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SUPREME COURT SCHEDULING

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, RSBC 1996, c 183

BETWEEN:

AMY HAMM

PETITIONER

AND:

BRITISH COLUMBIA COLLEGE OF NURSES AND MIDWIVES

RESPONDENT

WRITTEN SUBMISSIONS OF THE PETITIONER AMY HAMM

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DATE, TIME, AND PLACE OF HEARING: November 10, 12 & 13, 2026, 10:00 AM
800 Smithe Street, Vancouver, BC

BEFORE: The Honourable Justice Jacqueline D. Hughes

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PART 1: OVERVIEW AND STATEMENT OF FACTS

1. This case is a statutory appeal of a decision of a discipline committee panel of the British Columbia College of Nurses and Midwives ("**BCCNM**" or the "**College**"), which found the Petitioner, Amy Hamm, guilty of unprofessional conduct for her off-duty, gender-critical advocacy for the sex-based rights of women.

2. This case is about a professional regulator zealously participating in the "cancellation" of a nurse, who had no prior discipline history, in response to complaints by activists who wanted her to be punished for her views, expressed entirely off duty. The complaints found resonance within the College, which launched an investigation, pulling together a dossier of some 330 pages of social media posts and articles and endeavoring to link these to her profession. After a 22-day hearing, the disciplinary committee hearing the matter, comprised of two nurses and a member of the public (the "**Panel**"), found that her comments were "discriminatory and/or derogatory" to transgender people and thereby constituted "unprofessional conduct." Only five of her comments were made in publications where she was identified as a nurse, and these were subject to penalty.

3. The Panel's 115-page "Reasons for Decision on Verdict", dated March 13, 2025, (the "**Decision**"), contained inherent inconsistencies and improperly extended the jurisdiction of the College over off-duty comments on a matter of public debate, based solely on the existence of minor biographical references in some of the Petitioner's publications. In its reasons, the Panel endorsed controversial ideas about the nature of sex, what constitutes a woman, and who must be included in any advocacy for that group.

4. Among other errors that will be described below, the Panel found that the Petitioner's impugned statements were discriminatory and/or derogatory toward transgender people, even when the target of those statements was gender ideology or trans activism or were advocacy for women's sex-based rights. No one identifying as transgender filed complaints or testified in this case.

The Parties

5. Amy Hamm is a registered nurse licensed with the College. She is a divorced mother of two young children, residing in New Westminster. She was employed for 13 years with Vancouver Coastal Health, most recently as a nurse educator, until she was terminated in March 2025, shortly after the Decision was published.

6. Ms. Hamm is a long-time advocate for women's rights, particularly with respect to the adverse impact of gender ideology on such rights, and a prolific writer. She has never had a patient complaint nor, until the events that were the subject of the Decision, was she ever subject to discipline by her employer or her regulator.

7. Ms. Hamm became involved in advocating for women's sex-based protections around 2016, after observing the impact of gender ideology on women's ability to speak about their own concerns in online groups without being silenced. She began writing about the issue and then organizing events for women to discuss these concerns in Vancouver.[1] This made her a target for countless threats of violence, death, rape, and aggressive protests at venues, such as the display of a mock guillotine directed at "TERFs" (Trans-Exclusionary Radical Feminists).[2]

The Context for the Petitioner's Comments

8. In her testimony, the Petitioner described the general concerns that led to her advocacy as follows: (1) gender identity ideology has a harmful impact on women generally, as well as on lesbians specifically; [3] (2) the medical transition of children and minors is a serious safeguarding issue;[4] (3) males, *as a sex class*, are, *on average*, physically stronger and more violent than women;[5] (4) *some* males, self-

[1] Second Affidavit of [redacted], containing the Record of Proceedings (the "**Record**"), at Tab A18, Hearing Transcript, Day 17, November 3, 2023, Direct Examination of Amy Hamm ("**DE of AH**"), page 1256, line 18 to page 1259, line 19
[2] *Ibid*, and Record, Tab A18, Transcript, Day 17, DE of AH, page 1261, line 7 to page 1265, line 16
[3] Record, Tab A18, Transcript, Day 17, DE of AH, page 1256, line 18 to page 1258, line 6
[4] Record, Tab A18, Transcript, Day 17, DE of AH, page 1249, line 19 to page 1250, line r; and page 1322, line 22 to page 1324, line 3
[5] Record, Tab A18, Transcript, Day 17, DE of AH, page 1235, lines 2 to 17; Record, Tab A19, Transcript, Day 18, November 6, 2023, Cross-Examination of Amy Hamm ("**CE of AH**"), page 1445, line 9 to page 1447, line 13; Tab A20, Transcript, Day 19, November 7, 2023, CE of AH, page 1477, lines 7 to 23

identifying as women (often fully intact and heterosexual), with none of the historical gatekeeping in place since “gender identity” achieved protected status, can and do abuse this statutory protection of gender identity to enter women’s sex-segregated spaces, including prisons, rape shelters, and changerooms;[6] (5) there is a conflict between sex and gender identity with real-world impacts, particularly due to this unconstrained ability for males to “self-identify” as women, which women are not allowed to question without consequences;[7] (6) fringe activists have been steadily pushing gender identity ideology into institutions, and being abusive to those who oppose it;[8] and (7) she cannot, in good conscience, stand by and watch this happen without speaking up.[9]

9. Ms. Hamm does not deny the existence of people who believe that they have an internal sense of self that differs from their biological reality. She does, however, reject the notion that *everyone* has a gender identity, as this series of answers during her testimony explains:[10]

> The, the base claim of gender identity is this notion that humans have within them in their brain a gendered soul, or a gender identity, and as far as I'm concerned, that is a metaphysical claim. There is no proof that it exists. It's unfalsifiable, and it's not something -- it's not something that a lot of people believe in, but women are being told you do have a gender identity, or you're a cis-woman, and I reject it wholesale. And the concern that I have about policies based on enshrining gender identity into law is that we're now in this situation where gender identity often supersedes women's sex-based rights.
>
> …I believe everyone has a biological sex, and they have a personality and that males and females, you know, there are stereotypes associated with males and females when it comes to their interests and behaviors, but I think everyone is a unique individual and I reject the notion that someone's adherence or non-adherence to the sex stereotypes or "gender stereotypes" somehow reflects an internal gender identity or gender soul. I just -- I frankly think that it is anti-scientific, metaphysical nonsense.

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[6] Record, Tab A18, Transcript, Day 17, DE of AH, page 1235, line 18 to page 1237, line 22
[7] Record, Tab A18, Transcript, Day 17, DE of AH, page 1326, line 19 to page 1327, line 8
[8] Record, Tab A18, Transcript, Day 17, DE of AH, page 1252, line 7 to page 1253, line 18
[9] Record, Tab A18, Transcript, Day 17, DE of AH, page 1258, lines 17 to 25; Record, Tab A20, Transcript, Day 19, CE of AH, page 1513, lines 12-16
[10] Record, Tab A18, Transcript, Day 17, DE of AH, page 1250, line 9 to page 1252, line 3

> I do not believe people can literally change their sex, and you know, there's no science to support that that can happen either. What I do have is I have a lot of compassion for people who suffer from gender dysphoria and are uncomfortable in their bodies, and I completely support the right of adults to make the decision to do whatever they would like to do with their bodies and to try to live their life and present the way that they look on the outside, to whether it's -- you know, they want to appear as the opposite sex. I have zero issue with that at all. As I've said repeatedly, I'm not transphobic, I don't have any issue with trans people. It's the infringement on women's rights, and it's the idea that children can consent to making these changes. I think that is an adult decision to make.

10. There was no allegation that Ms. Hamm engaged in any behaviour or conduct in the workplace that would cause the College to question her professional competence and, notably, she continued to work as a nurse for the more the 4 years between the investigation commencement and the Decision. Ms. Hamm described working with a transgender patient on the Downtown Eastside, of whom she was fond and treated with compassion.[11]

11. Some of the off-duty statements made by Ms. Hamm could be viewed as blunt, impolite, or mocking. They were made in the context described above, and in the thrust and parry of typical social media discourse, particularly on the platform formerly known as Twitter. They were intended as advocacy for women's rights.

12. The Panel accepted Ms. Hamm's evidence of her intentions (para 237):

> 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.

13. In a further finding at para 240, the Panel accepted that Ms. Hamm had no intention of inciting fear or contempt toward transgender people:

> The extent, nature and purpose of the publication and intended audience are significant contextual factors in this case. The Panel accepts that the Respondent's motivation in making the off-duty statements was to raise public

[11] Record, Tab A18, Transcript, Day 17, DE of AH, page 1221, line 1 to page 1222, line 22

> awareness and promote public discourse regarding the impact of gender identity theory on sex-based equality rights of cisgender women and girls. The Panel accepts that the Respondent did not make these statements to actively incite fear and contempt towards transgender people.

The Billboard

14. In the fall of 2020, following the lead of another gender critical feminist in the United Kingdom, Ms. Hamm participated in the rental of a billboard in Vancouver to show support for children's author, J.K. Rowling, which read simply: "I ♥ J K Rowling." Rowling had come to the defence of Maya Forstater, a UK woman who was going through a court case over her "gender critical views" in December 2019, in a tweet that caused massive outrage (and massive support) from around the world:

> Dress however you please. Call yourself whatever you like. Sleep with any consenting adult who'll have you. Live your best life in peace and security. But force women out of their jobs for stating that sex is real? #IStandWithMaya #ThisIsNotADrill[12]

15. In an online article about the billboard, Ms. Hamm was identified by the author as a "health-care worker". Two individuals, unknown to Ms. Hamm and not her patients, subsequently filed complaints with her regulator, the BCCNM.

Disciplinary Proceedings

16. Following receipt of the two public complaints, the BCCNM conducted an investigation into Ms. Hamm's off-duty gender critical advocacy and produced a record of over 300 pages of posts, or "tweets," on the social media site Twitter. Additionally, there were three articles written by Ms. Hamm for an independent media site called the *Feminist Current*, which contained a brief writer bio describing her variously as "a mom, a registered nurse educator, and a freelance writer" and as "a writer and registered nurse educator in New Westminster, BC." She also briefly referenced her profession in a podcast with a noted feminist, in which the pair discussed the billboard and Ms. Rowling's public statement, namely concerns over

[12] Record, Tab A18, Transcript, Day 17, DE of AH, page 1266, line 16 to page 12 68, line 26; Record, Tab B29, Exhibit 48: J.K. Rowling Tweet December 2019

transgender activism and gender ideology, which the women agreed was having an adverse impact on women's spaces, sports and safety, among other concerns.

17. The Inquiry Committee of the BCCNM initiated disciplinary proceedings and issued a Citation which alleged that the following conduct was contrary to certain professional standards and/or constituted unprofessional conduct:

> Between approximately July 2018 and March 2021, you made discriminatory and derogatory statements regarding transgender people, while identifying yourself as a nurse or nurse educator. These statements were made across various online platforms, including but not limited to, podcasts, videos, published writings and social media.

18. At the relevant time, registered nurses were regulated under the recently repealed *Health Professions Act* (the "***Act***"). Section 39(1) of the *Act* makes it an offence to engage in unprofessional conduct. This phrase is not defined in the statute, beyond stating that it "includes professional misconduct" and by implication is therefore broader.

19. The statutory objective of the BCCNM, as confirmed by the Panel, is to regulate the professions of nursing and midwifery in the public interest. Section 16 of the *Act* states that it is also to "serve and protect the public." It does *not* say, to protect the reputation of the regulator or profession, or to enforce compliance with certain values or worldviews.

20. Following the 22-day hearing which took place between September of 2022 and March of 2024, the Panel ruled that Ms. Hamm had committed unprofessional conduct in relation to three articles and one podcast in which she had identified herself as a nurse or nurse educator. In its reasons, including the lengthy Appendix (the "**App**.") the Panel found that many of Ms. Hamm's comments were discriminatory and/or derogatory toward transgender people, but only those publications in which she specifically identified herself as a nurse or nurse educator were subject to penalty [para 205]. The Panel concluded that the College had not proved that Ms. Hamm's extensive Twitter feed referenced her profession, although the College had attempted to create that inference [para 188-189].

The Impugned Statements

21. The Panel found that the following passages (the "**Impugned Statements**") were either discriminatory or derogatory to transgender people or contributed to their "erasure" (which was not part of the citation). Some of the surrounding context is reproduced below, with the portions found problematic by the Panel underlined:

    i) "Vancouver Rape Relief and Shelter will surely (and maddeningly) face continued backlash from trans activists determined to infiltrate or destroy women-only spaces" [App. p. 86].

    ii) "It has been healing to openly share the ways our bodies move us through this world. And to discuss how our female bodies — from which there is no absconding — often dictate our treatment and well-being. … I don't know what it feels like to be a woman. I don't believe this feeling exists. I have yet to hear a satisfactory or sensical answer to the question. Without a female body, there is no equivocating oneself into womanhood. There is no incantation or initiation that can transcend our bodily reality. "Woman" is not a feeling. 'Woman" just is'" [App. p. 108].

    iii) "It [a book reviewed by Ms. Hamm] normalizes the falsehood that babies can be "born in the wrong body," or that humans can change their sex. It promotes the lie that sexual orientation is an attraction to "gender," rather than sex. It paints women who question gender identity ideology and protect women's boundaries as hateful. I'm sick of it. It's homophobic, anti-science, and harmful to women and children. … Gender, accepted with religious fervour, is harmful. Knox and her family — and 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. Her children will grieve the loss of a father, instead. … If you can get through Knox's book without reaching the conclusion that gender identity ideology is going to go down as something akin to the Satanic Panic craze, then I must inform you that you've been had. Lesbians don't have penises, a gender soul doesn't exist, men cannot literally become women, and, for the love of god, please leave children out of this [App. p. 111].

    iv) "…maybe 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 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 [App. pp. 114-115].

v) "…if you're a feminine man, you should be protected on the basis of your sex. I don't know why they're to me, there's no reason that you should have to be recognized literally as a woman or legally as a woman to have legal protections. It's I think our sex covers discrimination. It just kind of muddies the water to add gender. When you add gender it renders sex meaningless [App. pp. 114-115].

22. The Panel made the following additional findings:

i) Ms. Hamm's motives may have been to advocate for women's rights [para. 215], but she sometimes used sarcasm or other impolite speech to convey her views [para. 216].

ii) The statement that there are only two sexes – male and female – is an oversimplification that does not align with current medical or biological understanding [App. p. 106]. The statement that sex is distinct from gender as a material biological reality is true but other claims such as there are only two sexes, humans cannot change their sex, and sex chromosomes are immutable are either oversimplifications or not true given that sex is multidimensional, according to Dr. Bauer [para. 250].

iii) Statements which discount a mystical belief in a gender soul are a form of discriminatory erasure as they deny the existence of transgender people [App. p. 105].

iv) "It is discriminatory and derogatory to suggest that transgender women should not be in the same spaces as cisgender women" [App. p. 100].

v) "The Panel also considered it possible to respectfully advocate for sex-based cisgender rights without making statements that denigrate and discriminate against transgender persons" [para. 237].

23. The inherent contradiction in point iv) and point v) in the preceding paragraph should be noted.

24. In its conclusion, the Panel found Ms. Hamm guilty of unprofessional conduct and held that she undermined the reputation and integrity of the nursing profession [para. 256]:

> By identifying herself as a nurse or nurse educator while posting discriminatory and/or derogatory opinions regarding a vulnerable and historically disadvantaged group on various online platforms, the Respondent undermined

the reputation and integrity of the nursing profession. A finding that the statements constitute unprofessional conduct would support the objectives of maintaining the reputation and integrity of the profession and promote trust in the profession of nursing.

25. On August 14, 2025, the Panel released its decision on Penalty, Costs and Publication, ordering the Petitioner to be suspended for one month and pay $93,639.80 in costs to the College.

PART 2: ERRORS IN DECISION

26. The Petitioner alleges that the Disciplinary Panel made the following errors (the specific paragraphs in which the errors are found are delineated in Part 3):

    i) It erred in law in expanding the scope of the term “discriminatory”, to include disagreement with gender ideology, trans activists, and transgenderism generally, and advocacy for women’s sex-based rights particularly; and/or in finding that such statements by the Petitioner were discriminatory, derogatory or otherwise constituted unprofessional conduct;

    ii) It erred in law in finding 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; and/or that her tone was relevant to a finding of nexus;

    iii) It 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;

    iv) It erred in law by misinterpreting the governing statute and balancing the Petitioner’s *Charter* s. 2(b) rights against a non-existent statutory objective, namely maintaining the integrity and reputation of the nursing professions, contrary to binding precedent;

    v) It erred in law in interpreting the protection of s. 2(b) to be limited to political speech, or less available to non-political speech;

    vi) It erred in law, or mixed law and fact, by favouring one “marginalized” group

over another and demeaning women's rights and protections, contrary to ss. 15(1) and 28 of the *Charter*; and in holding that statements by the Petitioner, a private citizen, engage s. 15 of the *Charter*;

vii) It made an error 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, as presented by the BCCNM's experts without clearly stating why their evidence was favored over that of the Petitioner's experts;

viii) It made an error of law, or mixed law and fact, in holding the Petitioner to the standard of a lawyer.

PART 3: ARGUMENT

Standard of Review:

27. Pursuant to section 40(1) of the *Act*, a party to a disciplinary hearing may appeal to this Court as of right. The appellate standard of review applies, and for questions of law it is correctness.[13]

28. For questions of fact or mixed fact and law where the legal principle is not readily extricable, the standard of review is palpable and overriding error.[14]

29. As noted by this Court in *Klop*:[15]

> [97] Correctness is the least deferential standard of review. The reviewing court may choose to either uphold the administrative decision maker's determination or substitute its own view: *Vavilov* at para. 54. No deference is owed to the Panel on errors of law: *Canada (Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53 at paras. 30–31; *Whieldon* at para. 32.
>
> [98] The palpable and overriding error standard requires considerable deference to the College: *Whieldon* at para. 36. A palpable and overriding error is one that is plainly seen: *Housen v. Nikolaisen*, 2002 SCC 33 at paras. 5–6; *Southwind v. Canada*, 2021 SCC 28 at para. 158. An error is "palpable" if it is

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[13] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 44
[14] *Housen v. Nikolaisen*, 2002 SCC 233 at para 36
[15] *Klop v College of Naturopathic Physicians of British Columbia*, 2022 BCSC 2086, leave to appeal dismissed

> clear, and "overriding" if it is so tied to the issues that it can be said to have affected the outcome: *Franklin v. Cooper,* 2016 BCCA 447 at para. 13.

Error 1: Discrimination should not include disagreement with gender ideology

30. The Panel erred in expanding 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.

31. As detailed in the fact section above, the Panel found that several publications, where Ms. Hamm was identified as a nurse, were either discriminatory or derogatory to transgender people or contributed to their "erasure."[16]

32. The Panel's definition is as follows:

> [196]…[S]tatements 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. Statements may be discriminatory even in the absence of an intent to discriminate.
>
> [197] The authorities also make clear that statements may be found to 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 a group whether through ridicule, belittling, insults, or through some other means. These are the definitions of "discriminatory" and "derogatory" which the Panel applies to the statements in the Extract in Appendix A.

33. Importing the term "discrimination" into a finding of unprofessional conduct that is not *directly related to conduct in the profession* is a slippery slope, particularly given the Panel's broad finding that gender critical views, specifically advocating for sex-segregated spaces for biological women, are discriminatory by their very nature [App. pp. 100 and 107; cf para 237]. Even the BC *Human Rights Code*, section 8, permits segregation on the basis of sex for these reasons:

> (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....

[16] The Panel's general findings are in paras 237, 254, 256, 260, 261 and 263 of the Decision, and the individual publications are reviewed in the Appendix at pp. 86, 90, 100, 105, 107, 108, 111 and 114-115.

34. Not only is there no individual transgender complainant or target, but the Panel's finding is further remote in that Ms. Hamm's references to "trans activists," were held to be "associated with members of the transgender community" by a reasonable person, and therefore discriminatory against transgender people [App. p. 86]. And later, "Although the tweets are focused on transgender activists, that does not immunize them from review as reasonable people would associate the comments with members of the transgender community" [App. p. 90].

35. The Panel even misapprehends one of the impugned comments entirely:

> 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 [para 254 – emphasis added].

36. This misstates the Petitioner's evidence in a critical way—she did not say, "transgender individuals control our institutions to make everyone go along with their gender identity ideology." She said, "the people that have taken control of the narrative 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" [App. p. 114-115].

37. In the Impugned Statements, Ms. Hamm was critical of *gender ideology*, *trans activists* and those who facilitate the spread of gender ideology in institutions and society. Neither ideologies nor activists are a protected class against discrimination under any human rights law, nor are they immune from criticism—even harsh, sarcastic or derogatory criticism.

38. The Panel further erred in expanding the definition of discrimination to include disagreement with the political and ideological aspects of transgenderism and its metaphysical claims—claims which the Panel's members made clear they

endorsed. For example, the Panel found that statements which discount a mystical belief in a "gendered soul" are a form of discriminatory erasure as they deny the existence of transgender people [App. p. 105]. Equating 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.

39. The *Kempling*[17] case of the BC Court of Appeal, relied on by the Panel in crafting its definition of "discrimination", held that, "Statements critical of a person's way of life or which denounce a particular lifestyle are not in themselves discriminatory. In my view, it is only when these statements are made in disregard of an individual's inherent dignity that they become so."

40. The Petitioner submits that in none of the Impugned Statements, where she was identified as a nurse, was she discriminatory or derogatory to transgender people, and the Panel erred in so finding.

41. If this Honourable Court finds in favour of the Petitioner on this ground of appeal, the entirety of the Decision should be overturned on the basis that Ms. Hamm's Impugned Statements were not discriminatory or derogatory and therefore did not constitute unprofessional conduct, without the necessity of success on the remaining grounds.

Error 2: Tone is not determinative of unprofessionalism, nor relevant to nexus

42. The Panel erred in finding 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; and/or that it was relevant to a finding of nexus.[18]

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[17] *Kempling v. British Columbia College of Teachers*, 2005 BCCA 327, at para 33 ("***Kempling***")
[18] In particular, see paragraphs 184, 216-217, 237 and 246-248 of the Decision.

43. The Supreme Court of Canada, in the case *Groia v. The Law Society of Upper Canada,*[19] held that the fact that a professional uses incivility in their speech does not invalidate whether that speech is made in "good faith." The Court stated:

> [7] That said, the Appeal Panel's finding of professional misconduct against Mr. Groia on the basis of incivility was, in my respectful view, unreasonable. Even though the Appeal Panel accepted that Mr. Groia's allegations of prosecutorial misconduct were made in good faith, it used his honest but erroneous views as to the disclosure and admissibility of documents to conclude that his allegations lacked a reasonable basis. However, as I will explain, Mr. Groia's allegations were made in good faith and they were reasonably based. As such, the allegations themselves could not reasonably support a finding of professional misconduct.
>
> [8] Nor could the other contextual factors in this case reasonably support a finding of professional misconduct against Mr. Groia on the basis of incivility. The evolving abuse of process law at the time accounts, at least in part, for the frequency of Mr. Groia's allegations; the presiding judge took a passive approach in the face of Mr. Groia's allegations; and when the presiding judge and reviewing courts did direct Mr. Groia, apart from a few slips, he listened. The Appeal Panel failed to account for these contextual factors in its analysis. In my view, the only conclusion that was reasonably open to the Appeal Panel on the record before it was a finding that Mr. Groia was not guilty of professional misconduct. [Emphasis added]

44. The relevant contextual factors to apply in the case at bar include the fact that those groups the Petitioner sought to protect and advocate for are disadvantaged and marginalized (women, especially those in prison or rape shelters, and children), and there was ample evidence before the Panel that harm is being caused to those groups. None of her sarcasm was directed towards any specific patient or client she was dealing with in the workplace, nor toward any of her colleagues. Her commentary was directed to the general public, including policy makers. The Panel considered the context of gender critical beliefs in paragraphs 184, and 246-248, concluding that it was not concerned with the validity of the Petitioner's beliefs, but the manner in which she expressed them.

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[19] *Groia v. Law Society of Upper Canada*, 2018 SCC 27, [2018] 1 SCR 772 ("***Groia***")

45. To this finding, we would point the Court to Exhibit 49,[20] which was a sample of the tweets and comments from "trans activists" who attacked J.K. Rowling online, and to the evidence of Amy Hamm, who testified about the 15,000 or so comments she received in response to the billboard which called her horrible names or threatened death and rape,[21] and to the evidence of her hosting events for women to meet and discuss the impact of gender identity on their lives, which were attacked, protested, cancelled, and thronged, and where a "mock guillotine" was in the demonstration, all under the guise of "trans activism".[22]

46. During her testimony, Ms. Hamm addressed most of the scattershot collection of posts and statements the College identified as "over the line" and described her advocacy goals and motivations behind each one. She admitted that some used humour and satire to make a point.[23] Given the ridiculousness and viciousness of some of the things she was countering in the public square, we submit that was contextually appropriate.

47. In *Groia*, the Supreme Court found that, while incivility by a lawyer may not be the ideal form of advocacy, to require civility for speech to avoid regulatory discipline would have a chilling effect on advocacy [para 76]. The same can be said for gender critical advocacy, which is often critical of government and institutional policies.

48. The Court in *Groia* stated that characterizing speech that one disagrees with as "professional misconduct" would be to penalize the professional for sincerely held (and there is no doubt that the Petitioner's beliefs were sincerely held), but mistaken beliefs (para. 85).

49. Further, at para 120, the Court held:

> [S]anctioning a lawyer for good faith, reasonably based allegations that are grounded in legal error does not reflect a proportionate balancing. Advancing good faith, reasonable allegations — even those based on legal error — helps maintain the integrity of the justice system by holding other participants

[20] Record, Tab B30, Exhibit 49: "J.K. Rowling and the Trans Activists: a Story in Screenshots"
[21] Record, Tab A18, Transcript, Day 17, DE of AH, page 1276, line 13 to page 1277, line 9
[22] Record, Tab A18, Transcript, Day 17, DE of AH, page 1262, line 2 to page 1263, line 16
[23] Record, Tab A18, Transcript, Day 17, DE of AH, page 1296, line 23 to page 1297, line 8

> accountable. Well-founded arguments exposing misconduct on the part of opposing counsel thus lie close to the core of the s. 2(b) values underpinning a lawyer's expressive freedom. Discouraging lawyers from bringing forward such allegations does nothing to further the Law Society's statutory mandate of advancing the cause of justice and the rule of law. If anything, silencing lawyers in this manner undercuts the rule of law and the cause of justice by making it more likely that misconduct will go unchecked.[24]

50. There is no requirement that professionals be unfailingly polite or civil in all their public discourse. The Supreme Court of Canada in *Groia* confirms that. "Overemphasizing civility has the potential to thwart this good [holding *all* justice system participants accountable] by chilling well-founded criticism…Proportionately balancing lawyers' expressive rights, therefore, 'may involve disciplinary bodies tolerating a degree of discordant criticism': *Doré*, at para. 65."[25]

51. The Panel erred in finding that Ms. Hamm's tone was determinative in their finding of unprofessional conduct.

52. In assessing the question of whether there was a sufficient nexus between Ms. Hamm's off-duty statements and the profession of nursing, the Panel was, again, improperly swayed by the tone and style of the commentary:

> The Respondent used a variety of writing styles in her advocacy including sarcasm, mockery, insults, and hyperbole. The tone and content of many of the Respondent's statements are denigrating and insulting to transgender people [para. 216].
>
> The tone and content of the Respondent's statements also appeared to be designed to elicit outrage and condemnation of the transgender community. The controversial nature of the J.K. Rowling billboard prompted two members of the public to file complaints with the College. The Respondent acknowledged that her statements were intended to generate controversy to attract public attention [para. 217].

53. Tone is contextual, not determinative. In *Strom v Saskatchewan Registered Nurses' Association*,[26] the Saskatchewan Court of Appeal set aside a disciplinary finding

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[24] *Groia*, para 120
[25] *Groia,* para 115
[26] *Strom v Saskatchewan Registered Nurses' Association*, 2020 SKCA 112 ("***Strom***")

because the regulator failed to assess the nurse's posts as a whole, including their content, purpose, and tone; forceful language did not itself establish misconduct.

54. Repugnant speech is not automatically or necessarily discriminatory. In *Ward v Quebec (Commission des droits de la personne et des droits de la jeunesse)*, the Supreme Court of Canada found that the stand-up comic's "nasty and disgraceful" words did not incite members of the public to vilify the target or deny their humanity and thereby lead to discriminatory treatment:

> In our view, a reasonable person aware of the relevant circumstances would not view Mr. Ward's comments about Mr. Gabriel as inciting others to vilify him or to detest his humanity on the basis of a prohibited ground of discrimination. His comments, considered in their context, cannot be taken at face value. Although Mr. Ward said some nasty and disgraceful things about Mr. Gabriel's disability, his comments did not incite the audience to treat Mr. Gabriel as subhuman.[27]

55. In sum, the Panel was unduly and improperly swayed by the tone of some of the Petitioner's comments. Having found valid intentions on the part of Ms. Hamm [paras 237 and 240], the conclusion should have been as it was in *Groia* – no finding of misconduct or unprofessional conduct.

Error 3: Nexus requires more than mere biographical reference

56. The Panel found that a minor biographical detail identifying Ms. Hamm as a nurse or nurse educator on some of her publications created a sufficient nexus to warrant a finding of unprofessional conduct in relation to her off-duty gender critical advocacy [paras 221 and 258].

57. The Panel then endeavored to connect Ms. Hamm's tangential mention of being a nurse educator in her bio, to the medical and scientific nature of the issues she comments on:

> The Respondent suggests it is necessary for the College to prove that the public would give more credence to the speech of a nurse than to other members of the public on the non-medical issues she wrote about. However, this argument presupposes that the Respondent was addressing matters

[27] *Ward v Quebec (Commission des droits de la personne et des droits de la jeunesse)*, 2021 SCC 43 at para 108

> unrelated to medical issues. The crux of the gender ideology debate is enmeshed in medical and scientific understanding of the nature of sex and gender which the Respondent addresses. For example, the Respondent's 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. [Para 220]

58. The Petitioner submits that these are human rights and socio-political issues as much as medical and scientific ones. Ms. Hamm's occupation as a nurse gives her no more or less authority to speak on the impact of gender ideology on women's rights than any other parent, woman, lesbian, female athlete, or other person of any background so impacted, although medical, scientific and ethical issues are also implicated in some aspects of the debate.

59. Off-duty expression may justify discipline only where it has a sufficiently concrete connection to professional practice: for example, where it impairs the member's ability to perform professional obligations, conflicts with core professional values, damages professional standing or public confidence, or adversely affects persons served by the profession. The issue was discussed by this Court in *Klop*, at paragraph 110:

> [110] Conduct outside the practice of a profession—often described as off-duty conduct—can amount to conduct unbecoming where there is a nexus with the professional practice: *College of Physicians & Surgeons Alberta v. Ali*, 2017 ABCA 442 at para. 100, Slatter J. dissenting not on this point [*Ali*]; *Strom v. Saskatchewan Registered Nurses' Association*, 2020 SKCA 112 at para. 89. Further, and as this Court has noted, it is well settled that off-duty conduct can give rise to discipline when it has a negative impact on the individual's ability to carry out their professional obligations or where the conduct has a negative impact on, or conflicts with the core values of, the profession: *Fountain v. British Columbia College of Teachers*, 2007 BCSC 830 at para. 51; see also *Kempling v. British Columbia College of Teachers*, 2005 BCCA 327 at paras. 36, 46 [*Kempling CA*]; *Strom* at paras. 113–115.

60. On the question of the nexus between professional and personal life to warrant regulatory interest, the Court in *Strom* held:

> [O]ff-duty conduct may be found to be professional misconduct if there is a sufficient nexus or relationship of the appropriate kind between the personal

> conduct and the profession to engage the regulator's obligation to promote and protect the public interest. More specifically, I would state the issue this way: was the impugned conduct such that it would have a sufficiently negative impact on the ability of the professional to carry out their professional duties or on the profession to constitute misconduct?"[28] [Emphasis added.]

61. Off-duty social media posts made by a registered nurse, whether truthful or popular or not;[29] whether undesirable or improper or not;[30] whether blunt and upsetting or not;[31] or even critical posts without restraint and with frustration, hyperbole, colourful "and even perhaps disrespectful language" aimed at reform,[32] do not invite a finding of professional misconduct without the College meeting its burden of establishing a material and negative impact to the profession so as to have a "poisoning effect."[33]

62. The Panel denies that evidence of a 'poisoned environment' is necessary to find a nexus [para 223]. However, La Forest J. for the majority in *Ross v. New Brunswick School District No. 15* states that the poisoned environment **must be traceable** to the off-duty conduct of a teacher that is likely to produce that loss of confidence: para 45. The Panel failed to establish a 'poisoned environment' traceable back to the respondent – the two complaints received are not from her patients.

> [45] It is on the basis of the position of trust and influence that we hold the teacher to high standards both on and off duty, and it is an erosion of these standards that may lead to a loss in the community of confidence in the public school system. I do not wish to be understood as advocating an approach that subjects the entire lives of teachers to inordinate scrutiny on the basis of more onerous moral standards of behaviour. This could lead to a substantial invasion of the privacy rights and fundamental freedoms of teachers. However, where a "poisoned" environment within the school system is traceable to the off-duty conduct of a teacher that is likely to produce a corresponding loss of confidence in the teacher and the system as a whole, then the off-duty conduct of the teacher is relevant.[34] [Emphasis added.]

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[28] *Strom*, para. 89
[29] *Strom*, para. 138
[30] *Strom*, para. 93
[31] *Strom*, para. 138
[32] *Strom*, para. 136
[33] *Strom*, para. 92
[34] *Ross v. New Brunswick School District No. 15*, 1996 CanLII 237 (SCC), [1996] 1 SCR

63. Paragraph 224 of the Decision provides, “the statements in question fundamentally conflict with core values of the health care system and the protection of the public,” which appears to lack a traceable connection.

64. Ms. Hamm’s comments were expressions of opinion on gender identity ideology and policy. The assertion of regulatory authority over such speech must be based on an obvious connection to the professional services under its jurisdiction, and “edge cases” should be resolved in favour of free expression. Alternative viewpoints and vigorous advocacy alone are not grounds for censure. Regulators must tolerate “a degree of discordant criticism”[35] in a free and democratic society.

65. There was a time in the recent past when regulatory bodies would have dismissed public complaints over a professional’s political opinions. In the pre-pandemic Ontario Health Professions Appeal and Review Board decision involving a complaint against a physician for her gun control stance,[36] the Board restated the Investigation Committee’s decision as follows:

> The Committee determined to take no action on the basis that the Applicant was using the College’s complaints process as a tool to advance his own political/policy agenda, constituting an abuse of the complaints process. The Committee stated that it was concerning that the Respondent has been subjected to what appears to be a campaign to dissuade her from voicing her views. The Committee stated that physicians’ roles include responsible advocacy with respect to matters affecting public health. The Committee stated that the complaints process should not be used as a tool to silence or intimidate physicians. The Committee determined that there were no issues of clinical care or professional conduct raised in this complaint. The Committee opined that the Applicant’s sole concern related to the Respondent’s statements in a public forum, as part of a political discourse, and as such, the College has no role in regulating this political debate.

66. It bears asking whether this principle that the complaints process should not be used as a tool to silence or intimidate professionals from their political opinions has general application. It is respectfully submitted that it is not for the BCCNM to decide

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[35] *Doré v. Barreau du Québec*, [2012] 1 SCR 395, 2012 SCC 12, at para. 65 (“**Doré**”)
[36] *M.R.M. v N.A.A.*, 2020 CanLII 22968 (ON HPARB), para. 25

which political and policy perspectives are permitted to be held and expressed by nurses and midwives.

Error 4: Balancing Charter rights against non-existent statutory objectives

67. This case implicates the Petitioner's constitutional right to freedom of thought, belief, opinion and expression. Accordingly, the Panel was required to balance her *Charter of Rights and Freedoms* section 2(b) rights against the statutory objectives of the College. In the context of an administrative tribunal, the primary authority is *Doré v. Barreau du Québec,*[37] as modified by *Loyola*[38] in establishing a robust proportionality test. Additional appellate jurisprudence confirms that *Charter* protections must be "upheld to the fullest extent possible given the statutory objectives within a particular administrative context."[39]

68. The first question is, what statutory objective is the decision-maker tasked to uphold? The College's purpose is set out in the *Act*, namely, to serve and protect the public and to exercise its powers and discharge its responsibilities in the public interest.[40] Its powers are constrained by the *Act*.

69. In performing its requisite "robust proportional balancing" of the statutory objectives of the BCCNM with the protected rights of the Petitioner, the Panel concluded that Ms. Hamm's expressive rights were outweighed by the harm to the values of the healthcare system (para. 219):

> By publicly linking her views regarding gender ideology with her status as a nurse or nurse educator, the Respondent expressed opinions and made claims that cannot be reconciled with the core values of the health care system. The Panel accepts that nurses are seen by the community in part as the medium for the fundamental values on which our health care system is based. Those values include equitable access to health care services and respect, dignity and equality for all patients and health care workers regardless of personal attributes.

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[37] *Supra*, note 35
[38] *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12 (CanLII), [2015] 1 SCR 613
[39] *Lauzon v. Ontario (Justices of the Peace Review Council)*, 2023 ONCA 425 (CanLII), para 146
[40] *Health Professions Act,* s. 16(1)

70. It is not a statutory objective in section 16 of the *Act* to protect the integrity or reputation of the regulator or the nursing profession. Nonetheless, under the heading Statutory Objectives, the Panel wrote:

> 231. The Panel finds 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 that speech and by ensuring they uphold the values central to ethical nursing practice.

71. And, at paragraph 256:

> By identifying herself as a nurse or nurse educator while posting discriminatory and/or derogatory opinions regarding a vulnerable and historically disadvantaged group on various online platforms, the Respondent undermined the reputation and integrity of the nursing profession. A finding that the statements constitute unprofessional conduct would support the objectives of maintaining the reputation and integrity of the profession and promote trust in the profession of nursing.

72. And, at paragraph 258:

> The Panel is satisfied that making a finding of unprofessional conduct would not impair the Respondent's freedom of expression more than is necessary to achieve the goals of protecting the public interest and maintaining the integrity and reputation of the nursing profession and public confidence in the health care system.

73. The Panel erred in law in the above excerpts 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 professions. While jurisprudence on proportional balancing does not require the objectives to be literally transcribed in the governing statute, they must nonetheless be consistent with the statute's intent and not be used as an opportunity to expand the remit of the administrative tribunal.

74. This was of particular concern to the dissenting justices in *Law Society of British Columbia v. Trinity Western University*, where Justices Côté and Brown noted[41] that broad mandates like "public interest" must be interpreted in light of the home

[41] *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32 (CanLII), [2018] 2 SCR 293, paras 270-273 and 288

statute's specific limits (e.g., ensuring individual fitness for licensing) to prevent improper purposes.

75. In *Strom*, the Saskatchewan Court of Appeal held that **criticism** of the healthcare system is manifestly in the public interest (para. 160).[42] Similarly, in *Klein v. Law Society of Upper Canada,*[43] professional conduct rules at the time prevented lawyers from contacting the press about their cases. The Divisional Court said, "A lawyer has a moral, civic and professional duty to speak out where he sees an injustice. Furthermore, lawyers are, by virtue of their education, training and experience, particularly well-equipped to provide information and stimulate reason, discussion and debate on important current legal issues and professional practices. Speech of this kind surely lies at the core of the constitutional right guaranteed by s. 2(b)." Protecting the "reputation" of the system from dissident thinkers, accordingly, may not necessarily be in the public interest.

76. While the *Strom* decision is pertinent to the analysis in this case, it should be noted that the definition of professional misconduct in the Saskatchewan legislation specifically includes "harm to the standing of the profession of nursing." In British Columbia, it does not. The Panel in the case at bar "read in" more to its statutory mandate than the text provides.

77. In *Whatcott*, the Saskatchewan Court of Appeal noted that there was no evidence that members of the public thought less of nurses as a result of Whatcott's conduct in demonstrating outside of an abortion clinic. The Court noted that the purpose of s. 2(b) is to protect expression which is offensive to somebody and this includes protection for polemical statements on matters of moral debate (para 71). The Court quashed the discipline committee's decision.[44]

78. It is acknowledged that courts in other regulatory cases have held that regulators may pursue public interest objectives through standards of professional

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[42] See also *Strom*, paras 115, 124, 168 and 169
[43] *Re Klein and Law Society of Upper Canada*, 1985 CanLII 3086 (ON HCJDC), para 143
[44] *Whatcott v. Saskatchewan Association of Licensed Practical Nurses*, 2008 SKCA 6 (CanLII)

communications. In *Peterson v. College of Psychologists of Ontario,* the Court determined that Jordan Peterson's comments made while identifying as a clinical psychologist *could* undermine public trust in the profession and harm individuals/communities, by employing demeaning and degrading language that was specifically prohibited by the College's ethics code: para 45. Further, at para 51, citing *Kempling* and *Ross,* the Divisional Court held:

> Even when "off duty", courts have recognized that members of regulated professions can still harm public trust and confidence in their profession by their statements and conduct. As the British Columbia Court of Appeal put it in *Kempling v. British Columbia College of Teachers*, 2005 BCCA 327, 255 DLR (4th) 169, at para. 43, citing the Supreme Court in *Ross*: "When a teacher makes public statements espousing discriminatory views, and when such views are linked to his or her professional position as a teacher, harm to the integrity of the school system is a necessary result."[45]

79. Nonetheless, there is a serious risk of "mission creep" of professional regulators, desiring to protect their own reputations from viewpoints with which they disagree at, a time when social media has created a virtual soapbox with extensive reach for both professionals and their critics. Once the objective of public interest is stretched to include punishing dissident opinions and criticisms of progressive orthodoxy (although the shoe could be on the other foot, easily enough), it is plain to see the *TWU* dissenting justices' concerns about improper purposes borne out.

80. In our submission, the further the regulator moves away from regulating professional standards and competence, the more it must demonstrate the existence of an applicable statutory objective to balance against the restriction on *Charter* rights, and the more stringently the protections of those rights must be upheld.

81. In determining the scope of its duties to act in the public interest, the College should not have let its complaints system become weaponized by activists to punish contrarian views; nor should the College have put its thumb on the scale, advocating for a "side" in matters of legitimate public debate, particularly when that "side" is using all available methods to shut down any such debate. More categorically: the

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[45] *Peterson v. College of Psychologists of Ontario*, 2023 ONSC 4685 (CanLII)

"public interest" means not taking any side on a political issue, or "public interest" becomes a means of converting the College into a political agent, which is clearly not its mandate. The Panel erred in not shutting down the College's overreach based on the lack of a statutory objective to justify it.

Error 5: Freedom of expression is not limited to political speech

82. The Panel erred in law, at paragraphs 250, 251, 261 and 262, in interpreting the protection of s. 2(b) to be limited to political speech, or less available to non-political speech; While political speech has been held to be particularly worthy of protection under s. 2(b) of the *Charter*, it does not follow that non-political speech is entitled to no, or less, protection.[46]

83. Other rationales for protecting freedom of expression—encouraging the search for truth through the open exchange of ideas, and fostering individual self-actualization, thus directly engaging individual human dignity—are also key values that inform the section 2(b) analysis.[47] The Panel acknowledged these values and the *Irwin Toy* decision at paragraphs 232-233 of the Decision.

84. The Panel also held (at para. 215):

> The nature of the Respondent's conduct involved engagement in social and political discourse which is a constitutionally protected right under s. 2(b) of the *Charter* and an important aspect of personal autonomy. The panel accepts that the Respondent's motivation for making these statements was 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.

85. However, despite stating the principles involved at the outset, when it addressed the individual statements in issue, the Panel only considered whether the speech was of a *political* character and, if not, it was not protected. This error of law was repeated in each of the following passages:

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[46] See, for example, *Thomson Newspapers Co. v. Canada (A.G.)*, [1998] 1 S.C.R. 877
[47] *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927 at page 976

> 250. … Some of the statements are unfair to the extent they advocate for legal changes which would adversely impact the equality rights of transgender women; however, the Panel also recognizes that the Position Statement constitutes political speech advocating for sex-based equality rights of cisgender women and girls. As well, unlike some of the Respondent's other online statements, the Position Statement is drafted in less inflammatory terms without statements which are overtly derogatory to transgender people.
>
> 251. … 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 about the meaning of being a woman.
> …
> 261. The discriminatory and/or derogatory statements which appear at Tabs 4, 24, 28 and S3 of the Extract may be intended to contribute to social discourse but they are not political speech and lie far from the core of s. 2(b) values. The Panel is satisfied that finding the off-duty statements identified in those tabs constitute unprofessional conduct would not unjustifiably infringe the Respondent's rights under s. 2(b) of the *Charter.*
>
> 262. The caWsbar Position Statement at Tab 22 contains some statements which are not true or oversimplifications of the science of sex and gender; however, the statements are not overtly derogatory or derisive in content or tone. The Panel accepts that Position Statement, as a whole, constitutes political speech. Not without some difficulty, the Panel concludes finding that the statements in the Position Statement constitute unprofessional conduct would unjustifiably infringe the Respondent's freedom of speech. It therefore declines to make that finding in relation to Tab 22. [Emphasis added.]

86. Section 2(b) is not confined to political speech. The Supreme Court has consistently interpreted freedom of expression broadly and purposively. Expression is *prima facie* protected whenever it conveys or attempts to convey meaning, except where it is conveyed through violence. This includes political, commercial, artistic, personal, offensive, and even obscene expression.

87. Offensiveness strengthens the need for protection. In *Strom* [paras 136-8], the Court, citing *Kopyto*, *Ross* and *Irwin Toy*, emphasizes that criticism of public institutions may be vigorous, hyperbolic, colourful, or disrespectful. Expression is particularly in need of constitutional protection when it is unpopular or objectionable to its audience.

88. Political value may affect justification, not initial protection. The degree to which expression advances democratic discourse may be relevant when assessing whether an infringement is justified under s. 1 or proportionate under the *Doré/Loyola* framework. It is not a basis to deny that non-political speech falls within s. 2(b) at the first stage.

Error 6: Women's rights are not lesser than trans rights

89. On page 106 in the Appendix, the Panel stated, in relation to the caWsbar statement:

> The Position Statement asserts that "women's and girls' sex-based *Charter* rights must be strongly asserted and preserved in public policy" and "must take precedence over any concept of gender". It is clear from the context of this statement that it intentionally excludes transgender women and girls which is discriminatory. The position that the *Charter* rights of biological women and girls should supersede the rights of transgender women and transgender girls is also discriminatory as it suggests that constitutional rights based on gender identity and expression have a subordinate status which is not the case [emphasis added].

90. That is true as far as the jurisprudence goes – rights that are analogous to those explicitly delineated in s. 15(1) of the *Charter* are on par with one another, although they may sometimes come into conflict. But the Panel went further than that. It made it a disciplinary matter for a nurse to advocate for biological women's rights, despite, or perhaps because of, that conflict. First, it suggested that the advocacy could continue if it was nice and respectful:

> 237. …The Panel also considered it possible to respectfully advocate for sex-based cisgender rights without making statements which denigrate and discriminate against transgender persons.

91. However, it then made it impossible for Ms. Hamm to engage in such advocacy (if identified with her profession in any way) without running afoul of her regulator, by finding that even referring to sex as a separate right from gender identity is derogatory or discriminatory of transgender people:

> The Panel finds that the quotes and observations attributed to the Respondent regarding self-identification laws are concerning. The suggestion that women cannot defend their legal rights or the definition of womanhood if anyone can

> self-identify as a woman is critical of the right of transgender persons to express their identity authentically and transition to a sex that reflects their sense of identity. The Panel finds that the comments are discriminatory because they convey that transgender women should not be able to self-identify as women; however, the Respondent does not identify herself as a nurse or nurse educator in the quotes nor is she identified as such in the article [App. p. 93 – emphasis added].
> …
> It is discriminatory and derogatory to suggest that transgender women should not be in the same spaces as cisgender women; however, the Respondent does not identify herself as a nurse or nurse educator in the tweet or in the immediately surrounding tweets [App. p. 100].

92. From these internally inconsistent passages, albeit the latter being *obiter*, the Panel makes it clear that a) its members believe people can literally change their sex; b) that men are women if they say they are (and one cannot challenge the assertion, once declared); and c) women (or men, for that matter) cannot complain about this, even if it profoundly affects them, without risking their livelihood. This is a significant infringement of the constitutional rights of Ms. Hamm (and other professionals), which the Panel failed to consider or balance. By characterizing statements contrary to these "truth claims" as "unprofessional conduct," the Panel significantly infringed the *Charter* rights of Hamm and others, whose speech will be chilled by this decision.

93. As the Supreme Court of Canada once held in *Chamberlain v. Surrey School District No. 36*,[48] "it is a feeble notion of pluralism that transforms 'tolerance' into 'mandated approval or acceptance'":

> 132 Beyond this, nothing in *Vriend v. Alberta*, 1998 CanLII 816 (SCC), [1998] 1 S.C.R. 493, or the existing s. 15 case law speaks to a constitutionally enforced inability of Canadian citizens to morally disapprove of homosexual behaviour or relationships: it is a feeble notion of pluralism that transforms "tolerance" into "mandated approval or acceptance". In my view, the inherent dignity of the individual not only survives such moral disapproval, but to insist on the alternative risks treating another person in a manner inconsistent with their human dignity: there is a potential for a collision of dignities. Surely a person's s. 2(a) or s. 2(b) *Charter* right to hold beliefs which disapprove of the conduct of others cannot be obliterated by another person's s. 15 rights, just like a person's s. 15 rights cannot be

[48] *Chamberlain v. Surrey School District No. 36*, 2002 SCC 86 (CanLII), [2002] 4 SCR 710, para 132

> trumped by s. 2(a) or 2(b) rights. In such cases, there is a need for reasonable accommodation or balancing. In my view, in the context of this case, the decision reflects a constitutionally acceptable balance.

94. 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.*

95. This had the effect of prioritizing an *implied* or analogous protection of gender identity against an *explicit* protection of sex, and the female sex in particular, also in contravention of section 28 of the *Charter* which provides that:

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

96. Section 28 reinforces women's (sex) substantive equality. It requires those interpreting the *Charter* to take substantive sexual equality into account when determining the meaning and scope of sections 2 to 23 and applying them to a given situation, with this guideline being imperative and having primacy over other interpretative rules, reinforcing the notion of a liberal and generous interpretation of section 15(1): *A. P. c. Procureur général du Québec*.[49]

97. As noted, there is no hierarchy of protected grounds. The Court in *Andrews v. Law Society of British Columbia*,[50] rejects a simplistic "similarly situated persons should be similarly treated" approach. It establishes that s. 15(1) protects against distinctions based on enumerated or analogous grounds that create or reinforce disadvantage; it does not authorize decision-makers to accord lesser constitutional concern to sex-based disadvantage merely because another protected group is also affected**.**

98. The Panel also stated in the body of their decision, with respect to s 15:

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[49] *A. P. c. Procureur général du Québec*, 2025 QCCA 24 at para 27
[50] *Andrews v. Law Society of British Columbia*, [1989] 1 SCR 143

> While individuals who join regulated professions do not lose their *Charter* rights, they must nevertheless comply with the rules of their regulatory body which may reasonably limit their right to free speech: *Peterson; Groia*. The Panel finds it is reasonable to limit a nurse's ability to make discriminatory and/or derogatory statements which target a marginalized and highly vulnerable group while self-identifying as a nurse or nurse educator. Statements 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 [para. 257 – emphasis added].

99. The Panel further erred in law in holding that statements by the Petitioner, a private citizen, engage s. 15 of the *Charter*. The Panel held that Ms. Hamm's advocacy on behalf of women and girls was directed against a "highly vulnerable community protected under s. 15 of the *Charter,*" which was a factor in its proportionality analysis. However, "private individuals do not owe each other constitutional duties."[51]

100. The Petitioner submits that arguing and debating about the meaning of rights and the conflict thereof in society is precisely what is at the core of s. 2(b) rights. Furthermore, as a private citizen, her statements do not and cannot "engage s. 15 of the Charter." In her impugned statements, and in her testimony during the hearing, Amy Hamm has made it clear that she is a strong, passionate advocate for women's rights. Transgender people are not the only group seeking protection against discrimination and unfairness – women, too, have both *Charter* and human rights to equality and dignity. Ms. Hamm's advocacy stems from the recognition that there are impacts and harms to women, as a class, from the prioritization of gender identity over sex. The position statement of caWsbar sets out her concerns succinctly.[52]

101. Women have sex-based rights and protections under the *Charter*, and under all human rights legislation, based on the biological reality that women have historically faced barriers due to their sex, particularly the consequences of reproduction. Women experience varying degrees of differential treatment and outcomes on the

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[51] *Hudspeth v. Whatcott*, 2017 ONSC 1708, at para 118
[52] Record, Tab B17, Exhibit 26: BCCNM's Extract document, page 64

basis of their sex, across all cultures and places and over all time, not because they "self-identified" into being a woman and are now denying transpeople this "right", but <u>because they are female</u>. The Panel failed to balance this concern, and to maintain regulatory neutrality over competing concerns and differences of opinion that must be dealt with by debate in the public square and ultimately the legislatures.

102. The Panel improperly picked a side in a conflict of rights and used its statutory powers of discipline to penalize the "other side" for advocating for their rights. This was demonstrated in its acceptance of the evidence of [redacted] who testified that anyone can be a "woman" if they believe it to be so,[53] and even prevaricated under cross-examination over a definition of "female."[54] According to [redacted] we cannot use the word "female" to describe large gamete producers, because some people have had hysterectomies, some people have "micro-chimerism" from carrying "boys" *in utero*, and some older men might not be fully carrying XY chromosomes as they age. (This proves, [redacted] says, that our sex chromosomes are not immutable, but fails to explain how this process turns a male into a female.) [55]

103. Ms. Hamm's advocacy for women's rights, in the face of the virtual elimination of their meaningful categorization, as [redacted] would have it, is all the more necessary. The Panel was seriously misguided and incorrect in its finding that advocacy for women's rights that does not include transgender women is *prima facie* discriminatory.

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[53] Record, Tab A8, Transcript, Day 8, January 10, 2023, Cross-Examination of [redacted] ("**CE of [redacted]**"), page 123, line 24 to page 124, line 6
Record, Tab A6, Transcript, Day 6, October 26, 2022, CE of GB, page 51, lines 1-21; page 145, lines 15-23

[55] Record, Tab A3, Transcript, Day 3, September 23, 2022, Direct Examination of [redacted] ("**DE of [redacted]**"), page 178, line 12 to page 182, line 1

Error 7: Panel held Petitioner's expert to higher degree of scrutiny, favouring novel opinions of College expert

104. The Panel erred in mixed fact and law by accepting, without reservation, a scientifically novel and unsettled opinion on the multidimensional nature of sex [para 165], and the dismissal of autogynephilia [para 170], as presented by the BCCNM's experts without clearly stating why their evidence was favored over that of the Petitioner's experts.

105. The Panel heard the evidence of five experts – two for the College and three for the Petitioner – and determined that it preferred the evidence of the BCCNM's expert witnesses, particularly [redacted] [para 170 et al.].

106. The Panel described the evidence of the experts for both parties at some length in the Decision. It would be fair to say that the evidence of the experts was diametrically opposed.

107. The Petitioner's expert, [redacted] who was the only expert who had actually treated transgender people in his clinical psychology practice, provided important context for Ms. Hamm's concerns and statements, namely that men with "autogynephilia" (sexual attraction to oneself as a woman), or who are cross-dressers, or who have other paraphilias or psychopathologies, including exhibitionism and voyeurism, are now able to enter into women's spaces without restriction:

> Rather than being attracted to men or being attracted to women, they're largely attracted to women, but they're attracted to being the woman. They're sexually aroused at the image of themselves in female form.
>
> And so the term -- where gynephilia is the technical term we use for attracted to female, autogynephilia is attracted to oneself as female. And these people, unlike the childhood onset types who were recognizably effeminate, the adult onset types are not. They're unremarkably masculine. You -- nobody would pick them out in a crowd. They are very often married to women, have children, and people are surprised when they come out as transgendered.
>
> Now, if they're otherwise mentally healthy, they in general can do perfectly fine in their new sex. The complication is that there are many other people with

other mental health issues, one of -- and they are also autogynephilic. It's not the only issue that they're dealing with. For example, autogynephilia for many people is one of several sexual atypical phenomena that they experience. So usually what the clinician then needs to consider is that is this person acting out of autogynephilia or one of these other interests and just taking advantage of transition in order to fulfill some other interest?

One of the most common ones of those would be sexual masochism or exhibitionism. For example, an exhibitionist is sexually turned on by the idea of showing himself either naked or showing his genitals or surprising, usually female, onlookers where they weren't expecting to be presented with it. Well, if one is an exhibitionist, one often would try hard to take advantage of opportunities where they get to be naked surrounded by females.

So now it's a clinical question, when somebody asks to be deemed female, are they asking to be deemed female because it's a genuine case of autogynephilia and they might do fine living as female or is this an exhibitionist taking advantage of a situation where he or she can just, as I say, take advantage of the situation in order to enact the exhibitionism?

So it's situations like that that require an assessor who is aware of all of the various potential motivations as a gatekeeper, somebody objective, to help make sure that the people who are undergoing transition and being deemed female, well, can be associated with the expectation of a healthy outcome.

But when the gatekeeping procedures are removed and a person is simply self-identifying, they now become, you know, subject to abuse. If a person merely has to declare out loud that they belong to the other and there's nobody objective or there's very little power in somebody objective to determine who counts, now it's ripe for abuse and anybody for less healthy reasons can be, as I say, taking advantage of society's developing appreciation and desire to embrace sexual diversity.[56]

108. [redacted] conversely, testified that "autogynephilia" was an older term and a controversial hypothesis that "does not resonate with the experience of many transgender women." During [redacted] cross-examination, [redacted] referred to the males who fit this profile as "trans-lesbians," some of whom may still have penises.[57]

Q. …So you would agree with me that there are some trans women who are not homosexual, they still retain an attraction to females and have a sexual interest in perceiving themselves as, in female form?

[56] Record, Tab A15, Transcript, Day 14, October 31, 2023, Direct Examination of [redacted] ("**DE of [redacted]**"), page 808

[57] Record, Tab A8, Transcript, Day 8, January 10, 2023, CE of [redacted], page 117

> A. Okay, so you're using very outdated language. So you're talking about trans women who are lesbians or attracted to women and have a sexual -- that doesn't necessarily go together, that's part of the problem with this as a theory. Is it basically says that all trans-lesbians are sexual fetishists and that's absolutely not true.
>
> Q. Okay, so these are trans-lesbians though who do not have surgery, so they're trans-lesbians who have penises, is that correct? In many cases at least.
>
> A. These are trans-lesbians at all different types of gender (audio drops) medical care or not. Sexual orientation is different from gender [affirming] medical care status.

109. [redacted] further opined that sex is "multidimensional" rather than binary and [redacted] would not concede that there are only two types of gametes, large and small. [58] A chart was produced in the Decision representing [redacted] thesis on this, published just ten years ago (para. 44).

110. [redacted] conversely, testified that there are only two sexes, and that disorders of sexual development or other developmental changes to sexual organs and chromosomes over the human lifespan do not disprove the binary.[59]

111. The Panel failed to properly assess the witnesses' credibility, including the demeanor of [redacted] who was evasive and unwilling to plainly answer the question, "What is the definition of a female?":

> Q: Could you agree with the definition that females are individuals who do or did or will or would, but for developmental or genetic anomalies, produce eggs? Is that a definition that covers your various dimensions but still helps us understand what a female is when we're speaking of it?
>
> A: So in research we would define things often for a very specific purpose depending on what is it that we're looking at and so we would be looking at, you know, specific sex dimensions if that is what was of interest. So when we're talking about kind of trying to create general categories of male or female it's always and many exceptions apply. So from a scientific perspective that

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[58] *Supra*, note 54

[59] Record, Tab A15, Transcript, Day 14, DE of [redacted], page 854, line 3 to page 855, line 20

> definition might vary depending on what health condition it is that we're interested in.[60]

112. [redacted] opinion, evidently, is that phenomena cannot be categorized meaningfully unless the categories have no exceptions. The Panel did not even comment on this in the Decision, or note any concerns whatsoever with the College's experts, who testified and were cross-examined over many days.

113. At paragraph 165, the Panel stated, "The Panel relies on the evidence of [redacted] which define "sex" as a "a set of biological attributes…"

114. The Panel's only criticisms of the expert evidence were saved for the Petitioner's experts. At paragraph 178, the Panel stated, "It was concerning to the Panel that [redacted] appeared to dismiss the trauma and harm that transgender individuals report based on a connection, which he did not support with research, between ROGD [Rapid Onset Gender Dysphoria] and borderline personality disorder."

115. Further, [redacted] had been critical of the low-powered survey-based studies on which the BCCNM's experts relied, but without acknowledging any issues with those studies, the Panel found that since [redacted] could not point to any randomized control trials (the highest possible form of evidence) to support [redacted] claims about autogynephilia or that adolescent youth are suffering with social function as a result of social media rather than gender dysphoria, the evidence of [redacted] was preferred [para 170].

116. Subjecting one party's evidence to a higher degree of scrutiny than another's evidence amounts to an error of law justifying judicial intervention: *Miller v. College of Optometrists of Ontario*.[61]

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[60] Record, Tab A6, Transcript, Day 6, October 26, 2022, CE of [redacted] page 51, lines 1-21
[61] *Miller v. College of Optometrists of Ontario*, 2020 ONSC 2573 (Div. Ct.) at para 30

117. While appellate courts are not entitled to reweigh and reassess evidence unless the tribunal has committed a palpable and overriding error, in a case with the political and ideological overtones of this one, uneven scrutiny should be a ground for review.

Error 8: The Panel held Petitioner to standard of a lawyer

118. In paragraph 254, the Panel states:

> The Respondent also asserts that feminine men should be protected on the basis of sex rather than gender, arguing there is no reason why they should have to be recognized literally or legally as women to have legal protections since protection from discrimination extends to sex.

119. Continuing from same paragraph:

> 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. … 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 [Emphasis added].

120. This appears to hold Ms. Hamm to the standard of a lawyer, rather than a citizen, or even a nurse, who is engaging in the public square on matters of public policy. Note that, in *Groia*, even a lawyer taking a sincerely held but incorrect legal position is not necessarily committing professional misconduct [para 88]:

> [88]…Crucially, as the Appeal Panel noted, allegations do not lack a reasonable basis simply because they are based on legal error: at para. 280. In other words, it is not professional misconduct to challenge opposing counsel's integrity based on a sincerely held but incorrect legal position so long as the challenge has a sufficient factual foundation, such that if the legal position were correct, the challenge would be warranted.

Penalty & Costs

121. The Panel ordered the Petitioner to pay $93,639.80 in costs to the College, in addition to a one-month licence suspension. The cost award is unreasonable, crushing and punitive in nature. 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. 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.

PART 4: ORDERS REQUESTED

122. The Petitioner seeks an order reversing the Order on Verdict of a Panel of the Discipline Committee of the BCCNM, dated March 13, 2025, pursuant to section 40(9)(a) of the *Health Professions Act*.[62]

123. In the alternative, the Petitioner seeks an order referring the Order on Verdict back to the Discipline Committee with directions, pursuant to s. 40(9)(b) of the *Health Professions Act*.

124. The Petitioner seeks an order setting aside the Order on Penalty, Costs and Publication of the Discipline Committee, dated August 14, 2025, pursuant to s. 40(9)(a) of the *Health Professions Act*.

125. In the alternative, the Petition seeks an order varying the Order on Penalty, Costs and Publication to reduce the amount payable for costs, pursuant to ss. 40(9)(a) and (c) of the *Health Professions Act*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED at the City of London, in the Province of Ontario, on this 8th day of September, 2026

[redacted]

Lisa D.S. Bildy
Counsel for the Petitioner,
Amy Hamm

[62] Reasons for Decision on Verdict, para 263

APPENDICES: LIST OF AUTHORITIES

1. *AP. c. Procureur général du Québec*, 2025 QCCA 24
2. *Andrews v. Law Society of British Columbia*, [1989] 1 SCR 143
3. *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65
4. *Chamberlain v. Surrey School District No. 36*, 2002 SCC 86, [2002] 4 SCR 710
5. *Doré v. Barreau du Québec*, [2012] 1 SCR 395, 2012 SCC 12
6. *Groia v. Law Society of Upper Canada*, 2018 SCC 27, [2018] 1 SCR 772
7. *Housen v. Nikolaisen*, 2002 SCC 233
8. *Hudspeth v. Whatcott*, 2017 ONSC 1708
9. *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927
10. *Kempling v. British Columbia College of Teachers*, 2005 BCCA 327
11. *Klop v College of Naturopathic Physicians of British Columbia*, 2022 BCSC 2086, leave to appeal dismissed
12. *Lauzon v. Ontario (Justices of the Peace Review Council)*, 2023 ONCA 425 (CanLII)
13. *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32 (CanLII), [2018] 2 SCR 293
14. *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12 (CanLII), [2015] 1 SCR 613
15. *M.R.M. v N.A.A*, 2020 CanLII 22968 (ON HPARB)
16. *Miller v. College of Optometrists of Ontario*, 2020 ONSC 2573 (Div. Ct.)
17. *Peterson v. College of Psychologists of Ontario*, 2023 ONSC 4685 (CanLII)
18. *Re Klein and Law Society of Upper Canada*, 1985 CanLII 3086 (ON HCJDC)
19. *Ross v. New Brunswick School District No. 15*, 1996 CanLII 237 (SCC), [1996] 1 SCR
20. *Strom v Saskatchewan Registered Nurses' Association*, 2020 SKCA 112
21. *Thomson Newspapers Co. v. Canada (A.G.)*, [1998] 1 S.C.R. 877

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

23. *Whatcott v. Saskatchewan Association of Licensed Practical Nurses*, 2008 SKCA 6 (CanLII)

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...