

IN THE MATTER OF THE BRITISH COLUMBIA COLLEGE
OF NURSES AND MIDWIVES AND A CITATION ISSUED UNDER THE
HEALTH PROFESSIONS ACT, R.S.B.C. 1996, c. 183

BETWEEN:

THE BRITISH COLUMBIA COLLEGE OF NURSES AND MIDWIVES

(the “College”)

AND:

AMY EILEEN HAMM

(the “Respondent”)

Hearing Date:	Conducted by written submissions
Discipline Committee Panel:	Edna McLellan, Non-Practising R.N. (Panel Chair) Sheila Cessford, Public Member Jackie Murray, R.N.
Counsel for the College:	Michael Seaborn
Counsel for the Respondent:	Lisa D.S. Bildy
Counsel for the Panel:	Angela R. Westmacott, K.C.

**DECISION OF THE DISCIPLINE COMMITTEE
HEARING PANEL ON
PENALTY, COSTS AND PUBLICATION**

A. INTRODUCTION

1. A panel of the Discipline Committee (the “Panel”) of the British Columbia College of Nurses and Midwives (the “College”) conducted a hearing pursuant to s. 38 of the *Health Professions Act*, RSBC 1996, c. 183 (the “Act”) to determine whether Amy Eileen Hamm (the “Respondent”) engaged in unprofessional conduct or a breach of the Act or College bylaws or College standards by making discriminatory and derogatory statements regarding transgender people, while identifying herself as a nurse or nurse educator, across various online platforms between approximately July 2018 and March 2021.

2. The hearing proceeded by videoconference on September 21 to 23, October 24 to 27, 2022, January 10 to 12, 2023, October 23 to 25, October 31 to November 3, November 6 to 8, 2023, and March 18 to 19, 2024.
3. On March 13, 2025, the Panel released its decision finding that the Respondent had committed unprofessional conduct (the “Decision on Verdict”). In the Decision on Verdict, the Panel indicated a hearing would be scheduled to address penalty, publication, and costs.
4. The parties requested the hearing on penalty proceed by way of written submissions. The Panel set a schedule for the exchange of written materials and received submissions and affidavits from both parties.
5. The Panel is satisfied that the written materials filed by the College and the Respondent are sufficient to enable it to make a determination regarding the appropriate disciplinary action under s. 39(2) of the Act as well as publication and costs.

B. POSITIONS OF THE PARTIES

6. The College seeks:
 - (a) an order that the Respondent be suspended for three months;
 - (b) hearing costs in the amount of \$163,053; and
 - (c) an order for public notification under s. 39.3 of the Act.
7. The Respondent maintains that a reprimand, a suspension of 10 to 14 days, and hearing costs of \$40,115 would be more appropriate. She takes no position on public notification.
8. The parties jointly submit that any order made by the Panel under s. 39(2) and costs award should be stayed pending the outcome of the Respondent’s appeal in relation to the Decision on Verdict under s. 40 of the Act.

C. LEGISLATION

9. As the Panel determined that the Respondent engaged in unprofessional conduct under s. 39(1) of the Act, it has discretion to make one or more of the following orders:

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).

10. Where a hearing panel makes an order under s. 39(2), the following additional provisions apply:

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.

(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.

D. GENERAL PRINCIPLES

11. The imposition of a penalty is discretionary. The purpose of a penalty is to protect the public from professional misconduct or unprofessional conduct in furtherance of the College's public protection and public interest mandate under s. 16(1) of the Act.

12. The factors to be considered in determining an appropriate penalty are set out in *Law Society of British Columbia v. Ogilvie*, [1999] LSBC 17 ("*Ogilvie*") at para. 10:

- (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 number of times the offending conduct occurred;
- (e) the possibility of remediating or rehabilitating the respondent;

- (f) the impact of the proposed penalty on the respondent;
- (g) the need for specific and general deterrence;
- (h) the need to ensure the public's confidence in the integrity of the profession; and
- (i) the range of penalties imposed in similar cases.

13. In *Law Society of BC v. Dent*, 2016 LSBC 5 ("*Dent*"), the *Ogilvie* factors were condensed into four categories, recognizing that not all factors are necessarily engaged in each case:

- (a) the nature, gravity, and consequences of the conduct;
- (b) the character and profession conduct record of the respondent;
- (c) acknowledgement of the misconduct and remedial action; and
- (d) public confidence in the profession including public confidence in the disciplinary process.

14. This framework, which the parties used, has been consistently applied by many professional regulators, including the College discipline committee: see, e.g., *BCCNM v. Parniak*, 2020 BCCNM 5.

E. APPLICATION OF GENERAL PRINCIPLES

Nature, gravity, and consequences of the conduct

15. The first constellation of *Dent* factors considers the severity of the misconduct, including its duration and how many times it occurred, the impact on any victim, and whether the professional gained from the misconduct or faced any consequences as a result of it: *Dent*, para. 20.
16. The College argues that it is necessary to understand the nature of the group targeted by the Respondent's statements to properly assess the gravity and consequences of the Respondent's conduct. It references the Panel's findings that: (a) the Respondent's off-duty statements were squarely directed at members of a vulnerable and marginalized group in our society; (b) the tone and content of the Respondent's statements appeared to be designed to elicit outrage and condemnation towards the transgender community; and (c) there is a risk that members of the transgender community will assume the views expressed in those statements are shared by at least some portion of the nursing profession and further reinforce concerns they will not receive proper treatment and/or discourage them from seeking health care.
17. The College also relies on the Panel's findings that the Respondent "repeatedly posted statements online that were critical of the transgender community while linking them to her professional status" and went to considerable lengths to disseminate her views as broadly as possible. According to the College, the consequences of the misconduct are "serious, far reaching and corrosive" as the Respondent's statements not only affect the transgender community but also confidence in the health care system itself.
18. In response, the Respondent points out there was no "direct victim" in this case; rather, the "complainants were [her] ideological opponents". She notes that no patient was involved, and no trans-identified people came forward to provide evidence of "harm" or "impact". The Respondent notes that the finding of harm was largely based on the Panel's acceptance of the

College's expert evidence regarding the likelihood that trans-identified people find would find her statements to be discriminatory and derogatory.

19. The Respondent emphasizes the consequences that she has suffered. She advised that Vancouver Coastal Health terminated her employment without severance two weeks after the Decision on Verdict was released. It did so, according to the Respondent, despite her successful 13 years of employment there. As a single mother who receives no child support, the Respondent described this as a "calamitous result". She has been unemployed as a nurse for the last three months and observes that this situation is "continuing indefinitely". The Respondent contends that a further three-month suspension on top of her *de facto* suspension would be unduly punitive.
20. The Respondent further states that she has experienced considerable adverse mental health impacts from the protracted College investigation and hearing which necessitated medical treatment and numerous leaves of absence from work. She maintains that the investigation and hearing process has largely amounted to punishment.
21. The Panel finds that the Respondent's conduct in making discriminatory and derogatory statements regarding transgender people on various online platforms while identifying herself as a nurse or nurse educator is serious. The College alleged that these statements were made from approximately July 2018 to March 2021. The alleged discriminatory and derogatory statements were not particularized in the Citation; rather, the College tendered over 300 pages of material containing the alleged statements into evidence. It subsequently distilled that material down to a binder containing 22 tabs¹ containing the allegedly discriminatory and derogatory statements. The Panel determined that statements in 6 of those 22 tabs were discriminatory and derogatory to transgender people and had the requisite nexus to the nursing profession. Those statements were posted between July 7, 2018 and September 14, 2020.
22. The material in those 6 tabs confirmed that the Respondent repeatedly posted statements online which were discriminatory and derogatory to transgender people while identifying herself as a nurse or nurse educator. Those statements were disseminated on forums that would have been available to a large audience. This was not a lapse in professional judgment on the part of the Respondent; rather, it reflected a pattern of online behaviour. The Panel considered this pattern to demonstrate a lack of understanding by the Respondent of her ethical obligations as a nursing professional. Although no transgender people came forward to address the impact of the Respondent's statements, the expert evidence established the risk of harm which statements of this nature engender. The Panel summarized the risk in the Decision on Verdict:

255. ... The Respondents' statements repeatedly challenge the existence of transgender women, conflate sex and gender, and advocate for the denial of legal protections for transgender women whom she describes as feminine men. The Panel has no hesitation in finding that these statements are disrespectful, hurtful, and harmful to the transgender community. As Dr. Saweyc testified, the experience of transgender people who have contact with nurses in all areas of clinical care can be markedly different from the care experienced by cisgender individuals. A nurse who makes public statements using their profession status which challenge the existence of transgender women and appear to be

¹ Tab 4 was a partial duplicate of an article at Tab 30 – the tabs were not numbered sequentially.

designed to elicit hostility, fear and contempt for members of the transgender community erodes the trust that members of that community have in the health care system and likely foster a reluctance or unwillingness to access health care for fear they will face further discrimination. This is borne out by the findings of the Canadian Trans Youth Survey which revealed that many youth chose not to access required health care based on a fear of what “people will say or do” in the health care system and the impact of previous negative experiences. This is unacceptable and inimical to the foundational values of our health care system.

256 The Respondent’s derisive statements regarding transgender people (and particularly transgender women) are not only contrary to the foundational values of the health care system but also to the obligation of the nursing profession to treat individuals with respect and dignity and to facilitate and promote equitable access to health care services without regard to irrelevant personal attributes and characteristics. By identifying herself as a nurse or nurse educator while posting discriminatory and derogatory opinions regarding a vulnerable and historically disadvantaged group on various online platforms, the Respondent undermined the reputation and integrity of the nursing profession. ...

23. The repeated targeting of a vulnerable and marginalized group in society is an aggravating factor which militates in favour of a more serious penalty.
24. The Panel accepts the Respondent has experienced adverse consequences. She states that “two weeks after the Decision [on Verdict], she was terminated from her employment with Vancouver Coastal Health and, despite a 13-year successful employment tenure, received no severance”. To the extent the Respondent seeks to have the Panel infer that the termination was caused by the finding of unprofessional conduct, there is insufficient evidence to establish that nexus. However, the Panel acknowledges that the Respondent has lost her employment as a nurse and, as a single parent, is in a difficult financial position relying on the “modest income” she earns from writing “opinion pieces”. The Panel recognizes that a lengthy suspension imposed upon the Respondent’s return to nursing would be a significant financial hardship.
25. The Panel considered the Respondent’s submission that the emotional toll she has suffered as a result of the prolonged investigation and discipline process amounts to a form of punishment. Although no medical evidence was led to support this claim, the Panel recognizes that the investigation and discipline process is inherently stressful for professionals. However, the Panel does not accept that such impacts constitute a form of “punishment” which would obviate the need for disciplinary action in light of the gravity and repeated nature of the Respondent’s conduct.

Character and professional conduct record of the respondent

26. The second category of factors under *Dent* concern the respondent’s age and experience, professional reputation and reputation in the community, and professional conduct record.
27. The College confirms the Respondent has no prior disciplinary record with the College or its legacy predecessors; it acknowledges this is a mitigating factor. However, the College maintains that the Respondent is an experienced nurse who should have been aware of her responsibilities as a regulated professional. The College references several learning resources

available online to registrants regarding their professional responsibilities; it suggests that the Respondent should have availed herself of those resources which would have clearly informed her not to connect her advocacy to her professional designation. The Panel notes those learning resources were not put in evidence.

28. The Respondent points out that she also has no history of patient complaints. She submits that the Panel should consider the sincerity of her beliefs and her intentions which were to advocate for the sex-based rights of women and children (which was acknowledged in the Decision on Verdict). The Respondent asserts that her conscience and genuinely held beliefs led her to speak up in the face of what she considers to be a grave injustice to women and children, even if her views counter the “current accepted orthodoxy on gender”.
29. The Respondent is an experienced nurse and nurse educator. She has practiced as a registered nurse for approximately 13 years and assumed an educational role as a nurse educator in 2016. As a nurse educator, the Respondent was responsible for onboarding new nurses, providing education and orientation for the inpatient psychiatry unit she was working on, and providing education for existing staff who required support in their practice.
30. The Panel was not provided with any evidence concerning the Respondent’s professional reputation or her general reputation in the community.
31. The Panel finds that the Respondent, as an experienced nurse and nurse educator, should have been aware of her professional ethical responsibility to refrain from using her professional designation when publicly expressing her views regarding the transgender community. The Panel accepts that the Respondent’s statements were motivated by her genuine belief that recognition of the rights of transgender women harms the sex-based rights of cisgender women and children. However, as noted in the Decision on Verdict, it is possible to express gender critical views without making statements which denigrate and discriminate against transgender persons. The Respondent’s seniority and experience in nursing weighs in favour of a more significant penalty.

Acknowledgement of the misconduct and remedial action

32. The third category of *Dent* factors involves consideration of whether a respondent has admitted their misconduct and taken any steps to prevent a reoccurrence, whether they have taken any remedial action to correct the specific misconduct and can be rehabilitated, and whether there are other mitigating circumstances (such as mental health or addiction issues).
33. The College acknowledges that the Respondent no longer connects her statements regarding transgender people to her professional designation.
34. The Respondent points out she has remediated the concern which led to the Citation to the “apparent satisfaction of the College by removing the reference to her professional designation from her bio in her published articles”. She indicates that there were never any references to her professional designation in her social media biographical information. The Respondent suggests that the need for a disciplinary hearing may have been obviated if the College had simply asked her to remove the references to her professional designation in her online commentary – an observation which, in the Panel’s view, is speculative.

35. The Panel accepts that the Respondent stopped using her professional designation as a nurse or nurse educator when publishing her gender critical views albeit at the request of her employer, which is a mitigating factor. As well, the Panel recognizes that the Respondent was fully cooperative in the discipline hearing process.

Public confidence in the profession including public confidence in the disciplinary process

36. The final category of *Dent* factors involves consideration of whether there is sufficient specific and general deterrent value in the proposed disciplinary action, whether the public will have confidence that the proposed disciplinary action is sufficient to maintain the integrity of the profession, and whether the proposed disciplinary action is in line with the penalties imposed in similar cases.
37. The College asserts that a suspension of registration is the only penalty that will accomplish the goals of specific and general deterrence. It contends that a three-month suspension is commensurate with the seriousness of the conduct and will “communicate clearly that the College – and by extension the nursing profession – does not tolerate discrimination”. It suggests that a three-month suspension also falls within the range of disciplinary action imposed in similar cases with reference to the following decisions:
- (a) *Kempling v. British Columbia College of Teachers*, 2004 BCSC 133, aff’d 2005 BCCA 327 (“*Kempling*”), which upheld a one-month suspension on a teacher for expressing views that associated homosexuals with immorality, abnormality, perversion, and promiscuity in an article and letters to the editor of a local newspaper;
 - (b) *Ontario College of Teachers v. Le Blanc*, 2022 ONOCT 108 (“*Le Blanc*”) in which a teacher was disciplined for making homophobic statements in an online blog in which he identified himself as an educator, and posting several “homophobic and transphobic” tweets on his public Twitter account between 2012 and 2016. The teacher acknowledged his conduct constituted professional misconduct in an Agreed Statement of Facts and Guilty Plea and agreed to a suspension of one month, a reprimand, and a requirement to complete remedial education; and
 - (c) *Ontario College of Teachers v. Teal*, 2022 ONOCT 33 (“*Teal*”) in which a teacher was disciplined for failing to accommodate the requests of two students to be called by their preferred names, instead calling them by their birth names. The teacher also made comments which disparaged their gender identities. The teacher signed an Agreed Statement of Facts and Guilty Plea in which he agreed to a three-month suspension, a reprimand, and a requirement to complete remedial education.
38. The College submits that a more significant disciplinary outcome is warranted in this case because the Respondent: (a) engaged in misconduct frequently and over a prolonged period of time; (b) actively sought as wide an audience as possible; (c) is an experienced nurse who ought to have understood her ethical responsibilities that attached to her professional designation; (d) acknowledged her statements had been raised by others at her place of employment due to her high profile and necessitated her employer making arrangements in

case a patient did not wish to be treated by her; (e) made statements which negatively affected the reputation of the nursing profession and were “inimical to the foundational values of our health care system” as reflected in the Decision on Verdict; and (f) made statements directed towards a marginalized group already facing barriers in accessing health care.

39. The Respondent does not take issue with the imposition of a suspension but argues that three months is excessive. She suggests that a suspension in the range of 10 to 14 days is more appropriate as her conduct did not give rise to any public safety issues. The Respondent disputes that the public’s confidence in the nursing profession will be served by a significant penalty for advocating “against controversial gender ideology”. Indeed, the Respondent suggests it may in fact increase the distrust that large segments of the population have towards professional regulators. In considering general deterrence, the Respondent maintains that a significant penalty would convey to professionals that they should not speak up on controversial matters based on conscience which, in her view, is precisely the wrong message to send to the medical and scientific community.
40. The Respondent points out that the conduct at issue in *Kempling* also involved an offer to make conversion therapy available at the school. She notes that Mr. Kempling only received a one-month suspension in part because of his unblemished record. The Respondent notes that generalized online activity also only warranted a one-month suspension in *Le Blanc*. In contrast, the Respondent states that the conduct in *Teal* involved professional misconduct towards students, making her circumstances much more analogous to the facts in *Le Blanc*.
41. The Respondent maintains that a three-month suspension is also excessive in light of the disciplinary action imposed in the following decisions:
 - (a) *Ontario College of Teachers v. McDonald*, 2019 CanLII 145136 (ON OCT) (“*McDonald*”) in which a member admitted to retweeting racist and otherwise discriminatory posts on his private Twitter account which were discovered by a parent. The discipline panel imposed a reprimand, a 10-day suspension, and a requirement to complete a course on appropriate communications and sensitivity;
 - (b) *College of Physicians and Surgeons of Ontario v. Wright*, 2018 ONCPSD 19 (CanLII) (“*Wright*”) in which a physician used Facebook and other online messaging platforms to have sexualized conversations with women and online sexual relationships with several women who were not his patients, while identifying as a practicing psychiatrist. The Discipline Committee imposed a one-month suspension in view of the seriousness of the physician’s misconduct;
 - (c) *Holt v. Assn. of Registered Nurses (Alberta)*, 2002 ABCA 308 (CanLII) (“*Holt*”) in which a nurse created a climate of anxiety in relation to those involved with her to the point they feared litigation if they opposed her. The nurse also acted outside scope when she gave a patient prescription medication without consulting his caregiver or healthcare provider. The nurse received a reprimand and \$500 fine;
 - (d) *Coffrey v. College of Licensed Practical Nurses (Manitoba)* 2008, 291 D.L.R. (4th) 723 (Man. C.A.), leave to appeal to SCC denied (“*Coffrey*”) in which a nurse circulated

false information about staff salaries at the college. The nurse received a reprimand and was ordered to pay costs;

- (e) *Foo v. Law Society of British Columbia*, 2017 BCCA 151 (CanLII) (“*Foo*”) in which a lawyer told a social worker outside a courtroom that he should shoot her for taking away too many kids. The lawyer had a previous citation and three conduct reviews. The discipline panel ordered a two-week suspension and costs of \$8,840;
- (f) *Abrametz v. The Law Society of Saskatchewan*, 2018 SKCA 37 (“*Abrametz*”) in which a lawyer acted in a conflict of interest. The discipline panel ordered a two-month suspension, restitution for the personal gain he received, and a requirement to take an ethics course;
- (g) *Carruthers v. College of Nurses (Ontario)*, 1996 CanLII 11803 (ON SC) (“*Carruthers*”) in which a nurse received a three-month suspension for kissing a physically restrained psychiatric patient; and
- (h) *College of Physicians and Surgeons of Ontario v Jha*, 2021 ONCPSD 18 (CanLII) (“*Jha*”) in which a physician assaulted his fiancée while off-duty and, in a separate incident, smashed her phone. He was found guilty of assault and mischief in separate criminal proceedings and given an absolute discharge. The Discipline Committee denounced domestic violence and imposed a suspension of three months.

- 42. The Panel finds that the requirement for specific and general deterrence is particularly compelling in this case given the importance of sending a strong message that associating discriminatory and derogatory views regarding a vulnerable group with one’s professional designation gives rise to the risk that those statements will erode the trust that members of that group have in the health care system and likely foster a reluctance or unwillingness on their part to access health care.
- 43. In terms of the range of penalties, the Panel finds that the circumstances of this case are most analogous to the facts in *Kempling* and *Leblanc*. The facts in *Teal* are distinguishable as the teacher engaged in verbal and psychological or emotional abuse towards two of his students. The teacher in that case persistently made comments that questioned or denied the students’ gender identity and expression and suggested that gender non-conforming students are “broken”. This was a case of professional misconduct rather than off-duty conduct involving generalized statements that were not directed at specific individuals.
- 44. The Panel finds that *McDonald* is also distinguishable. The discriminatory statements in that case were posted on a private Twitter account rather than made available more broadly to the public through various online platforms. The remainder of the cases cited by the Respondent are of minimal assistance as they do not involve the deliberate public dissemination of discriminatory and derogatory statements targeting a vulnerable and stigmatized community.

Conclusion on Penalty

45. In the circumstances, the Panel considers a one-month suspension to be reasonable having regard to the nature and severity of the Respondent's misconduct, her unblemished discipline history, the steps she took to remove her professional designation from her biographical description in her online articles, the consequences she has already experienced, the financial impact of a prolonged suspension in view of her particular circumstances, and the range of disciplinary action imposed in *Kempling* and *Le Blanc*.
46. A suspension represents the second most serious action that a discipline committee panel can take short of cancellation of registration. The Panel is satisfied that a one-month suspension will serve the public interest and the purposes of specific and general deterrence by making it clear that it is unacceptable to use a professional nursing designation in conjunction with the public expression of discriminatory and derogatory statements targeting vulnerable and marginalized members of a community as such statements risks that members of that community will lose trust in the health care system and may be reluctant or unwilling to seek health care.
47. The one-month suspension will commence on the date that the Respondent returns to the practice of nursing.

F. COSTS

48. Section 212(2) of the College bylaws establishes the tariff of costs in Schedule J to partially indemnify parties for their expenses incurred in preparing for and conducting hearings under s. 38 of the Act. The tariff sets a value of \$120 for each unit.² Section 3 of Schedule J provides that "(i)n addition to the Tariff, actual reasonable disbursements are recoverable". By virtue of s. 39(6) of the Act, costs must not exceed 50% of the actual costs incurred by the College for legal representation for the hearing.
49. The Panel has a broad discretion to award costs based on the circumstances before it. The considerations which should inform the discretion to order costs are set out in *Jaswal v. Newfoundland Medical Board*, 1996 CanLII 11630 (NL SC) ("*Jaswal*"):

[51] It is necessary, therefore, to determine the factors appropriate to the proper exercise of the judicial discretion to make an order for payment or partial payment of expenses. In my view, based on the submissions of counsel, the following is a non-exhaustive list of factors which ought to be considered in a given case before deciding to impose an order for payment of expenses:

1. the degree of success, if any, of the physician in resisting any or all of the charges
2. the necessity for calling all of the witnesses who gave evidence or for incurring other expenses associated with the hearing

² Where the tariff sets out a range of units, it provides that one unit represents "matters upon which little time should ordinarily have been spent" and the maximum number of units is reserved for "matters upon which a great deal of time should ordinarily have been spent".

3. whether the persons presenting the case against the doctor could reasonably have anticipated the result based on what they knew prior to the hearing
4. whether those presenting the case against the doctor could reasonably have anticipated the lack of need for certain witnesses or incurring certain expenses in light of what they knew prior to the hearing
5. whether the doctor cooperated with respect to the investigation and offered to facilitate proof by admissions, etc.
6. the financial circumstances of the doctor and the degree to which his financial position has already been affected by other aspects of any penalty that has been imposed.

[52] In examining the scope of the inquiry and the manner and focus of the investigation the Court, or the Board, ought to be careful not to apply, with the benefit of hindsight, too high a standard for the imposition of costs. The decision to call witnesses and to take a certain approach is made before the disposition of the case is known. The test is therefore not one of necessity viewed in the light of the resulting decision but one of reasonableness viewed from the perspective of the persons investigating and preparing the case for hearing.

50. The College provided the following proposed bill of costs claiming 427 units for a total of \$51,240 for legal representation:³

Item	Description	Units Available	Units Claimed
1.	Initiating Process in Respect of Citation All process for which provision is not made elsewhere in this tariff for commencing a proceeding	1 to 5	5
2.	Disclosure All processes associated with obtaining or providing disclosure of evidence, including documents.	1 to 10	10
3.	Experts All processes and correspondence associated with retaining and consulting all experts for the purposes of obtaining opinions for use	1 to 5	5
4.	Witnesses	1 to 10	8

³ The College states it has only claimed units for in-house counsel and did not include the cost for external counsel. The College confirms that the total amount claimed does not exceed 50% of the actual costs to the College for legal representation.

	All process and correspondence associated with contacting, interviewing, and preparing summons to all witnesses		
5.	Pre-Hearing Conferences Preparation for each day of attendance	1 to 3	PHC #1 – 3 PHC #2 – 3 (See Note 1) ⁴
6.	Attendance at Pre-Hearing Conference for each day.	1 to 5	PHC #2 – 5 (See Note 1)
7.	Discipline Committee Hearing Preparation for each day of hearing.	8	21 days x 8 = 168
8.	Attendance at discipline committee hearing for each day.	10	21 days x 10 = 210
9.	Process for making admission of fact	1 to 10	N/A
10.	Preparation of closing submission for the discipline committee	1 to 10	10
11.	Attendance at the hearing where party is ready to proceed and when hearing is not commenced.	3	N/A
12.	Settlement of Costs	1 to 5	N/A
13.	Settlement of Order	1 to 3	N/A

51. The College also seeks reimbursement for the disbursements incurred with respect to three experts:

- (a) Dr. Elizabeth Saewyc who billed the College \$14,550 for her expert report, preparation for giving evidence, and her attendance at the hearing;
- (b) Dr. Greta Bauer who billed the College \$63,663 for her expert report, preparation for giving evidence, and attendance at the hearing as well as assisting the College in preparing to challenge the expert report of Dr. Miriam Grossman which was tendered by the Respondent; and
- (c) Dr. Ayden Scheim who billed the College \$33,600 for assisting the College in preparing to cross-examine and respond to Dr. James Cantor who was tendered by the Respondent and preparing to testify as a rebuttal expert witness although his evidence was not called.

52. In total, the College seeks a costs award of \$163,053 for legal representation under the tariff and the expert witness fees. It maintains that this amount is not disproportionate when weighed against the length and complexity of the hearing. Rather than being punitive, the College contends that the proposed costs and expenses reflect the result of the broad-ranging defences which the Respondent chose to advance.

⁴ Note 1 – PHC occurred by way of written submissions with the Panel's decision issued on April 14, 2022. PHC#2 addressed the Respondent's application for further disclosure and was held September 2, 2022, with the Panel's decision issued September 6, 2022.

53. The College notes that the Panel must stipulate a time for payment of costs. It contends that: (a) the costs should be paid within two months of the date of the Panel's order in the event the Respondent has an indemnification agreement with the Justice Centre for Constitutional Freedoms ("Justice Centre") or another organization which covers the full amount of any costs award; or (b) that part of the costs award covered by an indemnification agreement should be payable within two months of the date of the Panel's order with the remaining amount payable by the Respondent within two years of the date of the Panel's order. If Respondent does not have an indemnification agreement, the College submits that the full amount of costs awarded should be payable by her within two years of the date of the Panel's order on penalty and costs.
54. For her part, the Respondent characterizes the College's proposed costs award as devastatingly punitive. She argues that the costs award should be discounted as the College made minimal effort at the outset of the proceeding to focus the hearing; it was only on the request of the Panel that the College culled the 300+ pages of documentary evidence. According to the Respondent, even then, the College continued to rely on 186 pages of tweets and publications contained in the Extract, alleging that every comment about women's rights was discriminatory and derogatory to transgender people.
55. The Respondent argues that the College should not have the benefit of recovery for the entire hearing given that only four publications "out of hundreds" were ultimately found to be discriminatory and derogatory to transgender people with the requisite nexus to nursing. She cites *Fadelle v. Nova Scotia College of Pharmacists*, 2013 NSCA 26 in costs were apportioned based on the number of charges proven relative to the number of charges alleged. The Respondent also cites *Jinnah v. Alberta Dental Association*, 2022 ABCA 336 (CanLII) in which the Court rejected the proposition that a regulated member should bear all or most of the costs in a discipline process.
56. The Respondent further argues that a costs award should not be a deterrent to defend allegations of unprofessional conduct, particularly in novel cases involving freedom of expression and conscience issues which are not directly related to the practice of nursing. According to the Respondent, the proposed cost award would have a deterrent effect which would result in the College having "the unchecked ability to regulate the personal lives and off-duty speech of its members".
57. The Respondent denies that she has an indemnification agreement to cover costs. She referenced an excerpt of her 2020 agreement with the Justice Centre which confirms she is responsible for hearing costs although fundraising assistance will be provided to contribute to those costs. The Respondent points out there is no guarantee that any fundraising efforts will generate sufficient funds to cover a costs award.
58. Finally, the Respondent points out that any costs award will be dependent upon the outcome of her appeal under s. 40 of the Act. In the event her appeal is unsuccessful, the Respondent submits that the units in the College's tariff should be reduced from 427 to 107 (the bottom quarter of the range) which, at \$120 per unit, would reduce the fees to \$12,840.
59. Regarding the College's claim for expenses, the Respondent contends that the invoices from Drs. Bauer and Scheim are excessive. In contrast, she notes that the Justice Centre paid \$19,980 USD to Dr. Grossman and \$14,800 CAD to Dr. Cantor. She suggests that more

reasonable claims for Drs. Bauer and Scheim would be \$30,000 and \$10,000 respectively, which would reduce the total expert costs to \$54,550. In view of the mixed result which the College achieved, the Respondent submits that this amount should be reduced by a further 50% to \$27,275.

60. In summary, the Respondent suggests the College should only be awarded costs of \$40,115 (\$12,840 for fees and \$27,275 for expert expenses) based on the delays that occurred, the need for a longer hearing to address all of the Respondent's published statements regardless of whether they had a nexus to the nursing profession, the College's challenges to her experts, and financial hardship. She agrees that a two-year period is an appropriate timeframe to pay the costs given her current circumstances.
61. The Panel considers the units sought by the College under the tariff to be reasonable. The amount sought is rationally connected to the length and level of difficulty of the hearing. The Respondent's proposal of \$12,840 for fees does not provide proportionate cost recovery for a 21-day hearing involving extensive expert evidence and complex constitutional and other legal issues. That said, the Panel agrees that the College's evidence could have been more focused at the outset; however, the impact of this lack of focus on hearing time was minimal. The College was successful in proving the allegation set out in the Citation. Considering the principles of proportionality, in view of the fact that the College only proved a portion of the statements in the Extract tabs contained discriminatory and derogatory statements with the necessary nexus to nursing, the Panel is prepared to discount the total costs award by 20% to reflect that more limited degree of success. The College is entitled to tariff costs of \$40,992 which represents 80% of the total fees claimed in the proposed bill of costs.
62. In addition, the College is entitled to reimbursement for reasonable expenses under Schedule J of the bylaws. Dr. Saewyc's invoices total \$14,450. Subject to her submission that the total fees and disbursements should be heavily discounted, the Respondent does not take issue with the amount billed by Dr. Saewyc. The Panel finds this is a reasonable disbursement which should be recoverable by the College.
63. The College seeks reimbursement of \$63,663 for Dr. Bauer's invoices. The Respondent maintains that this amount is excessive, particularly relative to the fees charged by the other experts. The Panel agrees that Dr. Bauer's fees are high relative to the fees charged by Dr. Saewyc and the Respondent's experts and is prepared to exercise its discretion to reduce that expense on the basis that it is not reasonable to pass the entire cost onto the Respondent: *Bell v. Fantini*, 1981 CanLII 614. The Panel finds that the claim for Dr. Bauer's invoices should be reduced by 40% which would entitle the College to reimbursement of \$38,197.80.
64. The College also seeks reimbursement of \$33,600 for Dr. Scheim's invoices. While the College indicates Dr. Scheim assisted the College in preparing for the cross-examination of Dr. Cantor, he did not testify as a witness in the hearing. As Dr. Scheim was not a witness at the hearing, the Panel finds that this is not a reasonable disbursement which should be recoverable by the College.
65. In assessing fees and disbursements, the Panel recognizes the need to consider the Respondent's financial circumstances. However, apart from the information that the Respondent is currently relying on her modest income from writing opinion pieces, the Panel

has no evidence establishing an inability to pay costs. The Respondent proposes a costs award of \$40,115 which reflects she has some ability to pay. The Panel considered the impact of a large costs award in addition to a one-month suspension as well as the punitive effect of a large award and its unintended deterrent effect. These factors weighed in favour of lowering the cost award. While the Panel's cost award exceeds the amount proposed by the Respondent, it is less than the amount sought by the College which should ease her financial burden. The Panel recognizes that the Respondent does not have an indemnification agreement for her costs and that will be factored in the time to pay.

66. In summary, the College is entitled to \$93,639.80 representing \$40,992 for fees under the tariff and \$52,647.80 for disbursements (\$14,550 for Dr. Saewyc and \$38,197.80 for Dr. Bauer) which the Panel finds to be reasonable and necessary. The Panel recognizes that that this amount will have a significant impact on the Respondent but that will be offset to some degree by allowing two years for payment. The Panel does not consider this amount to be punitive given the length and complexity of the hearing nor so high that it will deter others from raising reasonable defences.

G. JOINT APPLICATION FOR A STAY OF PENALTY AND COSTS AWARD

67. Section 39(1) of the Act provides that if an order under ss. (2) is appealed under s. 40, the discipline committee may stay its order and impose limits or conditions on a respondent's practice:

39(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.

68. The Respondent seeks a stay of the Panel's orders under s. 39(9) pending the outcome of the statutory appeal. The College invites the Panel to consider the request for a stay for an order and costs to be a joint submission by the parties. The College agrees that fairness dictates that any order made by the Panel should not take effect until completion of the appeal process under s. 40.

69. The Panel agrees that fairness requires a stay of the order for a suspension and costs award pending the outcome of the statutory appeal.

H. PUBLICATION

70. Section 39.3(1) of the Act requires publication of orders made under s. 39(2), (5) and (9) subject to exceptions in ss. (3) and (4). The College maintains there is no basis for making an exception to the general rule requiring publication. The Respondent made no submission regarding exceptions to the general rule on publication.

71. The Panel finds that the exceptions in ss. 39.3(3) and (4) are not engaged. The penalty decision will be published pursuant to s. 39.3(1) of the Act.

I. ORDER OF THE PANEL

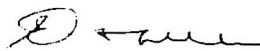
72. The Panel orders the following:

- (a) the Respondent's registration is to be suspended for one (1) month to commence on the date that she returns to nursing practice;
- (b) the Respondent will pay costs and disbursements to the College in the amount of \$93,639.80, such amount to be paid within two years from the date of this Order;
- (c) the orders under paragraphs (a) to (b) will be stayed pending the outcome of the appeal filed under s. 40 of the Act in relation to the Panel's Order on Verdict; and
- (d) the penalty decision of the Panel will be published pursuant to s. 39.3 of the Act.

J. NOTICE

73. By virtue of s. 40(1) of the Act, a respondent who is aggrieved or adversely affected by an order of the Discipline Committee under s. 39 of the Act may appeal the decision to the Supreme Court. Under s. 40(2), an appeal must be commenced within 30 days after the date on which the order is delivered to the respondent.

Dated for reference this 14th day of August, 2025.



Edna McLellan, Non-Practising RN
Panel Chair



Jackie Murray, R.N.



Sheila Cessford