

THE COLLEGE OF REGISTERED PSYCHIATRIC NURSES OF BRITISH COLUMBIA

In the matter of the *Health Professions Act*, R.S.B.C 1996, c. 183

And a hearing into the conduct of

KIMBERLY HURLSTON

RESPONDENT/REGISTRANT

**DECISION OF THE DISCIPLINE COMMITTEE HEARING PANEL
TO PROCEED WITH THE HEARING IN THE ABSENCE OF THE
RESPONDENT/REGISTRANT**

Hearing date:

June 6, 2017

Panel:

Tim Holmes, Chair, Public representative

David Reid, Registrant

Gavin Wallace, Registrant

Counsel for the College

James D. Kondopoulos

Christopher J. Munroe

No one appearing on behalf of the Respondent/Registrant

1. On March 1, 2017 the College of Registered Psychiatric Nurses of British Columbia, (the "College"), issued a citation under section 37 of the *Health Professions Act*, (the "Act"), alleging professional misconduct against Kimberly Hurlston, the Respondent/Registrant, ("Ms. Hurlston"). The citation and a schedule particularising the allegations against Ms. Hurlston are set out in a document comprising five pages titled AMENDED NOTICE OF HEARING, (the "Notice").
2. At 9:30 a.m. on June 6, 2017, this panel of the Discipline Committee, established by the College, commenced a hearing of the citation pursuant to section 38 of the Act.

3. Ms. Hurlston first registered with the College on November 20, 2009. She failed to renew her registration on February 28, 2014 and her status as of the date of the hearing is that of a Ceased member in the Inactive category.
4. The Notice and accompanying letter dated March 1, 2017, signed by Susan Rutherford, Regulatory Counsel and Deputy Registrar of the College, were served on Ms. Hurlston personally on March 5, 2017, at Prince George, British Columbia. We were provided with an Affidavit of Service sworn on March 6, 2017, in confirmation.
5. Both the Notice and the letter from Ms. Rutherford set out the time, date and place of the scheduled hearing and advised Ms. Hurlston that if she failed to attend the panel could proceed with the hearing in her absence. In the letter Ms. Rutherford wrote: 'As we have previously done, we encourage you to enlist the assistance of a legal or union representative to assist you in this matter.'
6. The foundations of the allegations set out in the citation were brought to the attention of the College by KW by letter dated February, 19, 2014, (the "Complaint"). The complaint alleges improper conduct on the part of Ms. Hurlston dating from 2011 and 2012.
7. Prior to the hearing counsel for the College applied pursuant to section 38 (3) of the Act to hold the hearing or part of it in private, contrary to the usual requirement of a public hearing. Counsel indicated that the evidence would involve matters of a personal nature relating to interactions between KW and Ms. Hurlston, and also deal with sensitive medical and core biographical matters of KW. This panel agreed that it would be appropriate in the circumstances to exclude the public from the hearing room whenever necessary to protect the privacy of KW and not to identify him in any written reasons.
8. The College provided the complaint to Ms. Hurlston in late February 2014. Ms. Hurlston responded by letter dated December 21, 2014. In essence, she denied all of the facts alleged in the complaint. Ms. Hurlston provided a further response to the complaint by letter dated March 31, 2016.
9. We were provided with a second Affidavit of Service which was sworn on May 30, 2017. The same process server who served the Notice attempted to connect with Ms. Hurlston in order to serve her with the Book of Documents which the College intended to rely on at the hearing, along with a brief outline of the evidence which counsel expected KW and Ms. Rutherford would give. The process server left a voice message for Ms. Hurlston asking her to call back. She also sent several text messages explaining that she had documents to deliver and asking when they might meet. Ms. Hurlston responded once by text asking how late the process server would be available, but did not respond further. The materials were left in Ms. Hurlston's mailbox at [REDACTED] [REDACTED] British Columbia. We conclude that Ms. Hurlston was not inclined to engage in a meaningful way with the process.
10. As noted above in paragraph 2, the hearing convened at 9:30 a.m. on June 6, 2017, at the offices of Charest Reporting Inc., #1650 – 885 West Georgia Street, Vancouver British Columbia, which is the time, date and place set out in the Notice and the letter from Ms. Rutherford referred to in paragraphs 4 and 5 above. On learning Ms. Hurlston was absent, the panel agreed to wait for 30 minutes to allow time for her to appear. We asked counsel to try and contact her by telephone. At approximately 10:10 a.m. we reconvened and learned that counsel had called the telephone number for Ms. Hurlston (250 552 5017), but both calls went to voicemail. Counsel did not leave a message.

11. Counsel applied to proceed in the absence of Ms. Hurlston. The panel was satisfied that proof Ms. Hurlston had received the citation was in evidence. We decided to exercise our discretion to proceed with the hearing in the absence of Ms. Hurlston in accordance with the authority provided under section 38 (5) of the Act. The Chair gave oral reasons on the record.
12. Our decision to proceed in this manner was underscored by the notion that in order for a self-regulating professional body like the College to meet its duty to serve and protect the public and to uphold the public interest, as required under section 16 (1) of the Act, it is essential that members and registrants cooperate with the College in achieving that goal. In the present case, although Ms. Hurlston is taken to know the seriousness of the allegations and the possible consequences of an adverse finding against her, she took no steps to explain her absence, nor did she give any indication of her intentions regarding attendance. The panel also took into consideration the length of time that has elapsed since the conduct giving rise to the complaint is alleged to have taken place, and we determined that the public interest would be best served by proceeding expeditiously.

Reasons written by Tim Holmes with the concurrence of David Reid and Gavin Wallace