IN THE MATTER OF: **The Regulated Health Professions Act S.M. 2009 c. 15**

AND IN THE MATTER OF: **An inquiry hearing into the conduct of Shannon Hancock, CRNM #135095-092**

DECISION RE: PENALTY AND COSTS

Important note regarding redactions in this document:

In compliance with s. 129(2) of the *Regulated Health Professions Act*, the College of Registered Nurses of Manitoba may edit the decision or order. In compliance with Council Policy GP-11 and the *Regulated Health Professions Act*, the College redacted the names of individuals not directly involved in the hearing. Other information is redacted to maintain the privacy of the Member's personal information.

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AND IN THE MATTER OF: **An Inquiry Hearing into the Conduct of Shannon Hancock, CRNM #135095-092**

DECISION RE: PENALTY AND COSTS

Inquiry Panel Members: Sandy Forrest, RN – Panel Chair

Michelle Prange, RN

Michele Groff, Former Registrant

Joanna Knowlton, Public Representative

Patricia Conroy, Public Representative

Counsel to the Member: Dustin Klaudt
Klaudt Law

Counsel to the Investigation Committee: Bernice Bowley
Fillmore Riley LLP

Counsel to the Panel: Susan B. Barber, Q.C.
McDougall Gauley LLP

Introduction

1. On October 1, 2020, April 28, 2021 and April 29, 2021 a panel of the inquiry committee (the "**Panel**") of the College of Registered Nurses of Manitoba (the "**College**") held a hearing into charges against Shannon Hancock, a suspended member of the College (the "**Member**"), as set out in the Notice of Hearing dated August 28, 2020.

2. By a decision dated May 12, 2021 (the "**Decision**"), the Panel found the Member guilty of professional misconduct and ungovernable, for the reasons set out in the Decision.

3. The matter was scheduled for submissions in relation to penalty and costs on May 20, 2021. The Member retained counsel and, on application of counsel for the Member, the matter was adjourned to June 15, 2021. Following a further request by counsel for the Member the matter was again adjourned to July 14, 2021, when the Panel convened to hear submissions in relation to penalty and costs.

4. Counsel for the Member took the position in submissions:
   (i) that the finding against the Member of professional misconduct ought to be varied[…];
   (ii) that the finding of ungovernability should be reconsidered in light of mitigating factors;
   (iii) that no penalty should be imposed in recognition of the long duration of time already served by way of suspension;
   (iv) that there ought to be no award for costs; and
   (v) that there ought to be a publication ban, sealing or redaction order.

5. Counsel for the Complaints Investigation Committee (the "**CIC**") opposed all of the requests from counsel for the Member and asked that the Panel cancel the Member's registration and award costs in the amount of $75,000.00.

Issues

6. The issues to be determined by the Panel are the following:

   i. Should the finding against the Member that she is guilty of professional misconduct be varied and should the finding of ungovernability be reconsidered in light of mitigating factors;
   ii. What is the appropriate penalty, if any;
   iii. What is the appropriate award as to costs, if any; and
   iv. Should the Panel direct a publication ban, sealing and/or redaction order.

Decision of the Committee and Reasons

i. Should the finding against the Member that she is guilty of professional misconduct be varied and should the finding of ungovernability be reconsidered in light of mitigating factors?

7. In connection with the first issue there are two sub-issues raised in argument, being the application of *The Canadian Charter of Rights and Freedoms* (the "**Charter**") and the admissibility of Affidavit evidence submitted on behalf of the Member.

(a) Application of the Charter

8. Counsel for the Member argues that the Panel, in rendering a discretionary decision on statutory findings, remedial orders and discretionary orders, is bound to comply with the Charter and its values. In that regard, counsel argues that the significant potential consequences resulting from any penalty or costs levied against the Member to her Charter liberty and security of the person interests render a consideration of relevant principles of fundamental justice particularly important. Moreover, in assessing the Charter implications, counsel argues that particular attention should be given to

9. Counsel for the CIC argues that the Panel is only obligated to balance any Charter values at issue with the statutory objectives engaged by *The Regulated Health Professions Act,* S.M. 2009 c. 15 (the "**RHPA**"). Counsel argues that there was no specific Charter right at issue with respect to the charges of misconduct and ungovernability and no other Charter right at stake in the proceeding.

10. The Panel concludes that the Charter and associated principles are not engaged in this proceeding.

11. S. 7 of the Charter offers protection for the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

12. The Court of Queen's Bench in *Ouellette v. Law Society of Alberta* (2019) ABQB 492 (“***Ouelette***”) dealt with the claim of a member of the Law Society of Alberta who was disbarred following a disciplinary hearing. Mr. Ouellette sued the Law Society of Alberta, seeking a declaration that the disbarment decision was void. He asked for reinstatement and damages under the Charter. The Law Society sought to strike the claim.

13. In concluding that the claim ought to be struck in its entirety as disclosing no reasonable claim and as representing an abuse of process, the court addressed the allegation of a breach of, among other things, Section 7 of the Charter guaranteeing the right to life, liberty and security of the person. The court concluded that his life was not threatened and there was no threat to his liberty. In relation to the “security of the person” the court stated as follows:

> 52 In ***Kopyto v Law Society of Upper Canada***, 1993 CanLII 9433 (ON SCDC), [1993] OJ No 2550 (Ont Div Ct), the Court stated that s. 7 of the *Charter* does not guarantee a right to a particular livelihood, a professional membership nor does it relate to professional disciplinary proceedings: see also ***Mussani v College of Physicians & Surgeons (Ontario)***, 2004 CanLII 48653 (ON CA), [2004] OJ No 5176 (CA). In other words, s. 7 of the *Charter* does not guarantee economic interests in terms of the right to practice a chosen profession.

14. Although no specific rights under the Charter were referenced on behalf of the Member, the Panel finds that, as in *Ouelette, supra,* none of the rights protected by the Charter are either engaged or infringed in these proceedings. The Charter has no application, including s. 2(b) (freedom of expression), s. 7 (the right to life, liberty and security of the person), or s. 15 (equality). As in *Ouellette, supra*, these proceedings related to “truly an internal disciplinary matter.” They are not the sort of proceedings to which the Charter applies in the particular circumstances.

(b) <u>Affidavit Evidence</u>

15. Counsel for the Member filed two affidavits on behalf of the Member to provide “context” in relation to the Member's ongoing disciplinary proceedings; to provide “context” on the Member's conduct in the 2019 appeal; to provide “context” on the Member's conduct in the 2019 application; to detail a timeline of the College's purported knowledge of the Member's [redacted]; and to detail further occurrences following the May 20, 2021 hearing. The affidavit evidence, comprised of a first and second affidavit, totaled 24 pages.

16. The Panel, for the reasons that follow, has determined that the findings of professional misconduct and ungovernability stand and will not be reconsidered or varied. For that reason, it is not necessary to make any ruling on the admissibility or propriety of the affidavit evidence, though some reference will be made to the affidavit evidence in connection with penalty and costs.

(c) <u>The Issue Proper</u>

17. The RHPA provides, in s. 131(1), for an appeal of a finding of professional misconduct to the Court of Appeal. Accordingly, the appropriate action for the Member to have taken was to appeal the Decision, rather than to ask this Panel to vary its finding of professional misconduct or reconsider its finding of ungovernability, as a finding corollary to the finding of professional misconduct.

18. The Decision was final and is not subject to variation or reconsideration. Nor does the RHPA contemplate such an outcome.

19. A similar finding was made by the court in *Ouellette, supra,* where it stated as follows, at para. 73:

> 73 If disbarred lawyers, such as Mr. Ouellette were allowed to go outside of the appeal process prescribed by the *Act* before exhausting that process and instead were allowed to sue for damages in this Court on the bald faced assertion that there was fraud, malice, or bad faith amounting to an "intention to convict", that would mean the Court would be condoning a possible collateral attack should a trial judge reach a different conclusion from that of the LSA Hearing Committee (which in this case disbarred Mr. Ouellette). As pointed out by Master Robertson at paras 81 and 82, that collateral attack is an abuse of process and to allow Mr. Ouellette's Claim to go forward could lead to a different conclusion by the trial judge to that of the Hearing Committee. As stated above, the inconsistency itself would undermine the credibility of the process, thereby diminishing its authority, its credibility, and its aim of finality. Mr. Ouellette failed to appeal the 2016 decision leading to his disbarment, which means that his disbarment remains valid. That being the case, even if damages were available (which I have determined they are not), for Mr. Ouellette's Claim for damages to succeed, it must certainly involve a determination that his disbarment was improper. Clearly, in this case the appeal process under the *Act* is the proper route to make that determination; not through litigation in this Court.

20. The Supreme Court of Canada in *Chandler v. Alberta Association of Architects,* [1989] 2 S.C.R. 848 addressed the notion of finality in relation to administrative proceedings. At issue was whether the Practice Review Board of the Alberta Association of Architects was *functus officio* after delivering a report on the practices leading to the bankruptcy of the Chandler Kennedy Architectural Group. As was the case in relation to this matter, the applicable legislation in that case did not purport to confer on the board the power to rescind, vary, amend or reconsider a final decision.

21. The majority stated as follows at para. 76 in relation to the notion of *functus officio*:

> … there is a sound policy reason for recognizing the finality of proceedings before administrative tribunals. As a general rule, once such a tribunal has reached a final decision in respect to the matter that is before it in accordance with its enabling statute, that decision cannot be revisited because the tribunal has changed its mind, made an error within jurisdiction or because there has been a change of circumstances. It can only do so if authorized by statute or if there has been a slip or error within the exceptions enunciated in *Paper Machinery Ltd. v. J. O. Ross Engineering Corp*., *supra*.

22. The "exceptions" noted by the court related to cases where there was a slip in drawing up the judgment or decision, or where there was an error in expressing the manifest intention of the court.

23. In this case neither of the exceptions apply. There was no slip in drawing up the Decision and no error in expressing the Panel's manifest intention.

24. Although the Panel has the ability to hear and consider submissions in relation to penalty and costs, the evidence in the affidavits filed on behalf of the Member and the arguments on her behalf were tantamount to a collateral attack on the Decision which, as noted in *Ouellette, supra,* is not appropriate.

25. The same sentiment was expressed in *Attallah v. College of Physicians and Surgeons of Ontario* (2021) ONSC 3722 (CanLII).

26. In that case, Dr. Attallah was found guilty of professional misconduct by the Discipline Committee of the College of Physicians and Surgeons of Ontario and his certificate of registration to practice medicine was revoked. The decision followed a seven-day hearing in which Dr. Attallah did not testify or call any evidence in his defence. Dr. Attallah did offer evidence at the penalty hearing and purported to introduce evidence that related to the merits of the misconduct allegations.

27. On appeal the court noted the following with respect to the Discipline Committee's decision about Dr. Attallah's testimony:

> The Committee did not prevent the Appellant from testifying at his penalty hearing but did refuse to admit evidence that it determined could only serve as a collateral attack on its liability decision. It did not err in doing so. Where defence counsel in a professional discipline matter opts for the tactical advantage of not calling the respondent at the merits hearing, the respondent could not subsequently be permitted to testify during the penalty phase in an effort to rebut the core evidence heard by the panel during the liability phase. This would be a fundamental abuse of the principle of finality and of "time-honoured and accepted" trial and sentencing procedures: *R. v. Braun*, 1995 CanLII 16075 (MBCA), at p. 451.

28. In this case the Member chose not to testify at the initial hearing. After appearing for a brief period on the first day, she left the hearing and did not present herself again before the Panel, even though she was aware of the further dates and was aware that the Panel would proceed without her. She cannot now purport to introduce evidence by way of affidavit that serves to challenge the Decision.

29. In the result, the Decision will not be varied or reconsidered.

ii. What is the appropriate penalty, if any?

30. Counsel for the Member argues, given that there has effectively been a 20-month suspension of the Member's registration, that the Panel should find that an appropriate penalty is one for "time served" or, alternatively, the Panel should impose, at most, a four month suspension, less the time actually suspended before the Member's registration expired.

31. The arguments in support of the Member's position include the following:

- Where a finding of ungovernability is not supported on the evidence, a cancellation of a member's certificate of practice or registration is not an appropriate penalty;

- Where there is threshold evidence that [redacted] may have impacted the Member's actions that are alleged to be misconduct or a violation of statutory or prescribed nursing obligations, a more appropriate penalty is a suspension pending satisfaction of a reviewing person or committee [redacted] or, alternatively, the ordering of a further investigation specifically on the point of [redacted], followed by additional submissions.

- Although previous orders regarding past misconduct by the Member can be considered, those orders related to distinctive misconduct (i.e. entering a therapeutic relationship with a relative) from the alleged misconduct found here in relation to failure to disclose

[requested information]. Moreover, the previous misconduct orders are still under appeal and may change.

- There is no indication of dishonesty, which is a hallmark feature of cases where ungovernability has warranted a cancellation order. The absence of dishonesty is a factor that strongly militates against cancellation of registration.

- A strong mitigating factor in favour of the Member is [redacted] and how it has potentially influenced her conduct in her interactions with the College.

- The Discipline Committee, in its decision dated July 29, 2019 in the prior disciplinary proceedings involving the Member, noted the absence of harm or the intention of harm to others as a mitigating factor which also exists here. Moreover, given that the Member [redacted] it is notable that there was no inquiry made into the scope of her interaction with the public in the performance of her work duties in order to assess any particular risk.

- Although the Panel found that the Member engaged in accusations of bias that were frivolous, there was no finding of conduct unbecoming. Moreover, the Member's criticisms of potential human rights violations and retaliation in relation to her previous human rights complaint remain to be adjudicated and ought not to be taken into consideration when they are still under review.

- Even if some sanction is warranted, the extreme penalty of permanent cancellation of registration is neither supported by the case law nor consistent with the Charter implications in this matter.

- The animating principle of progressive discipline articulated in other cases suggests that, prior to cancellation of registration, a suspension of a lesser period should first be issued.

- The Member's [redacted], and her approach in seeking a [redacted] more in line with her privacy and equality rights, warrant that no fixed date suspension should be issued but, rather, a further investigation or suspension conditional on completion of [redacted] should be considered.

32. Counsel for the CIC argues that the appropriate penalty is cancellation of the Member's certificate of practice, based on the following considerations:

- The findings of misconduct are in and of themselves of a severity that supports cancellation of the Member's certificate of practice.

- A further significant factor is the conclusion that the Member is ungovernable. The presumptive penalty for a finding of ungovernability is cancellation of the member's registration because the fundamental principle of protection of the public cannot be assured where a member refuses to accept the authority of their governing body.

- Because the Member chose not to attend the latter parts of the hearing there is no evidence before the Panel as to any mitigating factors.

- The Member's previous misconduct is not yet under appeal, as no leave application has been filed to the Supreme Court of Canada. The Panel is, accordingly, entitled to rely on the previous finding, regardless of any expressed intention to appeal or even an actual appeal.

- A finding of dishonesty is not a requirement for ungovernability.

- The Member's offer to [redacted] is not meaningful and has no impact on the issues to be determined by the Panel. Moreover, the fact remains that the Member has continued to refuse to disclose the [information] initially requested by the College.

- There is no link in the selective [redacted] provided by the Member between her [redacted] and her antagonism and conduct towards the College and its personnel.

33. The Panel has broad powers under s. 126(1) of the RHPA based on its conclusion in the Decision that the Member is guilty of professional misconduct and ungovernable. Under s. 126(1) of the RHPA the Panel may make an order doing one or more of the following:

> (a) reprimanding the investigated member;
>
> (b) suspending the investigated member's registration or certificate of practice for a stated period;
>
> (c) suspending or restricting the investigated member's registration or certificate of practice until he or she
>
> > (i) has completed a specified course of studies,
> > (ii) has completed supervised practical experience under a restricted certificate of practice issued for that purpose, or
> > (iii) has complied with the requirements of both subclauses (i) and (ii),
>
> to the satisfaction of a person or committee specified by the panel;
>
> (d) suspending the investigated member's registration or certificate of practice until he or she satisfies a person or committee specified by the panel that the ailment, emotional disturbance or addiction no longer impairs his or her ability to practice the regulated health profession;
>
> (e) accepting, in place of a suspension under clause (b), (c) or (d), the investigated member's undertaking to limit his or her practice;
>
> (f) imposing conditions on the investigated member's right to practice a regulated health profession, including conditions that he or she
>
> > (i) limit his or her practice,
> > (ii) practice under supervision,
> > (iii) permit periodic inspections or audits of his or her practice, including inspections or audits of practice records,
> > (iv) report on specified matters to a person or committee specified by the panel,

(v) not engage in sole practice;

(g) requiring the investigated member to take counselling or receive treatment;

(h) directing the investigated member to repay money that was paid to him or her where payment was, in the panel's opinion, unjustified for any reason;

(i) cancelling the investigated member's registration or certificate of practice.

34. The Panel has carefully considered the arguments put forth on behalf of both parties and the breadth of sanctions it can impose pursuant to s. 126(1) of the RHPA. In the circumstances of this case the Panel concludes that the appropriate penalty is cancellation of the Member's registration or certificate of practice.

35. In the Decision the Panel concluded that the Member's refusal to comply with the provisions of the RHPA and of the obligations imposed on her under the College's mandate was unrelenting and stubborn. She maintained her position of defiance against the College's repeated, legitimate requests for information for a period of approximately 10 months. She demonstrated her steadfast refusal to be governed by the College based on her conduct from and after August 15, 2019. The Panel also noted her history and repeated pattern of responding inappropriately to legitimate requests by the body that is statutorily authorized to regulate her. Although the allegation against her in the prior proceedings that remain under appeal may have been in relation to entering a therapeutic relationship with a relative, many of the findings in that matter relate to similar conduct displayed by the Member that gave rise to the charges in this matter.

36. As noted by James T. Casey in *Regulation of Professions in Canada* (Thomson Reuters Canada: Toronto, 2019) at para 14.2:

> Given that the primary purpose of the legislation governing professionals is the protection of the public, it follows that the fundamental purpose of sentencing for professional misconduct is also to ensure that the public interest is protected from acts of professional misconduct.

37. The factors noted by James Casey in determining how the public might best be protected include the following:

- Specific deterrence of the member from engaging in further misconduct;
- General deterrence of other members of the profession;
- Rehabilitation of the offender;
- Punishment of the offender;
- Isolation of the offender;
- The denunciation by society of the conduct;
- The need to maintain the public's confidence in the integrity of a profession's ability to properly supervise the conduct of its members; and
- Ensuring that the penalty imposed is not disparate with penalties imposed in other cases.

38. Consideration of the relevant factors in these circumstances, without placing undue emphasis on punishment and denunciation, supports revocation of the Member's certificate of practice. The Panel, in assessing the appropriate penalty is mindful of the need to maintain the confidence of the public in the integrity of the ability of the College to properly supervise the conduct of its members. In this case, particularly in light of the Member's unrelenting refusal to cooperate in response to a legitimate request from the regulator, the penalty is warranted.

39. Moreover, the case authorities support the Panel's conclusion.

40. In the reasons for decision on penalty in *The Law Society of Upper Canada v. Junior Osas Ebagua*, 2012 ONLSHP 0123, the law society hearing panel described the misconduct found in the case as repeated failure to co-operate with Law Society investigations by failing to provide timely substantive responses and by failing to produce books and records that are required to be kept. It described the further misconduct as analogous, being a failure to report charges laid against him. The panel labelled the further misconduct as analogous because it represented a failure to enable the regulator to effectively supervise his professional conduct.

41. The panel considered Mr. Ebagua's discipline history and lack of governability. The panel also noted that (i) Mr. Ebagua did not provide any character evidence; (ii) there was no evidence of any remorse on his part; (iii) there was no evidence that Mr. Ebagua recognized or understood the seriousness of his misconduct; (iv) there was no evidence of any willingness on the part of Mr. Ebagua to be governed by the Society; and (v) there was no evidence of remedial efforts to mitigate the risk of future misconduct, all of which suggested the pattern of misconduct would continue in the future.

42. In the result, the panel concluded, in the face of a finding of ungovernability, that the presumptive penalty of revocation would apply.

43. In the Decision the Panel specifically commented that the similarities between the conduct of Mr. Ebagua and the Member were striking, noting as follows at para. 37:

> 37 … Like Mr. Ebagua, the Member has repeatedly failed to respond to appropriate inquiries from her regulator and, through her communications, has showed no remorse and no understanding of the obligations on her or of the effect of her misconduct on the public and others.

44. In *College of Physicians and Surgeons of Saskatchewan v. Ali* (2016) SKQB 42, Dr. Ali was found guilty of conduct unbecoming a medical practitioner and his registration privileges were revoked. He appealed the decision to the Court of Queen's Bench. The court dismissed the appeal. In doing so the court considered the notion of ungovernability and potential penalties and stated as follows at para. 75:

> 75 As a matter of general principle, it cannot be said that if a self-governing body found one of its members as a consequence of the member's conduct to be ungovernable, that revocation of a license would not be a consequence to be considered. The protection of the public is sure to be in jeopardy if a member of a self-regulating profession is not willing to be governed.

45. In *Kuny v. College of Registered Nurses of Manitoba* (2018) MBCA 21, Mr. Kuny, a Registered Nurse, appealed the decision of a panel of the discipline committee of the College which found him guilty of professional misconduct and conduct unbecoming a member and concluded further that he was ungovernable. The panel ordered that his registration be cancelled.

46. The Manitoba Court of Appeal confirmed the panel's finding of ungovernability and revocation of the member's license. The court endorsed the notion articulated by James Casey in *The Regulation of Professions in Canada, supra*, that the fundamental purpose of sentencing for professional misconduct is to ensure that the public is protected. The court noted the finding by the discipline committee that, through his conduct, the member had refused to accept the authority of or take direction from his governing body.

47. In *Ahluwalia v. College of Physicians and Surgeons of Manitoba* (2017) MBCA 15 Dr. Ahluwalia, who had been found guilty of professional misconduct and unfitness to practice medicine, appealed the cancellation of his registration and revocation of his license to practice medicine. On appeal Dr. Ahluwalia asserted that there were no patients harmed and no one complained and, further, that the decision makers ought to have given appropriate weight to the fact that he entered guilty pleas to certain of the charges; that he indicated his willingness to comply with technological requirements; and that he offered his apology for his actions. He argued that cancellation of a license to practice medicine should be reserved for only the most serious cases.

48. Although the Court of Appeal specifically recognized that the penalty of cancelling a physician's license to practice medicine is significant, it nonetheless concluded that a finding of ungovernability justified cancellation of his license.

49. In this case the Member did not appear to give evidence in relation to penalty. The only information offered was in the form of affidavit evidence that was not subject to cross-examination. Although the Panel has considered the evidence, none of it moves the Panel from its conclusion that the Member has displayed lack of insight; that she has repeatedly deflected responsibility for her actions; that she responds to allegations against her by discrediting members of the health care team; and that she characterized reasonable efforts by the CIC, the CIC's legal counsel, the investigator, and Professional Conduct staff as being retaliatory, vindictive, lacking in humanity and aimed at personally punishing her. The Panel has little confidence, based on the Member's conduct and her history, that she will be prepared in the future to accept the authority of the governing body.

50. In the result, in light of the findings in the Decision and the relevant case authorities, the Panel concludes that revocation of the Member's certificate to practice nursing is the appropriate penalty in this case.

iii. What is the appropriate award as to costs, if any?

51. The Panel's discretion to award costs, and the nature and extent of costs that can be awarded, are set out in ss. 127(1) and (2) of the RHPA, which provides as follows:

127(1) In addition to or instead of dealing with the investigated member's conduct under section 126, the panel may order the member to pay to the college, within the time period set in the order,

(a) all or part of the costs of the investigation, hearing and appeal;

(b) a fine not exceeding

(i) the amount that is set out in the column of the table of professional misconduct fines in Schedule 1 that is specified for the college, by regulation, for each finding of professional misconduct, or

(ii) the aggregate amount set out in that column for all of the findings arising out of the hearing; or

(c) both the costs under clause (a) and the fine under clause (b).

127(2) The costs referred to in subsection (1) may include, but are not limited to,

(a) all disbursements incurred by the college, including

(i) fees and reasonable expenses for experts, investigators and auditors whose reports or attendance were reasonably necessary for the investigation or hearing,

(ii) fees, travel costs and reasonable expenses of witnesses required to appear at the hearing,

(iii) fees for retaining a reporter and preparing transcripts of the proceedings, and

(iv) costs for serving documents, long distance telephone and facsimile charges, courier delivery charges and similar miscellaneous expenses;

(b) payment of remuneration and reasonable expenses to members of the panel or the complaints investigation committee; and

(c) costs incurred by the college in providing counsel for the college and the panel, whether or not counsel is employed by the college.

52. Counsel for the Member argues that if any costs award is appropriate, it should be in an amount between $5,000 and $10,000, which is equivalent to an estimate of the cost to obtain [new information], as offered by the Member as early as December, 2019. Arguments on behalf of the Member in support of her position include:

- An award of costs should be controlled by principles of proportionality in relation to the gravity of the conduct and degree of responsibility of the offender and should display parity with other costs awards issued by the College or similar regulators.

- The requested $75,000.00 is fundamentally disproportionate to the nature of conduct alleged to be improper by the Member and fails to account for the mitigating factor of her diminished degree of responsibility due to her [redacted] and her self represented status previously in the proceedings. In the College's disciplinary decision from July, 2019, an award of costs in the amount of $15,000.00 was made in the face of a request for $75,000.00 in costs (based on a claim that costs exceeded $250,000.00). Many of the same mitigating factors are present.

- Substantive costs would have been greatly reduced if the College had accepted the Member's offer of [obtaining new information] in December, 2019.

- The Member has incurred significant legal costs, estimated at around $12,000.00.

- An award of costs would have a potential chilling effect on nurses raising legitimate arguments on matters to the discipline committee, particularly on the basis that the Member resisted disclosure of certain [information] at least partially on the basis that it offended her charter and statutory rights and her privacy rights over her [redacted] [redacted]. A costs remedy is not to serve as a penalty and there is no statutory basis for punitive costs in the RHPA.

- There was no direct finding of incivility or conduct unbecoming in the Decision.

- The high watermark for costs set by the College is $30,000.00 (in *Kuny*). Other cases have awarded significantly less in costs.

- The rough estimate of $150,000.00 provided by the CIC is not sufficiently particularized to evidence the actual costs.

53. Counsel for the CIC asks for a costs order in the amount of $75,000.00, in the face of costs totalling $212,111.00 by the time the matter ultimately came before the Panel for determination. That assessment apparently does not include expenses for such items as transcription fees, other disbursements and internal expenses. Counsel's arguments include the following:

- An award of costs is in the full discretion of the Panel.

- In professional discipline cases the purpose of costs is not to indemnify the opposing party but for the sanctioned member to bear the costs of disciplinary proceedings as part of the burden of being a member, rather than to have those costs visited on the membership as a whole.

- The collective membership ought not to be responsible for the costs that resulted from the Member's frivolous and vexatious arguments as to the fairness of the proceedings, which caused delay and added expense. Further, the collective membership ought not to be responsible for costs arising from the very ungovernability of the Member.

- The Member, consistent with her refusal to be governed, has engaged in incivility, which raises her exposure to costs. That incivility is part and parcel of her ungovernability.

54. In connection with the provisions of the RHPA, the College has issued a policy (GP-10) which outlines the procedure in relation to cost orders (the "**Policy**"). The Policy outlines the nature of costs that may be awarded, all of which is consistent with the RHPA. It also includes a recognition that each particular costs award must be determined by the facts particular to the case and lists a number of considerations that may be taken into account when an award of costs is made, as follows:

(a) The circumstances of the act of professional misconduct, contravention of the act, incapacity or unfitness to practice, conduct unbecoming, etc. being investigated, prosecuted or appealed;

(b) Discipline history of the registrant including previous cost orders issued to the registrant;

(c) Cost orders given in similar cases;

(d) The manner in which the registrant conducted himself or herself in the investigation, appeal and/or the conduct of the defense before the discipline panel (i.e., did the manner in which the registrant conducted himself/herself result in unnecessarily inflated costs? Similarly, has expense been saved as a result of the registrant's approach?)

(e) The consequence of the cost ordered upon the registrant;

(f) The amount of costs incurred by the College in the course of the investigation, appeal or prosecution;

(g) The degree of success, if any, of the registrant in resisting any or all of the charges.

55. The Panel has considered the Affidavit evidence submitted on behalf of the Member which speaks to, among other things, the Member's suggestion that her conduct can be explained by her ████████ ██████████. She further deposes to the fact that she has incurred significant legal costs, estimated at around $12,000.00.

56. Considering all of the circumstances and the relevant factors taken into consideration in making a discretionary award of costs, the Panel concludes that the Member's ████████████████████ are not a complete defence for her conduct in these proceedings. The Member's intolerance and indifference to the College's authority protracted the entire process, contributing to increased costs overall. It is not appropriate that those costs, in their entirety, ought to be visited on the membership of the College. The Member, in light of the finding against her, should bear some responsibility.

57. In making an award as to costs the Panel has considered the mitigating factors, including the following:

- The Member's ████████████
- The legal costs incurred by the Member in the proceedings;
- The impact of a costs order on the Member;
- The potential chilling effect within the profession of a more substantial order of costs.

58. The Panel has not particularly considered the suggestion that the Member's alleged incivility merits an increased costs award. Although the Panel agrees that the Member's conduct throughout the proceedings lacked civility, that determination is subsumed within the general conclusion that the Member is ungovernable and does not warrant separate consideration.

In all of the circumstances, the Panel orders that the Member pay $40,000.00 in costs, within 2 years of the date of this decision.

iv. Should the Panel direct a publication ban, sealing and/or redaction order?

59. Under s. 129(3) of the RHPA, the Panel has the discretion to order a publication ban, sealing or redaction order, but only where it has found that a member is suffering from an ailment, emotional disturbance or addiction that impairs her ability to practice. Given the conclusion in this case that the Decision will not be reconsidered or varied, no such order can or will be made under the RHPA.

60. In addition, assuming it has any discretionary power to make such an order in any event, the Panel declines to do so.

DATED at Winnipeg, Manitoba, the 2nd day of September, 2021.