



Court File No. VLC-S-S-252688
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF A STATUTORY APPEAL

**PURSUANT TO SECTION 40 OF
THE HEALTH PROFESSIONS ACT, R.S.B.C. 1996, C. 183**

BETWEEN:

AMY HAMM

PETITIONER

AND:

BRITISH COLUMBIA COLLEGE OF NURSES AND MIDWIVES

RESPONDENT

AND:

**COLLEGE OF PHYSICIANS AND SURGEONS OF BRITISH COLUMBIA, WEST COAST
LEAF, EGALE CANADA, AND ASSOCIATION FOR REFORMED POLITICAL ACTION
CANADA**

INTERVENERS

WRITTEN SUBMISSIONS OF THE RESPONDENT

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**British Columbia College of Nurses and
Midwives**

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**DATE, TIME, AND PLACE OF HEARING: 10, 12, AND 13 NOVEMBER 2026, 10 AM
BEFORE: THE HONOURABLE JUSTICE JACQUELINE D. HUGHES**

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OPENING STATEMENT

A discipline panel of the British Columbia College of Nurses and Midwives (the “Panel”) found that the Petitioner, Amy Hamm, had made discriminatory and derogatory statements about transgender people online while identifying herself as a nurse or nurse educator. The Panel concluded that the Petitioner had engaged in unprofessional conduct with respect to four statements that satisfied these criteria.

The Panel’s decision followed 23 days of hearing over the span of 18 months. The College and the Petitioner both tendered expert evidence, and the Panel dedicated a substantial portion of its 115-page reasons to analyzing and making findings on that evidence.

The Panel took a deliberate, systematic approach in analyzing a binder of over 35 tabs of statements made by the Petitioner. For each statement, it analyzed whether the content was discriminatory or derogatory, whether the Petitioner had linked her professional status to the statement, and whether making a finding of unprofessional conduct in respect of the statement would unjustifiably infringe the Petitioner’s rights under s. 2(b) of the *Charter*. Following this thorough analysis, the Panel made findings of unprofessional conduct in relation to four of the statements.

On this statutory appeal, the Petitioner asserts eight errors in the Panel’s decision. She labels these separately as errors of fact, errors of mixed fact and law, and errors of law. On closer examination, few of the Petitioner’s grounds of appeal actually qualify as questions of law; the Petitioner simply disagrees with the Panel’s determinations of fact (or findings of mixed fact and law). Disagreement with the Panel’s assessments is not sufficient to overturn them on appeal.

The Petitioner also takes issue with the Panel’s decision on penalty and costs, arguing that the costs award was disproportionate and will chill legal speech of other professionals. Here, too, the Petitioner simply disagrees with the Panel’s assessments. That is insufficient to overturn the Panel’s discretionary decisions on penalty and costs. In any event, the Petitioner fails to acknowledge the adjustments and reductions the Panel made in the course of crafting a proportionate cost award.

PART 1 – STATEMENT OF FACTS

1. The respondent, the British Columbia College of Nurses and Midwives (the “College”), does not agree with all the facts set out by the Petitioner, which are at times in the nature of legal argument. The College says the relevant facts are those set out below.

A. The Parties

2. The College regulates the practice of nursing and midwifery, and all times material to this appeal did so under the *Health Professions Act*, RSBC 1996, c 183 (the “Act”).¹ The College is under a statutory duty to serve and protect the public, and to exercise its powers and discharge its responsibilities in the public interest.² Its objects include superintending the profession; governing its registrants according to the Act, regulations, and bylaws; establishing, monitoring, and enforcing standards of practice to enhance the quality of practice and reduce incompetent, impaired, or unethical practice; and establishing, monitoring, and enforcing standards of professional ethics among registrants.³
3. The Petitioner is a registrant of the College. At the time of the Panel’s decision, she worked as an educator in a hospital’s patient psychiatry department, a position she had held since 2016.⁴

B. The Investigation and Citation

4. The College issued a citation on 1 April 2022 (amended 28 June 2022) alleging that, between July 2018 and March 2021, the Petitioner made discriminatory and derogatory statements about transgender people while identifying herself as a nurse or nurse educator. The citation further alleged that the statements constituted unprofessional conduct under s. 39(1) of the Act, or a breach of the Act or bylaws.⁵

¹ The Act was replaced by the [Health Professions and Occupations Act](#), SBC 2022, c 43, which came into effect on 1 April 2026. However, as the citation was issued and the discipline hearing concluded prior to the new statute’s entry into force, the former Act continues to apply: *Health Professions and Occupations Act*, SBC 2022, c 43 at [s 543\(3\)](#).

² [Health Professions Act](#), RSBC 1996, c 183 (“Act”) at [s 16\(1\)](#).

³ Act, [ss 16\(2\)\(a\), \(b\), \(d\), \(g\)](#).

⁴ [British Columbia College of Nurses and Midwives v Hamm](#), 2025 BCCNM 1 (“Panel Reasons”) at para [140](#).

⁵ Affidavit of [REDACTED] made 26 June 2025, Exhibit C1 – Revised Redacted Citation [Citation], p 3521.

C. The Panel's Conduct Decision

5. Pursuant to s. 38 of the Act, a panel of the Discipline Committee (the "Panel") convened to hear and determine whether the Petitioner had engaged in unprofessional conduct in respect of the statements identified in the citation. On 13 March 2025, after 23 days of hearing over the span of 18 months, the Panel concluded that the Respondent had engaged in unprofessional conduct in respect of four of the statements.⁶
6. The Panel identified three issues for determination⁷:
 - a. Were the Petitioner's off-duty statements discriminatory and/or derogatory to transgender persons, and did the Petitioner identify herself as a nurse, or nurse educator, when she made them?
 - b. Was there a sufficient nexus between the Petitioner's off-duty statements and the profession of nursing?
 - c. If so, would a finding that the off-duty statements constituted unprofessional conduct unjustifiably infringe the Petitioner's rights under s 2(b) of the *Charter*?
7. The College argued that the Panel should make a finding of unprofessional conduct if it found the Petitioner's statements to be either discriminatory or derogatory, or both: i.e., that it was unnecessary for the College to prove that every impugned statement was both discriminatory and derogatory. The Petitioner did not challenge this interpretation, and the Panel proceeded on that basis.⁸
 - i) *Material Evidence and Findings*
8. Several witnesses, including experts for both the College and Petitioner, testified during the discipline hearing. The Panel's assessment of the expert evidence comprised a material part of the ruling.⁹

⁶ Panel Reasons at para [263](#).

⁷ Panel Reasons at para [12](#).

⁸ Panel Reasons at paras [8-9](#).

⁹ Panel Reasons at paras [17-84](#), [86-138](#).

9. In her evidence, the Petitioner accepted that College standards require her to treat marginalized and vulnerable communicates with respect, care and dignity. She conceded that transgender people are a marginalized and vulnerable population.¹⁰
10. The Panel found that the evidence was “beyond clear” that transgender people constitute a highly vulnerable and marginalized group, which “has been subjected to a long history of discrimination and exclusion from society.”¹¹ The Panel also accepted that transgender people face significant mental health challenges.¹²
11. The Panel found that transgender persons have experienced harms in their interactions with the health care system, including “infringements of personal privacy based on irrelevant and intrusive questions, intentional misgendering, lack of attention to presenting complaints, and a reluctance to provide care based on a concern that more specialized care is required.”¹³ The Panel found that these harms “erode trust in the health care system and ... may foster a reluctance on the part of transgender individuals to disclose their gender identity to health professionals or access necessary health care.”¹⁴
12. The Petitioner further accepted that, as a member of a regulated health profession (nursing), she holds a special position of trust and influence.¹⁵ In this connection, the Panel also found that nurses, as integral members of the health care system, hold a trusted status in Canadian society. It held 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. When nurses make statements denying the identity or existence of transgender persons, or discount 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

¹⁰ Panel Reasons at para [155](#).

¹¹ Panel Reasons at para [172](#); This finding is consistent with [Hansman v Neufeld](#), 2023 SCC 14 (“*Hansman*”) at para [84](#), in which Karakatsanis J wrote that “[t]he transgender community is undeniably a marginalized group in Canadian society. The history of transgender individuals in our country has been marked by discrimination and disadvantage.”

¹² Panel Reasons at para [177](#).

¹³ Panel Reasons at para [175](#).

¹⁴ *Ibid.*

¹⁵ Panel Reasons at para [155](#).

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.¹⁶

ii) *Legal Analysis*

a. *Meaning of “discriminatory” and “derogatory”*

13. The Panel dismissed the Petitioner’s argument that “discrimination” for the purposes of disciplinary proceedings under the Act was limited to violations of the *Human Rights Code*, RSBC 1996, c 210 (i.e., refusals to provide services). It followed the Court of Appeal’s instruction in *Kempling* that “statements are ‘discriminatory’ if they disparage or express negative judgments about individuals not on their individual merits or capacities but rather on stereotypical characteristics that are attributed to them because they belong to a group.”¹⁷ The speaker’s intention is irrelevant, as statements can be discriminatory even in the absence of intent to discriminate.

14. Likewise, the Panel found that statements may be derogatory “if they are critical of, express a low opinion of, detract from the character or standing of, or otherwise lower the reputation of an individual or group whether through ridicule, belittling, insults, or through some other means.”¹⁸

b. *Identification and assessment of impugned statements*

15. The Panel considered the factual context of each statement to determine: (a) whether it was discriminatory or derogatory to transgender people; and (b) whether the Petitioner had made any reference to her role as a nurse or nurse educator.¹⁹ Ultimately, the Panel found the Petitioner had made discriminatory and/or derogatory statements while identifying as a nurse or nurse educator on five specific occasions.²⁰

¹⁶ Panel Reasons at para [176](#).

¹⁷ Panel Reasons at para [196](#), citing [Kempling v BC College of Teachers](#), 2005 BCCA 327 [*Kempling*].

¹⁸ Panel Reasons at para [197](#). The Panel relied on the dictionary definition of “derogatory” as well as [Saskatchewan v Whatcott](#), 2013 SCC 11 at para [89](#).

¹⁹ Panel Reasons at para [203](#).

²⁰ Panel Reasons at para [205](#).

- a. **Tab 4 of the Extract**²¹: The Petitioner wrote an online article identifying herself as “registered nurse educator” that contained the statement “trans activists determined to infiltrate or destroy women-only spaces.” The Panel held that “a reasonable person would associate those comments [*sic*] with members of the transgender community” and that “[t]he comment is discriminatory and derisive as it suggest all transgender activists will act in an improper and aggressive manner in attempting to infiltrate or destroy ‘women-only spaces’ and derogatory to the extent it is designed to lower the standing of transgender persons in the community and elicit outrage and contempt.”²²
- b. **Tabs 21 and 22 of the Extract**: The Petitioner was identified as a registered nurse educator on a webpage of the Canadian Women’s Sex-Based Rights organization [caWsbar] listing her as one of the 10 founding members. The website hosted a Position Statement containing assertions that, the Panel found, denied the personally held sense of gender of transgender people, suggested that constitutional rights based on gender identity and expression have a subordinate status to sex-based rights, and contained stereotypical assumptions that all transgender women pose a risk to cisgender women and girls and should be denied entry to sex-segregated spaces.²³
- c. **Tab 24 of the Extract**: The Petitioner posted an article “On feeling like a woman” online, on 7 July 2018, identifying herself as a nurse educator. The Panel found that three statements in the article—that “there is no absconding” from female bodies, that the feeling of being a woman does not exist, and that there is no “incantation or initiation that can transcend bodily reality” without a female body—were discriminatory to transgender women because they denied the possibility that individuals born into male bodies can feel and identify as women, which was a “type of erasure of transgender women.”²⁴

²¹ The College prepared a binder of statements by the Petitioner, which the Panel referred to as the “Extract”: Panel Reasons at para [2](#).

²² Panel Reasons, Appendix A – Analysis of Statements in Extract [Appendix A] at p 86. The page number references in Appendix A refer to the page numbers of the decision indicated in Exhibit A to the Affidavit of [REDACTED] made 14 April 2025.

²³ Appendix A at pp 106-107.

²⁴ Appendix A at pp 107-108.

- d. **Tab 28 of the Extract:** The Petitioner posted an online book review on 20 November 2019, identifying herself as a registered nurse educator. The Panel found several statements in it to be discriminatory as they denied the existence of transgender people:
- i. that the book’s author normalizes “the falsehood that babies can be ‘born in the wrong body’, or that humans can change their sex”;
 - ii. that everyone “who believes in wrong bodies or innate genders – would rather devastate a child, telling him his father is not, in fact, his father, but (surprise!) has been someone else all along, than accept that men can look and behave and dress as ‘feminine’ as they would like, and still be men”;
 - iii. suggesting “that gender identity ideology is going to go down as something akin to the Satanic Panic craze”;
 - iv. “[l]esbians don’t have penises”;
 - v. “a gender soul does not exist”; and
 - vi. “men cannot literally become women”

The Panel also found that the statements in subparagraphs (ii) and (iii) are derogatory to transgender people.²⁵

- e. **Tab S3 of the Extract:** The Petitioner appeared in a YouTube interview on 14 September 2020 and introduced herself at the outset as a nurse who has been involved in the “Gender Wars.” During the interview, she said that “feminine men” should be protected based on sex and did not need to be recognized literally or legally as a woman to have legal protections, noting it “muddies the water to add gender” and “[w]hen you add gender it renders sex meaningless.” The Panel found this to be discriminatory and derogatory as it effectively advocated for the denial of legal protections to transgender women based on gender identity. The Panel also found a separate comment the Petitioner made in the interview about people who have “taken control of the narrative and have taken control of institutions” is discriminatory and derogatory and “appear ...

²⁵ Appendix A at pp 110-111.

designed to adversely impact the public’s perception of transgender people and lower their standing and reputation in the community.”²⁶

c. Assessment of nexus to the regulated profession

16. The Panel noted that regulators may discipline registrants for conduct occurring outside the practice of the profession where a sufficient nexus exists.²⁷ It identified that the Petitioner “used a variety of writing styles in her advocacy including sarcasm, mockery, insults, and hyperbole”²⁸ and that “acknowledged that her statements were intended to generate controversy to attract public attention.”²⁹ The Panel also observed that the “tone and content of the [Petitioner’s] statements ... appeared to be designed to elicit outrage and condemnation of the transgender community.”³⁰
17. The Petitioner had identified herself as a nurse or nurse educator on the five impugned occasions. The Panel held that “[b]y publicly linking her views regarding gender ideology with her status as a nurse or nurse educator, [she] expressed opinions and made claims that cannot be reconciled with the core values of the health care system.” It explained that “nurses are seen by the community in part as the medium for the fundamental values on which our health care system is based” and that the values included “equitable access to health care services and respect, dignity and equality for all patients and health care workers regardless of personal attributes.”³¹
18. The Panel rejected the Petitioner’s argument that the College needed to show that the public would give more credence to the speech of a nurse than other members of the public on “non-medical topics.” This assumed the Petitioner was addressing matters unrelated to medical issues, when the “crux of the gender ideology debate is enmeshed in medical and scientific understanding of the nature of sex and gender.” For example, the Petitioner’s assertion that a person cannot become a woman if not born female or that babies cannot be born in the wrong

²⁶ Appendix A at p 115.

²⁷ Panel Reasons at para [212](#).

²⁸ Panel Reasons at para [216](#).

²⁹ Panel Reasons at para [217](#).

³⁰ *Ibid.*

³¹ Panel Reasons at para [219](#).

body “necessarily engages medical, scientific and ethical issues.” The Panel concluded that “[d]irect evidence is not necessary to demonstrate that the use of a professional title may lead the public to place more reliance on statements made by a professional such as a nurse.”³²

19. Finally, the Panel noted the Petitioner’s behaviour was not an isolated lapse of judgment. She “repeatedly posted statements online that were critical of the transgender community while linking them to her professional status.”³³ Addressing the Petitioner’s submission that she had not intended to rely on her nursing background to suggest particular expertise, the Panel held that it was reasonable to infer that the use of the title “nurse” or “nurse educator” in her biographical description “provided a degree of enhanced credibility and legitimacy to her views.” This created a sufficient nexus to engage the College’s regulatory purview.³⁴

d. Balancing of Charter rights and the College’s statutory mandate

20. The Panel cited *Groia* for the proposition that an administrative decision that limits *Charter* protections “will only be reasonable if it reflects a proportionate balancing of the *Charter* protections at play with the decision-maker’s statutory mandate.”³⁵ Applying the framework from *Doré*³⁶—and cautioning itself as to the glosses in *Loyola* and *Trinity Western*³⁷—the Panel made the following findings:

- a. The College’s relevant statutory objective “is to protect the public and the integrity and reputation of the nursing profession by setting and enforcing standards with respect to public speech by nurses who identify their professional status in that speech and by ensuring they uphold the values central to ethical nursing practice.”³⁸

³² Panel Reasons at para [220](#).

³³ Panel Reasons at para [221](#).

³⁴ *Ibid.*

³⁵ Panel Reasons at para [225](#), citing [Groia v Law Society of Upper Canada](#), 2018 SCC 27 [*Groia*] at para [111](#).

³⁶ [Doré v Barreau du Québec](#), 2012 SCC 12 [*Doré*].

³⁷ [Loyola High School v Quebec \(Attorney General\)](#), 2015 SCC 12 [*Loyola*]; [Law Society of British Columbia v Trinity Western University](#), 2018 SCC 32 [*Trinity Western*].

³⁸ Panel Reasons at para [231](#).

- b. The Petitioner’s off-duty statements in this case “were directed at a marginalized and vulnerable group” and did not relate to nursing services.³⁹
- c. While the Petitioner “did not make [the impugned] statements to actively incite fear and contempt towards transgender people,” she “went to considerable lengths to disseminate her views as broadly as possible.”⁴⁰
- d. Certain of the impugned statements were neither true nor fair to transgender women⁴¹ and others were “profoundly” unfair and/or untrue.⁴²
- e. The Petitioner’s repeated challenges to the existence of transgender women, conflation of sex and gender, and advocacy for the denial of legal protections for transgender women (whom she described as feminine men) were disrespectful, hurtful, and harmful to the transgender community.⁴³ It continued:

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.⁴⁴

- 21. The Panel ultimately held that a finding of unprofessional conduct in respect of four statements with a nexus to the profession would not impair the Petitioner’s freedom of expression any more than necessary to achieve the College’s statutory goals.⁴⁵ The Panel explained that the Petitioner was “free to disseminate her view to the public without identifying herself as a nurse or nurse educator or her affiliation with the College” or to disseminate her views, while so identifying, “in a way that does not discriminate against or denigrate members of a vulnerable

³⁹ Panel Reasons at paras [235-239](#).

⁴⁰ Panel Reasons at paras [240](#), [241](#).

⁴¹ Panel Reasons at paras [249](#), [251](#).

⁴² Panel Reasons at paras [252](#), [254](#).

⁴³ Panel Reasons at para [255](#).

⁴⁴ *Ibid.*

⁴⁵ Panel Reasons at para [261](#). The Panel concluded “[n]ot without some difficulty” that a finding of unprofessional conduct with respect to the statement at Tab 22 *would* unjustifiably infringe the Petitioner’s freedom of speech and declined to make a finding in respect of it: para [262](#).

community or otherwise express herself in a way that reflects poorly on the profession as a whole.”⁴⁶

iii) *The Panel’s conclusions*

22. The Panel concluded that several statements were discriminatory and/or derogatory to transgender persons.⁴⁷ However, the Petitioner had only identified herself as a nurse or nurse educator in the statements found at Tabs 4, 21–22, 24, 28, and S3 of the Extract,⁴⁸ and the Panel ultimately found that the Petitioner had committed unprofessional conduct only in relation to the statements in Tabs 4, 24, 28, and S3.⁴⁹

D. The Panel’s penalty and costs decision

23. The Panel released its decision on penalty and costs on 14 August 2025.⁵⁰ It noted that the purpose of a penalty is to protect the public from professional misconduct or unprofessional conduct in furtherance of the College’s public protection and public interest mandate.⁵¹ It reviewed the discretionary factors set out in *Ogilvie* and *Dent*,⁵² noting they had been applied by the College’s discipline committee.⁵³

24. The Panel found that the Petitioner’s conduct was serious: this was not a lapse in professional judgment, but rather a pattern of online behaviour.⁵⁴ The “repeated targeting of a vulnerable and marginalized group in society is an aggravating factor which militates in favour of a more serious penalty.”⁵⁵ Further, in light of the Petitioner’s seniority and experience in nursing, she should have been aware of her professional ethical responsibility to refrain from using her

⁴⁶ Panel Reasons at para [258](#).

⁴⁷ Panel Reasons at para [204](#).

⁴⁸ Panel Reasons at para [205](#).

⁴⁹ Panel Reasons at para [263](#).

⁵⁰ [British Columbia College of Nurses and Midwives v Hamm](#), 2025 BCCNM 2 (“Penalty and Costs Decision”).

⁵¹ Penalty and Costs Decision at para [11](#).

⁵² *Law Society of British Columbia v Ogilvie*, [1999] LSBC 17; [Law Society of British Columbia v Dent](#), 2016 LSBC 5.

⁵³ Penalty and Costs Decision at para [14](#), citing [British Columbia College of Nurses and Midwives v Parniak](#), 2020 BCCNM 5.

⁵⁴ Penalty and Costs Decision at paras [21–22](#).

⁵⁵ *Ibid* at para [23](#).

professional designation when publicly expressing her views about the transgender community. This weighed in favour of a more significant penalty.⁵⁶

25. Although the Panel held that there was insufficient evidence to establish that the Petitioner had been terminated *because of* the finding of unprofessional conduct, it recognized that a lengthy suspension upon her return to nursing would be a significant financial hardship.⁵⁷ It also recognized as mitigating factors that the Petitioner had stopped attaching her professional designation when expressing views in public and had been fully cooperative in the discipline process.⁵⁸
26. Balancing all the factors, the Panel concluded that a one-month suspension was reasonable.⁵⁹
27. On costs, while the Panel considered the units sought by the College under the tariff to be reasonable, it discounted the amount sought by 20% to reflect that the College had not proven unprofessional conduct in respect to all the statements.⁶⁰ It also reduced one of its expert disbursement claims by 40% and did not allow a disbursement for another expert that assisted the College but did not testify.⁶¹ Recognizing that the total amount of \$93,639.80 would have a significant impact on the Petitioner, the Panel allowed two years for payment.⁶²
28. The Panel ordered a stay of the suspension and costs award pending the outcome of the statutory appeal.⁶³

⁵⁶ *Ibid* at para [31](#).

⁵⁷ *Ibid* at para [24](#).

⁵⁸ *Ibid* at para [35](#).

⁵⁹ *Ibid* at para [45](#).

⁶⁰ *Ibid* at para [61](#).

⁶¹ *Ibid* at paras [63](#), [64](#).

⁶² *Ibid* at para [66](#).

⁶³ *Ibid* at para [69](#).

PART 2 – ISSUES ON APPEAL

29. The Petitioner raises eight alleged errors, which she describes as a mix of alleged errors of law, mixed fact and law, and fact.⁶⁴ The Panel made no such reversible errors. The College will address each alleged error in turn.

PART 3 – ARGUMENT

A. Standard of Review

30. On a statutory appeal under s. 40 of the Act, the appellate standards of review apply.⁶⁵ Questions of law are reviewed for correctness, while questions of fact or mixed fact and law are reviewed for palpable and overriding error.⁶⁶ Where a decision-maker errs in making a factual finding (regardless of whether it is “direct” or the product of inference), this is an error of fact.⁶⁷

B. The Panel did not err in concluding that the statements made by the Petitioner were discriminatory and/or derogatory

31. Under this heading, the Petitioner argues that the Panel “erred” in various ways. She does not identify the nature of the alleged error. The College submits that the Petitioner does not assert errors of law here, but instead alleges errors of fact or mixed fact and law, or a misapprehension of evidence. These all attract a heightened standard of review.⁶⁸

32. At paragraphs 33 and 34, the Petitioner’s argument seems to target the “remoteness” of the impugned statements insofar as there was “no individual transgender complainant or target” and, further, that it is a “slippery slope” to “[import] the term ‘discrimination’ into a finding of unprofessional conduct that is not *directly related to conduct in the profession*.” The intervener, the Association for Reformed Political Action (“ARPA”), appears to make a similar argument, taking issue with the BC Human Rights Tribunal’s decision in *Oger* and arguing that

⁶⁴ Written Submissions of the Petitioner, Amy Hamm, filed 9 September 2026 (“Petitioner’s Written Submissions”) at para 26.

⁶⁵ *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 37 (and as acknowledged in *Whieldon v British Columbia College of Nurses and Midwives*, 2021 BCSC 1648 at para 32).

⁶⁶ *Housen v Nikolaisen*, 2002 SCC 33 at paras 8, 10, 19, 21-25, 37.

⁶⁷ *Ibid* at paras 9, 26-27.

⁶⁸ *Emond v British Columbia (Attorney General)*, 2023 BCCA 456 at paras 26-28.

discrimination could only occur if there is a “specific adverse effect” on someone as a result of the Petitioner’s speech.⁶⁹

33. The Petitioner made this same argument before the Panel:

According to the Respondent, “discrimination” should be defined more narrowly as a refusal to provide a service customarily available to the public in the human rights context. The Respondent contends that discrimination cannot be the basis for an allegation of unprofessional conduct “because there is no evidence or allegation that she failed to provide service to a transgender person in contravention of human rights law, nor that she expressed any intention to do so”. She argues there is no complainant participating in this case, no evidence of harm, and no evidence that she discriminated against anyone as contemplated by the *Human Rights Code* (the “Code”).⁷⁰

34. The Panel rejected this argument based on *Kempling*, which specifically foreclosed it. In that case, the Court of Appeal did not accept that the “conduct must be directed against a particular individual in order to constitute discrimination” and explained that “the question to be determined by the Panel was not whether the appellant’s published writings would attract liability as a human rights violation” but, rather, “whether the making and publication of those statements in the circumstances and context in which it was done fell below acceptable standards of professional conduct.”⁷¹ The Petitioner does not identify any specific errors made by the Panel in rejecting this argument, other than that she disagrees with the Panel’s (and, by necessary implication, the Court of Appeal’s) conclusion.

35. The Petitioner argues at paragraphs 35 and 36 that the Panel misapprehended evidence with respect to the following impugned statement:

[M]aybe what that reveals is that it really is just a small minority of activists in Vancouver that cause so much outrage if you could have it up for almost an entire working day. And how many I don’t know how many 1000s of people drive down Hastings Street during business hours, but to not have any of those people feel outraged enough to take a picture or go on Twitter and say, Holy shit, this transphobic sign is up. I think shows that really, like we say quite frequently the people that have taken control of the narrative

⁶⁹ Written Submissions of the Intervener, Association for Reformed Political Action dated 23 September 2026 (“ARPA Submissions”) at paras 10-14.

⁷⁰ Panel Reasons at para [194](#).

⁷¹ *Kempling* at paras [38-39](#), quoted by the Panel at para [195](#).

and have taken control of the institutions and are making everyone go along with gender identity ideology. It's a small minority of really loud activists.⁷²

36. The Petitioner contends the impugned statement is critical of “gender ideology,” “trans activists,” and “those who facilitate the spread of gender ideology in institutions and society”—which are not a “protected class against discrimination”—rather than transgender people. However, the Petitioner does not explain how this alleged misapprehension of evidence, even if accurate, could have reasonably affected the result or why it warrants appellate intervention.⁷³ Further, the Panel rejected this very argument (that “transgender activists” should be distinguished from comments against “transgender people”), finding that a reasonable person would associate the comments with members of the transgender community.⁷⁴ This is a permissible inference, and one that the Petitioner has raised no reason to be interfered with.
37. At paragraphs 38 and 39 the Petitioner asserts that “[e]quating disagreement with a particular group’s ‘mystical beliefs’ with ‘discrimination’ is a fundamental error of law, is biased, and has the effect of creating a protected class of people whose beliefs are untouchable and cannot be criticized.” In the College’s respectful submission, this argument is not at issue on appeal. The Petitioner was not sanctioned with respect to her Tweet about a “mystical belief in a ‘gendered soul’” because the Panel found that she did not identify herself as a nurse or nurse educator in making it.⁷⁵ This undercuts the Petitioner’s assertion that any such class of people “cannot be criticized.”
38. Even if the issue is properly raised, the Petitioner has not shown any error. She asserts that the Panel equated “disagreement with a particular group’s ‘mystical beliefs’ with discrimination.” This argument distorts the Panel’s finding. When the Panel referred to a “mystical belief in a gender soul,” it was clearly using the language that *the Petitioner herself* had used in the Tweet

⁷² Panel Reasons at para [254](#) [emphasis added].

⁷³ [Kane v Proffitt](#), 2018 BCCA 106 at para [42](#).

⁷⁴ Appendix A, p 86. Although the Panel directed this comment to the impugned statements at Tabs 4 and 30 (whereas the Petitioner is here taking issue with the statement at Tab S3), the same reasoning applies.

⁷⁵ Appendix A, p 105.

at issue.⁷⁶ The Panel found this Tweet to be discriminatory because it denies that transgender people can exist. In other words, the Panel did not create a new protected class of people who have a “mystical belief in a gender soul”; its finding was that the Petitioner, in making the statement “mystical belief in a gender soul”, was denying that transgender people exist. The Petitioner has demonstrated no error of law, nor has she made any attempt to justify her assertion that the Panel was “biased” (or even cited the applicable legal standard for bias).

39. The Petitioner’s allegations at paragraphs 30 and 40 do not identify any specific factual or legal errors; she merely disagrees with the Panel’s conclusion. The Panel did not, as the Petitioner alleges, expand the scope of the term “discriminatory” to include “disagreement with gender ideology and trans activism, as well as advocacy for women’s sex-based rights.”⁷⁷ In its 30-page analysis of the impugned statements, the Panel clearly indicated why it found statements discriminatory towards transgender people, including for: suggesting that transgender persons will destroy female spaces;⁷⁸ rejecting the possibility that transgender people can have a personally held sense of gender and that they can be women or girls;⁷⁹ denying the possibility that individuals born into male bodies can feel and identify as women;⁸⁰ suggesting that gender identity ideology is analogous to the “Satanic Panic craze”;⁸¹ and advocating that transgender people should not have legal protections based on gender.⁸² Briefly, the Panel did *not* as a general proposition hold that it is discriminatory to express views on gender; rather, it made factual findings about why each statement was discriminatory towards transgender people.
40. ARPA argues that the Petitioner’s statements denying that a transgender person can self-identify as a woman cannot be discriminatory because they do not deny that someone can *identify* as a woman, they only deny that “identifying as a woman makes a person a woman in reality.”⁸³ This submission ignores that the Panel made findings, based on expert evidence, that denying the very existence of transgender people (which, on ARPA’s definition, the Petitioner

⁷⁶ Appendix A, pp 104 (tweet 12:147), 105.

⁷⁷ Petitioner’s Written Submissions at para 30.

⁷⁸ Appendix A, p 86.

⁷⁹ Appendix A, p 106.

⁸⁰ Appendix A, p 108.

⁸¹ Appendix A, p 111.

⁸² Appendix A, p 115.

⁸³ ARPA Reasons at para 7, and generally at paras 6-10 and 15-16.

did because she rejects the notion that transgender people can be women) causes harm to transgender people and is contrary to the current medical and biological understanding of sex.⁸⁴

41. ARPA also argues that “gender critical speech” is not unprofessional *per se* and that statements critical of a person’s way of life only become discriminatory if they are made in inherent disregard of an individual’s inherent dignity.⁸⁵ It states that to “disagree with someone’s self-concept or self-identity as male or female, or man or woman, because one holds a different view of what such terms mean, is not to deny the other’s worth as a human being or to promote hatred.”⁸⁶ These submissions simply disagree with the Panel’s conclusions, again based on expert evidence, that statements denying the existence of transgender people *do* deny their dignity in that they constitute erasure.⁸⁷

C. The Panel did not err in considering the Petitioner’s use of “tone” as part of the overall nexus analysis

42. The Petitioner asserts that the Panel erred in law when it found “that the use of sarcasm, mockery, derision or other ‘tone’ which the Panel found unpalatable invalidated the Petitioner’s good faith intentions and the social value of her speech, contrary to binding precedent; and/or that it was relevant to a finding of nexus.”⁸⁸ She states that the Panel drew this conclusion “contrary to binding precedent,”⁸⁹ relying principally on *Groia*. However, the Petitioner has not explained how *Groia* sets out a binding or governing standard in an entirely different regulatory context.
43. The Petitioner points to paragraph 76 of *Groia*, arguing that it stands for the proposition that “to require civility for speech to avoid regulatory discipline would have a chilling effect on advocacy.” In her submission, the “same can be said for gender critical advocacy, which is often critical of government and institutional policies.”⁹⁰

⁸⁴ Panel Reasons at paras [20-22](#), [25-26](#), [31-32](#), [37](#), [45-48](#), [55](#), [61](#), [198-199](#).

⁸⁵ ARPA Submissions at paras 17-25.

⁸⁶ APRA Submissions at para 22.

⁸⁷ E.g. Panel Reasons at paras [176](#), [216](#), [222](#), [252](#); Appendix A at p 108.

⁸⁸ Further Amended Petition of Amy Hamm filed 1 September 2026 (“Petition”) at paras 27(b), 39-46.

⁸⁹ Petitioner’s Written Submissions at para 26.

⁹⁰ Petitioner’s Written Submissions at para 47 [emphasis added].

44. This argument disregards the context that grounded the Court’s conclusions in *Groia*. Paragraph 76 of *Groia*, on which the Petitioner relies, states in part:

[W]hen defining incivility and assessing whether a lawyer’s behaviour crosses the line, care must be taken to set a sufficiently high threshold that will not chill the kind of fearless advocacy that is at times necessary to advance a client’s cause...⁹¹

45. The Court’s discussion in *Groia* was squarely focused on the legal profession. It assessed incivility in the context of lawyer discipline, and the alleged misconduct stemmed from in-court conduct while defending a client.⁹² The duties of the legal profession contextualize the Court’s assessment. Lawyers have a professional duty to be civil, and incivility is a standalone basis for misconduct in lawyer discipline.⁹³ At the same time, the lawyer’s duty of civility must be understood alongside their duty of resolute advocacy on behalf of their client,⁹⁴ which has a constitutional dimension.⁹⁵
46. The Petitioner argues *Groia* stands for the proposition that the “civility” of speech made by a member of a regulated profession cannot be considered by its regulator as it would chill their personal “advocacy.” This position neglects that lawyers (the regulated body in *Groia*) have independent professional duties of civility and resolute advocacy, and the Court sought to reconcile these duties when they may conflict. The Petitioner offers no basis to extend *Groia*’s holding to an entirely different regulatory context.
47. The Petitioner also relies on the Court’s statement in *Groia* that “law societies should not sanction lawyers for sincerely held but mistaken legal positions or questionable litigation strategies” as allowing lawyers to “[a]dvanc[e] good faith, reasonable allegations—even those based on legal error—helps maintain the integrity of the justice system by holding other participants accountable.”⁹⁶ Yet this portion of *Groia* is entirely distinguishable. The Court

⁹¹ *Groia* at para 76 [emphasis added].

⁹² *Groia* at para 10.

⁹³ See, e.g. *Groia* at paras 63-68. See also para 2.

⁹⁴ *Groia* paras 70-76.

⁹⁵ *Groia* at para 72, noting that resolute advocacy is a key component of the lawyer’s commitment to the client’s cause, a principle of fundamental justice.

⁹⁶ Petitioner’s Written Submissions at paras 48-49, citing *Groia* at paras 85, 120.

considered the “good faith basis” of certain statements made by Mr. Groia in the specific context of a lawyer making statements alleging misconduct by another lawyer, for which the Court found there was value to the rule of law and cause of justice in not discouraging.⁹⁷ The Petitioner has not raised any reason that this conclusion in *Groia* with respect to the legal profession should be interpolated into this statutory appeal.

48. In any event, the Petitioner’s argument here must fail because, contrary to what she argues, the Panel made no finding that the Petitioner’s speech had social value but that this was invalidated or negated by the use of sarcasm or mockery.⁹⁸

49. At paragraph 50, the Petitioner appears to take a different view of her position on this alleged error, stating that “[t]he Panel erred in finding that Ms. Hamm’s tone was determinative in their finding of unprofessional conduct.”⁹⁹ This argument relies on a misstatement: at no point did the Panel state or otherwise suggest that the Petitioner’s tone was determinative. Indeed, throughout the analysis, the Panel considers “tone and content” in concert.¹⁰⁰ Rather than treat tone as being determinative, the Panel repeatedly explained how the *content* of the Petitioner’s statements was discriminatory or derogatory, including statements that denied the experiences of transgender people,¹⁰¹ equated gender ideology to a “Satanic Panic craze”,¹⁰² and advocated that transgender people should not have gender-based legal protections.¹⁰³

D. The Panel did not err in concluding that a biographical reference is sufficient to create a nexus

50. The Petitioner submits that the Panel “erred in mixed law and fact, in finding a sufficient nexus between the impugned comments and the profession to ground a finding of unprofessional conduct, based solely on a minor biographical reference.”¹⁰⁴ The Petitioner relies on multiple sub-arguments, which will be addressed in turn.

⁹⁷ *Groia* at para [120](#).

⁹⁸ Petitioner’s Written Submissions at para 42.

⁹⁹ Petitioner’s Written Submissions at para 50 [emphasis added].

¹⁰⁰ E.g. Panel Reasons at paras [216](#), [217](#). See also para [184](#).

¹⁰¹ Appendix at pp 106, 108.

¹⁰² Appendix at p 111.

¹⁰³ Appendix at p 115.

¹⁰⁴ Petition at paras 27(c), 47-56.

51. First, the Petitioner takes issue with the Panel’s finding that the impugned statements are related to medical issues, insofar as the “crux of the gender ideology debate is enmeshed in medical and scientific understanding of the nature of sex and gender.”¹⁰⁵ The Petitioner says that “these are human rights and socio-political issues as much as medical and scientific ones” and that the Petitioner’s occupation as a nurse “gives her no more or less authority to speak on the impact of gender ideology.”¹⁰⁶ However, the Panel explicitly made a finding of fact to the contrary, noting that her assertion that a person cannot become a woman if not born as a female or that babies cannot be born in the wrong body “necessarily engages medical, scientific and ethical issues.”¹⁰⁷ The Petitioner raises no argument for why this finding of fact would be a palpable and overriding error, and indeed, acknowledges that “medical, scientific and ethical issues are also implicated in some aspects of the debate.”¹⁰⁸ The Petitioner also ignores the Panel’s findings, based on the Supreme Court of Canada’s decision in *Pharmascience*, that the inequality of knowledge between members of the public and regulated professionals gives rise to a position of trust, such that it is reasonable to infer that the public will place more weight on their views.¹⁰⁹ The Panel made no error in inferring that the public would place weight on the views of a regulated health professional such as a nurse on issues that necessarily involve medical, scientific, and ethical issues.

52. Next, the Petitioner, relying on *Ross*, states that the Panel erred in finding that evidence of a “poisoned environment” traceable back to the Petitioner is not a requirement for finding a nexus.¹¹⁰ The Panel rejected this very argument:

While the Panel recognizes that evidence of a “poisoned environment” is a sufficient basis for finding a nexus, it is not a necessary element. *Kempling BCCA* establishes that direct evidence of impairment is not required to establish the adverse effects of discriminatory and/or derogatory statements directed at a historically marginalized and vulnerable group. As equitable patient access is a core value of the health care system, a finding that the Respondent identified herself as a nurse or nurse educator in making statements that were discriminatory and/or derogatory to transgender people

¹⁰⁵ Panel Reasons at para [220](#).

¹⁰⁶ Petitioner’s Written Submissions at para. 58.

¹⁰⁷ Panel Reasons at para [220](#).

¹⁰⁸ Petitioner’s Written Submissions at para. 58.

¹⁰⁹ Panel Reasons at para [220](#), citing *Pharmascience Inc v Binet*, 2006 SCC 48 at para [36](#).

¹¹⁰ Petitioner’s Written Submissions at paras. 61, 62.

can properly form the basis of a determination of unprofessional conduct:
Kempling BCCA, para. 39.¹¹¹

53. In *Kempling*, the Court of Appeal was explicit that “[p]roof that he had actually discriminated against a particular student, or evidence of a poisoned school environment, was not required to prove that the school system had sustained harm. Mr. Kempling’s statements damaged the integrity of the school system as a whole.”¹¹² The court rejected the proposition that *Ross* requires some evidence of a “poisoned” environment; such evidence may be *sufficient* to show harm, but it is not *necessary*.¹¹³ Here, the Panel correctly stated that proof of a “poisoned” environment was sufficient, but not necessary, for a nexus and that a finding of unprofessional conduct can follow when a regulated professional makes discriminatory or derogatory statements that are inconsistent with the core values of the healthcare system. The Petitioner essentially repeats the argument she made to the Panel without identifying any error in its reasoning; she simply disagrees with the conclusion.
54. The Petitioner’s submission that “[t]here was a time in recent past when regulatory bodies would have dismissed public complaints over a professional’s political opinions” and reliance on an Ontario Health Professions Appeal and Review Board for support of this position¹¹⁴ is both irrelevant and untethered to any alleged issues on this statutory appeal.
55. The Petitioner’s submission that “it is not for the BCCNM to decide *which* political and policy perspectives are permitted to be held and expressed by nurses and midwives”¹¹⁵ distorts the issues in this case. The Panel recognized that it had “no regulatory authority in relation to offensive or unprofessional statements that are not otherwise discriminatory and/or derogatory” and systematically considered whether the Petitioner identified herself as a nurse or nurse educator in each individual statement.¹¹⁶ It also correctly noted that the Petitioner is free to disseminate her views without identifying herself as a nurse or nurse educator or her affiliation with the College, or to disseminate her views with such affiliation provided she does

¹¹¹ Panel Reasons at para [223](#).

¹¹² *Kempling* at para [45](#).

¹¹³ *Kempling* at para [78](#).

¹¹⁴ Petitioner’s Written Submissions at paras 65, 66.

¹¹⁵ Petitioner’s Written Submissions at para 66.

¹¹⁶ Panel Reasons at paras [9](#), [189](#).

not do so in a way that is discriminatory or derogatory.¹¹⁷ In sum, the Petitioner is not categorically prevented from holding or expressing her views, as she asserts.

E. The Panel did not err in balancing the Petitioner’s Charter rights against the regulatory objective

56. The Panel correctly stated that it was required to consider *Charter* rights and values in the exercise of its discretion, in line with the Supreme Court of Canada’s instruction in *Doré*, *Loyola*, *Groia*, *Trinity Western* and *Commission scolaire francophone*.¹¹⁸ These authorities require an administrative decision-maker to balance the *Charter* rights and values against the statutory objective in a manner that reflects a proportionate balancing.¹¹⁹ A “proportionate balancing” is “one that gives effect, as fully as possible to the *Charter* protections at stake given the particular statutory mandate.”¹²⁰

57. The Petitioner is not here asserting that the Panel erred in identifying the applicable test. Her complaint is with the *result* of that test. In other words, she is alleged alleging an error of mixed fact and law. The “palpable and overriding error” standard applies.

58. As the Supreme Court of Canada set out in *Trinity Western*, “the decision-maker is generally in the best position to weigh the *Charter* protections with his or her statutory mandate in light of the specific facts of the case. It follows that deference is warranted when a reviewing court is determining whether the decision reflects a proportionate balance.”¹²¹

i) Statutory Objective

59. The Petitioner argues that the Panel erred in law by balancing the Petitioner’s *Charter* s. 2(b) rights against a “non-existent statutory objective,” namely maintaining the integrity and reputation of the nursing profession.¹²²

¹¹⁷ Panel Reasons at para [258](#).

¹¹⁸ Panel Reasons at paras [13](#), [225-229](#).

¹¹⁹ *Doré* at paras [55](#), [57-58](#); *Loyola* at para [35](#); *Groia* at para [111](#); *Trinity Western* at paras [57-59](#); *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31 at para [72](#).

¹²⁰ *Loyola* at para [39](#); *Groia* at para [111](#).

¹²¹ *Trinity Western* at para [79](#).

¹²² Petitioner’s Written Submissions at para 73.

60. In making this argument, the Petitioner parses the Panel’s reasons. The Panel recognized that the College is “entrusted with regulating the professions of nursing and midwifery in the public interest under s. 16 of the Act.”¹²³ Indeed, the Panel repeatedly cited its public interest mandate throughout its reasons.¹²⁴ The Act also make clear that colleges have various statutory objects, including superintending the practice of the profession; establishing, monitoring, and enforcing standards of practice; and establishing, monitoring, and enforcing standards of professional ethics among registrants.¹²⁵ It is apparent that the statute sets out broad statutory objects, all under the broad umbrella of regulating in the public interest.
61. In identifying the statutory objective, the Panel noted at paragraph 230 its public interest mandate and the fact that it “stems from the significant degree of ‘trust’ which members of the public necessarily place in regulated nurses and midwives.” It further noted that the College protects the public by establishing requirements for licensure as well as developing, monitoring, and enforcing standards of practice and conduct.¹²⁶
62. At paragraph 231, the Panel summarized all of the foregoing, in the statement the Petitioner takes issue with, by noting that the “statutory objective in this case is to protect the public and the integrity and reputation of the nursing profession by setting and enforcing standards with respect to public speech by nurses who identify their professional status in speech and by ensuring they uphold the values central to ethical nursing practice.”¹²⁷
63. There is nothing erroneous or controversial in this statement. The Panel was simply elaborating on *what it means to regulate in the public interest* in a case such as this. As the Panel stated in paragraph 230 (and throughout its reasons¹²⁸), public trust in the nursing profession is crucial for its effectiveness. The Panel’s reference to the “reputation” of the profession in paragraph 231 must be read in that light. As the Panel later discussed, statements by registrants such as those made by the Petitioner have the potential to cause members of the community to lose

¹²³ Panel Reasons at para [230](#).

¹²⁴ E.g. Panel Reasons at para [161](#), [232](#), [255](#), [258](#), [259](#).

¹²⁵ Act at [ss 16\(2\)\(a\), \(d\), \(g\)](#).

¹²⁶ Panel Reasons at para [230](#).

¹²⁷ Panel Reasons at para [231](#).

¹²⁸ E.g. Panel Reasons at paras [175](#), [176](#), [220](#), [255](#), [256](#).

trust and confidence in the health care system, and foster a reluctance or unwillingness to access health care for fear that they will face discrimination.¹²⁹ Contrary to the Petitioner’s portrayal, the Panel was *not* speaking of regulators “[p]rotecting the ‘reputation’ of the system from dissident thinkers” or “protect[ing] their own reputations from viewpoints with which they disagree”¹³⁰ Its concern was ensuring that the public continues to have trust in the medical system—a quintessential aspect of regulating in the public interest.

64. The Petitioner goes on to assert various vague cautions that a regulator must not engage in “mission creep,” “punis[h] dissident opinions and criticisms of progressive orthodoxy,” allow its “complaints systems [to] become weaponized by activists to punish contrarian views,” “put its thumb on the scale, advocating for a ‘side’ in matters of legitimate public debate,” engage in overreach, or become a “political agent.”¹³¹ This hyperbole does not reflect what the Panel actually did. As discussed in the section directly above, the Panel was acutely aware of the ambits of its regulatory authority and took great care to analyze each of the Petitioner’s statements to determine whether they were discriminatory or derogatory and if there was the requisite nexus.

ii) Application of the Doré Test

65. In applying the *Doré* test, the Panel considered the relevant factors from *Strom* for a s. 2(b) proportionality analysis as follows:

(i) the off-duty statements were directed at a marginalized and vulnerable group; (ii) the statements were made off-duty and did not relate to nursing services; (iii) the extent, nature and purpose of the communications; (iv) the truth and/or fairness of the statements; (v) the nature and scope of the damage to the profession and public interest; and (vi) the impact of finding that the statements constitute unprofessional conduct.¹³²

66. The Petitioner’s submissions demonstrate that this balancing exercise was not a question of law. For instance, the Petitioner cites *Whatcott* and says the court “noted that there was no

¹²⁹ Panel Reasons at para [255](#).

¹³⁰ Petitioner’s Written Submissions at paras 75, 79.

¹³¹ Petitioner’s Written Submissions at paras 79, 81.

¹³² Panel Reasons at paras [233](#) and [234](#), citing *Strom v Saskatchewan Registered Nurses’ Association*, 2020 SKCA 112 [*Strom*].

evidence that members of the public thought less of nurses as a result of Whatcott’s conduct in demonstrating outside of an abortion clinic.”¹³³ The “no evidence” reference makes abundantly clear that the court was speaking of factual findings, which typically turn on context. An important contextual factor in *Whatcott* was that Mr. Whatcott did not hold himself out as a nurse while he was picketing. As the Court of Appeal of Alberta later observed in *Zuk*, had Mr Whatcott held himself out as a nurse while he was picketing and expressing anti-abortion opinions,

there would have been a rational connection between the objective of ensuring respect for the status of the profession and sanctioning him for unprofessional conduct. The link would have been obvious.¹³⁴

67. Instead of pointing to a palpable and overriding error in the Panel’s analysis, the Petitioner seeks to reargue submissions made in the proceedings below. For example, she argues that, in *Strom* and *Klein*, criticism of the healthcare and legal system was in the public interest.¹³⁵ This is already addressed by the Panel, which found that:

The facts in this case are distinguishable from *Strom* because the statements in issue do not involve criticisms directed at the health care system or a particular institution. Instead, the Respondent’s off-duty statements are squarely directed at members of a vulnerable and marginalized group in our society.¹³⁶

The Petitioner fails to identify any error in this reasoning.

68. APRA argues that the Petitioner’s speech promoted the dignity and rights and women and that, while the law may accord protection based on gender identity, citizens are not required to *agree* with the law or its underlying premise.¹³⁷ In its submission, “speech that seeks to limit legal protections is protected speech,” and people should be free to debate the meaning of terms such as woman, man, sex, and gender, and what the law should say about them.¹³⁸ This submission

¹³³ Petitioner’s Written Submissions at para 77, citing [*Whatcott v The Saskatchewan Association of Licensed Practical Nurses*](#), 2008 SKCA 6.

¹³⁴ [*Zuk v Alberta Dental Association and College*](#), 2018 ABCA 270 at para 133.

¹³⁵ Petitioner’s Written Submissions at para 75, citing [*Strom*](#) and [*Re Klein and Law Society of Upper Canada*](#), 1985 CanLII 3086 (ON HCJDC).

¹³⁶ Panel Reasons at para 235.

¹³⁷ ARPA Submissions at paras 26-27.

¹³⁸ ARPA Submissions at paras 28-30.

ignores that the Panel did, in its lengthy *Doré* analysis, consider the Petitioner’s right to freedom of speech and found that in relation to the four specific statements—which it found were untruthful, unfair, and designed in part to elicit fear, contempt, and outrage against a vulnerable group—it was proportionate to make findings of unprofessional conduct.¹³⁹ ARPA disagrees with the Panel’s application of the law to the facts.

69. The Panel ultimately concluded that it “would be abdicating its duty under s. 16(1) of the Act by failing to discipline unprofessional conduct which has a nexus to the profession of nursing, specifically where a nurse uses their professional status when expressing discriminatory and/or derogatory statements targeting vulnerable and marginalized members of the community.”¹⁴⁰ Following a robust proportionality analysis, it found that findings of unprofessional conduct in respect of four statements would not unjustifiably limit the Petitioner’s s. 2(b) rights, but refrained from making a finding in respect of the caWsbar Position Statement.¹⁴¹

F. The Panel did not find that freedom of expression only protects political speech

70. The Petitioner alleges that the Panel erred in law “in interpreting the protection of s. 2(b) to be limited to political speech, or less available to non-political speech,” citing paragraphs 250, 251, 261, and 262 of the Panel’s reasons.¹⁴² The Petitioner then undermines this allegation by recognizing that the Panel acknowledged the other rationales for protecting freedom of expression under s. 2(b).¹⁴³

71. Paragraphs 250, 251, 261, and 262 of the Panel Reasons all address the application of s. 2(b) to the Petitioner’s specific statements. These are findings of mixed fact and law. The Petitioner does not identify specific palpable and overriding errors.

72. Importantly, paragraphs 250 and 262 are about the caWsbar Position Statement at Tabs 21-22 of the Extract: a statement that the Petitioner was *not* disciplined for.¹⁴⁴ The Panel concluded

¹³⁹ Panel Reasons at paras [260-261](#).

¹⁴⁰ Panel Reasons at para [259](#).

¹⁴¹ Panel Reasons at paras [261-262](#).

¹⁴² Petitioner’s Written Submissions at para 82.

¹⁴³ Petitioner’s Written Submissions at para 83, citing paragraphs [232-233](#) of the Panel Reasons.

¹⁴⁴ Tab 21 reproduces a page from the caWsbar website that lists the Petitioner as a founding member of that organization; the Panel found that Tab 21 “must be considered in conjunction

that “finding that the statements in the Position Statement constitute unprofessional conduct would unjustifiably infringe the Respondent’s freedom of speech.”¹⁴⁵ Unless the Petitioner seeks to challenge this conclusion, these paragraphs are outside the scope of this appeal.

73. Therefore, the only relevant paragraphs identified by the Petitioner are paragraph 251, which addresses the Petitioner’s statements at Tab 24, and paragraph 261, which summarizes the Panel’s prior findings about the Petitioner’s statements at Tabs 4, 24, 28, and S3.

74. Read generously, the Petitioner argues the Panel denied the protection of s. 2(b) to the statements in Tabs 4, 24, 28, and S3 because they were found to be non-political.¹⁴⁶ The Petitioner’s attempt to demonstrate this error unfairly parses the Panel Reasons, as (1) the Panel clearly held that these statements fell under the ambit of s. 2(b), given that the Panel embarked on a *Doré* proportionality analysis, and (2) the Panel assessed not only whether the statements were political but also their “truth and/or fairness,” including addressing the Petitioner’s argument that “gender critical speech” is “socially valuable” and “deserving of protection.”¹⁴⁷

75. For these statements, the Panel made the following findings of fact:

- a. For Tab 4: the statement “strongly connotes illegal, aggressive, and improper conduct and mischaracterizes transgender women seeking access to support services available to cisgender women in crisis situations as dangerous individuals. The Panel finds that the statement is not true nor is it fair to transgender women.”¹⁴⁸
- b. For Tab 24: the statements “are untrue and unfair to transgender women as they deny the possibility that that an individual born into a male body can feel like a woman and effectively deny the existence of transgender women. The Panel does not accept that an article containing the Respondent’s personal reflections on womanhood constitutes political speech, although it accepts that her musings contribute to social discourse.”¹⁴⁹

with the Position Statement downloaded from the organization’s website at Tab 22”: Panel Reasons at para [253](#).

¹⁴⁵ Panel Reasons at para [262](#).

¹⁴⁶ Petitioner’s Written Submissions at para 88.

¹⁴⁷ Panel Reasons at paras [243](#) and [248-254](#).

¹⁴⁸ Panel Reasons at para [249](#).

¹⁴⁹ Panel Reasons at para [251](#).

- c. For Tab 28: the statements “are profoundly unfair and untrue. These statements, which appear to be designed to elicit fear, contempt and hostility towards the transgender community, particularly transgender women, lie far from the core values of s. 2(b).”¹⁵⁰
- d. For Tab S3: the statements “unquestionably elicit fear and hostility towards transgender people,”¹⁵¹ “are profoundly unfair to members of the transgender community,” and “lie far from the core of s. 2(b) values.”¹⁵²

76. The Petitioner argues that “offensiveness strengthens the need for protection.”¹⁵³ However, the s. 2(b) jurisprudence from the Supreme Court of Canada does not consider speech to be more valuable *solely* because it is offensive; rather, these cases have considered the social value of offensive speech in relation to the values underlying freedom of expression and any potential harm caused.¹⁵⁴ This was the same approach as that of the Panel.

77. The Panel recognized that the Petitioner’s statements were captured by the expansive protection of s. 2(b), citing *Edmonton Journal* and *Irwin Toy*.¹⁵⁵ The Panel made no reversible errors in applying the *Strom* factors to determine the value of each statement under the s. 1 proportionality exercise.

G. The Panel did not prioritize trans rights over women’s rights

78. The Petitioner argues that the Panel “erred in law at paragraph 257, read in conjunction with paragraph 237 and App. pp. 93, 100 and 106, by essentially favouring one ‘marginalized’ group over another and demeaning women’s rights and protections, contrary to ss. 15(1) and 28 of the *Charter*.”¹⁵⁶

¹⁵⁰ Panel Reasons at para [252](#).

¹⁵¹ Panel Reasons at para [253](#).

¹⁵² Panel Reasons at para [254](#).

¹⁵³ Petitioner’s Written Submissions at para 87, citing *Strom* at paras [136-138](#).

¹⁵⁴ See, for example, *R v Keegstra*, 1990 CanLII 24, [1990] 3 SCR 697 at pp 746, 762 (SCC).

¹⁵⁵ Panel Reasons at para [232](#), citing *Edmonton Journal v Alberta (Attorney General)*, 1989 CanLII 20 [1989] 2 SCR 1326 (SCC), and *Irwin Toy Ltd. v Quebec (Attorney General)*, 1989 CanLII 87, [1989] 1 SCR 927 (SCC).

¹⁵⁶ Petitioner’s Written Submissions at para 94.

79. The Petitioner’s submissions on this point are difficult to follow. She begins by accepting that enumerated and analogous grounds under s. 15 of the *Charter* are on par with each other.¹⁵⁷ She then states that the Panel made it impossible for her to advocate for biological women’s rights, concluding that the Panel prioritized trans rights over women’s rights and erred in law by favouring one “marginalized”¹⁵⁸ group over another.¹⁵⁹ Yet she then goes on to argue that *women’s rights* should have been prioritized over *trans* rights,¹⁶⁰ in apparent contradiction to her position that there must be no hierarchy of rights. She concludes by drawing attention to the Panel’s finding that “[s]tatements of this nature which engage s. 15 of the *Charter* warrant less protection as they do not lie at the core of s. 2(b) values,”¹⁶¹ without explaining what error the Panel is alleged to have committed by saying so.
80. However forcefully the Petitioner argues to the contrary, it is clear that the Panel did not find there was a “clash of rights,” favour one marginalized group over another, or discipline the Petitioner for her advocacy for women’s rights. Instead, the Panel noted that the fact that the impugned statements were part of the Petitioner’s advocacy did not negate the statements’ discriminatory and harmful effect:

Here, the Panel considered the Respondent’s evidence that she was not seeking to discriminate against transgender persons but rather to advocate for the sex-based equality rights of cisgender women and girls. She presented her case as a “clash of rights”. The Panel accepted the Respondent’s evidence of her intentions but noted statements may be discriminatory and harmful in effect even if not intended to be so. The Panel also considered it possible to respectfully advocate for sex-based cisgender rights without making statements which denigrate and discriminate against transgender persons. Characterizing the off-duty statements as advocacy for sex-based equality rights of cisgender women does not negate the Panel’s concern that discriminatory and/or derogatory statements targeting a

¹⁵⁷ Petitioner’s Written Submissions at para 90.

¹⁵⁸ It is not clear why the Petitioner’s written argument puts quotation marks around the word *marginalized*. She does not expressly allege that the finding that transgender persons are marginalized is the product of palpable and overriding error. Indeed, she could not. There was ample evidence before the Panel and case law from the Supreme Court of Canada to support this finding: *Hansman* at para 84.

¹⁵⁹ Petitioner’s Written Submissions at paras 91-94.

¹⁶⁰ Petitioner’s Written Submissions at paras 95-98.

¹⁶¹ Panel Reasons at para 256, cited in Petitioner’s Written Submissions at para 98.

protected historically disadvantaged and vulnerable group are far from the core values of s. 2(b) of the Charter.¹⁶²

81. The Petitioner points to an alleged inconsistency in the Panel Reasons¹⁶³ because the Panel found that (1) it was “possible to respectfully advocate for sex-based cisgender rights without making statements which denigrate and discriminate against transgender persons,”¹⁶⁴ and (2) “the suggestion that women cannot defend their legal rights or the definition of womanhood if anyone can self-identify as a woman” was “discriminatory because they convey that transgender women should not be able to self-identify as women.”¹⁶⁵ The proposition that one can respectfully advocate for sex-based cisgender rights without conveying that transgender women should not be able to self-identify as women is not internally inconsistent.
82. The Panel’s consideration of the vulnerability of transgender people was fully justified. It cited *Keegstra* for the proposition that the s. 1 analysis must be guided by the values and principles of a free and democratic society, including “respect for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity.”¹⁶⁶ The Panel’s approach was also in line with *Hansman*, where Karakatsanis J noted that s. 2(b) jurisprudence grounds the level of protection afforded to expression in the nature of the expression and that s. 15(1) considerations “may factor into the weighing analysis in a proper case,” including that expression may “provoke hostility against a vulnerable group” protected under the *Charter* or human rights legislation.¹⁶⁷
83. The Petitioner argues the Panel “further erred in law in law by holding that statements by the Petitioner, a private citizen, engage s. 15 of the *Charter*.”¹⁶⁸ This again misconstrues the Panel’s reasons. A fair reading of the passage cited by the Petitioner shows that the Panel was

¹⁶² Panel Reasons at para [237](#) [emphasis added].

¹⁶³ Petitioner’s Written Submissions at paras 90-93.

¹⁶⁴ Panel Reasons at para [237](#).

¹⁶⁵ Appendix A, p 93.

¹⁶⁶ Panel Reasons at para [236](#), citing *Keegstra* at pp 736-737.

¹⁶⁷ *Hansman* at para [79](#), citing [1704604 Ontario Ltd v Pointes Protection Association](#), 2020 SCC 22 at para [80](#).

¹⁶⁸ Petitioner’s Written Submissions at para 99.

not saying that the Petitioner was subject to s. 15 but, rather, that a regulator may impose limits in line with the *Charter*.¹⁶⁹

H. The Panel did not err in favouring the evidence of certain expert witnesses

84. The Petitioner submits that the Panel erred in mixed fact and law “by accepting, without reservation, a scientifically novel and unsettled opinion on the multidimensional nature of sex... and the dismissal of autogynephilia” presented by the College’s experts “without clearly stating why their evidence was favo[u]red over that of the Petitioner’s experts.”¹⁷⁰ The Petitioner acknowledges the length at which the Panel discussed the expert evidence,¹⁷¹ but submits that the Panel nevertheless erred in failing to assess the expert witnesses’ “credibility.”¹⁷²

85. Credibility is not usually a criterion on which expert evidence is judged. Credibility “has to do with a witness’s veracity”¹⁷³ or “honesty and sincerity.”¹⁷⁴ It would be unusual, albeit theoretically possible, for someone to lack credibility and still be qualified as an expert. Credibility in an expert would typically be associated with bias, and bias would disqualify the expert.¹⁷⁵ Conversely, an expert opinion’s *reliability* may be put into question. In applying the two-step test for admission of opinion evidence, the decision maker balances potential risks and benefits to decide if the “pros” outweigh the “cons,” which is known as the “reliability versus effect factor.”¹⁷⁶

86. The Petitioner asserts that the Panel “failed to properly assess the witnesses’ credibility, including the demeanour of Dr. Bauer, who was evasive and unwilling to plainly answer the question, ‘What is the definition of a female?’”¹⁷⁷ While the Petitioner asserts that Dr. Bauer’s answer was “evasive,” that is merely the Petitioner’s view. A fair reading of Dr. Bauer’s

¹⁶⁹ Panel Reasons at para [257](#).

¹⁷⁰ Petitioner’s Written Submissions at para 104.

¹⁷¹ Petitioner’s Written Submissions at para 106.

¹⁷² Petitioner’s Written Submissions at para. 111.

¹⁷³ *R v C(H)*, 2009 ONCA 56 at para [41](#), as cited in *Huang v Li*, 2020 BCSC 1727 at para [318](#).

¹⁷⁴ *R v Kruk*, 2024 SCC 7 at para [146](#) (*per* Rowe J, concurring).

¹⁷⁵ *White Burgess Langille Inman v Abbott and Haliburton Co*, 2015 SCC 23 at para [53](#).

¹⁷⁶ *Ibid* at para [24](#); *R v Mohan*, 1994 CanLII 80, [1994] 2 SCR 9 at p 21 (SCC).

¹⁷⁷ Petitioner’s Written Submissions at para 111.

testimony relied on by the Petitioner¹⁷⁸ is that she explained that the definition of “male” or “female” can vary depending on what health condition is being studied. In other words, while the Petitioner views sex as black and white, Dr. [REDACTED] explained that the scientific view is more nuanced.¹⁷⁹ While the Petitioner asserts that Dr. [REDACTED] was not credible, it cannot be said that she lacked veracity, honesty, or sincerity in expressing this nuanced statement.

87. In any event, the gravamen of the Petitioner’s complaint under this heading is her view that the Panel reserved its only criticisms of the expert evidence for her experts.¹⁸⁰ She builds upon this observation, alleging that the Panel subjected her evidence to a higher degree of scrutiny than the College’s, and that this was an error of law.¹⁸¹ The case she cites, *Miller*,¹⁸² does not assist her. *Miller* was a case alleging sexual assault and involved evidence from the complainant and the regulated professional. It addresses the procedural unfairness of using a higher degree of scrutiny to assess the credibility or reliability of evidence adduced by one party over that adduced by the adversary. That is not what occurred here.

88. The law does not require decision makers to find the expert evidence of opposing parties to be equally persuasive. A decision maker’s “findings regarding the weight to be given to expert evidence, including preferring one expert over another, is entitled to deference, absent a palpable and overriding error.”¹⁸³ The decision maker can prefer one expert’s evidence over the other, as long as they provide sound reasons for dismissing or according less weight to one of the party’s experts.¹⁸⁴ The Panel explained that it preferred Dr. [REDACTED]’s evidence because it was more balanced. It noted that she explained the limits of a study and was quick to acknowledge that a hypothesis warranted further research. In contrast, Dr. [REDACTED] cited the

¹⁷⁸ See the block quotation at para. 111 of the Petitioner’s Written Submissions.

¹⁷⁹ See also Panel Reasons at para 68, noting that Dr. [REDACTED] testified that “she does not believe that using two rigid categories such as ‘male’ and ‘female’ defined by gametes is adequate. She testified that the concern is not about the common use of ‘male’ and ‘female’ but rather using those terms to say there is no space for another group of people to exist. She stressed the importance of considering the different dimensions of sex and gender from a health perspective.”

¹⁸⁰ Petition at para 94.

¹⁸¹ Petition at paras 94, 96.

¹⁸² *Miller v College of Optometrists of Ontario*, 2020 ONSC 2573 (Div Ct).

¹⁸³ *Bamrah v Waterton Precious Metals Bid Corp*, 2020 BCCA 122 at para 64.

¹⁸⁴ *Ibid.*

same study as definitive, even though it did not rate highly on a “pyramid of evidence” that he had provided and relied upon to critique Dr. [REDACTED]’s evidence.¹⁸⁵

89. The Petitioner is again identifying a discrete piece of evidence and urging this Court to take a different view of the evidence. This is not a palpable and overriding error capable of overturning a finding of fact.

I. The Panel did not hold the Petitioner to the standard of a lawyer

90. The Petitioner alleges that the Panel erred in law, or mixed law and fact, by holding her to the standard of a lawyer.¹⁸⁶ This, again, does not identify a pure question of law. At best, it raises a question of mixed fact and law, attracting a heightened standard of review.

91. Regardless, this alleged error mischaracterizes the Panel’s finding. The paragraph with which the Petitioner takes issue states in relevant part:

The Respondent misrepresents the state of the law regarding protections based on gender identity by arguing that transgender women (whom she improperly refers to as feminine men) should be deprived of legal protection on the basis of gender identity. The Respondent claims that transgender individuals have taken control of institutions to make everyone go along with their gender identity ideology. The Panel finds that there is no truth to these statements and they are profoundly unfair to members of the transgender community to the extent that they seek to deprive them of legal protections they are entitled to under human rights legislation and s. 15 of the *Charter*. These destructive statements which mischaracterize the state of the law and falsely assert that transgender individuals control our institutions lie far from the core of s. 2(b) values.¹⁸⁷

92. Contrary to the Petitioner’s argument, the Panel did not find that she committed professional misconduct because of her “sincerely held but incorrect legal position.”¹⁸⁸ Rather, the Panel was concerned that the Petitioner *was advocating* for transgender people to have fewer rights, by insisting that “feminine men” should not have legal protection based on gender, and that the Petitioner was again suggesting that transgender people were “taking control of institutions

¹⁸⁵ Panel Reasons at paras [170-171](#).

¹⁸⁶ Petitioner’s Written Submissions at paras 118-120.

¹⁸⁷ Panel Reasons at para [254](#).

¹⁸⁸ Petitioner’s Written Submissions at para 120.

to make everyone go along with their gender identity ideology.” The Panel considered that such statements were far from the core of s. 2(b) values.

93. In any event, the Petitioner has not shown how this single statement in the Panel’s 115-page decision had any impact on the ultimate outcome. The Petitioner again seeks to carve out a single aspect of the Panel’s findings and cite disagreement with it, ignoring that it is only part of a much broader, contextual analysis.

J. Penalty and Costs Decision

94. The Petitioner argues that the Panel’s cost award of \$93,639.80 was “unreasonable, crushing and punitive in nature” and that the Panel “made a palpable and overriding error when it applied the top end of the tariff in a case of a cooperative registrant with no prior disciplinary history and involving constitutional rights.” She further states that the Panel “failed to consider the impact of the *Charter* on the costs award, and whether such a high figure might deter professionals from contesting regulatory overreach and thereby chill legal speech.”¹⁸⁹
95. The Panel’s decision on costs involved weighing several factors set out in *Jaswal*.¹⁹⁰ The Petitioner alleges that the Panel made a palpable and overriding error in applying the top end of the tariff. However, she ignores that the Panel discounted the tariff costs sought by the College by 20%,¹⁹¹ reduced the costs of one expert report by 40%,¹⁹² disallowed one disbursement,¹⁹³ and granted the Petitioner two years to pay the costs award.¹⁹⁴ Ultimately, the Petitioner has not identified a palpable and overriding error; she merely disagrees with the Panel’s weighing of the *Jaswal* factors.
96. Although the Petitioner pleads that the Panel’s decision on penalty was unreasonable and disproportionate,¹⁹⁵ she does not appear to pursue this argument in her written submissions. Assuming she still advances this argument, it also fails. The Panel’s decision on penalty

¹⁸⁹ Petitioner’s Written Submissions at para. 121.

¹⁹⁰ *Jaswal v Newfoundland Medical Board*, 1996 CanLII 11630 (NL SC).

¹⁹¹ Penalty and Costs Decision at para [61](#).

¹⁹² Penalty and Costs Decision at para [63](#).

¹⁹³ Penalty and Costs Decision at para [64](#).

¹⁹⁴ Penalty and Costs Decision at para [66](#).

¹⁹⁵ Further Amended Petition at para. [103](#).

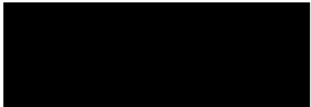
involved balancing the *Ogilvie/Dent* factors.¹⁹⁶ This is a discretionary exercise attracting a standard of palpable and overriding error. The Petitioner has not identified any such error, nor expanded on her basis for saying the penalty was unreasonable and disproportionate. Nor has she addressed the fact that the Panel, in weighing the *Ogilvie/Dent* factors, found several facts to be mitigating in this case and, accordingly, ordered a lesser penalty than that sought by the College. It appears that the Petitioner simply disagrees with the panel's exercise of discretion, which is not sufficient to overturn it.

PART 4 – NATURE OF ORDER SOUGHT

97. The respondent seeks an order that:

- a. The appeal is dismissed; and
- b. It be granted costs of this statutory appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 29 SEPTEMBER 2026.


 Brent Olthuis, K.C.
 for Olthuis van Ert
 Counsel for the Respondent

¹⁹⁶ These have been applied by discipline panels of the College in, e.g., [*British Columbia College of Nurses and Midwives v Parniak*](#), 2020 BCCNM 5 at paras [10-12](#).

APPENDIX A: LIST OF AUTHORITIES

Authorities	Page # in factum	Para # in factum
<i>Bamrah v. Waterton Precious Metals Bid Corp</i> , 2020 BCCA 122	34	88
<i>British Columbia College of Nurses and Midwives v Parniak</i> , 2020 BCCNM 5	11	23
<i>British Columbia College of Nurses and Midwives v Hamm</i> , 2025 BCCNM 1	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36	3, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 15a, 15b, 15c, 15d, 15e, 16, 17, 18, 19, 20, 20a, 20b, 20c, 20d, 20e, 21, 22, 33, 35, 36, 37, 38, 39, 40, 41, 49, 51, 52, 55, 56, 60, 61, 62, 63, 65, 68, 69, 70, 72, 74, 75b, 75c, 75d, 77, 79, 80, 81, 82, 83, 86, 88, 91, 95
<i>British Columbia College of Nurses and Midwives v Hamm</i> , 2025 BCCNM 2	11, 12	23, 24, 25, 26, 27, 28
<i>British Columbia College of Nurses and Midwives v Parniak</i> , 2020 BCCNM 5	36	96
<i>Canada (Minister of Citizenship and Immigration) v Vavilov</i> , 2019 SCC 65	12	30
<i>Doré v Barreau du Québec</i> , 2012 SCC 12	9, 23	20, 56
<i>Edmonton Journal v Alberta (Attorney General)</i> , 1989 CanLII 20, [1989] 2 SCR 1326 (SCC)	29	77
<i>Emond v. British Columbia (Attorney General)</i> , 2023 BCCA 456	13	31
<i>Groia v Law Society of Upper Canada</i> , 2018 SCC 27	9, 18, 19	20, 44, 45, 47
<i>Hansman v Neufeld</i> , 2023 SCC 14	3, 30, 32	10, 79, 82
<i>Housen v Nikolaisen</i> , 2002 SCC 33	13	30

<i>Huang v Li</i> , 2020 BCSC 1727	32	85
<i>Irwin Toy Ltd. v Quebec (Attorney General)</i> , 1989 CanLII 87, [1989] 1 SCR 927 (SCC).	29	77
<i>Jaswal v Newfoundland Medical Board</i> , 1996 CanLII 11630 (NL SC)	36	95
<i>Kane v. Proffitt</i> , 2018 BCCA 106	15	36
<i>Kempling v BC College of Teachers</i> , 2005 BCCA 327	4, 14, 21	13, 34, 53
<i>Law Society of British Columbia v Dent</i> , 2016 LSBC 5	11	23
<i>Law Society of British Columbia v Ogilvie</i> , [1999] LSBC 17	11	23
<i>Law Society of British Columbia v Trinity Western University</i> , 2018 SCC 32	9, 23	20, 56, 58
<i>Loyola High School v Quebec (Attorney General)</i> , 2015 SCC 12	9, 23	20, 56
<i>Miller v College of Optometrists of Ontario</i> , 2020 ONSC 2573 (Div Ct)	33	87
<i>R v C(H)</i> , 2009 ONCA 56	32	85
<i>R v Keegstra</i> , 1990 CanLII 24, [1990] 3 SCR 697 (SCC)	29	76
<i>R v Kruk</i> , 2024 SCC 7	32	85
<i>R v Mohan</i> , 1994 CanLII 80, [1994] 2 SCR 9 (SCC)	30	85
<i>Saskatchewan v Whatcott</i> , 2013 SCC 11	4	14
<i>Strom and Re Klein and Law Society of Upper Canada</i> , 1985 CanLII 3086	26	67
<i>Strom v Saskatchewan Registered Nurses' Association</i> , 2020 SKCA 112	25, 29	65, 76
<i>Whatcott v The Saskatchewan Association of Licensed Practical Nurses</i> , 2008 SKCA 6	25	66
<i>Whieldon v British Columbia College of Nurses and Midwives</i> , 2021 BCSC 1648	12	30
<i>White Burgess Langille Inman v Abbott and Haliburton Co</i> , 2015 SCC 23	33	85
<i>Zuk v Alberta Dental Association and College</i> , 2018 ABCA 270	26	66

APPENDIX B: ENACTMENTS

HEALTH PROFESSIONS ACT [RSBC 1996] CHAPTER 183

Duty and objects of a college

16 (1) It is the duty of a college at all times

(a) to serve and protect the public, and

(b) to exercise its powers and discharge its responsibilities under all enactments in the public interest.

(2) A college has the following objects:

(a) to superintend the practice of the profession;

(b) to govern its registrants according to this Act, the regulations and the bylaws of the college;

(c) to establish the conditions or requirements for registration of a person as a member of the college;

(d) to establish, monitor and enforce standards of practice to enhance the quality of practice and reduce incompetent, impaired or unethical practice amongst registrants;

(e) to establish and maintain a continuing competency program to promote high practice standards amongst registrants;

(f) to establish, for a college designated under section 12 (2) (h), a patient relations program to seek to prevent professional misconduct of a sexual nature;

(g) to establish, monitor and enforce standards of professional ethics amongst registrants;

(h) to require registrants to provide to an individual access to the individual's health care records in appropriate circumstances;

(i) to inform individuals of their rights under this Act and the [*Freedom of Information and Protection of Privacy Act*](#);

(i.1) to establish and employ registration, inquiry and discipline procedures that are transparent, objective, impartial and fair;

(j) to administer the affairs of the college and perform its duties and exercise its powers under this Act or other enactments;

(k) in the course of performing its duties and exercising its powers under this Act or other enactments, to promote and enhance the following:

(i) collaborative relations with other colleges, regional health boards designated under the [Health Authorities Act](#) and other entities in the Provincial health system, post-secondary education institutions and the government;

(ii) interprofessional collaborative practice between its registrants and persons practising another health profession;

(iii) the ability of its registrants to respond and adapt to changes in practice environments, advances in technology and other emerging issues.

HEALTH PROFESSIONS AND OCCUPATION ACT, SBC 2022, CHAPTER 43

Transition — disciplinary proceedings

543 (1) In this section:

"discipline committee" means the discipline committee of a college under the former Act;

"transitioned citation" means a citation issued under [section 37](#) of the former Act with respect to which no final decision has been made as of the date that this section comes into force.

(2) If a transitioned citation has been issued but the discipline committee has not yet begun a hearing with respect to the citation,

(a) the registrar must transfer the citation to the director of discipline and include with the citation all information and records referred to in [section 137](#) [*information to director of discipline*] of this Act, and

(b) this Act applies as if the citation had been issued by the director of discipline.

(3) If a transitioned citation has been issued and the discipline committee has begun a hearing or has completed hearings with respect to the citation,

(a) the discipline committee may continue to exercise powers and must perform duties under the former Act as if that Act had not been repealed, and

(b) in the exercise of powers and performance of duties under paragraph (a) of this subsection, [section 14](#) [*guiding principles for persons acting under this Act*] of this Act applies to the discipline committee.