IN THE MATTER OF A HEARING BY
THE BRITISH COLUMBIA COLLEGE OF NURSES AND MIDWIVES
CONVENED PURSUANT TO THE PROVISIONS OF
THE *HEALTH PROFESSIONS ACT* RSBC 1996, c.183

BETWEEN:

The British Columbia College of Nurses and Midwives

(the "College")

AND:

Julia Filtness

(the "Respondent")

Decision on Penalty and Costs

Date and Place of Application:	By written submissions
Panel of the Discipline Committee	Dr. Catharine Schiller, RN, Chair Stephanie Buckingham, RN (non-practising) Dorothy Barkley
Counsel for the College:	Jennifer Groenewold Michael Shirreff
Counsel for the Respondent:	Joven Narwal, K.C. Miranda Gartner
Counsel for the Panel:	Susan Precious

Introduction

1. On August 29, 2024, the Panel issued its decision (the "Conduct Decision") pursuant to section 39(1) of the *Health Professions Act*, RSBC 1996, c. 183 (the "HPA" or "Act"). The Panel determined that the Respondent contravened the British Columbia College of Nurses and Midwives' ("BCCNM") Professional Standards and Practice Standards and committed professional misconduct as alleged in the citation dated April 8, 2021 (the "Citation").

2. The Panel determined that while the Respondent was employed with Correction Services Canada ("CSC") as a registered nurse at a CSC Institution, she entered into an inappropriate personal, romantic and sexual relationship with an inmate ("Inmate A").

3. The Panel found the Respondent breached the following BCCNM Professional and Practice Standards:

    a. Professional Standard 1, Responsibility and Accountability

    b. Professional Standard 3, Client-Focused Provision of Service

    c. Professional Standard 4, Ethical Practice

    d. Boundaries in the Nurse-Client Relationship Practice Standard

    e. Scope of Practice Standard for RNs

    f. The Panel determined that the Respondent committed professional misconduct, including sexual misconduct.

4. In the Conduct Decision, the Panel set a schedule for exchange of written submissions relating to what orders, if any, should be made pursuant to section 39(2) with respect to penalty and costs.

5. On August 30, 2024, the Respondent requested an opportunity to receive and review the redacted decision prior to its publication.

6. On September 3, 2024, the Panel indicated that it would not participate in the College's implementation of its public notification order and left the matter to the parties. The Panel had previously provided the parties with the opportunity to

address the matter of redactions in their closing submissions related to conduct, and if appropriate, on penalty. The Respondent chose not to exercise that opportunity.

7. The Respondent then filed several applications throughout September 2024, including an abuse of process application seeking to stay the proceedings, a recusal application, and an application for interim relief.

8. The parties delivered submissions in relation to the Respondent's applications, as well as with respect to penalty and costs, during September, October and November 2024.

9. On January 14, 2025, the Panel issued its decision on the Respondent's request for interim relief.

10. On February 28, 2025, the Panel issued its decision on the Respondent's recusal application.

11. On July 10, 2025, the Panel issued its decision on the Respondent's abuse of process application.

12. With those matters now concluded, the Panel turns to the issues of penalty and costs.

13. The College is seeking the following orders regarding penalty and costs:

    a. An order that the Respondent's registration is cancelled commencing from the date she is made aware of the Panel's penalty order pursuant to section 39(2)(e) of the Act;

    b. A direction that the Respondent is not eligible to apply for reinstatement until the day that is two years from the date that she is made aware of the Panel's penalty order, at which time she will be required to meet all fitness, competence, and character requirements pursuant to section 39(8)(a) and (b)(i) of the Act;

    c. An order that the Respondent pay a fine in the amount of $25,000, payable immediately pursuant to section 39(2)(f) of the Act;

d. An order that the Respondent pay costs and disbursement to the College in the amount off $40,280.99, payable within six months,[1] pursuant to section 39(5) of the Act; and,

e. A direction that the Registrar publishes its decision on Penalty and Costs pursuant to section 39.3 of the Act.

14. The Respondent takes the position that the appropriate sanction in this matter is a reprimand and costs ordered against the College:

> 11. It is respectfully submitted that an appropriate penalty in the unique circumstances of this case is a reprimand and short suspension, however, as the Respondent has already been suspended by the Panel for a significant period of time, the appropriate penalty is a reprimand. This would achieve the goals of denunciation, specific and general deterrence, and would uphold the public interest. The addition of a fine, as sought by the College, would result in the penalty being disproportionate and excessively punitive. In the alternative, should the Panel find that a further suspension or cancellation of registration is necessary, the Respondent submits that no fine should be imposed.
>
> 12. With respect to costs, to remedy the significant delay and its impact on the Respondent, as well as the Charter breach found by the Panel, costs should be ordered against the College and in favour of the Respondent. In the alternative, the parties should bear their own costs. In the further alternative, costs should be made payable as a condition to the Respondent's application for re-instatement.

15. The parties delivered extensive penalty and costs submission materials, all of which the Panel has considered in arriving at its decision.

Legal Framework

Former registrant

16. The Respondent did not renew her RN registration with the College by the deadline of April 1, 2023. As a result, she is now a former RN registrant.

17. Under the HPA, the Panel retains jurisdiction over former registrants. Section 26 of the HPA defines "registrant" as including "former registrant" for the purposes of Part 3 of the Act, which deals with "Inspections, Inquiries and Discipline."

[1] The College's submissions were dated October 4, 2024 and the College sought payment by March 31, 2025, which has now passed due to the Respondent's three other applications.

HPA provisions

18. Section 39(2) of the Act 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;
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> (e) cancel the respondent's registration;
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> (f) fine the respondent in an amount not exceeding the maximum fine established under section 19 (1) (w).

19. If the Panel orders a suspension or cancellation, the following additional provisions from the HPA 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.

20. Section 39(5) and (7) 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 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.

Approach

21. The imposition of a disciplinary order under section 39(2) of the HPA is something over which the Panel holds significant discretion. The primary purpose of the imposition of sanctions is the protection of the public.

22. 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 circumstances;

    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.

23. *Law Society of BC v. Dent*, 2016 LSBC 05 consolidated the list of relevant factors to consider in determining an appropriate penalty as follows:

    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.

24. In *Re: Jean Marlyn Cunningham* (Penalty Decision, June 22, 2017), a Discipline Committee panel of one of the BCCNM's legacy colleges held that:

> 19…the Panel may decide on an appropriate measure under HPA s. 39(2) with a view to a number of objectives, including the following:
>
> 1. The need for specific deterrence of the Respondent;
> 2. General deterrence of the other registrants who might otherwise offend;
> 3. Educating registrants and the public about professional standards; and,
> 4. Promoting public confidence in the profession and its ability to self-regulate.
>
> 20. Ultimately, a penalty must fall within a reasonable range of appropriate penalties, having regard to the circumstances of the misconduct and the evidence in mitigation.

25. The *Ogilvie / Dent* approach has been cited with approval in many of this Committee's past decisions, including *College of Registered Nurses of BC* re: *Hansen* (Penalty Decision, February 2, 2019) and *College of Registered Nurses of BC* re: *Whieldon* (Penalty Decision, April 14, 2020).

26. The Respondent submits that the concept of proportionality is also relevant in assessing the factors (*Matheson* v. *College of Physicians and Surgeons of P.E.I.,* 2010 PECA 5).

27. The Panel finds the *Ogilvie / Dent* factors to be the appropriate approach to apply in this case. The Panel notes that the application of those factors calls for an individualized approach.

Analysis

Remedies sought by the Respondent for delay, *Charter* breach and suspension time served

28. The Respondent argues that this case is unique, and that the Panel ought to exercise its discretion in crafting a penalty that takes into account particular

circumstances of this case, which she submits are inordinate delay, a *Charter* breach, and a period of suspension already served.

29. The College submits that the Respondent's penalty and costs position focuses heavily on alleged abuse of process, which was the subject of a separate application. In addition, the College argues that the Respondent's position regarding costs for a minor alleged *Charter* breach does not warrant the relief sought.

Delay

30. The Respondent argues that "the Panel must hold the College accountable for the inordinate delay in these proceedings. A remedy for the inordinate delay and prejudice, as described by the Respondent and expounded in [the doctor's] report, should serve not only to compensate the Respondent for the unfairness she has suffered, but to make it clear to the College that a culture of complacency and delay in investigations and adjudicating discipline proceedings is unacceptable." The Respondent relies upon *Blencoe* v. *British Columbia (Human Rights Commission),* 2000 SCC 44, *Law Society of Saskatchewan* v. *Abrametz*, 2022 SCC 29, and *Wachtler* v. *College of Physicians and Surgeons of the Province of Alberta*, 2009 ABCA 130.

31. The Respondent cites the following passages from *Abrametz* noting remedies for abuse of process can include reductions in penalty and costs:

> [92] When a member is found guilty of professional misconduct, the tribunal must determine the appropriate sanction.
>
> [93] As noted, the Law Society's disciplinary process has as its purposes the protection of the public, regulation of the profession and preservation of public confidence in the legal profession. These purposes are relevant to deciding the sanction to be imposed.
>
> [94] A wide range of penalties is possible, from a reprimand to a lifetime revocation of a licence to practice. Various factors, including the presence of an abuse of process, can be considered when determining the appropriate sanction (see J. T. Casey, *The Regulation of Professions in Canada* (loose-leaf), at § 14:3; J. G. Villeneuve et al., *Précis de droit professionnel* (2007), at pp. 246-49; MacKenzie, at § 26:18). Since *Blencoe*, numerous tribunals and courts have taken abuse of process into account as an attenuating factor in deciding an appropriate sanction.

> [95] *Wachtler* provides an example of how delay can be a factor in determining what disciplinary sanctions should be imposed. The Court of Appeal reduced the member's penalty given the length of the proceedings. The member had received a penalty including a three-month suspension and a costs award against him following disciplinary proceedings by the College of Physicians and Surgeons: paras. 9-10. The Court of Appeal found that the College had failed to properly consider the lengthy delay in the case. The Court of Appeal concluded that although the member had shown that he suffered some prejudice, he was unable to demonstrate that the prejudice was such as would justify a stay: para. 36. Instead, the Court of Appeal reduced the sentence to a one-month suspension (which had already been served) and set aside the costs award: paras. 45-46 and 49.
>
> [99] Courts faced with applications for review of administrative delay have the discretion to set aside an order of costs against a party or to order costs against the administrative agency. This can be done in the exercise of the court's discretion relating to costs. As *Blencoe* illustrates, even where inordinate delay does not amount to abuse of process, it may still justify an award of costs against the agency: para. 136.
>
> [100] A stay of proceedings, a reduction in sanction, or variation of an award of costs are possible remedies. This is not an exhaustive list. Various tribunals may be empowered by their enabling statutes to grant other remedies. They should not hesitate to use such tools to combat inordinate delay amounting to an abuse of process.

32. The Respondent's penalty submissions refer to the delay arguments she made in her second stay application. The Respondent argues that there has been inordinate delay in these proceedings that has caused her significant prejudice. The Respondent relies upon her Affidavit #3 affirmed October 29, 2024 in support of this argument. The Respondent argues that even if inordinate delay and significant prejudice were not established in her second stay application, it is still open to the Panel to remedy delay and prejudice at this penalty stage. The Respondent relies upon the following paragraph from *Blencoe* in support of the Panel's authority to do so:

> 136. I would allow the appeal. The Court of Appeal decision is set aside and the Tribunal should proceed with the hearing of the Complaints on their merits. Considering the lack of diligence displayed by the Commission, I would nevertheless exercise the Court's discretion under s. 47 of the *Supreme Court Ac*t, R.S.C., 1985, c. S-26, to award costs against the appellant Commission in favour of Robin Blencoe, Andrea Willis and Irene Schell.

33. The College argues that even if there were a finding of abuse of process in the Respondent's second stay application, then a reduction in sanction from a presumptive cancellation would be a high bar. As noted in *Abrametz*:

> [98] As noted, abuse of process can be viewed on a spectrum. To convert a presumptive licence revocation into a lesser penalty requires a significant abuse of process, one at the high end of the spectrum. Moreover, under no circumstances should the adjustment of the penalty undermine the purposes of the disciplinary process, notably the protection of the public and its confidence in the administration of justice. For these reasons, a remedy that substitutes a licence revocation for a lesser penalty will generally be as difficult to receive as a stay. Both may equally undermine a professional body's responsibility to regulate the profession.

34. The Panel notes that the Respondent's submissions on delay overlap with arguments raised in her second abuse of process application. In the Conduct Decision, the Panel established a schedule for penalty and costs submissions. Before the Panel released its penalty decision however, the Respondent brought an application seeking a stay of proceedings on the basis of delay.

35. On July 25, 2025, the Panel released its decision on the Respondent's second abuse of process application (the "Second Stay Decision"). The Panel denied the Respondent's application, finding that the Respondent had not established inordinate delay, significant prejudice arising from delay, or an abuse of process.

36. In its Second Stay Decision, the Panel found that the delay in these proceedings was caused largely by the Respondent; specifically, due to the following:

    a. tactical choices that the Respondent made in conducting her defence;

    b. the Respondent repeatedly adopted a position that sought to indefinitely suspend these proceedings;

    c. the Respondent and her legal counsel failed to cooperate in scheduling the Discipline Hearing dates and failed to abide by Panel directions to provide counsel availability to reset hearing dates when those directions became necessary;

    d. the Respondent failed to bring applications promptly and with the appropriate materials filed by the submission deadlines; and

e. the Respondent frequently incorrectly characterized Panel findings and sought to re-litigate issues in her applications.

37. The Panel reasoned in the Second Stay Decision:

> 128. In addition, the Respondent brought 12 applications in these proceedings, three of which were applications to adjourn the Discipline Hearing. The Respondent's adjournment applications were not brought promptly, resulting in further scheduling impacts and delays. Throughout the proceedings, the Respondent repeatedly adopted a position that sought to indefinitely suspend these proceedings. The Respondent and her legal counsel failed to cooperate in scheduling the Discipline Hearing dates and failed to abide by Panel directions to provide counsel availability to reset hearing dates when those directions became necessary. The Panel made these findings in many of its decisions, including:
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> > 23. […] The Respondent's counsel is not only seeking to unilaterally dictate the dates for the Discipline Hearing, but by failing to provide any availability at all, is once again effectively demanding to indefinitely suspend these proceedings. […]
> >
> > Panel Decision June 17, 2022
> >
> > 68. The Panel finds that the Respondent did not act promptly in bringing this application. This application is being brought after the release of two decisions which were necessary to set hearing dates because the Respondent had failed to provide any available dates for continuing this discipline hearing.
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> > . . .
> >
> > 85. Moreover, as the College noted, for nearly two years, predating the service of the Citation, the Respondent failed to provide dates to schedule this discipline hearing. The College has had to request that this Panel order hearing dates. The Respondent did not comply with the Panel's directions with respect to scheduling and selection of hearing dates. After the matter of hearing dates was heard and decided by the Panel, the Respondent brought this adjournment application seeking to reverse the Panel's previous decisions. The absence of collaboration while canvassing dates and failure to adhere to the Panel's orders regarding scheduling have made this an arduous process;
> >
> > 86. The Panel is particularly concerned by the Respondent's failure to comply with its orders on the scheduling of these proceedings and regarding the very dates that are now at issue in this application. Members of regulated professions are required to comply with orders of their regulatory bodies. There is a very strong public interest in ensuring that this Discipline Committee's orders are observed. The failure to comply with Discipline Committee orders impacts the ability of the College to regulate the profession in the public interest and risks undermining the public's confidence in the integrity of the profession. The public interest does not favour

> granting an adjournment where the Respondent did not comply with the Panel's orders regarding the scheduling of hearing dates in these proceedings.
>
> Panel Decision August 29, 2024

129. Not only did the Respondent seek to indefinitely suspend these proceedings, but she also took the position in mid-March 2022 that there was no need to reschedule the hearing before July 31, 2022. Her legal counsel acknowledged that their "limited availability is a challenge" but urged the Panel to hold off on rescheduling the Discipline Hearing on the basis that there were no public protection risks because the Respondent "remains suspended and her current job does not require a nursing license."

130. The Panel recognizes that the Respondent is entitled to mount a vigorous defence. However, with every application that the Respondent brought, the Panel was required to accord the College its procedural entitlement to be heard on those applications and carefully consider the arguments, evidence and caselaw raised. The Panel issued written reasons for those applications, all of which took time and careful consideration. In all, the Panel issued 13 written decisions in this matter. This does not include all the Panel's rulings in these proceedings. The amount of time that these proceedings took was caused in large part by tactical choices that the Respondent made in conducting her defence. While she is entitled to make strategic decisions about her case, she cannot object to the time it takes for the Panel and the College to deal with those strategic choices. Any delay associated with the hearing and issuance of those decisions was innate in these proceedings.

131. Moreover, the mere fact that a party is mounting a vigorous defence, or has successfully obtained an adjournment, does not excuse other conduct during those periods that does inappropriately cause delay. A party is obligated to cooperate in the scheduling of the Discipline Hearing, to bring applications promptly with the appropriate materials filed by the submission deadlines, and to comply with Panel directions. This behaviour must be factored into the evaluation of whether a party caused the delay they are alleging. The Respondent engaged in all of these types of conduct and caused the most significant delays in these proceedings.

    […]

141. The above quote demonstrates another cause of delay in the proceedings. As is evident from the multiple excerpts of the Panel's prior decisions in these reasons, the Respondent has frequently incorrectly characterized Panel findings and sought to re-litigate issues in her applications. This approach caused delay as the Panel has been required to deal with those issues as well.

38. Consistent with the Panel's findings and reasons in the Second Stay Decision, the Panel is satisfied that the Respondent's arguments for a reduction in penalty or costs due to alleged inordinate delay are without merit. In considering these arguments at

the penalty stage, including the additional evidence contained in Affidavit #3, the Panel finds that this affidavit contains the same deficiencies that the Panel detailed in relation to her Affidavits #1 and #2. The Respondent asserts various forms of prejudice, such as medical and financial harm, without adequate evidence to support those assertions. The Panel finds that the alleged delay was largely caused by the Respondent and significant prejudice has not been established.

39. The Panel also considered the Respondent's alternative submission that, even if inordinate delay were not established, her position on penalty and costs should still be adopted based on *Blencoe*. Having reviewed the relevant authorities and the facts of this case, the Panel does not find this submission persuasive.

40. The statutory provision referenced by the Respondent, under which the Supreme Court of Canada exercised its discretion to award costs in *Blencoe,* is section 47 of the *Supreme Court Act.* This section provides broad discretion to order payment of costs whether a judgment is affirmed, varied or reversed.

141. The Panel notes that this provision is significantly different than this Panel's authority under section 39(5) of the HPA which provides:

> (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).

142. Irrespective of the College's success at having proven the Citation against the Respondent, under section 39(5) of the HPA, the Panel does not have the authority to order costs against the College and in the Respondent's favour. The same discretion that exists under the statutory regime of the passage quoted by the Respondent in *Blencoe* does not exist in this case.

143. Finally, the Panel agrees with the College's submission regarding the Supreme Court of Canada's holding in *Abrametz* at paragraph 98. A remedy that substitutes a registration cancellation for a lesser penalty will generally not be appropriate as it could undermine a professional body's responsibility to regulate the profession and protect the public. That would require the presence of a significant abuse of process, which does not exist in this case.

Charter breach

144. The Respondent argues that the College's *Charter* breach in the seizure of property management records, including copies of communications with the Respondent, their agency agreement, a copy of the Respondent's driver's license and the Respondent's BC services card, and a tenancy agreement, was in breach of the Respondent's *Charter* rights and must be remedied. She says that the Respondent's previous application for exclusion of the evidence under s 24(2) of the *Charter* was dismissed by the Panel and the Respondent now asks the Panel to remedy the breach under s 24(1) of the *Charter.*

145. The Respondent submits that the Panel has jurisdiction to remedy a *Charter* breach under section 24(1) of the *Charter,* and that such remedy can take the form of a reduction in sanction and/or costs in favour of the Respondent. She argues that this accords with the College's public-interest mandate and supports a fair and transparent discipline process. The Respondent does not set out where the Panel would derive authority to grant a section 24(1) remedy.

146. The College submits in reply that the Respondent has mischaracterized her success in relation to the *Charter* breach. In its decision dated November 2, 2021, the Panel held that it had "insufficient information before it to conclude that [the records] were authorized under section 18(1)(c) of PIPA." The College argues that the Panel had held the seizure was conducted in a reasonable manner, even if there was a question as to whether it was authorized. The Panel did not accept many of the Respondent's arguments regarding the *Charter* breach. The Panel found that the alleged *Charter* breach, even if it had been proven, was not a serious breach. The College submits that the Respondent is attempting to recast the Panel's decision to justify a reduction in sanction or costs against her.

147. Section 24(1) of the Charter provides:

> 24.(1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

148. The Panel notes that the parties' submissions did not address whether this Panel has the jurisdiction to grant remedies under section 24(1) of the *Charter*, nor did they provide detailed argument on the applicable legal framework for such a remedy. In these circumstances, the Panel has proceeded on the basis of the Respondent's submissions without making any determination as to its jurisdiction under section 24(1). The Panel previously found that certain documents had been obtained in a manner inconsistent with section 8 of the *Charter*, but no remedy was granted at that time as the Respondent had not established the necessary legal foundation. In the present context, the Panel is likewise not satisfied that the evidentiary or legal requirements for a section 24(1) remedy have been met. Accordingly, even if such jurisdiction were assumed, the Panel would not grant a remedy on the record before it. For clarity, nothing in these reasons should be taken as a conclusion regarding the Panel's jurisdiction to grant remedies under section 24(1) of the *Charter*.

149. The Panel did not find there to be a serious *Charter* breach. Indeed, it left open the possibility that the College was authorized in its actions but held that there was simply insufficient evidence before the Panel to form that conclusion. The Panel rejected the Respondent's arguments in that application about the nature of the document seizure and its implications on the Respondent and on the process. In its November 2, 2021 decision, the Panel found that the Respondent did not establish the test set out in section 24(1) of the *Charter* (paras. 85-96).

150. The Panel does not consider that there is adequate basis to grant the significant penalty and costs relief sought by the Respondent in relation to the outcome of that application.

Suspension "time served"

151. The Respondent submits that the Panel ought to take into consideration the suspension that she has "already served." She asks the Panel to apply criminal law concepts of "time served." She relies upon *R* v. *Basque*, 2023 SCC 18, arguing that the motor vehicle driving prohibition in that case is similar to a suspension in this case. The Respondent argues that her registration was suspended in November

2021, and she did not renew her registration in March 2023; therefore, she should be credited with 16 months suspension already served.

152. The College argues that the Respondent's position in relation to "time served" has no merit. The Respondent's interim suspension between November 2021 and March 2023 is entirely disconnected from the misconduct that the Panel found to be established in its Conduct Decision. The interim suspension therefore should have no impact on the sanction. For this reason, the *Basque* decision is also inapplicable. In this case, the interim suspension was ordered under section 35 of the HPA on the basis that the Respondent had advised the Panel that she was unfit, to the extent of being unable to provide instructions to her legal counsel and to appreciate and understand legal consequences.

153. The College argues that there is no evidence before the Panel about the Respondent's current employment. She does not depose that she lost her employment in November 2021 when she was suspended. The Respondent's evidence is that she "...could not seek employment as a registered nurse." The College points out that this says nothing about what the Respondent was actually doing for work in 2021 and in the years since. The College argues that if there was any financial prejudice that resulted from her suspension, the Respondent should have introduced evidence to support her assertions, including tax and employment records. Instead, there is a complete absence of evidence in this regard.

154. The Panel declines to apply a "credit" from the Respondent's November 2021 interim suspension to any suspension ordered under section 39(2) of the HPA for the Respondent's misconduct.

155. The Respondent was suspended under section 35 of the HPA, which deals with extraordinary action. The context of that suspension is that the Respondent put her fitness to practice at issue when she sought an adjournment of the Discipline Hearing two days before it was scheduled to commence. At that time, legal counsel for the Respondent informed the Panel that the Respondent was so unwell that she was unable to provide them with instructions and was unable to appreciate and understand legal consequences. The events leading up to and following that

decision have been set out in several of the Panel's past decisions. In the Panel's November 19, 2021 section 35 decision, the Panel set out a path for the Respondent to apply to lift this interim suspension and return to practice. To date, the Respondent has failed to do so. As noted in the Panel's July 10, 2025 abuse of process decision:

> 158. The Respondent applied to vary the section 35 order on November 30, 2021. The Panel declined that request on December 16, 2021 due to inadequate medical information that the Respondent placed before the Panel (which is detailed at para. 155). The Panel expressly set out the deficiencies so that the Respondent could address those gaps in future, if she wished. However, the Respondent took no other steps to present the Panel with the information that it required to lift the suspension. At a pre-hearing conference in February 2022, the Panel asked the Respondent's legal counsel whether they would be providing the necessary medical information to allow the Panel to lift the section 35 order and was advised "our intention is to provide a medical report and to follow the time frames if at all possible." The Respondent did not do so.

158. The Respondent's failure to apply to lift the suspension with the appropriate medical documentation, despite the Panel setting out a clear pathway for her to do so, undermines her argument that she remained suspended for this full period of time and should be credited for same.

159. In addition, the Panel agrees with the College's argument that the *Basque* decision is inapplicable to this case. In the Respondent's case, the November 2021 interim suspension was imposed for fitness to practice reasons, while the Panel's present task is to determine the appropriate penalty for her proven professional misconduct, which includes sexual misconduct.

160. Having disposed of the Respondent's remedy arguments on delay, the *Charter* and a time-served suspension, the Panel now turns to apply the *Ogilvie / Dent* factors.

Nature, gravity and consequences of conduct

161. The College submits that the Respondent's conduct was egregious. The College argues that the Respondent entered into a relationship with an incarcerated person that was personal, romantic and sexual, that she took calculated steps to conceal her professional misconduct, and that she engaged in months-long subterfuge to

deceive her colleagues, her employer and her regulator. The College states that the Respondent also involved Inmate A in her deception.

162. The College submits that the Panel made multiple findings that should be taken into account, including:

    a. The Respondent engaged in professional misconduct by her personal interactions with Inmate A on the phone, on Facebook, and in person; by her failure to report those personal interactions to CSC; and by agreeing to rent her property to Inmate A and concealing that personal business from CSC;

    b. The Respondent's conduct was contrary to several of BCCNM's Professional Standards and Practice Standards and was unprofessional;

    c. The Respondent's failure to adhere to the CSC Code of Discipline was contrary to the BCCNM Scope of Practice Standard for RNs;

    d. The Respondent's failure to disclose her personal and business interactions with Inmate A to her employer was contrary to BCCNM's Responsibility and Accountability Professional Standard requirement for her to be accountable and to take responsibility for her nursing actions and professional conduct;

    e. The Respondent's conduct was contrary to BCCNM's Client–Focused Provision of Service Professional Standard;

    f. The Respondent's conduct was contrary to BCCNM's Ethical Practice Professional Standard. By engaging in a personal relationship with Inmate A, the Respondent did not make her client the primary concern in the nursing care she provided and in the decisions she made. By concealing the relationship, the Respondent did not demonstrate honesty and integrity;

    g. The Respondent's conduct was contrary to BCCNM's Boundaries in the Nurse-Client Relationship Practice Standard;

    h. The Respondent knowingly violated her employer's Code of Discipline. There were multiple different instances of these violations over a period of

many months. The conduct was disgraceful, dishonourable, and unbecoming of a member of the nursing profession;

i. The Respondent was deceitful in knowingly violating the CSC's Code of Discipline and concealing that conduct from her employer;

j. Her conduct showed a lack of respect and a disregard for the vulnerability of Inmate A, her colleagues' safety and well-being, and CSC's goal of rehabilitation of inmates;

k. The Respondent committed professional misconduct pursuant to s. 39(1)(c) of the HPA; and

l. The Respondent engaged in behaviour and made remarks of a sexual nature towards her patient, Inmate A, and committed sexual misconduct for the purposes of s. 26 of the Act. This conduct was at the serious end of the professional misconduct spectrum.

163. The College argues that the Respondent's relationship with Inmate A not only put Inmate A at risk, but also put her colleagues, other offenders, and the institution at risk. The failure to maintain appropriately strict boundaries eroded trust and had the potential to undermine rehabilitation efforts aimed at offenders, and those related to Inmate A in particular.

164. The College notes that the Panel heard evidence from the CSC witnesses, including the Warden, about why boundaries have heightened importance in the institutional setting of a prison.

165. The College notes that as a registered nurse, the Respondent was in a position of trust and authority. There was an imbalance of power between her and Inmate A. The Respondent was aware of Inmate A's carceral history, his medical background and his social history. The Respondent also admitted that, as his nurse, she understood Inmate A's vulnerabilities. In that regard, the College relies upon the Panel's finding that "a patient who is incarcerated is in one of the most vulnerable positions a patient can be in, vis-à-vis a health professional" (Conduct Decision para. 261).

166. The College argues that the Respondent's conduct did not involve a single or momentary lapse of judgment. The Respondent actively participated in a relationship with Inmate A – both inside and outside the institution – that continued for many months. It included the period of time that Inmate A was on parole and after he was reincarcerated, up to the time of the Respondent's termination from CSC. It was a relationship that had continued until the matter was uncovered during a CSC internal investigation.

167. The College submits that the seriousness of the misconduct is often the dominant factor when assessing a penalty that will protect the public interest. The College submits that the nature of the Respondent's professional misconduct, including sexual misconduct, places this matter towards the most serious end of the professional misconduct spectrum and requires a proportionally serious sanction.

168. The Respondent argues that the College did not call Inmate A as a witness in the Discipline Hearing and there is no evidence about what, if any, impact the Respondent's misconduct had on Inmate A. The Respondent argues that there is no evidence that the relationship found by the Panel caused harm or personal risk to Inmate A.

169. The Respondent argues that, while serious, the gravity and consequences of the Respondent's misconduct are not at the far end of the spectrum when compared to other cases involving sexual misconduct. She argues that many aggravating factors found in more serious cases are not found here, such as physical sexual acts, repeat offences, multiple patients, non-consensual sexual touching or remarks, and evidence the patient suffered psychologically, physically, and/or financially.

170. The Respondent argues that there is no evidence of a pervasive pattern of misconduct; rather, it is limited to an inappropriate relationship with a single patient and all of the breaches and misconduct found by the Panel relate to that single relationship.

171. The Respondent argues that a proportional sanction must take into account the difference in gravity of the misconduct found here, and the misconduct in cases relied upon by the College where registration cancellation was ordered after a finding

of sexual abuse and physical sexual acts. The Respondent argues that cases that are more similar to the present matter should instead be relied upon, such as *College of Nurses of Ontario* v. *Duval*, 2005 CanLII 79646 and *College of Registered Nurses of British Columbia* re *Mclellan*, 2018 CanLII 154349.

172. The Panel finds that the Respondent's misconduct was very serious. The Respondent engaged in misconduct with an individual while he was incarcerated and while he was on parole. A pervasive pattern of misconduct is not required in order for the misconduct to be serious. Similarly, it is not necessary that consequences are established in order for the misconduct to be considered serious (though the presence of those types of evidence may be relevant to severity). In this case, the misconduct occurred during an extended period of time, the misconduct involved multiple different violations, and it contained an element of deception. As the Panel held in the Conduct Decision:

> 328. The Panel is satisfied that the evidence establishes that the Respondent engaged in "behaviour" and made "remarks of a sexual nature …. towards a patient" contrary to the College's Boundaries Standard and finds that in doing so the Respondent committed sexual misconduct for purposes of section 26 of the Act. The Respondent's remarks, behaviour and intended future conduct are at the serious end of the spectrum.

173. While the Respondent compares the present case to matters involving physical sexual acts or multiple victims, the Panel finds that the seriousness of misconduct is not determined solely by the presence of those factors. The cases cited by the Respondent do not diminish the seriousness of the Respondent's misconduct here; each case will involve different facts and must be assessed on its own facts. Abuse of a position of trust, deception, exploitation of vulnerability, and sexual misconduct place this matter at the more serious end of the spectrum.

174. The Respondent's position of power and Inmate A's vulnerability are aggravating factors in this case. As the Panel held in its Conduct Decision:

> 261. The Panel agrees with the reasoning in *Re McLellan* that "the Boundaries Standard primarily addresses relationships between registrants and current clients, but it also applies to relationships between registrants and former clients, based on continuing client vulnerabilities." In this case, the Panel finds that there were many circumstances which placed the Respondent in a position of power and Inmate A in a continuing position of vulnerability, including:

a. The Respondent's nurse-client relationship with Inmate A arose in the prison context. A patient who is incarcerated is in one of the most vulnerable positions a patient can be in, vis-à-vis a health professional.

b. The Respondent provided a variety of nursing care services to Inmate A over a lengthy period. She was privy to confidential and sensitive information about Inmate A because of her position.

c. Inmate A's vulnerability did not disappear when he was released on parole in the community. The fact that Inmate A was on parole meant that he remained vulnerable due to his conditional release and the possibility of re-incarceration at the institution where the Respondent continued to be employed as a Registered Nurse.

d. The length of time that had passed before the Respondent engaged in a personal relationship with Inmate A was relatively short. The Respondent argues in her closing submissions that she was contacted by Inmate A "months" after their nurse-client relationship concluded, suggesting this was a lengthy period. The Respondent's evidence on this was vague. The Panel finds it unlikely that the Respondent would not recall with more precision when the contact was initiated and how many times she and Inmate A met in the community. However, Inmate A was released on parole in January 2017 and the Respondent testified that she was contacted by Inmate A in "Spring 2017." That may have been as short as a matter of weeks. Even if the period stretched later into that Spring, given the underlying prison and parole contexts, the Panel finds a period of "months" to be a relatively brief period of time in the circumstances of this case.

e. Inmate A was vulnerable by virtue of the nature of the health care provided by the Respondent to him. The Respondent attended to many different aspects of his health, including particularly sensitive matters involving sexual health and infectious diseases.

f. The Respondent herself testified that Inmate A had special personal circumstances and that her knowledge of those circumstances was gained from her nurse/client relationship with Inmate A:

> Q Right. So from your point of view, based on your experience, it was important to not abruptly terminate the nurse/client relationship when the inmate was in the community?
>
> A I didn't feel that I was in a nurse/patient relationship anymore. But just with him as a person, I felt like I couldn't do that, given -- given his background, without getting into personal details of -- of the individual for confidentiality reasons. I didn't feel that it was a good idea to just cut –
>
> Q Right.
>
> A -- cut it off completely.
>
> Q Because that was based on your knowledge that arose from the nurse/client relationship; isn't that right?

A Yes. And the information that he gave me at that time.

175. The Panel finds that this factor weighs in favour of a more serious penalty.

Character and professional conduct record of the Respondent

176. The College notes that the Respondent has no prior discipline history with BCCNM or its legacy colleges and describes this as a neutral factor.

177. The College submits that the Respondent was not a new nurse at the time of the proven professional misconduct. She was an experienced nurse, having practiced for approximately 15 years, eight of which were as an employee of CSC. The Respondent acted in various leadership roles over the years at CSC. The College argues that these factors should be considered aggravating in terms of the necessary sanction as the Respondent would have known that her relationship with Inmate A breached a number of her professional obligations as a nurse.

178. The College submits that the Respondent possessed enough knowledge and experience to know that she had other options available to her at the time. She knew she could have discussed contact attempts from Inmate A with a trusted colleague. She could have sought help. Instead, the Respondent was a willing and active participant in the relationship, and she used her knowledge of the carceral setting (three-way calling, ensuring her name was not on the lease the property manager sent to the institution, taking time off work to coincide with Inmate A's release date and being dishonest with her employer about the reason) to hide her relationship with Inmate A. She also used her knowledge about Inmate A that she had gained from her nurse-client relationship, to further her own desire to be involved with Inmate A in a romantic, sexual and/or personal relationship.

179. The Respondent says that she had been working as an RN for approximately 18 years before she learned of the complaint. She has no prior discipline history.

180. The Respondent says that she relies upon her affidavit evidence, including the reports of [the doctor], which further describe her personal history.

181. The Respondent submits that she is of good character and that the misconduct was extremely out-of-character for her:

> The misconduct found by the Panel was extremely out-of-character for me. In all of my years of practice, I had never before had a prospective landlord-tenant relationship with a patient or former patient, and I had never before communicated with a patient or former patient outside of the workplace. I understand that I should have informed my employer, especially after Inmate A unexpectedly returned to the institution.

182. The Respondent also submits that the fact that she has no prior discipline history with the College is a mitigating factor. Similarly, her experience as a nurse and in her role at CSC are not aggravating factors; rather, the fact that she practiced for many years without incurring any prior conduct record is mitigating.

183. With respect to the College's argument that the Respondent has the knowledge and experience to have conducted herself differently, the Respondent submits that this fails to include relevant context, including the Respondent's evidence regarding her fear of Inmate A.

184. The Panel finds the Respondent's absence of any prior disciplinary history is a mitigating factor.

185. The Panel finds that the Respondent's years of experience, professional knowledge and leadership qualities, place her in a position where she should have known better. This is not a circumstance in which an inadvertent and isolated error may be excused due to inexperience or attributable to actions that were not misconduct. Indeed, the Respondent's experience and position enabled her to carry out and conceal the misconduct through three-way calling, removing her name from the property lease, engaging an intermediary to deliver the lease documents to Inmate A at the prison, taking time off work to coincide with Inmate A's release date, and taking steps to conceal the true nature of her relationship with Inmate A. These are aggravating factors with respect to the Respondent's character and conduct.

186. The Panel is not persuaded by the Respondent's argument that her conduct was out of character or should be viewed in light of contextual pressures, including any alleged fear of Inmate A. While the Panel has taken this argument into account, it is

not satisfied that the Respondent's claimed fear diminishes the seriousness or inappropriateness of her interactions with Inmate A. The requirement to maintain professionalism and boundaries is particularly critical in a prison setting, regardless of any apprehension a registrant may experience. The training received by staff, and the protocols put in place, are designed to address these challenges.

187. The Panel finds that the Respondent's affidavit evidence does not accurately describe the scope and severity of the misconduct in which the Panel found she had engaged. Accordingly, a statement that the misconduct is a departure from her normal character is of no assistance. Similarly, while the Respondent again relies upon the reports of [the doctor], the Panel has already held that those reports are manifestly unreliable and lack objectivity and the Panel has reiterated that finding in multiple previous decisions.

188. Overall, the Panel finds that this factor contains both mitigating and aggravating aspects. The absence of prior discipline provides some mitigation, but the Respondent's experience, deliberate concealment of her misconduct, and the Panel's rejection of her characterization of the misconduct and expert evidence are significant aggravating factors.

Acknowledgement of the misconduct and remedial action

189. The College submits that the Respondent has not meaningfully acknowledged the full scope of her misconduct, nor has there been any effort at remediation to address the egregious ethical lapses in which she engaged.

190. The College argues that the Respondent's conduct during the Discipline Hearing, including her efforts to mischaracterize events, "support the conclusion that she has not acknowledged her misconduct, including sexual misconduct, in any meaningful way, or at all." Instead, all of her efforts have been directed at avoiding regulatory consequences, including publication, arising from her professional misconduct.

191. The College argues that the Respondent's failure to acknowledge her misconduct during the Disciplinary Hearing is a significant aggravating factor that mandates in favour of a serious penalty.

192. The Respondent argues that the absence of an admission of misconduct is a neutral factor; it must not be considered an aggravating factor. Defending against allegations and holding the College to prove its case must not be held as an aggravating factor. The Respondent argues that she is entitled to have the case against her proved by cogent evidence, and she is entitled to make full answer and defence without fear of an increased penalty. She says that the way a defence is conducted and whether the panel accepts the Respondent's evidence are neither aggravating nor mitigating factors.

193. The Respondent says that she testified at the Discipline Hearing and provided answers to the best of her ability. She acknowledged that she should have informed her employer of the situation after Inmate A's return to the institution. She also acknowledged that the misconduct found by the Panel was out-of-character for her.

194. The Panel agrees with the Respondent that the absence of remorse is not an aggravating factor but instead is the absence of a mitigating factor. The Panel also agrees with the Respondent regarding her right to a full answer and defence.

195. Nevertheless, the Panel finds that the Respondent does not benefit from any mitigating aspects to this factor. While she maintains that she acknowledged her misconduct, this has actually been very limited in nature and scope. During the proceedings and in written submissions, the Respondent has acknowledged only the least serious aspects of her misconduct and has summarized the Panel's findings in a manner that diminishes the scope and severity of the Panel's findings. Accordingly, there is limited mitigating value to the Respondent's acknowledgement.

196. There is no evidence of any remedial steps that have been undertaken by the Respondent. As such, she also does not benefit from any mitigating consideration in that regard.

197. Overall, the Panel finds that there are no mitigating or aggravating components to this factor.

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

198. The College submits that this *Ogilvie / Dent* factor involves an assessment of the need for general and specific deterrence, as well as a review of the range of penalties in similar cases. Additionally, the College submits that in cases involving sexual misconduct, such as this one, it is appropriate for the Panel to consider wider issues of public confidence in the ability of the profession to appropriately self-regulate.

199. In terms of foundational principles, the College submits that it exists only to serve and protect the public and to act in the public interest. To preserve public confidence in the College as a regulator, deliberate, repeated and harmful misconduct by a nurse must be met with serious consequences.

200. The College submits that a core central tenet of professional practice is that health care professionals must not use their position of trust to engage in relationships with current or former patients. The Respondent's boundary violations must be emphatically denounced by the Panel. There is no room for ambiguity in these circumstances.

201. The College argues that the penalty imposed in this case must emphasize the College's regard for the importance of regulated professionals to adhere to all standards; in particular, the Ethical Practice Professional Standard. All registrants must put patient care needs and safety first, before their own.

202. The College submits that cancellation of the Respondent's registration with a prohibition on reapplication for registration for a minimum of two years, coupled with the imposition of a $25,000 fine, will serve to emphasize the Panel's disapproval and condemnation of the Respondent's serious misconduct.

203. The College submits that it is common in cases where a discipline panel made findings that a registrant committed sexual misconduct and engaged in conduct that was disgraceful and dishonorable, that an order for cancellation of registration has followed. There is no decision in British Columbia with similar facts, but there are a

number of Ontario decisions that the College brought to the attention of the Panel for assistance with determining the appropriate range of sanction.

204. The College notes that the *Ontario Regulated Health Professions Act*, 1991 S.O. 1991, c. 18, requires mandatory revocation of licensure for certain prescribed acts of sexual abuse pursuant to section 51(5) of Schedule 2 *Health Professions Procedural Code*. Where revocation has been ordered on the basis of sexual abuse, a registrant is not eligible to apply for reinstatement for a five-year period pursuant to section 72(3) of Schedule 2.

205. The College submits that in this case, the Respondent's sexual misconduct is not of the character that would require a five-year ineligibility period under the Ontario legislation. However, the College argues that the combination of the Respondent's sexual misconduct together with her deceitful actions in attempting to cover up her relationship with Inmate A, and her failure to acknowledge her misconduct, requires cancellation of her registration for at least two years before she can become eligible to apply for reinstatement.

206. The College relies upon the following cases:

    a. In *College of Nurses of Ontario* v. *Franklin*, 2020 CanLII 42408, a registrant worked at a hospital in a program that provided specialized community-based services to individuals living with mental illness. While providing nursing care to a patient, the registrant engaged in a personal relationship with the patient which included: driving the patient in her car for personal matters, the patient staying at her home for the night, kissing the patient, exchanging gifts with the patient, and purchasing a cell phone for the patient for their personal communications. The registrant and patient went on a trip together and stayed in the same hotel room. The relationship was discovered and reported to the registrant's employer, and her employment was terminated. There was a joint submission on penalty. The registrant was required to appear before the panel to be reprimanded, and the registrant's registration was revoked.

b. In *College of Nurses of Ontario* v. *Franklin,* 2020 CanLII 42408, a registrant made admissions, including that she sexually abused a patient, and in particular that she had kissed the patient while a nurse-patient relationship existed, constituting behaviour of a sexual nature. She was found to have committed professional misconduct. The registrant was reprimanded, and her registration was revoked.

c. In *College of Nurses of Ontario and Kwan*, 2016 CanLII 64049, a registrant entered into an agreed statement of facts and joint submissions regarding penalty after he was found to have engaged in sexual misconduct, which included sexual abuse of a patient and sexual intercourse with that patient. The patient was at an inpatient facility where the registrant worked. The panel found that the registrant began grooming the dependence and trust of the patient. The patient had a history of substance misuse disorder, and the registrant provided medications and advised her to follow a regime contrary to her physician's plan. The registrant was reprimanded, his registration was revoked, and he was required to contribute to a fund for victims of sexual abuse to seek therapy. The College's position was that it would have sought an order for revocation even if sexual intercourse (which mandates revocation as per the governing statute in Ontario) had not been proven.

d. *College of Nurses of Ontario* v. *Araujo*, 2021 CanLII 152827 involved a registered practical nurse who worked at a residential mental health and addictions services facility as part of an interdisciplinary team. The patient was admitted on two occasions in 2018, with diagnoses of PTSD and sex addiction, and one admission was preceded by an attempt at suicide. The registrant provided direct patient care to the patient on at least two occasions in the context of a team approach to nursing care. While the patient was in care, the registrant gave the patient notes with her name and phone number as well as notes that were characterized as flirtatious. When the patient was released on a weekend pass for exposure therapy, the registrant met the patient in the community, and they engaged in sexual

touching. The patient disclosed the encounter to a team member, there was an investigation, and the registrant's employment was terminated. Initially, the registrant had asked the patient to lie to the college investigator. At the hearing, the registrant agreed to a statement of facts and admitted that she had sexually abused the patient. The panel noted the vulnerability of the patient: he had alcohol use disorder, sexual compulsion, and PTSD. The inappropriate relationship lasted approximately two years. The registrant was reprimanded, her registration was revoked, and she was ordered to reimburse the College for costs associated with therapy for the patient. The panel noted that the aggravating factors were the seriousness of the misconduct, the length of the relationship, and the registrant's dishonesty to the regulator. In *Araujo,* the registrant had made admissions and agreed to a joint penalty submission.

e. In *College of Nurses of Ontario* v*. Ramos*, 2020 CanLII 124394, a registrant was found to have sexually abused a patient by making remarks of a sexual nature. He was cited for engaging in sexual intercourse and/or other forms of physical sexual relations with the patient. The patient died before the discipline hearing took place and those charges were not pursued. The registrant also texted with the patient outside of the therapeutic relationship and met with her in person outside of the therapeutic relationship. The registrant entered into an agreed statement of facts and admitted that his conduct constituted professional misconduct and contravened nursing standards. The College and the registrant put forward a joint submission requesting an 18-month suspension along with remedial education requirements. The registrant's registration was not revoked, but a lengthy suspension was ordered.

f. In *Ontario (College of Physicians and Surgeons of Ontario)* v. *Mitchell,* 2018 ONCPSD 63, a registrant psychotherapist was found to have committed professional misconduct and engaged in sexual abuse of a patient by making comments of a sexual nature to her. His crossing of boundaries with the patient included communications with her outside of the therapy room,

texting, and meeting with her in public. The committee found that the registrant had no insight into the harmful nature of his misconduct. The committee found that he demonstrated a lack of knowledge, skill and judgment in his care of the patient and that he was incompetent. The committee held that revocation of the registrant's certificate of registration was the only fair and appropriate penalty that would sufficiently protect the public from potential harm.

g. In *Ontario (College of Physicians and Surgeons of Ontario)* v. *Dubins,* 2016 ONCPSD 34, a physician used hypnotherapy to assist his patients with smoking cessation. The committee found he had failed to maintain the standards of practice and had engaged in behaviour which would reasonably be considered disgraceful, dishonourable or unprofessional. The registrant was found to have used graphic and offensive imagery and asked the patient to unbutton and lower his pants during hypnotherapy. Because the registrant had previously been cautioned for similar behaviour, the committee viewed the registrant as showing disregard for the authority of the College and he was thus considered ungovernable. The registrant resigned from the College and agreed not to re-apply. The Committee ordered a reprimand and costs, noting that his certificate would have been revoked had he not resigned.

207. The College makes the following additional submissions in relation to the specific orders that it seeks.

a. Cancellation of registration is the most serious penalty available under the Act. In view of the Respondent's very serious misconduct, cancellation is required to preserve the public's confidence in the profession and the College's ability to regulate it.

b. Cancellation supports the need for general and specific deterrence and is consistent with other cases that deal with sexual misconduct. Other cases where the misconduct was less severe have resulted in cancellation. Cancellation is the only means to effectively protect the public from the

Respondent. Any sanction less than cancellation would not fulfill the College's public interest mandate.

208. The College submits that a two-year period of ineligibility to apply for reinstatement is appropriate, pursuant to section 39(8)(b)(i) of the HPA.

209. The College submits that the penalty that will be imposed by the Panel must reinforce public confidence in the regulatory body's ability to effectively govern the profession, including the disciplinary process. In this case, public confidence is an important concern given the fundamental principles of nursing care and self-regulation for professionals at issue and the potentially serious consequences of the Respondent's actions. The public must have confidence that serious boundary violations and sexual misconduct will not be tolerated by the College and that patient safety, particularly that of vulnerable incarcerated people, is paramount over a registrant's personal desires.

210. The College seeks an order that the Respondent's registration be cancelled, and that she be prohibited from applying for reinstatement for two years. As the Act requires that the eligibility for reinstatement will occur "on a date specified in the order", a specific date must be included. The College therefore seeks an order that the Respondent's registration is cancelled under section 39(2)(e) of the Act, and that pursuant to section 39(8)(b)(i) of the Act, the Respondent be eligible to apply for reinstatement on the date that is two years from the Panel's issuance of its reasons on penalty.

211. The College also submits that this case merits the imposition of a fine. Section 39(2)(f) of the Act states:

> 39(2) If a determination is made under subsection (1), the discipline committee may, by order, do one or more of the following:
>
> (f) fine the respondent in an amount not exceeding the maximum fine established under section 19(1)(w).

212. Section 19 (1)(w) and (w.1) of the College's Bylaws state:

> 19(1) A board may make bylaws, consistent with the duties and objects of a college under section 16, that it considers necessary or advisable, including bylaws to do the following:
>
> > (w) establish the maximum fine that the discipline committee may impose under section 39(2)(f);
> >
> > (w.1) establish a tariff of costs to partially indemnify parities for their expenses incurred in the preparation for and conduct of hearings under section 38, other than for investigations under section 33;

213. Section 19(1)(w) of the HPA allows the Board to make a bylaw to establish the maximum fine that the discipline committee may impose under section 39(2)(f).

214. Section 211 of the College's Bylaws provides:

> 211. The maximum amount of a fine that may be ordered by the discipline committee under section 39(2)(f) of the Act is $50,000.

215. The College argues that the imposition of a fine has a punitive impact on a registrant but also furthers the goals of general and specific deterrence and promotes public confidence in the profession. The College submits that in this case, there is a reasonable risk that cancellation alone will not provide a sufficient deterrent effect for misconduct of this nature because the Respondent is not a current registrant, and cancellation will therefore have no present impact on her. The College submits that cancellation is very important, both for the message it sends and because it permits restrictions relating to the timing of any re-application for membership, but cancellation alone in this case is not a sufficient response to the Respondent's ethical and professional breaches.

216. The College also submits that for a penalty to provide sufficient general deterrence, it must have meaningful consequences. Cancellation of registration is potentially meaningless if a registrant is willing to step away from their nursing career. A fine is a more tangible and direct deterrent that will have far greater effect in this context. Only a current or returning registrant is directly impacted by a suspension or cancellation while a fine provides an important deterrent against sexual misconduct for all registrants and signals loudly to the profession that this conduct will not be tolerated.

217. The College argues that the penalty must be sufficient to uphold the public's confidence in the profession. The public is likely to consider the cancellation of a former registrant's registration as merely symbolic. There is a need for more in these circumstances, i.e. cancellation together with a fine.

218. The College submits that a fine is also warranted because of the Respondent's conduct during the course of this proceeding. The Respondent was entitled to put on a vigorous defense and to challenge the College's case against her. The Respondent's conduct in her defense, however, went beyond a zealous defense and strayed into being obstructive to the goal of an orderly hearing by flouting norms of decorum and process. The College provided the following examples:

    a. refusing to provide availability for a hearing on numerous occasions, even when ordered by the Panel to do so;

    b. bringing unmeritorious applications to delay the hearing, including providing no legal authority for the relief sought; and

    c. refusing to abide by the Panel's directions and orders regarding the exchange of submissions and production of unredacted medical reports.

219. The College submits that the Respondent's conduct prior to, during, and after the hearing all militate for a strong condemnation by the Panel. A fine of $25,000 is half of the allowable maximum fine under the Bylaws and would be an appropriate order.

220. The College notes that it has not had a previous case in which the Discipline Committee ordered a registrant to pay a fine where the registrant's registration was also cancelled. However, it notes that the Act does not place any restraint on the Panel's ability to impose both cancellation and a fine, as well as a costs award.

221. The College refers to a $105,000 fine that had been requested, in addition to cancellation, in the *College of Massage Therapists of British Columbia re Leonard Krekic* (Penalty and Costs), December 21, 2022 decision. The Panel notes that the discipline committee in that case ordered cancellation and a $10,000 fine, plus costs of $95,952.51 not a $105,000 fine.

222. In its submissions, the College also referred to the *Regulated Health Professions Act,* SO 1991, c. 18, s. 51 of Schedule 2 along with Ontario caselaw in which panels ordered registration cancellation and imposed a fine.

    a. In *College of Nurses of Ontario* v*. Tomaszewska*, 2004 CanLII 73647, a registrant crossed the boundary of the therapeutic nurse/client relationship by obtaining a power of attorney for finances and personal care of a client. The registrant became the executrix and beneficiary of the client's last will and testament. The panel found this constituted professional misconduct and ordered revocation of the registrant's registration, a $15,000 fine, approximately $50,000 in costs, and a reprimand (penalty decision affirmed on appeal: *Tomaszewska* v. *College of Nurses of Ontario,* 2007 CanLII 14931). The panel considered the vulnerability of the client, who suffered from psychiatric illness, and the scale of potential damage to the patient, both financially and emotionally. The panel found that the registrant had exploited the client's vulnerability and put her own personal interests ahead of the client.

    b. In *College of Nurses of Ontario* v. *Besharah*, 2007 CanLII 82758, a registrant was found criminally guilty of theft over $5,000 and of defrauding the occupational health and safety scheme in Ontario of approximately $200,000. The panel found the registrant guilty of professional misconduct, noting that the registrant was convicted of illegal activity including theft and making false statements for personal financial gain even after indicating to the College that he was responsible and accountable. He was dishonest to those who trusted him and to authorities. The panel ordered the member's registration be revoked and imposed a fine of $2,500 plus costs.

    c. In *College of Nurses of Ontario* v. *Mcclinton*, 2006 CanLII 81735, a registrant was alleged to have mishandled narcotics and to have failed to document her nursing actions with respect to narcotics, contrary to the health authority's policy and practice standards. The registrant requested that the hearing take place in Ottawa at a time when she would be on

vacation rather than in Toronto where hearings were typically held. After these requests were accommodated, the registrant failed to attend the hearing. The panel found professional misconduct and ordered registration revocation, a fine of $10,000 and costs of $10,000.

d. In *Ontario (College of Physicians and Surgeons of Ontario)* v. *Chandra*, 2018 ONCPSD 28, a physician was found to have committed professional misconduct by defrauding the provincial insurance plan and failing to respond to the regulator during its investigation. The physician did not attend the disciplinary hearing. The panel noted a number of aggravating factors, including that the physician used his position of authority and control to induce patients to assist him in his financial malfeasance, the length of time that this illegal scheme continued, and his failure to cooperate with the regulator. The only mitigating factor was that the physician did not have a history of discipline with the college. Given the scale of the financial fraud, the panel ordered the maximum fine of $35,000, revoked the physician's registration, and ordered that he attend for a public reprimand and pay the tariff for the three-day hearing in costs.

223. The Respondent argues that the penalty sought by the College is significantly greater than the penalties imposed in similar cases. She argues that anything more than a reprimand, or in the alternative, a suspension, would cause the public to lose confidence in the disciplinary process, specifically in the unique context of this case and the significant prejudice caused by the College's delay and *Charter*-infringing conduct.

224. The Respondent argues that the mandatory revocation applicable in Ontario cases does not apply in British Columbia. In addition, many of the Ontario cases involving revocation do not include a fine and costs.

225. The Respondent argues that the *Mclellan* decision involved similar facts to this case. A nurse who worked at a residential addiction treatment facility for men was found to have committed professional misconduct by engaging in a romantic and sexual relationship with a "near-client." The "near-client" had left the facility without being

discharged and contacted the nurse on social media a week later, after which they began dating. The nurse did not tell her employer about the relationship, and the relationship was in direct contravention of the employer's policies. The penalty imposed in *Mclellan* was a six-week suspension and $12,500 in costs. The Respondent notes that this is significantly less than what the College seeks in this case.

226. The Respondent also refers to *Duval* as being similar to this case. She argues that in *Duval,* the nurse worked in a psychiatric assessment unit and engaged in a relationship with a former patient within days of the patient's discharge. During a counselling session, the patient disclosed to the therapist that she had had a sexual encounter with the nurse a couple of days after the patient's discharge from the hospital and that she felt upset and tearful when telling the therapist. The therapist then made a report to the College. The discipline committee found the sexual, romantic relationship (kissing, hugging, holding hands) constituted professional misconduct. After an appeal, the penalty was reduced to a six month suspension, and the condition restricting the registrant from practicing in a psychiatric setting for 24 months was removed.

227. The Respondent submits that the appropriate penalty in this case is a reprimand; in the alternative, a suspension of six weeks similar to *McLennan*, with credit given for the time the Respondent has already been suspended. Relying on *College of Physicians and Surgeons of Ontario v. Boodoosingh (H.C.J.)*, 1990 CanLII 6686 (affirmed on appeal [1993] OJ No 859), the Respondent submits that cancellation is not appropriate in this case as it is "reserved for repeat offenders and the most serious cases."

228. The Respondent argues that the Ontario cases cited by the College are distinguishable because of the statutory regime regarding "sexual abuse" and because there was no finding of sexual abuse in this case.

229. The Respondent also distinguishes the cases relied upon by the College in support of cancellation and a fine of $25,000 as follows:

a. *Franklin*: this case involved the sexual abuse of a patient, and a joint submission was made for a reprimand and revocation. No fine or costs were ordered. The facts supporting the finding of sexual abuse were more serious than the Respondent's sexual misconduct;

b. *Kwan*: this case involved the sexual abuse of a patient, as well as sexual intercourse, which trigged statutory mandatory revocation. A joint submission was made for a reprimand and revocation. The Respondent argues that the following aggravating factors are distinguishable: the registrant in *Kwan* had engaged in "grooming"; the registrant had created a manipulative relationship involving financial, emotional, and physical dependence; the patient had a history of addiction, the registrant had provided drugs and advised a regime contrary to the physician's orders; and the conduct had been traumatic for the patient. No fine or costs were ordered;

c. *Araujo*: this involved the sexual abuse of a patient and sexual relations, and a joint submission was made. The Respondent argues that the following aggravating factors are distinguishable: the registrant had approached the patient while the patient was in their care and had initiated the relationship; the registrant had engaged in touching of a sexual nature while in the examination room; the registrant had engaged in sexual intercourse with the patient outside of the facility; the complaint had been put forth after the patient had disclosed the conduct to his counsellor and psychotherapist; the registrant had failed to co-operate with the college's investigation; the registrant had discussed the investigation with the patient and had planned to conceal the extent of their personal relationship from the investigator; and the registrant had coached the patient during the patient's interview by the investigator;

d. *Ramos*: this involved the sexual abuse of a patient, and a joint submission for a reprimand and 18-month suspension with conditions on registration. The Respondent submits that the inappropriate communications and

meeting outside of the therapeutic relationship were much more serious and expansive in *Ramos* than in this case;

e. *Mitchell*: this involved a psychiatrist who was found to have sexually abused his patient, the complainant, by making remarks of a sexual nature. The physician was also found to be incompetent. The Respondent submits that the misconduct was more aggravating in *Mitchell* in the following ways: there were findings of failure to communicate in a professional manner, including verbal abuse, shunning, swearing and threatening to terminate his medical care of the complainant patient; by failing to maintain appropriate boundaries, including managing transference, making sexualized comments, texting, and meeting the complainant patient out of the office, as well as continuing to provide care after she had complained about his care to the college. The physician had a prior conduct record, and there was evidence of significant harm to the patient; and,

f. *Dubins*: the Respondent submits that the facts of the *Dubins* case are more serious and involved an individual who had previously been cautioned by the college for similar misconduct.

230. The Respondent submits that imposing a fine in addition to other penalties would be unduly harsh in this case. Layering on additional penalties can be unduly punitive if added merely because they will act as a deterrent (*Alsaadi v Alberta College of Pharmacy*, 2021 ABCA 313).

231. The Respondent submits that the fine sought by the College is excessively punitive, given the Respondent has been suspended since November 19, 2021 and she says she has experienced financial hardship caused by these proceedings. The Respondent submits that a fine is not needed to achieve denunciation or deterrence, since a reprimand and suspension or the cancellation sought by the College would achieve those goals. In the alternative, the Respondent submits that a fine should be payable upon the Respondent's application to be reinstated as a registrant.

232. The Respondent submits that specific deterrence would be addressed through a reprimand and would also be addressed if the cancellation is granted. Imposing a

fine on top of a cancellation would have a punitive impact, as cancellation would be more than sufficient to achieve the goals of denunciation and deterrence. Public confidence in the profession does not require the addition of a fine.

233. The Respondent disagrees with the College's assertion that cancellation has no present impact on the Respondent. Cancellation is the most serious penalty that can be imposed, and ought to be reserved for only the most serious cases.

234. The Respondent submits that imposing cancellation because of the Respondent's conduct before, during, and after the hearing amounts to punishment of her right to defend herself.

235. The Respondent distinguishes the five cases cited by the College as follows:

    a. *Krekic*: the misconduct in this case included an exploitive relationship with a much younger patient for financial gain, a factor not found here. The nature, gravity, and consequences of the misconduct were much more serious, and had a detrimental impact on the patients. The Respondent submits that in *Krekic,* the misconduct involved a personal relationship with one patient over the span of months, the sexual misconduct was in the form of remarks of a sexual nature during a phone call, the patient did not participate or give evidence in the proceedings, and no findings of fact were made with respect to the impact on the patient. In addition, the registrant in *Krekic* breached a section 35 order and practised without insurance.

    b. *Tomaszewska*: the misconduct caused the client to suffer financial and emotional damage and was financially-motivated. The Respondent submits that there is no evidence that Inmate A suffered any financial or emotional damage, and the relationship found by the Panel was not financially-motivated.

    c. *Besharah*: the misconduct involved theft and fraud for financial gain, there was a repetitive nature of the offences, even after the registrant had indicated to the college that he would not repeat criminal offences. The panel imposed a fine of $2500 and costs of $250. The Respondent submits

that the Panel did not make any findings of fact that there was financial gain or financial motivation.

d. *Chandra*: this involved a serious fraudulent scheme and financial gain. The college in *Chandra* had argued that a fine payable to the Minister of Finance was fitting because of the fraud against OHIP. The panel noted that fines have been imposed where there has been financial gain.

e. *Mcclinton*: the registrant's conduct continued even though she had been cautioned. The Respondent argues that while no findings of fact were made about whether the registrant stole narcotics for financial gain, the panel did find that she had facilitated the theft of narcotics by not accepting and implementing the changes initiated to prevent further losses.

236. The Respondent submits that the fact that she is a former registrant, rather than a current one, does not alter the need for a proportionate sanction. She says that in cases where fines have been imposed in response to non-cooperation, they were related to the financial and non-cooperation aspects of their misconduct. The Respondent cites the following passage from *Krekic:*

> 72. In *Re Anderson*, the Discipline Committee made the following comments about the imposition of a fine in addition to cancellation:
>
> > 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 noncooperation, 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.

73. The College has sought a $10,000 fine in this case. The College noted in its submissions that:

> 13. The panel in *Anderson* stated that a fine of $10,000 was twice the fine of that in *Morgan*, but the fine in *Morgan* was by agreement between the parties and there is no guidance as to how and why the parties arrived at that decision. The fine in Morgan is not directly applicable here where there was a 20-day contested hearing concerning much more significant misconduct.
> 14. The maximum available fine is $50,000. This has never been awarded by a discipline panel of this College and the circumstances which would dictate a fine of that magnitude are difficult to consider given the decision in Anderson.

74. The Panel finds that it is necessary to impose a fine in addition to cancellation in this case for the same reasons as outlined in *Re Anderson* above. Cancellation alone would not provide sufficient deterrent or maintain public confidence in the profession. The Respondent is a former registrant and his misconduct included financial and non-cooperation conduct by violating a section 35 order, practicing without insurance, and engaging in a close personal relationship with a patient for his own personal and financial interests.

75. The parties agree about the imposition of a fine in the amount of $10,000. Given that the parties agree on the amount of the fine, the Panel is reluctant to impose a higher fine in the circumstances.

237. The Respondent argues that the *Krekic* case involved more egregious misconduct than the present case and there was a financial aspect to the misconduct as well as non-cooperation. The Respondent argues that a fine of $25,000 in her case is not justified.

238. In reply, the College sets out how *Mclellan* and *Duval* are distinguishable. The facts in *Mclellan* are different, the penalty was agreed upon, and the registrant had acknowledged her misconduct and engaged in remediation work. With respect to *Duval*, the College cautions about relying upon cases from 20 years ago because norms relating to sexual conduct have changed over that period. The College relies

upon *College of Physicians and Surgeons v. Peirovy*, 2018 ONCA in which a Divisional Court overturned a six-month suspension, stating the discipline panel should have been debating cancellation of registration or a suspension of multiple years and cautioned about relying on outdated precedents for penalties. The Court of Appeal held it would be up to the panel to determine whether it should deviate from the range of previously imposed penalties.

239. In *Schwarz v. The College of Physicians and Surgeons of Ontario*, 2021 ONSC 3313, the Court upheld a physician's revocation where the panel relied upon *Peirovy.* The Court agreed with the panel's reasoning that revocation did not constitute a departure from the range of penalties in similar cases but that, even if it did, it was justified based upon changing societal norms.

240. In reply, the College also takes issues with the 1990 decision of *Boodoosingh,* relied upon by the Respondent, which failed to take into account societal norms at the time. For example, the College points out the antiquated language regarding a "sophisticated woman", which is found in that decision.

241. In relation to the Respondent's submissions about the imposition of a fine, the College points out that the Respondent has incorrectly quoted from the *Krekic* decision. One of the reasons that the fine was imposed in that case was <u>because</u> the respondent was a former registrant.

242. The College argues that the Respondent's assertion regarding her financial status cannot be accepted as she does not provide any evidence of her current financial status. The College points out it is known that, at one point, she owned a second property that she was able to provide for Inmate A's use.

243. The College also argues in reply that there is no basis in law to award costs against the College and in favour of the Respondent. In addition, the costs sought by the College are modest given the expenditures which were required due to the Respondent's conduct, which increased the costs incurred throughout these proceedings. The College notes that there is a difference between vigorously defending a matter and "waging a war of attrition against the College by bringing unnecessary applications."

244. The Respondent was permitted to deliver sur-reply submissions with respect to two new cases cited by the College in its reply. The Respondent argues that *Peirovy* does not support a deviation from previous cases, nor does it caution against relying upon those cases. The Court of Appeal made it clear that concerns about sexual misconduct by health care professionals is not new. The Respondent also notes that while the College cites *Peirovy*, the Court of Appeal had actually criticized and overturned the Divisional Court decision in that case.

245. In considering the final *Ogilvie / Dent* factor, public confidence in the profession including public confidence in the disciplinary process, the Panel finds that this case engages the need for specific deterrence, general deterrence, and the preservation of public confidence in the profession. It is essential to convey to the Respondent, the profession, and the public that the misconduct in which the Respondent had engaged is unacceptable.

246. In terms of specific deterrence, the Panel finds that the different forms of misconduct, the length of time over which the misconduct took place, the fact that the conduct involved multiple different violations and contained an element of deception, and the fact that the misconduct involved a person who was incarcerated and then on parole, require a high degree of specific deterrence.

247. In terms of general deterrence, the Panel finds that a strong message must be sent to the profession that professional misconduct, including sexual misconduct, of incarcerated persons and persons on parole will not be tolerated, and where this occurs, registrants will be met with the most serious penalties available.

248. The Panel finds that there is a strong need to uphold public confidence in the integrity of the profession and in the College's ability to regulate the profession in the public interest given heightened societal concerns about vulnerable persons and sexual misconduct in the health profession context.

249. In terms of the caselaw cited, the Panel recognizes that the Ontario regulatory framework for sexual misconduct differs from that in British Columbia. The Panel finds the Ontario caselaw cited by the parties to be helpful but finds the British Columbia cases to be of more assistance.

250. In terms of a range of penalties, the Panel notes that the College of Massage Therapists of British Columbia (as it then was) has a recent and well-established body of cases involving sexual misconduct in this province. In the *Krekic* case, the discipline panel cited *Re Anderson, Re Morgan, Re Jones, Re Breault and Re Brown* (some of which are hearing decisions and some of which are consent orders). All of those decisions involved registration cancellation for sexual misconduct. There is no requirement that a Respondent be a "repeat offender" in order for cancellation to be imposed. Cancellation is appropriate in the most serious cases, including in sexual misconduct cases. This is one of those cases.

251. The Panel agrees with the College's submission that the *Mclellan* decision appears to have placed significant reliance upon admissions and remediation in arriving at the agreed-upon penalty – as such it appears to be more of an outlier in the British Columbia sexual misconduct sanctions at the more serious end of the spectrum.

252. The Panel finds the *Brown* case to be the most similar to the present facts. Much of the misconduct involved sexual communications, there was a personal, romantic and sexual relationship, and misleading conduct towards the college investigator. In this case, while the Panel was not persuaded on the evidence that sexual physical activity had occurred between the Respondent and Inmate A, the Panel did find that the Respondent was discussing having future sexual relations with Inmate A and engaged in sexual misconduct. Likewise, the Panel found that the intercepts between the Respondent and Inmate A "go well beyond a personal or business relationship. The Panel finds that the Respondent engaged in a sexual relationship with Inmate A that involved remarks, behaviour and intended future conduct of a sexual nature (para. 318)". In addition, the Respondent engaged in deceptive conduct with her employer in hiding her relationship with Inmate A.

253. The Panel disagrees with the Respondent's summary of the *Krekic* decision in relation to a sanction of both cancellation and a fine. The disciplinary panel in that decision imposed both cancellation and fine because the respondent was a former registrant and because there were financial aspects to the misconduct. Both of those factors are present in this case. The Respondent is now a former registrant. One

aspect of the Respondent's misconduct involved her agreement to rent her property to Inmate A – an act with a distinct financial element. In addition, the panel made clear in *Krekic* that those are not the only circumstances in which a fine and cancellation would be appropriate – rather, it was an "open-ended list" and would turn on the particular circumstances of the case at hand.

254. The Panel finds that this factor weighs in favour of a more serious penalty.

Conclusion on penalty

255. The Panel considers that cancellation is the appropriate penalty in this case having regard to the Panel's findings on the *Ogilvie / Dent* factors, and in light of the relevant caselaw.

256. The Respondent's registration is cancelled commencing from the date she is made aware of the Panel's penalty order pursuant to section 39(2)(e) of the Act.

257. The Respondent is not eligible to apply for reinstatement for two years. The Panel has already addressed the Respondent's arguments regarding her section 35 suspension and finds there is no reduction in time for the reasons set out above.

258. The Panel considers that it is also necessary and appropriate to impose a fine in this case. The Panel finds the following reasoning from *Re Krekic* (quoting *Re Anderson*) to be compelling and applicable to this case:

> 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. […]

259. The Panel does not consider that there is sufficient basis to order a $25,000 fine and finds that a $10,000 fine is appropriate in this case. The Panel has not factored in the Respondent or the Respondent's counsel conduct in the imposition of a fine as requested by the College. The Panel considers those matters to be more relevant to costs.

260. The imposition of a fine in this case is justified and is not unduly harsh or punitive. The fine is not merely being layered on to achieve deterrence as suggested by the Respondent, but is being imposed for principled reasons, and is proportionately tailored to this case. The Panel is imposing a fine that is lower than the amount sought by the College, is a fraction of the maximum allowable fine that could be imposed and is aligned with British Columbia caselaw.

Costs

261. The College submits that costs should be awarded to the regulatory body so that the membership does not bear the costs of conducting the discipline proceedings. Costs are awarded as permitted by the governing statute and the award is a discretionary order.

262. The College notes that a number of factors inform the reasonableness of a costs order. It refers to Salte, Bryan, *The Law of Professional Regulation* (Markham, Ontario: LexisNexis Canada, 2015) p. 262 and *Jaswal v Newfoundland Medical Board*, 1996 CanLII 11630 (NLSC).

263. The College submits that section 39(5) of the HPA permits an award of costs against a respondent if a tariff has been adopted as allowed by section 19(1)(w.1). Pursuant to section 39(7) of the HPA, the costs must not exceed in total 50% of the actual costs of legal representation. Section 212(2) of the College's Bylaws establishes a tariff of costs pursuant to the Act, set out in Schedule J. Schedule J provides:

Qualifying Expenses

1. For the purpose of assessing costs under this Tariff, qualifying expenses incurred from the time the inquiry committee directs the registrar to issue a citation under section 33(6)(d) of the Act until the time

> (a) the inquiry committee accepts a written proposal for a consent order under section 37.1(2) or (5) of the Act,
> (b) the discipline committee dismisses the matter under section 39(1) of the Act, or
> (c) the discipline committee issues an order under section 39(2) of the Act,
> are deemed to be expenses incurred in the preparation for and conduct of the hearing.

Value of Units

2. (1) The value for each unit allowed on an assessment of costs is $120.
(2) Where maximum and minimum numbers of units are provided for in an Item in the Tariff, the discipline committee has the discretion to allow a number within that range of units.
(3) In assessing costs where the Tariff indicates a range of units, the discipline committee must have regard to the following principles:

> (a) one unit is for matters upon which little time should ordinarily have been spent;
> (b) the maximum number of units is for matters upon which a great deal of time should ordinarily have been spent.

Disbursements

2. In addition to the Tariff, actual reasonable disbursements are recoverable.

264. The College noted that the Discipline Hearing was conducted by in-house legal counsel, who is a salaried employee of BCCNM, and by external counsel, who bills the College based on hourly rates (at a discount). The total costs at the time the College's penalty submissions were delivered (which preceded three additional applications by the Respondent and spanned multiple months) were approximately $100,000. The Panel notes that this amount preceded the Respondent's three additional applications which required further substantial written submissions and communications.

265. The College claims 304 units at $120 per unit for a total of $36,480 under the tariff and confirms that this amount is far less than 50% of the actual legal costs incurred.

The College also claims $3,800.99 for disbursements incurred by external counsel and for transcript costs incurred by the College. The total amount of costs and disbursements sought by the College is $40,280.99.

266. The College submits that applying the principles and factors from the legal authorities it cites, it ought to be indemnified to the maximum amount allowable under the statutory framework. The College characterizes this matter as “a complex, time-consuming and hard-fought matter.” The College submits that it proved the Citation, and the professional misconduct was serious. The College was required to undertake a complicated and hotly contested hearing, made more so by the actions and strategic choices of the Respondent. The College submits that the costs sought are supported by appropriate documentary evidence and are not punitive to the Respondent. The hearing was protracted and required several witnesses and documentation. The amount requested by the College is rationally connected to the length and level of difficulty of the hearing.

267. The Respondent submits that this matter was not complex and involved one allegation. She submits that in light of her partial success on the preliminary motions and what she alleges has been inordinate delay, that costs should be payable by the College to her. As noted above, she relies upon *Blencoe* in support of this argument.

268. The Respondent argues that an award must be made in her favour given her “divided success” on the issue of a section 8 *Charter* breach – which was found to exist but the evidence still allowed. The Respondent says that the College’s *Charter*-infringing conduct, and its impact on the Respondent, has not yet been remedied in any way.

269. The Respondent argues that there has been inordinate delay in these proceedings that must be remedied. She argues that “but for the inordinate delay between the complaint and the citation, and for the breach of the Respondent’s s 8 Charter right, the Respondent would not have been in a position where those preliminary motions were necessary.”

270. The Respondent argues that if costs are awarded against the Respondent, it would effectively permit a culture of complacency within the College's investigation and discipline process.

271. The Respondent argues that the costs sought by the College are punitive. The Respondent relies on *Re Jensen* 2015 LSBS 10 which held that sizeable costs awards could become a deterrent to lawyers defending citations where they have a reasonable defence or some answer to the allegation, and costs that reach a high level could become punitive. Costs must remain discretionary, flexible and proportional to the matter.

272. The Respondent argues that in the alternative, the parties should bear their own costs. In the further alternative, she argues that the order should be made payable prior to reinstatement. She refers to *Farbeh v College of Pharmacists of British Columbia*, 2015 BCSC 642.

273. The Panel finds that the College's costs are reasonable and necessary. The Panel does not consider that there is any basis for any reduction in the costs and disbursements claimed.

274. The Panel has already addressed the Respondent's submissions in relation to delay and *Charter* remedies and had declined to accept those arguments for the reasons outlined above.

275. The Panel disagrees that the College's costs are punitive. The Panel considers that the costs are reasonable given the length and complexity of the proceedings, the number of witnesses called, and the College's success in proving the Citation. As outlined in the Second Stay Decision, the extended nature of these proceedings was in large part due to the Respondent's conduct such as absence of cooperation in scheduling hearing dates, failing to abide by Panel orders, attempting to indefinitely suspend the proceedings, and attempting to re-litigate matters already decided by the Panel.

276. In arguing that the costs are punitive, the Respondent has also suggested that her financial circumstances are relevant to the assessment of costs. The Respondent

affirmed in her Affidavit #3 that she has experienced financial hardship by not being able to advance her career during these proceedings, [redacted], she has not been able to work overtime, and she has not been able to seek out additional sources of income. The Respondent has not provided any information or evidence in support of these assertions, and she has not established an inability to pay costs.

277. The Respondent made alternate arguments that the parties bear their own costs, or that if the Panel orders costs, those should be payable upon reinstatement. The Respondent has not provided any arguments to persuade the Panel why those measures would be appropriate in this case.

278. The Panel has decided to extend the timeframe within which the Respondent must pay the fine and the costs to the College.

279. The Panel orders that the Respondent pay costs and disbursement to the College in the amount off $40,280.99 pursuant to section 39(5) of the Act to be paid within two years from the date of this Order.

Order

280. The Panel orders that:

a. the Respondent's registration is cancelled commencing from the date she is made aware of the Panel's order pursuant to section 39(2)(e) of the Act;

b. the Respondent is not eligible to apply for reinstatement until the day that is two years from the date that she is made aware of the Panel's order, at which time she will be required to meet all fitness, competence, and character requirements pursuant to section 39(8)(a) and (b)(i) of the Act;

c. the Respondent pay a fine in the amount of $10,000, pursuant to section 39(2)(f) of the Act, and to be paid within two years from the date of this Order;

d. An order that the Respondent pay costs and disbursements to the College in the amount of $40,280.99 pursuant to section 39(5) of the Act, and to be paid within two years from the date of this Order, or according to a payment plan that is agreed in writing between the College and the Respondent;

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 her registration.

281. The Panel reminds the College of the requirements in section 39(3)(c) of the HPA.

282. The Panel directs that the Registrar notify the public of the order made herein pursuant to section 39.3 of the Act.

283. The Panel directs that pursuant to section 39.3(3)(a) of the Act, 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 as well as other persons affected by the matter. Any names and identifying information of the Complainants, the Informant, the Inmate, and the correctional facility, and any other witnesses' names and identifying information that could identify the Informant, Inmate or correctional facility, be withheld from the public notification. The Panel directs that the Respondent's dates of employment be redacted as well as all references to her family members. Any telephone numbers, and street names and numbers must be redacted. The College may return to the Panel for further direction as to implementation of this order if required.

Notice of Right of Appeal

284. 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 30, 2025

Dr. Catharine Schiller, RN, Chair

Stephanie Buckingham, RN (non-practicing)

Dorothy Barkley