections 39(5) and 39(7) of the HPA authorize the Panel to award costs to the College in an amount not to exceed 50% of the actual legal costs to the College for the discipline hearing:

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.

62. Section 72 of the College's Bylaws establishes a tariff of costs which is set out at Schedule F. Section 54 of the College's Bylaws provides that before reinstatement of registration, the Registrar must receive any outstanding debt owed to the College.

63. The College has prepared a bill of costs with amounts claimed pursuant to the tariff at Schedule F. The College claims \$12,250 in costs. The College has claimed \$42,696.67 in disbursements which include:
 - a. Charges by legal counsel for the College for disbursements in the amount of \$9,550.44;
 - b. Fees paid for obtaining expert evidence in the amount of \$6,150;
 - c. Charges for professional services contracted for the purposes of investigation in the amount of \$18,587.92;
 - d. Fees paid for court reporter services for the pre-hearing application and hearing, including transcripts, in the amount of \$8,408.31.
64. The total amount claimed by the College is \$54,946.67 which, according to the College's affidavit, is less than 50% of actual costs to the College for legal representation for the purposes of this matter.
65. The Panel has determined that the College's costs are reasonable, appropriate and conform with the statutory requirements. The Panel orders that the Respondent pay \$54,946.67 in costs to the College.

Order

66. The Panel orders that:
- a. The Respondent's registration is cancelled as of the date of this order;
 - b. The Respondent is prohibited from applying for reinstatement of his registration with the College for 15 years from the date of this order;
 - c. The Respondent must pay a fine in the amount of \$10,000;
 - d. The Respondent must pay costs to the College in the amount of \$54,946.67;
 - e. The Respondent must pay all outstanding amounts, including the fine and costs in (c) and (d), to the Registrar before applying for reinstatement of his registration.
67. The Panel directs that the Respondent pay the amounts owing in paragraph 66(c) and (d) by way of monthly installments, with the specific amounts and dates to be set out in writing by the College and provided to the Respondent within 7 days of the date of this order. The final payment must be made one year from the date of this order. If the Respondent fails to make any payments in accordance with the schedule, all amounts are due as of the default date.
68. The Panel directs pursuant to sections 39.3 of the Act that the Registrar notify the public of the order made herein.
69. The Panel directs pursuant to section 39.3(3)(a) of the Act that the Registrar withhold part of the information otherwise required to be included in the public notification under this section as the Panel considers it necessary to protect the interests of the complainants and another person affected by the matter.

Notice of Right to Appeal

70. 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.

Dated: October 20, 2022



Marilynne Waithman, Chair



Deborah Charrois, LL.B, LL.M



Evan Jeary, RMT