

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF A STATUTORY APPEAL PURSUANT TO: Section 40 of
the *HEALTH PROFESSIONS ACT* [RSBC 1996] Chapter 183

BETWEEN:

AMY HAMM

PETITIONER

AND:

BRITISH COLUMBIA COLLEGE OF NURSES AND MIDWIVES

RESPONDENT

AND:

THE ASSOCIATION FOR REFORMED POLITICAL ACTION (ARPA) CANADA

INTERVENER

AND:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF BRITISH COLUMBIA

INTERVENER

AND:

EGALE CANADA

INTERVENER

AND:

WEST COAST LEAF

INTERVENER

**WRITTEN SUBMISSIONS OF THE INTERVENER
ASSOCIATION FOR REFORMED POLITICAL ACTION (ARPA) CANADA**

Joel Persaud and John Sikkema

[REDACTED]

[REDACTED]

Counsel for the Intervener, ARPA Canada

Table of Contents

Part 1: Overview	1
Part 2: Argument	1
A. <u>The Petitioner’s gender critical speech is not discriminatory speech in law</u>	1
B. <u>Tribunal ruling in <i>Oger</i> depended on finding of demonstrable and specific adverse effects</u>	3
C. <u>Contesting questions of human nature and identity versus “denying existence”</u>	4
D. <u>Gender-critical speech is not unprofessional <i>per se</i></u>	4
E. <u>Gender-critical speech or advocacy for sex-based rights not contrary to respect for dignity</u>	5
F. <u>The Petitioner’s speech promotes human dignity</u>	7
G. <u>Gender-critical speech is compatible with legal protections for transgender persons</u>	7
Appendices: List of Authorities	9
Appendices: List of Secondary Sources	10
Appendices: Enactments	11

Part 1: Overview

1. Asserting that women are by definition female, or advocating for sex-based legal protections, is not unlawful, discriminatory, or unprofessional *per se*. The Petitioner's statements do not deny that some biologically male persons sincerely self-identify as women or deny anyone's human dignity. Disagreement with or criticism of a person's beliefs, self-concept, or way of life is not discriminatory *per se*.¹
2. The question is whether the speech, in context, treats people as not entitled to the basic respect owed to persons by virtue of their humanity. Questioning or denying the truth of a person's beliefs or self-identity does not equate to denying that person's dignity.²
3. Debating the scope of rights that identifiable groups of persons should have – such as transgender persons' access to opposite-sex facilities or services, or women's sex-based rights, is perfectly lawful in a free and democratic society. Human rights law is not designed to regulate the substance of such debates. Rather, human rights law is itself properly subject to debate (in which all may participate) in a free and democratic society.³
4. Furthermore, advocating that sex, rather than gender identity, should define who is or is not a woman does not amount to advocating that transgender persons receive no legal accommodations. Defining "woman" for legal purposes by reference to biological sex can coexist with legal protections and accommodations for transgender persons.⁴

Part 2: Argument

A. The Petitioner's gender critical speech is not discriminatory speech in law

5. According to the Panel decision, the Petitioner seeks to "advocate for the protection of sex-based rights for women and girls, to raise public awareness of the issues relating to gender ideology, and to stimulate public debate."⁵

¹ *Kempling v. British Columbia College of Teachers*, 2005 BCCA 327 at [para 33](#) [*Kempling*].

² *Ward v. Quebec (Commission des droits de la personne)*, 2021 SCC 43 at [para 56](#) [*Ward*]; *Del Grande v. Toronto Catholic District School Board*, 2024 ONCA 769 at [paras 40- 44](#) [*Del Grande*].

³ *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11 at [para 51](#) [*Saskatchewan v. Whatcott*]; *Oger v. Whatcott (No. 7)*, 2019 BCHRT 58, at [para 119](#) [*Oger*].

⁴ *For Women Scotland Ltd v. The Scottish Ministers*, [2025] UKSC 16 at para 248 [*For Women Scotland*].

⁵ *British Columbia College of Nurses and Midwives v Hamm*, 2025 BCCNM 1, at [para 215](#) [*Hamm*].

6. The Panel found that the Petitioner’s statements “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” are untrue and discriminatory against transgender persons because they “deny the possibility that individuals born into male bodies can feel and identify as women.”⁶
7. The Panel thus purports to be an authority on the inherently contestable question of whether or in what sense a male person can feel like or *be* a woman. As to whether a male person can *identify* as a woman, the Petitioner’s statements do not deny that – they only deny that identifying as a woman makes a person a woman in reality.
8. Making a male person who self-identifies as a woman (or “transgender woman”) reasonably feel unwelcome or unsafe in the workplace or as a client or customer may properly be called discriminatory in law. Publicly denying that a male person can really know what it feels like to be a woman cannot, per se, properly be labeled discriminatory in law. To be discriminatory in a legally meaningful sense, it must create a legally impermissible effect.⁷ That others might agree is not such an effect.
9. The Panel also held that statements suggesting that a “gender soul does not exist” or that “men cannot literally become women” are discriminatory “because they effectively deny the existence of transgender people.”⁸ But such statements do not deny that a male person can sincerely identify as a woman (making him an existent transgender person) – only that doing so does not in fact make him a woman, if woman is defined in reference to biology (an adult, female member of the human species), as some believe it should be.
10. Setting aside the question of whether the Petitioner’s speech denies transgender people’s existence, denying that a male person can identify as a woman, or vice versa, is not necessarily discriminatory speech. As stated by the UK’s Employment Appeals Tribunal in *Forstater*, “refusing to accept” that a person “has the gender that they identify with”

⁶ *Hamm*, *ibid*, at [para 251](#) and [Appendix A](#), Tab 24.

⁷ *Saskatchewan v. Whatcott*, *supra* note 3, at [paras 49-54](#); *Ward*, *supra* note 2, at [paras 82-86](#); *Oger*, *supra* note 3, at [para 134](#).

⁸ *Hamm*, *supra* note 5, at [Appendix A](#), Tab 28.

does not necessarily amount to discriminatory or harassing speech.⁹ It depends entirely on the context in which the statements are made and their legally relevant effects.¹⁰

B. Tribunal ruling in *Oger* depended on finding of specific adverse effects

11. The Panel relies on the Human Rights Tribunal ruling *Oger v. Whatcott* (No. 7) for the proposition that it is discriminatory to “deny the existence” of transgender people.¹¹
12. *Oger* turned on a finding that the publication “had a discriminatory effect, or likely effect, or was intended to do so,” meaning an effect “with specific adverse consequences for the complainant.” The Tribunal found that the challenged publication portrayed transgender people as “inherently deceptive and untrustworthy” and therefore unfit for political participation. But the specific, purportedly impermissible effect highlighted in *Oger* is remarkable: “The pamphlet promoted a “specific adverse outcome for Ms. Oger and groups like the NDP which would support transgender people: do not vote for them.”¹²
13. The Tribunal arguably exceeded its authority under the *Code*, considered in light of the *Charter*, by purporting to regulate one citizen’s expression about how others should vote in an election—expression at the core of s. 2(b) and democratic participation. The Panel decision herein also cuts to the core of the underlying purposes of s. 2(b).¹³ But at least the Tribunal’s analysis in *Oger* purportedly turns on a finding of a specific adverse effect.
14. Conversely, the Panel cannot point to a specific adverse effect on anyone resulting from Ms. Hamm’s speech. The College admitted that it “did not investigate whether there was harm from” the Petitioner’s speech.¹⁴ The Panel contends that the Petitioners’ speech advocates for removing transgender people’s legal rights, which one might argue is a specific adverse effect. However, the Petitioner does not argue against basic legal

⁹ *Forstater v Centre for Global Development Europe*, [2021] UKEAT 105_20_1006, at para 103 [*Forstater*]. (The UKEAT is a superior court of record.)

¹⁰ *Forstater*, *ibid*, at para 103.

¹¹ *Hamm*, *supra* note 5, at para 193, citing *Oger*, *supra* note 3.

¹² *Oger*, *ibid*, at paras 134-135 and 167.

¹³ *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927 at page 976.

¹⁴ *Hamm*, *supra* note 5, at para 16; In *Kempling*, *supra* note 1, at para 79, the Court of Appeal relied on evidence of harm to the school system. The Court found that it was clear from Mr. Kempling’s writings that his beliefs “would inform his actions as a teacher and counsellor”. It was for that reason that his writings “present an obstacle for homosexual students in accessing discrimination-free education.”

protections for anyone. She suggests that legal protections for transgender persons are possible without literally recognizing a male person as a woman.¹⁵ Thus, there is a lack of a logical connection between her speech and depriving anybody of rights. Rather, her speech is a legitimate contribution to public discussion of deeply contested questions.

C. Contesting questions of human nature and identity versus “denying existence”

15. The Tribunal in *Oger* says its reasoning “does not mean that all expression that criticizes or questions the existence of transgender people violates the *Code*,” but that it would distinguish “between public debate about, for example, the scope of rights that different groups in society may be afforded, and commentary like that which is in the Flyer, which denies the very existence of transpeople.”¹⁶
16. The rhetoric in the flyer is more extreme than anything the Petitioner herein has said. But in any case, to deny that sincerely identifying as a woman truly makes someone a woman is not to “deny the very existence of transgender persons.” It is only to take a different position on a deeply contested question about human nature and identity. “A free and democratic society is one that is committed to permitting everyone to speak what they understand to be the truth about the most profound questions of being and flourishing, and to advocate for laws and policies that reflect this.”¹⁷

D. Gender-critical speech is not unprofessional *per se*

17. In *Kempling v. BC College of Teachers*, the Court stated 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.” Rather the question “was whether the making and publication of those statements...fell below acceptable standards of professional conduct.”¹⁸ The Panel in the herein case relied on the lower court ruling.¹⁹

¹⁵ *Hamm*, *supra* note 5, at [Appendix A](#), Tab S3.

¹⁶ *Oger v. Whatcott (No. 7)*, 2019 BCHRT 58 at [para 119](#).

¹⁷ *40 Days for Life v. Dietrich*, 2024 ONCA 599 at [para 89](#) [**40 Days**].

¹⁸ *Kempling v. BC College of Teachers*, 2004 BCSC 133 at [para 39](#).

¹⁹ *Hamm*, *supra* note 5, at [para 195](#).

18. However, on appeal, the Court of Appeal in *Kempling* found that a determination of whether the impugned speech is discriminatory (and thus unprofessional) must be “based upon an analysis...in light of human rights principles.”²⁰
19. One human rights value highlighted by the Court of Appeal, citing Justice Gonthier in *Chamberlain v. Surrey School District No. 26*, was “the ‘inherent dignity of the individual.’” The Court noted that the “central tenet of democratic society is the belief that all people are equally deserving of respect, concern and consideration, and this belief flows from a recognition that each individual is inherently valuable.”²¹
20. The Court of Appeal found that “[s]tatements critical of a person’s way of life or which denounce a particular lifestyle are not in themselves discriminatory.” Rather, “it is only when...statements are made in disregard of an individual’s inherent dignity that they become [discriminatory].”
21. In *Del Grande v. Toronto Catholic District School Board*, 2024 ONCA 769, the Ontario Court of Appeal rejected the notion that expressing opposition to the legal interests of LGBTQ+ persons is inherently discriminatory or unprofessional. The Court found that it was reasonable for a school board to conclude that a school trustee had breached the board’s code of conduct, not because the trustee was critical of the concept of gender identity *per se*, but because of his “degrading and...flippant equation of gender identity and gender expression to cannibalism, rape, and bestiality.”²² The Court, citing *Kempling*, concluded that these remarks “ignored the inherent dignity of LGBTQ+ individuals” and therefore fell outside the core values protected by s. 2(b).²³

E. Gender-critical speech or advocacy for sex-based rights are not contrary to respect for dignity

22. The notion that gender critical speech is *per se* a violation of or denial of human dignity is incompatible with the Supreme Court of Canada’s rulings in *Saskatchewan v. Whatcott*

²⁰ *Kempling*, supra note 1, at [para 26](#).

²¹ *Ibid*, at [para 33](#).

²² *Del Grande*, supra note 2, at [para 41](#).

²³ *Ibid* at [para 44](#). Similarly, the Ontario Divisional Court found in *Peterson v. College of Psychologists of Ontario* at [para 64](#), 2023 ONSC 4685 that Jordan Peterson was not disciplined for expressing a gender-critical view, but for “degrading” language.

and *Ward v Quebec*.²⁴ These rulings emphasize that the law is not concerned with suppressing offensive ideas or ensuring that people think rightly. They highlight the law's concern with certain impermissible effects.²⁵ *Ward* emphasizes that Quebec's statutory right to the safeguard of dignity entails "protection from the denial of their worth as a human being."²⁶ 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.

23. A Roman Catholic person, for example, might deny that Jehovah's Witnesses are Christians, even if the latter strongly identify as Christians and consider it core to their identity. But denying the Jehovah's Witness's identity does not mean the Roman Catholic person has denied or undermined Jehovah's Witnesses' dignity, humanity, or personhood. Similarly, an atheist may deny that people have souls, without denying the human dignity of persons who believe they do and consider it core to their identity.
24. Professor Holly Lawford-Smith argues that if dignity is understood as the respect owed to each person by virtue of their humanity (which is similar to the Supreme Court's conceptualization of dignity in *Ward*), then denying that males can be or become female does not, in itself, deny the equal humanity of transgender persons. As Lawford-Smith puts it, "nothing about denying that males can be or become female, and vice versa, requires denying the equal humanity of a trans person. Humans have sexes; someone is not less human because they're one sex or the other."²⁷
25. Lawford-Smith therefore distinguishes between exclusion from a specific social concept and exclusion from society itself. While the latter would threaten a person's dignity and humanity, she argues that the former does not: rejecting a person's inclusion within a particular social category does not, without more, deny their equal humanity.

²⁴ *Saskatchewan v. Whatcott*, *supra* note 3; *Ward*, *supra* note 2.

²⁵ *Saskatchewan v. Whatcott*, *supra* note 3, at [paras 49-54](#); *Ward*, *supra* note 2, at [paras 82-86](#)

²⁶ *Ward*, *supra* note 2, at [para 58](#).

²⁷ Holly Lawford-Smith, *Sex Matters: Essays in Gender-Critical Philosophy* (Oxford: Oxford University Press, 2023) at page 178; regarding section 15, the Supreme Court said in *Vriend v. Alberta*, 1998 CanLII 816 (SCC), [1998] 1 SCR 493 at [para 67](#) that the *Charter* recognizes the value of a person regardless of their sex. The Court wrote, "[i]n order to achieve equality the intrinsic worthiness and importance of every individual must be recognized regardless of... sex...or other characteristics of the person."

F. The Petitioner’s speech promotes human dignity

26. The Petitioner’s speech promotes the dignity and rights of women.²⁸ The Petitioner stated, and the Panel accepted, that her intent was to promote discourse “on sex-based equality rights of cisgender women and girls.”²⁹ As noted by the Supreme Court in *R v Kapp*, “human dignity is an essential value underlying” the right to equality.³⁰

27. People may express their views about what respect for dignity requires based on their own unique perspectives.³¹ While gender identity’s recognition in law reflects what respect for dignity requires *according to the state*, citizens need not agree. The democratic legitimacy of the law depends on the freedom to question or oppose it.³² People are required to comply with law, not agree with it or its underlying premises.

G. Gender-critical speech is compatible with legal protections for transgender persons

28. According to the Panel, the Petitioner says transgender persons “should be protected on the basis of sex rather than gender...” The Panel contends that this “deprive[s] [transgender individuals] of legal protections they are entitled to under human rights legislation...” The Panel characterizes the Petitioner’s view as “profoundly unfair,” “destructive,” and a statement that “lie[s] far from the core of s. 2(b) values.” But speech that seeks to limit legal protections is protected speech.

29. In *Saskatchewan v. Whatcott*, the Court stated that hate speech legislation does not capture speech that “debates the merits of reducing the rights of vulnerable groups in society. It only restricts...expression exposing them to hatred as part of that debate.”³³

²⁸ *For Women Scotland*, at paras 206-207, 211, 213 United Nations Human Rights Council, [Report of the Special Rapporteur](#), “Sex-based violence against women and girls: new frontiers and emerging issues” (June 16, 2025) at para 29, pg. 8.

²⁹ *Ward*, *ibid*, at para 240.

³⁰ *R. v. Kapp*, 2008 SCC 41 at para 21.

³¹ *40 Days*, *supra* note 17, at para 89.

³² *Reference re. Alberta Statutes*, [1938] SCR 100, Justice Kerwin at 146, “Freedom of discussion is essential to enlighten opinion in a democratic state [...]. There must be an untrammelled publication of [...] the opinions of the political parties contending for ascendancy.”

³³ *Saskatchewan v. Whatcott*, *supra* note 3, at para 51.

30. The law may take a position on how to define woman, man, sex, gender, etc. for legal purposes. That does not make people any less free to debate the meaning of such terms or what the law should say about them.³⁴
31. In *For Women Scotland*, the UK Supreme Court affirmed that defining woman in law based on biology is compatible with having legal recognition, protections, and accommodations for transgender persons, even if it means that the latter's access to female-only spaces may consequently be more limited.³⁵
32. The belief that shelters, washrooms, and change rooms should be reserved for biological women does not entail that men or transgender persons are not entitled to safe access to similar services. Even if a transgender person may not enter a space that accords with their gender identity, human rights legislation may require facilities to include accommodations (e.g. single occupant washrooms) to protect the legal rights of transgender-identifying persons.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

Dated September 23, 2026


Joel Persaud & John Sikkema
Counsel for the Intervener, ARPA Canada

³⁴ *R v Zundel*, [1992] 2 SCR 731 at 827; *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 SCR 139, at 174, “no official, high or petty, can prescribe what shall be orthodox in politics [...] or other matters of opinion”. *40 Days*, *supra* note 17, at para 89.

³⁵ *For Women Scotland*, *supra* note 4, at para 248. See also United Nations Human Rights Council, *Report of the Special Rapporteur*, “Sex-based violence against women and girls: new frontiers and emerging issues” (June 16, 2025) at para 16, pg. 4.

Appendices: List of Authorities

40 Days for Life v. Dietrich, 2024 ONCA 599

British Columbia College of Nurses and Midwives v Hamm, 2025 BCCNM 1

Committee for the Commonwealth of Canada v. Canada, [1991] 1 SCR 139

Del Grande v. Toronto Catholic District School Board, 2024 ONCA 769

For Women Scotland Ltd v. The Scottish Ministers, [2025] UKSC 16

Forstater v Centre for Global Development Europe, [2021] UKEAT 105_20_1006

Irwin Toy Ltd. v. Quebec (Attorney General), [1989] 1 S.C.R. 927

Kempling v. BC College of Teachers, 2004 BCSC 133

Kempling v. British Columbia College of Teachers, 2005 BCCA 327

Oger v. Whatcott (No. 7), 2019 BCHRT 58

Peterson v. College of Psychologists of Ontario, 2023 ONSC 4685

R v Zundel, [1992] 2 SCR 731 at 827

R. v. Kapp, 2008 SCC 41

Reference re. Alberta Statutes, [1938] SCR 100

Saskatchewan (Human Rights Commission) v. Whatcott, 2013 SCC 11

Ward v. Quebec (Commission des droits de la personne), 2021 SCC 43

Appendices: List of Secondary Sources

Holly Lawford-Smith, *Sex Matters: Essays in Gender-Critical Philosophy* (Oxford: Oxford University Press, 2023)

United Nations Human Rights Council, [Report of the Special Rapporteur](#), “Sex-based violence against women and girls: new frontiers and emerging issues” (June 16, 2025)

Appendices: Enactments

HEALTH PROFESSIONS ACT, [RSBC 1996] CHAPTER 183

[Repealed by the *Health Professions and Occupations Act*, S.B.C. 2022, c. 43, s. 546, effective April 1, 2026 (B.C. Reg. 126/2025 as amended by 19/2026).]

Part 2 — Designated Health Professions

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.

Part 3 — Inspections, Inquiries and Discipline

Definitions for Part

26 In this Part:

"professional misconduct" includes sexual misconduct, unethical conduct, infamous conduct and conduct unbecoming a member of the health profession;

"registrant" includes a former registrant, and a certified non-registrant or former certified non-registrant to whom this Part applies;

"serious matter" means a matter which, if admitted or proven following an investigation under this Part, would ordinarily result in an order being made under section 39 (2) (b) to (e);

"unprofessional conduct" includes professional misconduct.

...

Action by discipline committee

39 (1) On completion of a hearing, the discipline committee may, by order, dismiss the matter or determine that the respondent

(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.

(2) If a determination is made under subsection (1), the discipline committee may, by order, do one or more of the following:

(a) reprimand the respondent;

(b) impose limits or conditions on the respondent's practice of the designated health profession;

(c) suspend the respondent's registration;

(d) subject to the bylaws, impose limits or conditions on the management of the respondent's practice during the suspension;

(e) cancel the respondent's registration;

(f) fine the respondent in an amount not exceeding the maximum fine established under section 19 (1) (w).

(3) An order of the discipline committee under this section must

(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.

(4) If the discipline committee dismisses the matter under subsection (1) on the basis that the matter was without merit, it may award costs to the respondent against the college, based on the tariff of costs established under section 19 (1) (w.1).

(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).

(6) Costs awarded under subsection (4) must not exceed, in total, 50% of the actual costs to the respondent for legal representation for the purposes of the investigation under section 33 and the hearing.

(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.

(8) If the registration of the respondent is suspended or cancelled under subsection (2), the discipline committee may

(a) impose conditions on the lifting of the suspension or the eligibility to apply for reinstatement of registration,

(b) direct that the lifting of the suspension or the eligibility to apply for reinstatement of registration will occur on

(i) a date specified in the order, or

(ii) the date the discipline committee or the board determines that the respondent has complied with the conditions imposed under paragraph (a), and

(c) impose conditions on the respondent's practice of the designated health profession that apply after the lifting of the suspension or the reinstatement of registration.

(9) If an order under subsection (2) is appealed under section 40, the discipline committee, on application of the respondent under this section, may, by order,

(a) stay the order made under subsection (2) pending the hearing of the appeal, and

(b) impose limits or conditions on the practice of the designated health profession by the respondent during the stay.

(10) Before taking action under subsection (2), (5), (8) or (9), the discipline committee may consider whether, in the opinion of the discipline committee, the matter is an appropriate case for a refund to the complainant of all or part of any amount paid by the complainant to the registrant for or related to a service provided by the registrant or another person under the delegation or supervision of the registrant, and if so, whether a refund has been offered or made by the registrant.

Appeal of discipline committee decision to Supreme Court

40 (1) A college, a respondent described in section 38 (2) or a registrant described in section 39.1 (1), aggrieved or adversely affected by an order of the discipline committee under section 39 or 39.1 (1), may appeal the order to the Supreme Court.

(2) An appeal under this section must be commenced within 30 days after the date on which the order described in subsection (1), or the written notice described in section 20 (7), as the case may be, is delivered to the person who has the right to appeal under this section.

(3) An appeal under this section must be commenced by filing a petition in any registry of the Supreme Court, and the Supreme Court Civil Rules relating to petition proceedings apply to the appeal, but Rule 18-3 of those rules does not apply.

(4) The petition commencing an appeal under this section must, within 14 days of its filing in the court registry, be served on

- (a) the college, effected by service on the registrar, if the appellant is a respondent described in section 38 (2) or a registrant described in section 39.1 (1),
 - (b) the respondent or the registrant, if the appellant is the college, and
 - (c) the complainant, if the matter relates to a complaint.
- (5) Only the persons required to be served under subsection (4) (a) and (b) may be parties to an appeal.
- (6) [Repealed 2008-29-42.]
- (7) On request by a party to an appeal under subsection (1) and on payment by the party of any disbursements and expenses in connection with the request, the registrar must provide that party with copies of part or all, as requested, of the record of the proceeding before the discipline committee.
- (8) An appeal under subsection (1) must be a review on the record unless the court is satisfied that a new hearing or the admission of further evidence is necessary in the interests of justice.
- (9) On the hearing of an appeal under this section, the court may
- (a) confirm, vary or reverse the decision of the discipline committee,
 - (b) refer the matter back to the discipline committee, with or without directions, or
 - (c) make any other order it considers appropriate in the circumstances.
- (10) A decision of the Supreme Court on an appeal under subsection (1) may be appealed to the Court of Appeal if leave to appeal is granted by a justice of the Court of Appeal.

***Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being
Schedule B to the Canada Act 1982, 1982, c 11 (UK)***

Fundamental freedoms

2 Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.

Equality Rights

Equality before and under law and equal protection and benefit of law

15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Affirmative action programs

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Rights guaranteed equally to both sexes

28 Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

Human Rights Code, [RSBC 1996] c 210

8(2) A person does not contravene this section by discriminating

(a) on the basis of sex, if the discrimination relates to the maintenance of public decency...