IN THE MATTER OF THE BRITISH COLUMBIA COLLEGE OF NURSES AND MIDWIVES

AND A CITATION ISSUED UNDER THE *HEALTH PROFESSIONS ACT*

R.S.B.C. 1996, c. 183

BETWEEN

THE BRITISH COLUMBIA COLLEGE OF NURSES AND MIDWIVES

(the College or BCCNM)

AND

AMY HAMM

(the Respondent)

COLLEGE – SUBMISSIONS ON PENALTY AND COSTS

INTRODUCTION

1. On March 13, 2025, this panel of the Discipline Committee of the British Columbia College of Nurses and Midwives (the Panel) issued it's Reasons For Decision On Verdict (the Decision) following a hearing conducted by videoconference on September 21 to 23, October 24 to 27, 2022; January 10 to 12, 2023; October 23 to 25, October 31 to November 3, November 6 to 8, 2023; and March 18 and 19, 2024.

2. The Panel found that the College had established the sole allegation set out in the revised Citation dated June 22, 2022, namely that the Respondent had made discriminatory and derogatory statements regarding transgender people, while identifying as a nurse or nurse educator, across various online platforms.

3. The Panel determined that the Respondent engaged in unprofessional conduct in respect of certain of those statements.

4. These are BCCNM's submissions with respect to the penalty and costs that the Panel should order against the Respondent pursuant to s. 39 of the *Health Professions Act* (the Act). BCCNM seeks the following orders:

(a) The Respondent is suspended for a period of three months; and

(b) The Respondent pay costs to BCCNM in the amount of $163,053.

APPICABLE LAW

Legislation

5. The Panel's authority to impose sanctions is set out in s. 39 of the Act. The key portions of that section provide as follows:

> 39 (1) On completion of a hearing, the discipline committee may, by order, dismiss the matter or determine that the respondent
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> (a) has not complied with this Act, a regulation or a bylaw,
> (b) has not complied with a standard, limit or condition imposed under this Act,
> (c) has committed professional misconduct or unprofessional conduct,
> (d) has incompetently practised the designated health profession, or
> (e) suffers from a physical or mental ailment, an emotional disturbance or an addiction to alcohol or drugs that impairs their ability to practise the designated health profession.
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> (2) If a determination is made under subsection (1), the discipline committee may, by order, do one or more of the following:
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> (a) reprimand the respondent;
> (b) impose limits or conditions on the respondent's practice of the designated health profession;
> (c) suspend the respondent's registration;
> (d) subject to the bylaws, impose limits or conditions on the management of the respondent's practice during the suspension;
> (e) cancel the respondent's registration;
> (f) fine the respondent in an amount not exceeding the maximum fine established under section 19 (1) (w).
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> (3) An order of the discipline committee under this section must
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> (a) be in writing,
> (b) include reasons for the order,

(c) be delivered to the respondent and to the complainant, if any, within 30 days after the date the order is made, and

(d) advise the registrant of the registrant's right to appeal the order to the Supreme Court.

…

(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.

…

Common Law Principles

6. The imposition of penalty and costs are at the Panel's discretion. The Panel must assess the question of penalty and costs based upon its findings from the hearing and considering all the relevant circumstances, including any aggravating or mitigating factors.

7. The purpose of a disciplinary penalty is to protect the public from unprofessional conduct, furthering the College's core public protection mandate. The Panel will want to craft a penalty to specifically deter the Respondent from engaging in further future acts of unprofessional conduct, as well as to deter other registrants from similar conduct. Disciplinary sanctions also communicate to the profession and to the public the degree of professionalism expected of registrants and the consequences for failing to adhere to that expected professionalism. All these measures promote public confidence in the College as a regulator and the nursing profession in general.

8. The relevant factors to consider in determining an appropriate penalty were set out in *Law Society of British Columbia v. Ogilvie*, [1999] LSBC 17 [*Ogilvie*] at paragraph 10 of the Penalty section:

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 of the proposed penalty on the respondent;

j. The need for specific and general deterrence;

k. The need to ensure the public's confidence in the integrity of the profession; and

l. The range of penalties imposed in similar cases.

9. In *Law Society of British Columbia v. Dent,* 2016 LSBC 5 [*Dent*], a hearing panel suggested a consolidation of the above list noting that not all the *Ogilvie* factors are engaged in every case:

> **Nature, gravity and consequences of conduct**
>
> [20] This would cover the nature of the professional misconduct. Was it severe? Here are some of the aspects of severity: for how long and how many times did the misconduct occur? How did the conduct affect the victim? Did the lawyer obtain any financial gain from the misconduct? What were the consequences for the lawyer? Were there civil or criminal proceedings resulting from the conduct?
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> **Character and professional conduct record of the respondent**
>
> [21] What is the age and experience of the respondent? What is the reputation of the respondent in the community in general and among his fellow lawyers? What is contained in the professional conduct record?
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> **Acknowledgement of the misconduct and remedial action**
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> [22] Does the respondent admit his or her misconduct? What steps, if any, has the respondent taken to prevent a reoccurrence? Did the respondent take any remedial action to correct the specific misconduct? Generally, can the respondent be rehabilitated? Are there other mitigating circumstances, such as mental health or addiction, and are they being dealt with by the respondent?

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

> [23] Is there sufficient specific or general deterrent value in the proposed disciplinary action? Generally, will the public have confidence that the proposed disciplinary action is sufficient to maintain the integrity of the legal profession? Specifically, will the public have confidence in the proposed disciplinary action compared to similar cases?

10. The *Ogilvie / Dent* factors have been cited with approval and applied by many health profession regulators in British Columbia, including in the recent BCCNM discipline cases of *Parniak, Byelkova*, *Christie*, and *Fung*.

SUBMISSIONS ON PENALTY

11. The College has largely organized its submissions in accordance with the categories in *Dent*, though we begin our submissions with a reminder of the responsibilities that attach to being a regulated professional.

Responsibilities as a Regulated Professional

12. Becoming a member of a regulated profession brings with it privileges, and with those privileges come responsibilities arising from the position of "trust and influence" that professional designation carries. This was articulated by the Supreme Court of Canada in *Ross v. New Brunswick School District No. 15*, 1996 SCC 237 which concerned a teacher who had publicly made discriminatory statements while off duty:

> 44 … I find the following passage from the British Columbia Court of Appeal's decision in *Abbotsford School District 34 Board of School Trustees v. Shewan* (1987), 1987 CanLII 159 (BCCA), 21 B.C.L.R. (2d) 93, at p. 97, equally relevant in this regard:
>
> > The reason why off-the-job conduct may amount to misconduct is that a teacher holds a position of trust, confidence and responsibility. If he or she acts in an improper way, on or off the job, there may be a loss of public confidence in the teacher and in the public school system, a loss of respect by students for the teacher involved, and other teachers generally, and there may be controversy within the school and within the community which disrupts the proper carrying on of the educational system.

> 45 It is on the basis of the position of trust and influence that we hold the teacher to high standards both on and off duty, and it is an erosion of these standards that may lead to a loss in the community of confidence in the public school system…

13. And as stated in *Strom v. Saskatchewan Registered Nurses' Association,* 2020 SKCA 112:

> [165] Becoming a member of a regulated profession comes with benefits but at a cost. Those who sign up as doctors, nurses, lawyers, engineers, or any other of the regulated professions that crowd the statute books choose to subject themselves to the requirements, rules and processes imposed by legislation, to applicable codes of conduct and professional standards, and to the authority of the regulator…

14. The Panel acknowledged this in the first part of paragraph 176 of the Decision:

> The Panel finds that nurses, as integral members of the health care system, hold a trusted status in Canadian society – a fact which the Respondent herself acknowledged. Based on the evidence of Dr. Saewyc, the Panel accepts that one of the core ethical responsibilities that nurses have under the CNA *Code of Ethics* is to work toward adhering to the values in the *Code* at all times for persons receiving care regardless of attributes such as age, race, gender, gender identity, and gender expression and to uphold the dignity of and respect for each person. The Panel accepts that public statements and opinions expressed by nurses may be influential in shaping public opinions and perceptions regarding the delivery of health care and our health care system.

Nature, Gravity and Consequences of Conduct

15. The Respondent's statements found to have constituted unprofessional conduct were directed towards transgender people. To properly assess the gravity and consequences of that conduct it is necessary to first understand the nature of the targeted population. As the Panel found in the Decision at paragraph 172:

> Whatever the pathways to gender dysphoria are, the evidence is beyond clear that transgender people are a highly vulnerable and marginalized group that has been subjected to a long history of discrimination and exclusion from society…

16. As the Panel noted in paragraph 235 of the Decision:

> … the Respondent's off-duty statements are squarely directed at members of a vulnerable and marginalized group in our society…

17. Turning to the later part of paragraph 176 of the Decision, the Panel makes clear the gravity and consequences of the Respondent's conduct:

> When nurses make statements denying the identity or existence of transgender persons, or discount or denigrate their experiences, there is a risk that members of that highly vulnerable community will assume those views are shared by at least some portion of the profession at large, further reinforcing concerns they will not receive proper treatment and/or discourage them from seeking health care. This cannot be reconciled with the fact that non-discrimination is a core value in our health care system generally and specifically in the nursing profession.

18. Further findings from the Decision as to the nature, gravity and consequences of the conduct include:

> 216. The Respondent used a variety of writing styles in her advocacy including sarcasm, mockery, insults, and hyperbole. The tone and content of many of the Respondent's statements are denigrating and insulting to transgender people. The Respondent's claim that trans activists are determined to "infiltrate and destroy women-only spaces" was clearly designed to sound the alarm that they pose a significant threat to women. The Respondent's claims that there is no ability for a person to become a woman if one is not born as a female, that "babies can be 'born in the wrong body" is a falsehood, that everyone "who believes in wrong bodies or innate genders" would "rather devastate a child", that a gender soul does not exist, and that gender identity ideology is akin to a Satanic Panic craze effectively deny the existence of transgender women and promote the type of erasure that Dr. Bauer described in her evidence.
>
> 217. The tone and content of the Respondent's statements also appeared to be designed to elicit outrage and condemnation of the transgender community. The controversial nature of the J.K. Rowling billboard prompted two members of the public to file complaints with the College. The Respondent acknowledged that her statements were intended to generate controversy to attract public attention…

19. *Dent* indicates that when considering this aspect of misconduct, a factor is "how many times did the misconduct occur". From the Decision at paragraph 221:

> … It is clear on the evidence that the Respondent repeatedly posted statements online that were critical of the transgender community while linking them to her professional status…

20. The College submits that a relevant factor to be considered here is the scope or reach of the misconduct which in this case was intentionally as wide reaching as possible. From the Decision:

> 241 … the Respondent went to considerable lengths to disseminate her views as broadly as possible. The Respondent joined online communities specifically to engage in discussions about gender issues; she acknowledged that she engaged in most of her advocacy work by writing on Twitter and various online publications. The Respondent also acknowledged that she used Twitter because it enabled her to share her views with a larger audience.
>
> 242. Similarly, the Respondent acknowledged that the location of the "I heart JK Rowling" billboard was specifically chosen because it was a high traffic area designed to garner significant attention. In one of her YouTube interviews, the Respondent explained that she and Mr. Elston also posted photos of the billboard and shared them on Twitter which was when "the outrage started". The Respondent stated during the interview that the billboard "had the intended effect, because look at all the conversation that's going on". She testified that she received more than 15,000 Facebook comments in response to the billboard. The Respondent's actions in organizing the billboard, posting photographs of it on Twitter, and engaging in extensive freelance writing for online publications were all designed to raise public attention and disseminate her views widely.

21. Turning specifically to the question of the consequences of the misconduct, in this case they are serious, far reaching and corrosive, affecting not only the transgender community but confidence in the health care system itself. As expressed in the Decision at paragraph 255:

> … A nurse who makes public statements using their professional status which challenge the existence of transgender women and appear to be designed to elicit hostility, fear and contempt for members of the transgender community erodes the trust that members of that community have in the health care system and likely foster a reluctance or unwillingness to access health care for fear they will face further discrimination… This is unacceptable and inimical to the foundational values of our health care system.

Character and Professional Conduct Record

22. The Respondent has no prior disciplinary record with BCCNM or its legacy colleges.

23. The Respondent has been a nurse since 2012 and should have been aware of her responsibilities as a regulated professional. There are various learning resources available to

registrants regarding their professional responsibilities, for example, the **BCCNM Entry Level Competencies for Registered Nurses** in the role of educator states:

> 2.8 Demonstrates professional judgement to ensure social media and information and communication technologies (ICTs) are used in a way that maintains public trust in the profession.

24. In addition, BCCNM has an extensive learning resource on social media use, including the expectation that nurses always act professionally and in a manner that maintains the public's confidence in the profession, and which includes case studies and links to relevant additional resources.

25. It was the Respondent's responsibility as a regulated professional to avail herself of these resources which would have clearly informed her not to tie her statements and advocacy to her professional designation.

Acknowledgement of the Misconduct and Remedial Action

26. The College acknowledges that the Respondent no longer ties her statements regarding transgender people to her professional designation.

Public Confidence in the Nursing Profession

27. The penalty imposed should serve to promote public confidence in the profession, including its ability to self-regulate in the public interest. As expressed in *Dent*, the penalty should address the need for both general and specific deterrence, ensure the penalty is sufficient to maintain the integrity of the nursing profession, and promote public confidence in the regulator's disciplinary response by being aligned with past disciplinary action in similar cases.

28. The Decision addresses the question of the integrity of the nursing profession at paragraph 256:

> The Respondent's derisive statements regarding transgender people (and particularly transgender women) are not only contrary to the foundational values of the health care system but also to the obligation of the nursing profession to treat individuals with respect and dignity and to facilitate and promote equitable access

> to health care services without regard to irrelevant personal attributes and characteristics. By identifying herself as a nurse or nurse educator while posting discriminatory and/or derogatory opinions regarding a vulnerable and historically disadvantaged group on various online platforms, the Respondent undermined the reputation and integrity of the nursing profession. A finding that the statements constitute unprofessional conduct would support the objectives of maintaining the reputation and integrity of the profession and promote trust in the profession of nursing.

29. In the present case, it is also necessary that the penalty communicate clearly that the College – and by extension the nursing profession – does not tolerate discrimination. It is the College's submission that only the disciplinary action of a suspension accomplishes these goals and would be commensurate with the seriousness of the conduct.

Penalties Imposed in Similar Cases

30. *Kempling v. British Columbia College of Teachers,* 2004 BCSC 133 and *Kempling v. British Columbia College of Teachers*, 2005 BCCA 327 involved a teacher and a registered clinical counsellor who taught in the Quesnel School District. He was cited for professional misconduct for an article and letters to the editor he wrote to a local newspaper over a three-year period in which he expressed his views on homosexuality, including associating homosexuals with immorality, abnormality, perversion and promiscuity. Mr. Kempling publicly identified himself as a teacher on three occasions in his writings.

31. The College of Teachers Disciplinary Committee found his writings to be discriminatory and demonstrating that Mr. Kempling was not prepared to accommodate the core values of the education system, one of which was non-discrimination. He was suspended for one month. In doing so, the Discipline Committee took into account Mr. Kempling's long and unblemished teaching career and his record of community service.

32. The suspension of one month was upheld on appeal to both the BC Supreme Court and the BC Court of Appeal.

33. *Ontario* College *of Teachers v Le Blanc*, 2022 ONOCT 108 involved a teacher who made discriminatory statements about homosexuals in an online blog of his in which he identified

as an educator. He also authored several “homophobic and transphobic” tweets on this Twitter account. The conduct in question occurred over several years. While the teacher did not expressly identify in his tweets as a teacher, he was recognized as such by students and former students. The teacher entered into a consent agreement to resolve the matter, acknowledging that their conduct amounted to professional misconduct. A suspension of one month was imposed, along with a reprimand and remedial education.

34. *Ontario College of Teachers v. Teal*, 2022 ONOCT 33 involved a teacher who did not accommodate requests by two students to be called by their preferred names, instead calling them by their birth names. The teacher also made comments to the two students which were incompatible with and disparaging of their gender identities, including stating that referring to them by their preferred names was promoting a mental illness. The conduct in question occurred over a period of several months and was intentional. The teacher entered into a consent agreement to resolve the matter, acknowledging that their conduct amounted to professional misconduct. A suspension of three months was imposed, along with a reprimand and remedial education.

Aggravating and Mitigating Factors

35. The College submits that there are serious aggravating factors in this case which speak to a more significant disciplinary outcome:

(a) the Respondent engaged in the misconduct frequently and over a prolonged period of time;

(b) the Respondent actively sought as wide an audience as possible for her statements, across various public platforms;

(c) the Respondent is an experienced nurse who ought to have understood the ethical responsibilities that attached to her professional designation;

(d) the Respondent acknowledged that her statements had been raised by others at her employment due to her high profile and necessitated her employer making arrangements in case a patient did not wish to be treated by the Respondent;

(e) the Panel determined that the Respondent's statements negatively affected the reputation of the nursing profession and were "inimical to the foundational values of our health care system"; and

(f) the Respondent's statements were directed towards a vulnerable marginalized group already facing barriers to accessing health care, likely resulting in a further depressive effect on that group seeking health care.

36. The College submits that the only mitigating factor in this case is that the Respondent does not have a discipline history with the College.

37. The College submits that considering damage to the reputation of the nursing profession, the likely depressive effect on transgender people accessing health care, and unprofessional conduct found to have been antithetical to core values of the health care system, a three month suspension is a reasonable and proportionate regulatory response.

SUBMISSIONS ON COSTS

Applicable Law

38. Section 39(5) of the Act permits the Panel to award costs when the College has been successful in establishing the allegations in a Citation. As with other professional regulatory bodies, the College is funded by registrants. Behind the recovery of costs for disciplinary proceedings is the important policy consideration that the membership in general should not have to bear the entire cost of conducting discipline hearings. Casey, James. *The Regulation of Professions in Canada* (Toronto, Ontario: Thomson Reuters, 2024) [*Casey*] p. 14-21 to 14-22:

> The focus of a cost award is to ensure that a member found to have committed unprofessional conduct bears the costs of the process as opposed to the membership as a whole. Bearing the burden of an award of costs reflects the consequences of being a member of a self-regulating profession and having engaged in unprofessional conduct.

39. This is particularly important in the present case where the College has incurred significant expenses in conducting this hearing given its length and complexity.

40. *Casey* articulates other factors to be considered in determining cost awards. Ones relevant to present case include:

(a) The amount of the time and expenses associated with the investigation and hearing;
(b) There is a need to find an appropriate balance by considering the impact of the cost award on the member. Costs should not be punitive in nature;
(c) Potential costs awards should not be so large so as to prevent individuals from raising reasonable defences to allegations of unprofessional conduct;
(d) The member's personal financial circumstances and the impact of a cost award. In appropriate cases consideration should be given to providing time to pay the costs;
(e) The impact of the other sanctions imposed should be considered as part of the context;
(f) The extent to which the conduct of each of the parties resulted in costs accumulating or conversely being saved; and
(g) Any other factors considered relevant given the particular circumstances of the case.

41. In determining an appropriate costs award, the Panel may also wish to consider the factors that a reviewing court would when assessing such an award for reasonableness. In a frequently cited case, Jaswal v. Newfoundland Medical Board, 1996 CanLII 11630 (NL SC), courts have adopted the following principles to the review of an award of costs:

> (51) It is necessary, therefore, to determine the factors appropriate to the proper exercise of the judicial discretion to make an order for payment or partial payment of expenses. In my view, based on the submissions of counsel, the following is a non-exhaustive list of factors which ought to be considered in a given case before deciding to impose an order for payment of expenses:
>
> 1. the degree of success, if any, of the physician in resisting any or all of the charges
>
> 2. the necessity for calling all of the witnesses who gave evidence or for incurring other expenses associated with the hearing
>
> 3. whether the persons presenting the case against the doctor could reasonably have anticipated the result based upon what they knew prior to the hearing

4. whether the doctor cooperated with respect to the investigation and offered to facilitate proof by admissions, etc.

5. the financial circumstances of the doctor and the degree to which his financial position has already been affected by other aspects of any penalty that has been imposed.

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

Counsel

42. For calculating the costs of legal representation, a tariff has been adopted by the College as allowed by s. 19(1) (w.1) of the Act. The College's Bylaw 212 (2) establishes a tariff of costs for discipline hearings:

(2) The tariff of costs set out in Schedule J, to partially indemnify parties for their expenses incurred in the preparation for and conduct of hearings under section 38 of the Act, is established under section 19(1) (w.1) of the Act.

43. Schedule J to the College's Bylaws provides:

SCHEDULE J – TARIFF OF COSTS (DISCIPLINE COMMITTEE HEARINGS)

(Section 212)

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.

TARIFF		
Item	**Description**	**Units**
1.	Initiating Process in Respect of Citation All process for which provision is not made elsewhere in this tariff for commencing a proceeding.	Minimum 1 Maximum 5
2.	Disclosure All processes associated with obtaining or providing disclosure of evidence, including documents.	Minimum 1 Maximum 10
3.	Experts All processes and correspondence associated with retaining and consulting all experts for the purposes of obtaining opinions for use	Minimum 1 Maximum 5
4.	Witnesses All process and correspondence associated with contacting, interviewing, and preparing summons to all witnesses	Minimum 1 Maximum 10
5.	Pre-Hearing Conferences Preparation for attendance at a pre-hearing conference for each day of attendance	Minimum 1 Maximum 3
6.	Attendance at Pre-Hearing Conference for each day.	Minimum 1 Maximum 5

7.	Discipline Committee Hearing Preparation for each day of hearing.	8
8.	Attendance at discipline committee hearing for each day.	10
9.	Process for making admission of fact	Minimum 1 Maximum 10
10.	Preparation of closing submission for the discipline committee	Minimum 1 Maximum 10
11.	Attendance at the hearing where party is ready to proceed and when hearing not commenced.	3
12.	Settlement of Costs	Minimum 1 Maximum 5
13.	Settlement of Order	Minimum 1 Maximum 3

Disbursements

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

44. Based on the above tariff, the College submits that the following are reasonable qualifying expenses to be claimed as costs:

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

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

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

45. The College notes that this was a lengthy and complex hearing, raising legal issues regarding disclosure, expert evidence, off duty conduct and freedom of expression as protected under the *Charter*. The tariff amounts claimed reflect this.

46. The College claims 427 units at $120 per unit for a total of **$51,240** in costs.

47. Under s. 39(7) of the Act, costs awarded must not exceed, in total, 50% of the actual costs to the college for legal representation for the purposes of the hearing. The College is claiming costs for legal representation only for in-house counsel and is not claiming costs for external counsel involved in the hearing. Given that, the claim of $ 51,240 does not exceed 50% of the actual costs to the College for legal representation.

Disbursements

Experts

48. The College called two experts at the hearing who were each qualified to testify in discrete areas.

49. **Dr. Elizabeth Saewyc**, Distinguished University Scholar and Director of the School of Nursing at the University of British Columbia. Dr. Saewyc was qualified as an expert to give evidence in the areas of nursing practice and nursing of transgender people, and specifically as concerned:

(a) nursing education;

(b) nursing standards, competencies, and guidelines;

(c) the health and mental health issues typically faced by and health outcomes of transgendered persons; and

(d) the harms that transgendered persons may experience in their interactions with health professionals.

50. Dr. Saewyc's invoices to the College totaled **$14,550** for preparation of expert report, preparation for giving evidence, and direct and cross-examination at the hearing.

51. **Dr. Greta Bauer**, Professor, Epidemiology and Biostatistics, Schulich School of Medicine and Dentistry, Western University. Dr. Bauer was qualified as an expert to give evidence in the areas of epidemiology and applied biostatistics with special expertise in social marginalization and the evidence-based health and well-being of sexual and gender minority people, including the effect of social marginalization on that population's health and well-being, and was specifically qualified to provide evidence on the following issues:

(a) definitions of terms used in her expert evidence, including but not limited to agender, cisgender, gender affirmation, gender binary, gender creative, gender diversity, gender expression, gender identity, intersex mis-gender, nonbinary, physical sex, sex assigned at birth, transgender or trans, trans man, transphobia, trans woman, two spirit;

(b) the current scientific understanding regarding the components of and relationship between sex and gender;

(c) the way in which trans people are marginalized in Canadian society, taking into account erasure, structural barriers, and interpersonal mistreatment and how marginalization plays out in the health care setting and/or impacts the ability of trans people to seek appropriate health care;

(d) the evidence-based research regarding the use of transgendered washrooms by trans people in both relation to harms experienced by trans people and cis people;

(e) the evidence-based research regarding the use by trans people of other gendered spaces, such as locker rooms, sports, prison wards, in relation to harms experienced by trans people and cis people;

(f) how the materials in the extract regarding the respondent's alleged statements fit within the framework of sex and gender; and

(g) whether the materials in the extract regarding the respondent's alleged statements are likely to cause harm to transgendered people and why or why not.

52. Dr. Bauer's invoices to the College totaled **$63,663** for preparation of expert report, preparation for giving evidence, and direct and cross-examination at the hearing. It should be noted that Dr. Bauer also assisted the College in preparing to challenge the expert report of Dr. Miriam Grossman, who was disqualified to give expert evidence; assisted counsel in understanding the science and issues at play; analysed specific statements of the Respondent; and was under cross-examination for over three days.

53. In addition, the College retained **Dr. Ayden Scheim**, Assistant Professor of Epidemiology, Department of Epidemiology and Biostatistics, Dornsife School of Public Health, Drexel University. Dr. Scheim was retained in response to the Respondent's late additional expert, Dr. James Cantor. While Dr. Scheim did not testify, his expertise was required by the College to prepare for the cross-examination of, and general response to, Dr. Cantor. Dr. Scheim was also prepped to testify in the event that the College choose to call rebuttal evidence. While

ultimately the College did not call rebuttal evidence to Dr. Cantor, the College submits that the expenses occurred in retaining and preparing Dr. Scheim were reasonable in the circumstances.

54. Dr. Scheim's invoices to the College totaled **$33,600**.

55. The College submits that all of the above disbursements were reasonably incurred in the circumstances of this case. In summary, the College's disbursements for the hearing were:

(a) Dr. Saewyc at $14,550
(b) Dr. Bauer at $63,663
(c) Dr. Scheim at $33,600

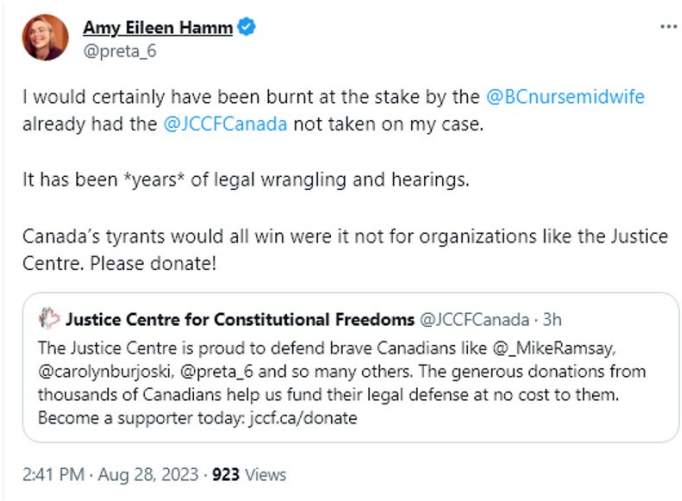
Total disbursements **$111,813**

Affidavit of Susanna Yan, May 6, 2025

Respondent's *Pro Bono* Representation

56. In assessing the reasonableness of the costs the College is seeking, a relevant factor for the Panel to consider is that the Respondent did not incur expenses for her legal representation; the Respondent was represented *pro bono* by the Justice Centre for Constitutional Freedoms (Justice Centre). The Justice Centre has been described by the British Columbia Court of Appeal as a "frequent litigant" and as a "special interest group" in *Servatius v. Alberni School District No. 70*, 2022 BCCA 421 [*Servatius*], at paragraphs 256 and 257.

57. That the Respondent was represented without cost to her is acknowledged in the following social media posts:



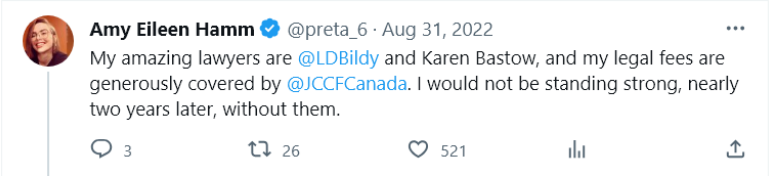
Amy Eileen Hamm
@preta_6

The @BCnursemidwife sent their monthly newsletter to their 60K registrants. As per usual, my name is at the bottom linking to my ongoing disciplinary hearing.

I'd like to reiterate: I am not transphobic. Women's rights are not transphobic. I deserve my right to free expression. I have never and would never harm a patient, regardless of their "gender identity."

Please do sign up to attend my (virtual) hearing. The world needs to see what the college is doing to me for standing up for women and children. It's not acceptable.

And thank you to the @JCCFCanada for paying my legal bills. Without you, I would have lost the fight. All Canadian women and children would have lost.



Indemnification

58. Any Respondent with organizational representation, especially an organization that is a frequent litigant, may have the benefit of an indemnification agreement whereby the organization will pay all or some of any costs awarded. That was the case in *Servatius*:

> [256] In her post-appeal written costs submission, Ms. Servatius disclosed, for the first time, that the JCCF [Justice Centre] was funding her fees and disbursements in the litigation, as well as agreeing to help her pay any award of costs by agreeing to fundraise for her if costs were awarded against her. Although vaguely described, there is no reason to believe that the JCCF, a frequent litigant, does not have the resources to make good on its promise and so this was in effect an agreement by the JCCF to use its resources to indemnify Ms. Servatius for any award of costs against her.

59. The College submits that if the Respondent has the benefit of an indemnification agreement, be it with the Justice Centre or another entity, that should impact the length of time for costs to be paid.

Costs Summary

60. The costs sought are significant but, in the College's submission, not disproportionate when weighed against the length and complexity of a hearing that stretched to 21 days, involved two experts for the College, plus a potential third expert as rebuttal, four experts for the Respondent, including Dr. Grossman who was excluded following the College's challenge, and raised important *Charter* issues. As such, the costs claimed cannot be considered so large as to be punitive to the Respondent; rather they are the logical result of the broad ranging defence the Respondent chose to advance. Simply put, the sum sought is rationally connected to the length and difficulty of the hearing.

61. Finally, the College's claim for costs and disbursements is supported by appropriate documentary evidence.

62. The College claims the following costs:

(a) In-house counsel at $51,240

(b) Disbursements at $111,813

Total costs claimed: **$163,053**.

63. The Panel must stipulate a time for payment of costs. The College suggests the following:

(a) If the Respondent has an indemnification agreement with the Justice Centre or another entity covering the full amount of any costs awarded, the costs awarded be payable within two months of the date of the Panel's Order on penalty and costs;

(b) If the Respondent has an indemnification agreement with the Justice Centre or another entity covering part of the amount of any costs awarded, the indemnified amount be payable within two months of the date of the Panel's Order on penalty and costs, and the remaining amount be payable by the Respondent within two years of the date of the Panel's Order on penalty and costs; or

(c) If the Respondent does not have an indemnification agreement with the Justice Centre or another entity, the full amount of any costs awarded be payable within two years of the date of the Panel's Order on penalty and costs.

PUBLICATION

64. In the Decision, the Panel indicated they wished the parties to make submissions on the question of publication of any penalty and costs decision. The College will reserve its submissions on publication until its reply.

CONCLUSION

65. The College submits that the Panel should make the following orders regarding penalty and costs which are supported by the applicable law and the circumstances of this case:

(a) The Respondent is suspended for a period of three months; and

(b) The Respondent pay costs to BCCNM in the amount of $163,053.

RESPECTFULLY SUBMITTED MAY 29, 2025

Michael Seaborn
Counsel for BCCNM