**IN THE MATTER OF A HEARING BY
THE DISCIPLINE COMMITTEE OF THE BRITISH COLUMBIA COLLEGE OF NURSES and MIDWIVES CONVENED PURSUANT TO THE
HEALTH PROFESSIONS ACT RSBC 1996, c.183**

BETWEEN:

The British Columbia College of Nurses and Midwives

(the "College" or "BCCNM")

AND:

Sean Taylor

(the "Respondent")

**Decision and Directions
(Respondent's Disclosure Application)**

Pre-Hearing Conference:	February 27, 2023 (by telephone)
Discipline Committee Panel:	Catharine Schiller, RN, Chair Hanna Ridley, RN Joshua Tan, Public Member
Counsel for the College:	Brent Olthuis Natalie Chan
Counsel for the Respondent:	Lee C. Turner
Independent Legal Counsel for the Panel:	Fritz Gaerdes

A. Introduction

1. A panel of the Discipline Committee (the "Panel") of the British Columbia College of Nurses and Midwives (the "College" or "BCCNM") has been convened to conduct a discipline hearing pursuant to section 39 of the *Health Professions Act* RSBC 1996 c.183 (the "Act" or the "HPA") in relation to the Respondent's conduct (the "Discipline Hearing" of the "hearing"). The Discipline hearing has been scheduled for July 18 to 21, 2023, to be conducted by videoconference on the College's Webex platform.

2. The College issued a citation on September 27, 2022, (the "Citation"), naming Sean Taylor as the Respondent. The Citation states the following:

> "…
> The purpose of the hearing is to inquire into your conduct as follows:
>
> 1. Between approximately 31 March 2020 and 2 November 2020, you made the following statements while identifying yourself as a registered nurse:
>
> a. (about COVID-19) "*...[Y]ou will get people to wear your masks and put them in your internment camps ... but there is a group of people, myself included, and you, and a bunch of friends, who will not comply. We will meet you in the streets and do this the old fashioned way*."
>
> b. (about movements including Black Lives Matter) "*The restraint that's being shown on the Right… I watch that shit, I wanna take a road trip and go down and play paint ball.*"
>
> c. (about COVID-19) "*[W]here does influenza come from? It is an avian virus and a porcine virus that usually comes from China because of the interface with Chinese culture*".
>
> d. "*There are so many times that I am comforting people in triage, who are terrified to be in the hospital, and I tell them there is no virus here. Don't worry about it. […] We had no cases admitted to the hospital. […] They still buy into this narrative.*"
>
> e. "*I don't wear a mask […] it's a load of horse shit.*"
>
> These remarks, made in these contexts, are contrary to BCCNM's Professional Standards and/or Practice Standards, including: the *Professional Responsibility and Accountability* Professional Standard, the *Knowledge-Based Practice* Professional Standard, and the *Ethical Practice* Professional Standard. They also constitute professional misconduct, unprofessional conduct, and/or a breach of the Act or by-laws, under s. 39(1) of the Act.
>
> 2. On 22 June 2020, you gave an interview to Global News (the "Segment"). The Segment was titled "*A Kelowna nurse says alleged racism in the emergency rooms having a negative impact on medical staff*". The Segment was filmed outside the Kelowna General Hospital, and you wore your scrubs with a stethoscope around your neck. In the Segment, you discussed allegations of racial discrimination against Indigenous patients and expressed the view that such news resulted in patients making allegations of racism against a nurse when they do not get their way.
>
> This conduct is contrary to BCCNM's Professional Standards and/or Practice Standards, including: the *Professional Responsibility and Accountability* Professional Standard, the *Knowledge-Based Practice* Professional Standard, the *Client-Focused Provision of Service* Professional Standard, and the *Ethical Practice* Professional Standard. It also constitutes professional misconduct, unprofessional conduct, and/or a breach of the Act or by-laws, under s. 39(1) of the Act.
>
> …"

B. The Respondent's Application for Disclosure of Additional Documents and Information

i. *Relief Sought*

3. The Panel conducted a pre-hearing conference ("PHC') with the parties on February 27, 2023 by telephone. The sole issue dealt with at this PHC was the Respondent's January 27, 2023 Application for Disclosure (the "Disclosure Application") in which he applies for the following relief:

> "…
> PART 1: ORDERS SOUGHT
>
> 1. The Respondent requests that the Panel exercise its powers under s.38(4.2)(c) of the Health Professions Act, c. 183, R.S.B.C., 1996, to make the following orders:
>
> > The College shall, at least 90 days before any scheduled discipline hearing, provide to the Respondent, a detailed affidavit identifying the documents, not already produced, reflecting the information or submissions that were directly or indirectly considered by the College in making the decision to issue the citation dated September 22, 2022 (the "Citation"), even if the documents are not going to be tendered or relied upon by the College at the discipline hearing, including but not limited to the following:
> >
> > i. all emails, meeting minutes, correspondence, notes of any and all individuals at Interior Health, the College, the Ministry of Health, concerning Mr. Taylor and his employment with Interior Health Authority, his standing with the College, and the issues raised in the citation issued September 22, 2022 (the "Citation").
> >
> > ii. all audio or video or transcripts of the incidents referenced in the Citation that form the basis of the Citation, including a copy of the complaint and all material supplied by the complainant in support of the complaint as well as copies of any and all emails, letters, fax, or correspondence between the complainant and the College, or Interior Health Authority, including any notes of any conversations between the College or the Interior Health Authority, and the complainant that is in the possession or control of the College.
> >
> > iii. the particulars of how each paragraph of the Citation and the conduct referred to therein, violates any statute, bylaw or practice standard.
> >
> > iv. the remedy that the College is seeking as a result of their Citation.
> >
> > …"

ii. *The Parties' Written Submissions*

4. Both parties filed written submissions prior to the PHC. The Respondent filed a Notice of Application containing submissions in support of the relief he seeks. The College filed Responding submissions, whereafter the Respondent filed reply submissions.

The Respondent's Position

5. The Respondent submits that on December 20, 2022, he requested the following information from the College that in any way relates to the Citation:

> i. all emails, meeting minutes, correspondence, notes of any and all individuals at Interior Health, the College, the Ministry of Health, concerning Mr. Taylor and his employment with Interior Health Authority, his standing with the College, and the issues raised in the Citation;
>
> ii. all audio or video or transcripts of the incidents referenced in the Citation that form the basis of the Citation, including a copy of the complaint and all material supplied by the complainant in support of the complaint;
>
> iii. the particulars of how each paragraph of the Citation and the conduct referred to therein, violates any statute, bylaw or practice standard;
>
> iv. the remedy that the College is seeking as a result of their Citation;
>
> (collectively, the "Disclosure Request").

6. The Respondent says that to date the College has not provided him with any information in response to the Disclosure Request. He submits that disclosure of the information requested in the Disclosure Request is necessary to ensure transparency and procedural fairness. The Respondent also submits that it is critical that the record before the Panel contains all the relevant evidence pertaining to the allegations made in the Citation, and only with a complete record will the Respondent be afforded a proper opportunity to know the case he has to meet and be able to properly respond.

7. The Respondent further submits that having a comprehensive record of proceedings is essential to the Panel fulfilling its entrusted responsibility to engage in meaningful administrative action. In this regard, the Respondent relies on the Federal Court of Appeal decision in *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2017 FCA 128 where the Court said that a full record is widely recognized to be "indispensable to the reviewing court's fulfilment of its responsibility to engage in meaningful review".

8. The Respondent says that the College is not a neutral third party in these proceedings. It is a party with a clear and direct interest in seeing its own administrative decisions upheld and accordingly, the Panel cannot merely accept the College's assertions and opinions, offered in defense of its decision to investigate and discipline the Respondent, as part of or in substitution for the actual record of evidence in this case.

9. The Respondent further says that the Panel's task is to independently review and assess the evidence before it to determine whether discipline is warranted. He argues further that in accordance with procedural fairness, to provide a full and meaningful response to that evidence, the Respondent must first have full disclosure beforehand.

10. The Respondent argues that it would be an abdication of the Panel's essential role for it to defer to the College's own view of what evidence should be disclosed, and what it demonstrates. In this regard, the Respondent points to the Supreme Court of Canada's statement in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, ("*Vavilov*") at paras 2, 14-15 where the Court, speaking in the context of a judicial review, explained that courts must "develop and strengthen a culture of justification in administrative decision making", which requires decisions that are "transparent, intelligible and justified".

11. He submits the Panel is functioning as an administrative tribunal in a quasi-judicial role akin to that of a court when it is deciding on a matter of professional discipline and, as such, the Panel has the same obligation to require the College to provide timely disclosure to develop and strengthen a culture of justification in administrative

decision making by making the process transparent.

12. The Respondent further submits that in *Vavilov* the Supreme Court of Canada has stated that administrative decision makers must adopt a culture of justification and demonstrate that their exercise of delegated public power can be "justified to citizens in terms of rationality and fairness". He argues that in this context, administrative tribunals must be alert to attempts by decision makers to prevent them from fulfilling their functions "by withholding documents and information necessary for judicial review or by failing to give explanations and rationales for decision-making". In this regard, the Respondent points to the following statement by the Federal Court of Appeal in *Canada (Citizenship and Immigration) v. Canadian Council for Refugees*, 2021 FCA 72, at paras 105-106:

> [105] The rationale against the complete immunization of administrative conduct from review is as fundamental as it can get:
>
> > "L'etat, c'est moi" and "trust us, we got it right" have no place in our democracy. In our system of governance, all holders of public power, even the most powerful of them—the Governor-General, the Prime Minister, Ministers, the Cabinet, Chief Justices and puisne judges, Deputy Ministers, and so on—must obey the law: *Reference re Secession of Quebec*, 1998 CanLII 793 (SCC), [1998] 2 S.C.R. 217, 161 D.L.R. (4th) 385; United States v. Nixon, 418 U.S. 683 (1974); *Marbury v. Madison*, 5 U.S. 137 (1803); Magna Carta (1215), art. 39. From this, just as night follows day, two corollaries must follow. First, there must be an umpire who can meaningfully assess whether the law has been obeyed and grant appropriate relief. Second, both the umpire and the assessment must be fully independent from the body being reviewed. See the discussion in *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2017 FCA 128 at paras. 77-79, *Slansky v. Canada (Attorney General)*, 2013 FCA 199, [2015] 1 F.C.R. 81 at paras. 313-315 (dissenting but not disputed by the majority), and the numerous authorities cited therein.
> >
> > Tyranny, despotism and abuse can come in many forms, sizes, and motivations: major and minor, large and small, sometimes clothed in good intentions, sometimes not. Over centuries of experience, we have learned that all are nevertheless the same: all are pernicious. Thus, we insist that all who exercise public power—no matter how lofty, no matter how important—must be subject to meaningful and fully independent review and accountability.
> >
> > (*Canada (Citizenship and Immigration) v. Tennant*, 2018 FCA 132 at paras. 23-24; see also *Girouard v. Canada (Attorney General)*, 2018 FC 865, [2019] 1 F.C.R. 404 at paras. 6-7, aff'd 2019 FCA 148, [2019] 3 F.C.R. 503.)

> [106] Courts are alert to attempts by public authorities and administrators to immunize their decision-making by withholding documents and information necessary for judicial review or by failing to give explanations and rationales for decision-making: *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2017 FCA 128 at para. 51; *Hartwig v. Commission of Inquiry into matters relating to the death of Neil Stonechild*, 2007 SKCA 74, 284 D.L.R. (4th) 268 at para. 24; Slansky at para. 276 (dissenting but not disputed by the majority); see also Paul A. Warchuk, "The Role of Administrative Reasons in Judicial Review: Adequacy and Reasonableness" (2016), 29 Can. J. Admin. L. & Prac. 87 at 113; and see the requirement for reasoned explanations behind administrative decision-making in *Vavilov* at paras. 83-87 and 91-104. [emphasis added]

13. The Respondent submits that to fulfil the requirements of transparency, intelligibility, and justification in this case, the College must be able to justify initiating the disciplinary process and specify by what authority they assert their right to do so, and to provide full disclosure of all relevant information to enable a full and proper review of the evidence to determine if the actions taken are justified.

14. The Respondent points to *Vancouver International Airport Authority v. Public Service Alliance of Canada*, 2010 FCA 158, at paras 21-22, and submits that it is not open to the College to say, "Trust us, we got it right." Nor is it sufficient to say, "trust us, but here's a hint". He further submits the Supreme Court of Canada in *Vavilov* stressed the importance of transparency and intelligibility to the proper application of the reasonableness standard, in words that apply directly to the present application:

> [95] That being said, reviewing courts must keep in mind the principle that the exercise of public power must be justified, intelligible and transparent, not in the abstract, but to the individuals subject to it. **It would therefore be unacceptable for an administrative decision maker to provide an affected party formal reasons that fail to justify its decision, but nevertheless expect that its decision would be upheld on the basis of internal records that were not available to that party**.
> [emphasis added]

15. The Respondent argues that this is precisely the circumstance that he is faced with in these proceedings. He says there has not been proper disclosure, despite his request on December 20, 2022 and despite the fact that the Citation was issued September 27, 2022 and pertains to conduct that is alleged to have occurred in 2020.

16. The Respondent further argues that procedural fairness demands not only full disclosure, but also timely disclosure. He says the College's position that it will produce what evidence it intends to rely upon during the Discipline Hearing only 14

days before the hearing (which has been scheduled for July 18-20, 2023) does not constitute full or timely disclosure and is not procedurally fair in the circumstances. The Respondent submits that he needs sufficient time to review the disclosure and to make whatever additional applications may be needed to obtain further disclosure if the initial disclosure is not complete.

17. The Respondent submits that by refusing to provide full disclosure in a timely fashion, the College is saying to him, and to the Panel, "trust us, we reviewed the record, and we got it right – here are our conclusions". He says that is not sufficient for a hearing of this nature that can have severe consequences for him. Any decision rendered by the Panel in these circumstances is at great risk of being set aside on judicial review for not meeting the standard set out in *Vavilov*, which requires the College to be "transparent, intelligible, and justifiable".

18. The Respondent says that the right of a petitioner on judicial review to a proper and complete record of evidence before the tribunal, and the essential role this plays in meaningful judicial review, has been confirmed many times by courts across the country. He submits this is analogous to the disclosure requirements of an administrative decision maker before a tribunal. In this regard, he points to the following statements in the case law:

    i. *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2017 FCA 128, paras 67-71:

> Thus, we must have front of mind the role that the evidentiary record plays in reviewing courts. It lies at the heart of meaningful judicial review. Its importance cannot be understated.
> (…)
> The reasons of the administrative decision-maker—and, thus, the evidentiary record intimately associated with them—are no small thing. They are the starting point and the focus for the reviewing court's judicial review analysis…
> And, quite apart from the foregoing, the evidentiary record before the administrative decision-maker is indispensable to the reviewing court's fulfilment of its responsibility to engage in meaningful review. In most judicial reviews, the reviewing court must evaluate the substantive correctness or acceptability and defensibility of the administrative decision. It is alert to errors or defects that might render the decision unreasonable. Often error or unacceptability and indefensibility is found by comparing the reasons with the result reached in light of the legislative scheme and—most importantly for present purposes—the evidentiary record before the administrative decision-maker. [emphasis added]

ii. *Hartwig v. Commission of Inquiry into matters relating to the death of Neil Stonechild*, 2007 SKCA 74, para 24:

> In my opinion, therefore, it is necessary to recognize and give effect to the reality that, in order to effectively pursue their rights to challenge administrative decisions from a reasonableness perspective, the applicants in judicial review proceedings must be entitled to have the reviewing court consider the evidence presented to the tribunal in question. No other result is fully consistent with the present substance of administrative law. [emphasis added]

iii. *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ON CA), para 161:

> **An applicant for judicial review has the right to have a full and accurate record of what went on before the tribunal put before the court**. This is an aspect of the superior court's inherent powers of judicial review. A superior court may insist upon the production of an adequate record of the proceedings before the tribunal being reviewed. As stated by Denning L.J. in *R. v. Medical Appeal Tribunal ex p. Gilmore*, [1957] 1 Q.B. 574 at 583 (C.A.): "The court has always had power to order an inferior tribunal to complete the record ... [A] tribunal could defeat a writ of certiorari unless the courts could order them to complete or correct an imperfect record. So the courts have the power to give such an order"…. A statutory body subject to judicial review cannot immunize itself or its process by arriving at decisions on considerations that are not revealed by the record it files with the court. [emphasis added]

19. The Respondent submits it is not controversial that the "record" generally consists of the material, evidence, documents, and information that was "before" the decision maker or decision-makers in making a particular decision. He says the "record" here includes what was before the College when they decided to issue the Citation, whether or not they intend to tender that evidence at the hearing. In this regard, he refers to the BC Court of Appeal decision in *British Columbia (Minister of Health) v. Eastside Pharmacy Ltd.,* 2022 BCCA 259 where the Court said:

> [49] Thus, while it may be more difficult to identify precisely which documents were before a decision maker such as the Minister or their delegate as in this case, as opposed to a tribunal, it is clear that the only documents to be produced as part of the record are those that were *actually before* the decision maker. [emphasis added]

20. The Respondent further says that this legal requirement to include all documents before the decision-maker in the record before the Court was recently applied by the BC Supreme Court in *Canada Mink Breeders Association v British Columbia*, 2022 BCSC 1731, at paras 19, 23, 35, and 39:

> [19] It has been held that an applicant under s. 17 is generally entitled to receive production of the "record of the proceeding", and no more: *Sobeys West Inc. v. College of Pharmacists of British Columbia*, 2016 BCCA 41; *Community Outreach*

> *Pharmacy Ltd. v. British Columbia (Minister of Health)*, 2017 BCSC 1634 at para. 18. The applicant is entitled only to those documents that were actually before the decision-maker: *British Columbia (Minister of Health) v. Eastside Pharmacy Ltd.*, 2022 BCCA 259 at para. 49.
>
> (…)
> [23] In light of these authorities, I am satisfied that the "record of the proceedings" in this case includes at least some of the documents that the petitioners seek to have produced, particularly those that will enable the court to reconstruct what was before cabinet when it made the impugned decision.
> (…)
> [35] In summary, I have concluded that the respondents should be directed to produce, to the extent they have not already done so, the documents in their possession or control reflecting the information and submissions that were directly or indirectly considered by cabinet in making the impugned decision, unless continuing to withhold those documents is found to be justified under the PII test, to which I turn next.
> (…)
> [39] The respondents are directed, within 30 days, to prepare and deliver to counsel for the petitioners a detailed affidavit identifying the documents, not already produced, reflecting the information or submissions that were directly or indirectly considered by cabinet in making the impugned decision, and the basis for the respondents' assertion of PII in each case. [emphasis added]

21. The Respondent also submits that a higher standard of procedural fairness and the highest degree of disclosure is required of an administrative tribunal when they are making a decision pertaining to professional discipline and when the right to continue in one's profession or employment is at stake. He says disclosure must include all evidence that may assist the person affected by the decision in defending themselves, even if the tribunal does not plan to rely on it in rendering its decision.

22. The Respondent refers to *Dane Developments Ltd. v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2015 BCSC 1663 (CanLII) and argues that procedural fairness requires disclosure of sufficient information to permit meaningful participation in the hearing process. He says both *Knight v. Indian Head School Division No. 19,* 1990 CanLII 138 (SCC), [1990] 1 SCR 653 *14* and *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 ("*Baker*") made it clear that procedural fairness does not dictate one size fits all outcomes; its content is "eminently variable", and as set out in the *Baker* factors, the requirements of fair procedure in a particular case depend on the nature of the statutory scheme, the nature and importance of the interest affected, the impact of the decision on that interest, the nature of the tribunal's decision-making process, the

legitimate expectations of the individuals affected, the tribunal's choice of procedures and the institutional context within which the tribunal operates.

23. The Respondent further says the law is clear that matters pertaining to professional discipline – where a person's profession, reputation, and livelihood are at risk – the disclosure requirements are substantial and include all the information the tribunal is being asked to consider in rendering its decision. He points to the case of *May v. Ferndale Institution*, 2005 SCC 82 ("*May*") which involved a challenge by several inmates serving life sentences to decisions by the Correctional Service of Canada (the "CSC") to transfer them from minimum to medium security institutions. The transfer decisions were made not as a result of specific inmate misconduct, but rather following a general risk assessment undertaken respecting all inmates serving life sentences who had not undertaken violent offender programming. The risk assessment was undertaken using a "scoring matrix," which was not disclosed to the inmates. The inmates argued that the failure to disclose the matrix made it impossible for them to challenge the decision. The inmates did not rely solely on the common law. They argued that this was one of those rare instances in administrative law where the decision affected their liberty interest under section 7 of the *Charter*. They argued that if the principles of fundamental justice in section 7 of the *Charter* gave rise to the *Stinchcombe* standard in by the proceedings, fundamental justice required no less in respect of their section 7 rights in administrative proceedings.

24. While the Court accepted that section 7 of the *Charter* was operative, it rejected the proposition that the principles of fundamental justice impose the same requirement in every context:

> "The appellants contend that the disclosure requirements set out in *Stinchcombe* apply to the present case because the transfer decisions involved the loss of liberty. On the other hand, the respondents argue that the proper context in which to deal with involuntary transfers is administrative law and not criminal law. The *Stinchcombe* disclosure standard is fair and justified when innocence is at stake but not in situations like this one."
>
> "We share the respondents' view. *The requirements of procedural fairness must be assessed contextually in every circumstance*…" [emphasis added]
>
> "It is important to bear in mind that the *Stinchcombe* principles were enunciated in the particular context of criminal proceedings where the innocence of the accused was at stake. Given the severity of the potential consequences the

> appropriate level of disclosure was quite high. In these cases, the impugned decisions are purely administrative. These cases do not involve a criminal trial and innocence is not at stake. *The Stinchcombe principles do not apply in the administrative context*." [emphasis added]
>
> "***In the administrative context, the duty of procedural fairness generally requires that the decision-maker discloses the information he or she relied upon. The requirement is that the individual must know the case he or she has to meet…***" [emphasis added]

25. The Respondent points out that the Court in *May* held that the disclosure was not sufficient to comply with principles of procedural fairness. The CSC relied on the scoring matrix and failed to disclose it which the Court said was "a major breach of the duty to disclose inherent in the requirement of procedural fairness". He says this was a breach not only of the common law and the *Charter*, but of the Commission's own statutory requirements governing fair hearings.

26. The Respondent also relies on *Sheriff v. Canada (Attorney General)*, 2006 FCA 139, which was decided a few months after *May*. The Respondent explains that the issue in *Sheriff* was whether the investigators were as a matter of procedural fairness under the same type of obligation as Crown Counsel in a criminal case (i.e., *Stinchcombe disclosure*) to disclose all relevant reports and documents to a licenced trustee in bankruptcy facing discipline proceedings as a result of a complaint by a creditor, even if the documents were not going to be tendered or relied on by investigators as evidence at the hearing. The licencee learned that investigators were in possession of evidence that they did not propose to call but which might have been helpful to the licencee. The Attorney General of Canada argued that *May* governed, and the disclosure of this information was unnecessary and not required by law. The Respondent points out that the Federal Court of Appeal (the "FCA") disagreed and dealt with *May* as follows (at paras. 29-34):

> "While the Court is unequivocal in stating that "[t]he *Stinchcombe* principles do not apply in the administrative context," **it clearly is not referring to a licensing review hearing, where a loss of livelihood and damage to professional reputation are at stake**. In contrast, in the present appeal, **the innocence, i.e. the reputation of the Trustees, is under review**. Accordingly, I would classify a review of a trustee in bankruptcy's license by the OSB as an exception to the rule established in *May*." [emphasis added]
>
> "It must be noted that this Court has on a number of occasions refused requests for disclosure of all documents related to an investigation (see Re *CIBA-Geigy Canada Ltd.,* [1994] F.C.J. No. 884, 1994 CarswellNat 1796 (C.A.); *D & B Co. of*

> *Canada Ltd. v. Canada (Director of Investigations & Research)* (1994), 176 N.R. 62 (C.A.)). However, these cases can be easily distinguished from the case on appeal because of the nature of the action. While both *CIBA* and *D&B* involve potential economic hardship for the appellant companies, neither case involves the individual's right to work or professional reputation. The interests of the appellants in these cases do not parallel those of the accused in a criminal proceeding; therefore, a lower level of disclosure was appropriate."
>
> "In contrast, **our Courts have repeatedly recognized a higher standard of procedure for professional discipline bodies when the right to continue in one's profession or employment is at stake** (see *Kane v. Board of Governors of University of British Columbia*, [1980] 1 S.C.R. 1105 at page 1113; Brown and Evans, Judicial Review of Administrative Action in Canada (Canvasback Publishing: Toronto, 1998 at pages 9-57 and 9-58). **This higher standard of disclosure exists regardless of whether the provincial jurisdiction recognizes the application of section 7 of the *Charter* in these cases**." [emphasis added]
>
> "**The requirement for increased disclosure is justified by the significant consequences for the professional person's career and status in the community**. Some Courts have noted that a finding of professional misconduct may be more serious than a criminal conviction (see *Howe v. Institute of Chartered Accountants* (1994), 19 O.R. (3d) 483 (C.A.) per Laskin J.A. in dissent at pages 495-496; *Emerson v. Law Society of Upper Canada* (1983), 44 O.R.
>
> (2d) 729, at 744). **The scope of disclosure in professional hearings continues to be expanded by provincial courts, which have applied the *Stinchcombe* principles in cases where the administrative body might terminate or restrict the right to practice or seriously impact on a professional reputation** (see *Hammami v. College of Physicians and Surgeons of British Columbia* (1977), 47 Admin. L.R. (2d) 30 (B.C.S.C.) at paragraph 75; *Milner v. Registered Nurses Association (British Columbia)* (1997), 71 B.C.L.R. (3d) 372 (S.C.)). In *Stinchcombe*, the Supreme Court of Canada held that there is **a general duty** on Crown prosecutors **to disclose all evidence that may assist the accused, even if the prosecution did not plan to adduce it**. While these principles originally only applied in the criminal law context, **the similarities between a criminal prosecution and a disciplinary hearing are such that the objectives are, in my analysis, the same**, i.e. the search for truth and finding the correct result. In this case, the Trustees **face a suspension of their license and injury to their professional reputation. In order to fully understand the case against them and to ensure a fair disciplinary proceeding, the Trustees must have access to all relevant material which may assist them**. This is consistent with the Superintendent's earlier ruling in this case that the SDA had a duty to disclose all documents unless they were "clearly irrelevant."" [emphasis added]

27. The Respondent submits that *Sheriff* is good law in Canada and that it has been cited with approval by the Federal Court, the Manitoba Court of Appeal, the Alberta Queen's Bench, and the Ontario Supreme Court. He also submits that the actions available to the Discipline Committee under section 39 of the *HPA* to penalize a registrant are expansive, including the restriction or prohibition of that individual's ability to practice in his or her designated profession and the ability to levy

considerable and uncertain monetary penalties. He says good standing and the unrestricted or unprohibited ability to practice are of the utmost importance to a registrant, past or present, to practice within the province or even in another jurisdiction in later years of his or her career. Lastly, the Respondent says his personal and professional reputation has the potential to be negatively impacted by any prospective publication that arises from the results of any disciplinary hearing.

28. The Respondent submits a higher standard of procedural fairness and disclosure is accordingly required of an administrative tribunal when they make a decision pertaining to professional discipline and when the right to continue in one's profession or employment is at stake. The Respondent says this standard is akin to that of *Stinchcombe* where disclosure must include all evidence that may assist the accused (i.e., the person affected by the decision), even if the prosecution (i.e., the College) did not plan to adduce it.

29. The Respondent further submits that given the extent of the potential consequences arising from the substantial accusations levied against the Respondent it is paramount that the College produce the information in the order sought. He says the way in which the Citation is worded leaves it completely open as to what provisions the College is saying have been breached and why. He submits the allegations contained in the Citation form the very basis of the disciplinary process itself. Impugned conduct must rise to the level of contravening explicit laws, rules, or standards to empower the relevant administrative bodies to initiate any form of investigation or disciplinary process. Accordingly, the particulars are required before the hearing can proceed. The Respondent argues that procedural fairness requires disclosure of all information pertaining to the Citation before the disciplinary hearing commences, with a reasonable period given to consider the information and to complete any submissions or applications that may be required.

The College's Response

30. The College opposes the relief sought through the Disclosure Application. The College's submits, in summary, that the disclosure the Respondent seeks should be denied because: (i) the Respondent's application does not rest on a proper

jurisdictional foundation; (ii) if this initial position is incorrect, the Respondent cannot meet the statutory test of showing that this relief "is necessary to ensure that [his] legitimate interests … will not be unduly prejudiced"; (iii) alternatively, what the Respondent seeks is irrelevant to the underlying proceeding so it can also not be ordered produced under Bylaw 208, and (iv) it is not just or equitable for the discipline panel to make an order along the timelines requested by the Respondent, which is almost six-and-a-half times longer than the statutory deadline provided in the *Health Professions Act*.

31. The College argues that the Respondent relies only on section 38(4.2) (c) of the Act as the statutory authority for the requested relief. The College says it is clear from the surrounding context that section 38(4.2) (c) confers a power on the Panel to exercise during the hearing. It says that since the proceeding is currently in the pre-hearing stage and section 38(4.2) (c) accordingly does not provide statutory authority for the relief the Respondent seeks.

32. The College further argues that Bylaw 208(6) governs pre-hearing conferences, such as the one at which the Respondent brought the Disclosure Application. This Bylaw provides that:

> (6) At a pre-hearing conference, the pre-hearing panel may make an order
>
> > (a) fixing or changing the date, time and place for the hearing,
> > (b) for the discovery and production of information or records relevant to the citation,
> > (c) respecting applications for joinder or severance of one or more complaints or other matters which are to be the subject of a hearing, or
> > (d) respecting any other matters that may aid in the disposition of the citation.

33. The College accepts that the Panel has jurisdiction to make the requested order pursuant to Bylaw 208(6) provided that: (i) the Respondent can show the information or records are relevant to the Citation, and (ii) the Panel is otherwise persuaded to exercise its discretion in favour of the relief in all the circumstances.

34. In the alternative, the College argues that if the Respondent has correctly invoked section 38(4.2)(c) as grounding his relief, then he bears the onus of showing that the

relief is “necessary to ensure that [his] legitimate interests … will not be unduly prejudiced”. The College says the Respondent cannot meet this bar.

35. The College submits that section 37(1)(b) of the Act indicates that the purpose of the Citation is to “describ[e] the nature of the complaint or other matter that is to be the subject of the hearing”. Section 38(1) then provides that “[t]he discipline committee must hear and determine a matter set for hearing by citation”. Subsections 38(4) and (4.1) subsequently make clear that the hearing is to proceed based on evidence – which the parties will lead in their discretion – and that the presumptive rule is that the party seeking to lead the evidence must make disclosure 14 days before the hearing (i.e., in this case, on or before 30 June 2023) for it to be admissible.

36. The College points out that the Citation in this case lists five comments the Respondent made between 31 March 2020 and 2 November 2020, while identifying himself as a registered nurse and alleges that those remarks were contrary to the College’s Professional Standards and/or Practice Standards, and constitute professional misconduct, unprofessional conduct, and/or a breach of the Health Professions Act or College Bylaws. The Citation lists a further statement made in a broadcast interview, that likewise gives rise to disciplinary action.

37. The College argues that the hearing will involve proof by the College that the Respondent made these comments, and argument about whether they were contrary to the listed provisions, standards, and rules. It says that to the extent the Respondent’s disclosure request is underpinned by a wish to turn the proceedings on their head, and “investigate the investigators”, he ought not to succeed. The College says these proceedings are about (i) what the Respondent said, (ii) in context, whether the statements are properly subject to discipline. It argues that the process leading to the registrar’s issuance of the Citation – and the process leading to the Inquiry Committee’s direction to do the same – is irrelevant to the discipline hearing. In this regard, it points to C*ollege of Dental Surgeons of British Columbia v Health Professions Review Board*, 2014 BCSC 1841 at para 57, where Donegan J explained the HPA creates three stages for processing complaints:

> The first two stages are often collectively referred to as the “front end” or

> "screening" process. The front end process involves the Registrar of the College and the Inquiry Committee. Each has certain defined authority, including the authority to dispose of a complaint short of issuing a citation. The issuance of a citation puts in motion the second process – that involving the Discipline Committee.

38. The College submits the Inquiry Committee and the Discipline Committee have "two distinct roles and stages": *Ridsdale v Anderson*, 2016 BCSC 942 ("*Ridsdale*") at para 48. It says what happened at the tail end of the front-end stage has no continued relevance at the discipline committee stage, where the result will be determined by whatever evidence the parties choose to lead.

39. For the above reasons, the College submits the Respondent's arguments regarding transparency, intelligibility and justification and procedural fairness should be rejected. The College says the Panel will be weighing the evidence and arguments presented to it – not the decision to issue a citation. Stated another way, the College agrees that procedural fairness requires timely disclosure. But, as per section 38(4) of the Act, this is timely disclosure of the evidence on which the College will rely in making proof of its case. Neither the Act nor the principles of procedural fairness demand anything broader than that.

40. The Collage says the Respondent's argument seeking to analogize administrative proceedings to judicial reviews conducted in the superior courts (submissions, paras 25-29) makes the College's point. It says the issuance of a citation is not amenable to judicial review. In this regard it relies on *Ridsdale*, *Maroofi v College of Physicians and Surgeons of British Columbia*, 2017 BCSC 1558 at paras 74-76 and *Dhillon v Law Society of British Columbia*, 2021 BCSC 806 at paras 73-76. The College submits the Courts will not entertain a challenge to the issuance of the Citation. It says the Respondent's analogy works well here, but in the opposite direction to what the Respondent urges: the various documents he is seeking are irrelevant in both forums. The College submits this last point is, also, the reason why the Respondent's reliance on *Sheriff* is misplaced. The documents the Respondent seeks are by definition irrelevant to the issues before the Panel in this separate stage of the process. They cannot possibly be exculpatory because they are not relevant. On account of the preceding logic, it is unnecessary for the Panel to address whether

Sheriff accurately reflects the law in British Columbia. For greater certainty, however, the College says it does not. It says *Sheriff* appears to have been cited only once in British Columbia and was not in that case applied by the Court: *Fets Fine Foods Ltd v British Columbia (Liquor and Cannabis Regulation Branch)*, 2021 BCSC 1256 at paras 19-20.

41. The College submits that even if the Respondent could show that the documents he seeks are exculpatory his instant request would still be declined on the basis of *May* which it says accurately states the law of disclosure in administrative proceedings. The College points out that *May* has been applied on numerous occasions in British Columbia, including in cases where persons stand to lose driving privileges such as *Walji v British Columbia (Superintendent of Motor Vehicles),* 2016 BCSC 1906 at para 10 and *Wyborn v British Columbia (Superintendent of Motor Vehicles),* 2018 BCSC 1012 at para 41. The College says *May* applies in this case, defeating any argument that "*Stinchcombe"*-style disclosure principles apply.

42. Finally, the College submits that while it is unclear what *Charter* right the Respondent seeks to invoke in this case in order to bring himself within "*Stinchcombe*"-style disclosure (and far beyond the disclosure that the BC Legislature, in its sovereign exercise of legislative power, has stated that he is entitled to), it does not appear that he has prepared or served a notice of constitutional question on the provincial or federal Attorneys General. As such, under the *Constitutional Question Act*, RSBC 1996, c 68, s 8(2), the Panel cannot find section 38(4) of the HPA inapplicable. In these circumstances, the College argues the Respondent cannot meet the test of showing that the order is necessary to ensure his interests will not be unduly prejudiced. The Panel cannot order them produced.

43. With respect to the test under Bylaw 208(6)(b), the College says this Bylaw allows the Panel to order production of documents "relevant to the citation". In context, the College submits that this clearly means "relevant to the hearing of the citation" at the final discipline stage. The power is not to "look back" to the earlier front end stage.

44. For all the above reasons, the College says the Respondent cannot meet this threshold. The documents are not relevant to the hearing of the Citation, and the Panel cannot order them produced.

45. The College further submits that if it is incorrect on all the above points, and the Respondent is entitled to disclosure of the documents that he requests, then he is nevertheless not entitled to receive them 90 days in advance of the hearing. It says the legislature has exercised its sovereign authority regarding when documents must be disclosed. Absent the parties' agreement to earlier deadlines, the 14-day deadline applies.

46. If the Panel is otherwise persuaded by the Respondent's arguments, the College says the Panel should order disclosure on or before 30 June 2023.

The Respondent's Reply

47. In Reply to the College's submissions, the Respondent submits that he wants to change the basis on which the disclosure order is sought to be pursuant to Bylaw 208 of the College's Bylaws. The Respondent further submits that the College mischaracterizes the Respondent's request for timely disclosure of all relevant information and documentation in the possession or control of the College as:

    a. a wish to turn the proceedings on their head and "investigate the investigators" (paragraph 19);
    b. an attempt to analogize administrative proceedings to judicial reviews conducted in the Superior Court's (paragraph 22);
    c. an attempt to challenge the jurisdiction to issue the citation (paragraphs 23); and
    d. an attempt to invoke his Charter rights (paragraph 26).

48. The Respondent says that the disclosure he seeks pertains to information and documentation that was directly or indirectly considered by the College in making the decision to issue the Citation, even if that information or documentation is not going to be tendered or relied upon by the College at the hearing. He submits that irrespective whether this information supports the allegations in the Citation, or refutes it, if it is information that was considered in the context of determining whether

the evidence supported the issuance of the Citation, it is relevant and ought to be produced.

49. The Respondent points out that the College admits that section 208 of the Bylaws allows the Panel to make an order for the discovery and production of information or records relevant to the Citation. He says this disclosure is necessary for him to know the case he must meet and to be in a position to properly prepare his defence.

50. The Respondent submits the College confuses its right to decide which information or records from the relevant evidence it will choose to tender at the hearing to prove the allegations in the Citation, with its legal obligation to disclose all the relevant information or records relevant to the Citation in a timely fashion. He submits that contrary to the College's submission, the onus is not on the Respondent to show that information or records which are in the possession or control of the College are relevant to the Citation. This is in any event not possible since the Respondent does not know what information or records are in the possession or control of the College. The Respondent argues the onus is on the College to disclose all information or records relevant to the allegations made in the Citation.

51. The Respondent says the College confirmed that its intention is to provide proof at the hearing that the Respondent made the comments referenced in the Citation and argue whether these comments were contrary to the professional and practice standards of the College and constituted professional misconduct, unprofessional conduct and/or a breach of the *Health Professions* Act or the Bylaws. The Respondent points out that the alleged comments complained of took place between March 31, 2020 and November 2, 2020, almost 3 years ago. The Citation was issued September 27, 2022 - 5 months ago. The Respondent says the College has had ample time to disclose the information and records that are relevant to the allegations in the Citation and the particulars of how the alleged comments are contrary to practice standards and the legislation or bylaws, but has refused to do so, despite requests for same being made by the Respondent in December 2022.

52. The Respondent submits that section 38(4.1) of the HPA on which the College relies to oppose disclosure does not address the College's disclosure obligations with

respect to the relevant information or records being sought. He argues that section 38(4.1) only addresses the criteria that must be met before a party will be able to tender any of the relevant information and records at the hearing. The Respondent submits that it is section 208 of the Bylaws, and the common law, that addresses the general disclosure obligations of the parties to produce the relevant information and records in a timely fashion.

53. The Respondent also submits that section 38 (4.1) of the HPA is akin to Rule 12-2 of the *Supreme Court Civil Rules* that permits the Court at a trial management conference to order the parties to provide to each other by a certain date before the trial the documents they intend to tender in evidence and the names, contact information and will say statements of witnesses intended to testify at trial. He also argues that section 208 of the Bylaws is akin to Rule 7-2 that requires the parties to provide early and fulsome discovery of all relevant documents and information and full particulars of the allegations made. The Respondents says the *Supreme Court Civil Rules* require the parties to disclose a list of all relevant documents 35 days after the close of pleadings. He says that if a similar process were followed in these proceedings, the College would have been obligated to provide disclosure of documents by the first week of November 2022. In this case, the Respondent says he is only seeking disclosure by April 18, 2023, or 90 days before the hearing.

54. The Respondent argues that the College continues to insist that it has the right to withhold disclosure until 14 days before the hearing and is only then required to tender those parts of the relevant documents and information that they intend to rely upon at the hearing. He submits that Rule 3-7 (18) of the *Supreme Court Civil Rules* requires a party to provide full particulars in their pleadings and allows a party to request further and better particulars, and to obtain an order if a party refuses to provide them. The Respondent submits he has requested further and better particulars from the College, and they insist that their obligation is limited to providing the evidence that they intend to tender at the hearing 14 days before the hearing.

55. The Respondent further submits that Rule 1-3 of the *Supreme Court Civil Rules* confirms that the objects of the rules are to secure the just, speedy and inexpensive

determination of every proceeding on its merits and the above Rules are consistent with that object. He acknowledges that while this panel is not subject to the *Supreme Court Civil Rules*, he says the objects and principles of these rules apply. The Respondent argues that the wisdom of these Rules that have been assembled by our superior court judges, lawyers, and representatives from the Ministry of the Attorney General is apparent. Early and fulsome disclosure promotes a fair hearing and increases the likelihood of a resolution before a hearing. The common law that has developed in administrative tribunal decisions, and in the courts of the province and across Canada are consistent with and have reinforced the merits and requirements of these objects. Yet in this case, the College submits that they should not be required to adhere to such objects.

56. The Respondents submits that the College has made it clear that it does not believe that its decisions should be subject to the standards of transparency, intelligibility, or justification that the Supreme Court of Canada has clearly said should apply to all administrative decision makers. The Respondent says the College is aware of the relevant information and documentation that they are in possession or control of that they reviewed and considered when they decided the evidence supported issuance of the Citation. He argues that the College's refusal to disclose this information to the Respondent until 14 days before the July 18-20, 2023 hearing, or even 18 days before as the College puts forward as an alternative position, is an attempt to force trial by ambush, something that is the antithesis of procedural fairness and runs contrary to disclosure requirements common to all other decision-making bodies.

57. With respect to the College's position that the process leading to the Registrar's issuance of the Citation and the process leading to the Inquiry Committee's direction to do the same is irrelevant to the discipline hearing, the Respondent acknowledges that he is not challenging the process, but is seeking disclosure of the information or records reviewed by the College that resulted in it deciding to issue the Citation so that he may know the case he has to meet. The Respondent submits that presumably at least some of the information or records in the College's possession or control supports these allegations, but there may also be information or records that do not. He submits all the relevant information or records must be disclosed by the College,

whether or not they intend to tender it in evidence at the hearing, and whether or not it supports the allegations.

58. The Respondent argues that the fact that an Inquiry Committee and the Discipline Committee have two distinct roles and stages in no way lessens the obligation of the College to provide timely disclosure of all relevant information and documentation reviewed and considered that resulted in the direction to the registrar to issue a citation. He argues that nothing in *Ridsdale* referenced by the College in any way supports the argument that the disclosure requirements set out in section 208 of the Bylaws and the common law do not apply to the Inquiry Committee or the College.

59. The Respondent submits he is not challenging whether the College has the jurisdiction to issue a citation, but rather whether the evidence reviewed by the Inquiry Committee supports the allegations contained in the Citation. He says he should not have to wait until 14 or 18 days before the hearing to receive select pieces of the relevant information and records that the College has decided to tender to support the allegations made in the Citation. He should have sufficient time to review all of the relevant information and records to understand the case he has to meet and to prepare to present his case.

60. The Respondent also submits that if he is required to wait until 14 days to receive all the relevant information or records from the College, he will be unable to provide to the College 14 days before the hearing which information or records he intends to tender in evidence at the hearing. He says this would then leave him in the position of being unable to tender any documentary evidence at the hearing, and will also not allow the Respondent sufficient time to secure the evidence of expert or non-expert witnesses to meet the evidence tendered by the College or to provide the name and an outline of the anticipated evidence of the witness as required by sections 38(4.1) (a) - (c) of the HPA. The Respondent says such an approach cannot be what was intended by section 208 of the Bylaws, or the HPA, and is not procedurally fair.

61. The Respondent further submits that he is not seeking to analogize administrative proceedings to judicial reviews conducted in the Superior Court but references those case authorities for the legal principles concerning the obligations of administrative

decision makers to provide timely disclosure of all relevant documentation and information considered by the administrative body in its decision-making process.

62. The Respondent also says the College's submission that his reliance on *Sheriff* is misplaced, is puzzling. He points out that the administrative decision-maker in that case was attempting to argue the very same point that the College is arguing here, which was rejected by the Court. Namely, that an administrative decision maker should only be required to disclose the evidence which they intend to rely upon at the hearing in support of their citation rather than providing proper disclosure of all relevant information and documentation beforehand. The issue in *Sherriff* was whether the investigators, akin to the College, was as a matter of procedural fairness under the same type of obligation as Crown Counsel in a criminal case to disclose all relevant reports and documents to the individual facing a discipline hearing even if the documents were not going to be tendered or relied upon by the investigators as evidence at the hearing. This case makes it clear that where an administrative body akin to the College has issued a citation where a loss of livelihood and damage to professional reputation are at stake, a higher standard of disclosure exists. This increased disclosure obligation is justified by the significant consequences to the professional person's career and status in the community.

63. The Respondent argues that the Supreme Court of Canada and the Federal Court of Appeal have made it clear that all holders of public power, even the most powerful of them, must obey the law, and that this also applies to the College. He says that any submission that he and the Discipline Panel should simply trust the College that whatever they decide to tender in evidence is all we need to see, has no place in our democracy.

64. The Respondent further contests the College's suggestion that *Sherriff* is not the law in British Columbia. He submits that the principles confirmed by the Federal Court of Appeal in *Sherriff* are consistent with the principles espoused in the Supreme Court of Canada decision of *Vavilov*, and other Court decisions in British Columbia that have followed it, that the courts must develop and strengthen a culture of justification in administrative decision-making which requires decisions that are transparent,

intelligible and justified. The Respondent questions why the College would argue that these standards should not apply to them is unclear.

65. The Respondent opposes the College's position that his request for disclosure of the information and documentation reviewed and relied on to support the allegations in the Citation should be denied based on *May*. He says that for purposes of this case, the Supreme Court of Canada's finding that the duty of procedural fairness in the administrative context generally requires that the decision-maker disclose the information he or she relied on. The Respondent says the requirement is that the individual must know the case he or she must meet and if the decision-maker fails to provide sufficient information, his or her decision is void for lack of jurisdiction.

66. The Respondent says that since the decision in *May* was decided in 2005, the Supreme Court of Canada, the Federal Court of Appeal, the Saskatchewan Court of Appeal, the Ontario Court of Appeal, and the BC Supreme Court have had occasion to expound upon and apply these principles and the requirements upon an administrative body to ensure procedural fairness and proper disclosure. He argues that the principle that run through all these cases is that the person who is being implicated must be given the documentation and information that was before the decision-maker when it made the impugned decision so that the affected individual knows the case that they must meet and that they have time to properly prepare their case and respond. The standard of disclosure and procedural fairness required depends on the nature of the statutory scheme, the nature and importance of the interest affected, and the impact of the decision on that interest amongst other things.

67. The Respondent submits that the allegations made against him in the Citation have potentially very serious consequences. Accordingly, he argues that procedural fairness dictates timely disclosure of all relevant information and documentation in advance of the hearing necessary to allow him to understand the case that he has to meet and to properly prepare his defence. He says this requires sufficient time to determine what documentary evidence the Respondent may rely upon, and what witnesses he may wish to secure to give evidence. This cannot be reasonably accomplished without disclosure well before the hearing.

68. The Respondent further submits that the College's position that a 90-day roadside driving prohibition is equivalent to the loss of employment, loss of professional license, a public rebuke and fines is without merit. He says that the BC Supreme Court, in the context of an action commenced through a Notice of Civil Claim, in the case of *Marion Family Ventures Inc v Lam*, 2021 BCSC 10764 ["*Lam*"], stated the purpose of document disclosure as follows:

> *A principal purpose of pretrial discovery, including discovery of documents, is to level the playing field between the parties by giving each access in advance of the trial documents in the possession or control of its opponent that may assist it in making out its case or defeating its opponent's case at trial.*

69. The Respondent also relies on the Court's statements in *Lam,* at para 28, where the Court quoted the *Peruvian Guano* test for discovery as follows:

> *It seems to me that every document relates to the matters in question in the action, which not only would be evidence upon any issue, but also which, it is reasonable to suppose, contains information which may – not which must – either directly or indirectly enable the party… either to advance his own case or to damage the case of his adversary. I have put in the words 'either directly or indirectly,' because, as it seems to me, a document can properly be said to contain information which may enable the party … either to advance his case or to damage the case of his adversary, if it is a document which may fairly lead him to a train of inquiry, which may have either of these two consequences.*

70. The Respondent further relies on *Freeman v. Coast Mountain Bus Company (No. 3)*, 2005 BCHRT 575 ("*Freeman*"), where the parties before the BC Human Rights Tribunal were required to disclose all documents in their possession or control which were relevant to the matters in issue in the complaint according to the tribunal's Rules of Practice and Procedure. He says that the tribunal, in citing *Watt v Foster/Hestia*, 2001 BCHRT 206, stated that documents must be produced if they are arguably relevant, and not necessarily already conclusively determined to be relevant. The Respondent says that the tribunal at paragraph 19 stated that in determining whether documents are arguably relevant and therefore should be disclosed, it is necessary to review the scope of the complaint to ensure that the requested documents are grounded within the complaint and the issues to be determined by the Tribunal.

71. The Respondent argues that a review of cases from the Courts and administrative decision makers across the country shows similar expectations of disclosure. He submits that since the subject matter of the complaint was between March and

November 2020, and the Citation was issued September 27, 2022, it is not unreasonable to expect the College would have provided proper disclosure at the latest by the end of 2022. He says he asked for disclosure to be made 90 days before the hearing which, under the circumstances, is reasonable.

72. The Respondent also disputes the College's position that the Respondent is more interested in litigating these issues than entertaining dialogue with counsel for the College. He says he did not issue the Citation, nor does he relish the obligation to have to defend himself against these allegations more than a year after he ceased to be a registrant of the College.

73. The Respondent submits that he was suspended from working as a nurse in September 2021, fired from his job in October 2021, and his license to practice as a nurse expired in March 2022 because of these allegations. He says he has faced significant financial hardship and damage to his professional and personal reputation because of his employer's (Interior Health) reaction to the allegations, and as a result of the issuance of the Citation itself.

74. The Respondent says that he has through counsel attempted dialogue with counsel for the College in December 2020, and asked for disclosure, particulars, and to be advised of the remedy the College was seeking. The College responded by saying that disclosure would consist only of what the College decided to tender as evidence at the hearing, and no disclosure would be forthcoming until 14 days before the hearing. The College also advised that they had not yet decided what remedy they were seeking, and that they were going to make that decision after they saw how the evidence was presented at the hearing. The Respondent says that given the College's response, there did not appear to be much opportunity for dialogue.

iii. The Parties' Oral Submissions during the PHC

75. After the Respondent and the College filed their written submissions, the Panel provided the parties with notice that it may also consider the following case law and paper in determination of the Respondent's Disclosure Application:

a. *Robert Carducci v. Canada (Minister of Transport)*, 2022 TATCE 21 (CanLII)["*Carducci*"], particularly, paras 5, and 16-30;
b. *Kullman v. Borbridge (1995),* 1995 CanLII 18109 (ABKB)["*Kullman*"], particularly, paras 9-14;
c. *Milner v. Registered Nurses Assn. of British Columbia*, 1999 CanLII 3148 (BC SC) ["*Milner*"], particularly paras 6-26;
d. *Hammami v. The College of Physicians And Surgeons of B.C*., 1997 CanLII 651 (BCSC)[" *Hammami"]*, particularly paras 75-78)
e. *Familamiri v. The Association of Professional Engineers and Geoscientists of British Columbia*, 2004 BCSC 660 (CanLII)[*"Familamiri"]*, particularly paras 58-72; and
f. Anne Wallace, *Disclosure Standards in Administrative Proceedings*, Canlii.

76. The Panel also invited the parties to make oral submissions during the PHC on these decisions and paper, and any further authorities they consider to be relevant to the issues in dispute between them in the Disclosure Application.

77. Counsel for both parties made oral submissions during the PHC.

78. The Respondent submits the nature of the order sought in the Disclosure Application is similar to the order that was granted in *Carducci.* He says that the case law shows that the level of disclosure that now apply in British Columbia in disciplinary matters such as this one is *Stinchcombe* type disclosure. In this regard, he points to paragraph 8 of *Milner* where the Court said that "…. since *Yeung* … was decided, the Courts have clearly moved toward requiring administrative disciplinary tribunals to approach, if not meet, the *Stinchcombe* standard*."*

79. The Respondent further points to paragraph 10 of *Hammami* where the Court held that "…In appropriate cases the court's approach should be as outlined by the Court of Appeal in *G.(J.P.) v. British Columbia (Superintendent of Family & Child Services* and that is where the disclosure 'might have been useful' then disclosure should be made by the Crown (or tribunal) unless there is 'any special reason why such material should not be disclosed' and in those circumstances the special reason should be brought to the attention of the judge or tribunal*."*

80. The Respondent submits he wants to know in a timely manner what case he needs to meet, and the College must disclose all relevant information 90 days before the

hearing so that if the level of disclosure is not what it should be then he needs time to apply for further disclosure. The Respondent further submits that in *Familamiri* the Court held that if disclosure is not provided then the tribunal's decision can be set aside. He says the disclosure that needs to be provided is *Stinchcombe* disclosure or near *Stinchcombe*.

81. In oral response, the College submits that *May* has overtaken *Milner* and *Hammami*, and that in *May* the Supreme Court of Canada has held that *Stinchcombe* disclosure does not apply in administrative proceedings.

82. The College says the test that applies to the Respondent's Disclosure Application is set out by Bylaw 208(6)(b) which provides:

> (6) At a pre-hearing conference, the pre-hearing panel may make an order
> …
> (b) for the discovery and production of information or records relevant to the citation

83. The College submits that any documents ordered to be disclosed must accordingly be relevant to the allegation raised in the Citation. It argues that *Carducci* is helpful and correctly defines the relevance of a document as follows:

> (23) … "[a] document is 'relevant' if it is logically connected to and tending to prove or disprove a matter in issue" (see *Sky Solar (Canada) Ltd. v. Economical Mutual Insurance Company,* 2015 ONSC 4714 ….

84. The College says that the documents the Respondent wants disclosed are those that were "considered and reviewed" to issue the Citation. The College submits the Panel is not reviewing or considering the decision to issue the Citation and accordingly, the Respondent does not need to know what documents were considered to issue the Citation – those documents are irrelevant.

85. The College further argues that the Disclosure Application is pre-mature. The HPA provides that documents need to be produced to a respondent 14 days before the hearing. The College says it will make timely disclosure and the Respondent will know the case to meet at that time.

86. In oral reply, the Respondent argues that to suggest the Respondent should only get disclosure 14 days before the hearing is unreasonable. He says such disclosure is

not timely disclosure. The Respondent further submits that *May* has not overturned *Milner* and *Hammami.* He also submits that *Carducci* refers to *May* and also found that disclosure should be contextually determined. The Respondent says that fulsome and timely disclosure is what all these cases stipulate and the College's "trust us" position is not the standard the Court has accepted.

87. In oral surreply, the College submits that it did not indicate that procedural fairness is irrelevant as the Respondent suggests, but says *May* provides the applicable test for procedural fairness in the circumstances. The College says its position is not that it will only be disclosing the documents it intends to rely on during the discipline hearing 14 days before the hearing; it will provide those documents to the Respondent well in advance of the hearing. It reiterates that the issuance of a citation is not a decision in administrative law.

88. In oral sur-surreply, the Respondent submits it is clear from paragraphs 6, 30 and 31 of the College's written submissions that that it is indeed the College's position that document disclosure will only be made 14 days in advance of the discipline hearing.

89. In response to the Panel's question of when it intends to provide the Respondent with document disclosure, counsel for the College advised that the College was currently waiting for its expert's report to be finalized, and that disclosure will be provided at least 30 days before commencement of the discipline hearing. The College further advised that the evidence it will rely on during the hearing in support of the allegations in the Citation will consist primarily of an affidavit sworn by the College's investigator enclosing the complaint made and supporting audiovisual materials. The College also advised that the affidavit has already been prepared and that it can provide it to the Respondent immediately. The College further submitted that the documents and particulars the Respondent seeks are extraordinarily broad and constitute *Stinchcombe* disclosure. It says it is inappropriate to order its production and those documents are irrelevant.

90. During the PHC, the Respondent advised the Panel that it accepts the College's offer of disclosure of its investigator's affidavit and enclosures. The Respondent further

submitted that, since any expert report to be used in the discipline hearing needs to be disclosed to the College 14 days in advance of the hearing, then should the College provide document disclosure 30 days prior to commencement of the hearing it would still leave the Respondent with only 16 days to retain an expert to provide a responding report. He says this is not sufficient time, particularly considering the College had five months to obtain and instruct its expert and still does not have the expert report.

91. The Respondent also indicated that, since there would be a penalty stage in this discipline proceeding should the College prove the allegations contained in the Citation, during which both parties will have an opportunity to make submissions on the proposed penalty, he no longer at this stage seeks an order with respect to the remedy the College is seeking as a result of their Citation.

C. Analysis and Findings

92. Section 38 of the Act and section 208(6) of the College's Bylaws are relevant to the determination of the Disclosure Application. These sections provide:

> 38 (1) The discipline committee must hear and determine a matter set for hearing by citation issued under section 37.
>
> (2) The respondent and the college may appear as parties and with legal counsel at a hearing of the discipline committee.
>
> (2.1) A complainant may be represented by legal counsel, at the complainant's cost, when the complainant is giving evidence at a hearing of the discipline committee.
>
> (3) A hearing of the discipline committee must be in public unless
>
> (a) the complainant, the respondent or a witness requests the discipline committee to hold all or any part of the hearing in private, and
> (b) the discipline committee is satisfied that holding all or any part of the hearing in private would be appropriate in the circumstances.
>
> (4) At a hearing of the discipline committee,
>
> (a) the testimony of witnesses must be taken on oath, which may be administered by any member of the discipline committee, and
> (b) the college and the respondent have the right to cross examine witnesses and to call evidence in reply.

(4.1) Subject to subsection (4.2), evidence is not admissible at a hearing of the discipline committee unless, at least 14 days before the hearing, the party intending to introduce the evidence provides the other party with

(a) in the case of documentary evidence, an opportunity to inspect the document,
(b) in the case of expert testimony,
(i) the name and qualifications of the expert,
(ii) a copy of any written report the expert has prepared respecting the matter, and
(iii) a written summary of the evidence the expert will present at the hearing if the expert did not prepare a written report in respect of the matter, and
(c) in the case of testimony of a witness who is not an expert, the name of that witness and an outline of their anticipated evidence.

(4.2) The discipline committee may

(a) grant an adjournment of a hearing,
(b) allow the introduction of evidence that is not admissible under subsection (4.1), or
(c) make any other direction it considers appropriate

if the discipline committee is satisfied that this is necessary to ensure that the legitimate interests of a party will not be unduly prejudiced.

(5) If the respondent does not attend, the discipline committee may

(a) proceed with the hearing in the respondent's absence on proof of receipt of the citation by the respondent, and
(b) without further notice to the respondent, take any action that it is authorized to take under this Act.

(6) The discipline committee may order a person to attend at a hearing to give evidence and to produce records in the possession of or under the control of the person.

(7) On application by the discipline committee to the Supreme Court, a person who fails to attend or to produce records as required by an order under subsection (6) is liable to be committed for contempt as if he or she were in breach of an order or judgment of the Supreme Court.

(8) If the discipline committee considers the action necessary to protect the public between the time a hearing is commenced and the time it makes an order under section 39 (2), the discipline committee may impose limits or conditions on the practice of the designated health profession by the registrant or may suspend the registration of the registrant and, for those purposes, section 35 applies.

…

208(6) At a pre-hearing conference, the pre-hearing panel may make an order

(a) fixing or changing the date, time and place for the hearing,
(b) for the discovery and production of information or records relevant to the citation,
(c) respecting applications for joinder or severance of one or more complaints or other matters which are to be the subject of a hearing, or

> (d) respecting any other matters that may aid in the disposition of the citation.

93. As noted, the College argues that section 38(4.2) (c) of the Act only authorizes the Panel to make orders under that section *during* the discipline hearing. The College argues that since the proceeding is in the pre-hearing stage, this section does not authorize the Panel to order the relief the Respondent seeks.

94. The Panel does not agree that section 38(4.2) (c) limits the Panel's statutory power in this manner. Throughout section 38 of the Act, in particular in subsections (2), (2.1), (4), (4.1), and (6), conduct that must or will occur *during* the actual discipline hearing are described with the words "at a hearing".

95. If the Legislature intended to limit the Panel's statutory power to only make orders under section 38(4.2) *during* the discipline hearing, it would also have included the words "at a hearing" in that section. Those words are not present.

96. The Panel finds that when reading the words of section 38(4.2)(c) in their grammatical and ordinary meaning harmoniously in the context of section 38 as a whole, it is clear that this section grants the Panel a broad discretionary power to make any direction it considers appropriate in the conduct of a discipline hearing. The Panel may exercise this discretion at any time after a citation is issued. The Panel finds it has the statutory power to make orders pursuant to section 38(4.2)(c) of the Act before the hearing commences and during the hearing. This includes making orders with respect to document disclosure as sought in the Disclosure Application.

97. Further, as noted, the College also argues the Respondent has not met his burden to show the relief requested under section 38(4.2) is "necessary to ensure that [his] legitimate interests will not be unduly prejudiced" and, in the alternative, it argues that the documents the Respondent wants disclosed are irrelevant to the discipline proceeding and cannot be ordered produced pursuant to section 208(6) of the College's Bylaws.

98. The College agrees that procedural fairness requires timely disclosure but argues that pursuant to section 38(4.1), that is timely disclosure of the evidence on which the College will rely during the discipline hearing to make its case. It says neither the Act nor the principles of procedural fairness demand anything broader than that.

99. The Panel does not accept these arguments.

100. In the Panel's opinion, section 38(4.1) of the Act simply prescribes the period within which a party to a discipline hearing must disclose to the opposing party any documents it intends to use during the hearing to support its case. Section 38(.4.1) does not abrogate or override the common law rules of disclosure inherent to procedural fairness, which are applicable to discipline hearings.

101. The Panel agrees with the parties that *May* is applicable to the determination of the Disclosure Application, including with respect to the scope of disclosure.

102. The Panel recognizes that in *May* the Supreme Court of Canada held that *Stinchcombe* principles of disclosure do not apply in the administrative context.

103. The Court further explained that although the *Stinchcombe* principles of disclosure do not apply, procedural fairness may still impose an informational burden on a party in an administrative proceeding. In this regard the Court held the following:

> 92 In the administrative context, the duty of procedural fairness generally requires that the decision-maker discloses the information he or she relied upon. The requirement is that the individual must know the case he or she has to meet. If the decision-maker fails to provide sufficient information, his or her decision is void for lack of jurisdiction. As Arbour J. held in *Ruby*, at para. 40:
>
> > As a general rule, a fair hearing must include an opportunity for the parties to know the opposing party's case so that they may address evidence prejudicial to their case and bring evidence to prove their position . . . .
>
> 93 Therefore, the fact that *Stinchcombe* does not apply does not mean that the respondents have met their disclosure obligations. As we have seen, in the administrative law context, statutory obligations and procedural fairness may impose an informational burden on the respondents.

104. The Court in *May* found that failing to disclose relevant information constituted a major breach of the duty to disclose inherent in the requirement of procedural fairness. The Court indicated that withholding the relevant information from the

appellants deprived them of the opportunity to provide a meaningful response to the adverse decision.

105. The Court confirmed that a duty of procedural fairness rests on every public authority making administrative decisions affecting the rights, privileges, or interests of an individual.

106. In *Milner* the British Columbia Supreme Court also quoted with approval the following statements of the author James T. Casey in *The Regulation of Professions in Canada*, at pp. 8-24 and 8.24.1:

> [12] …. The standard of disclosure for a disciplinary tribunal has been described by one Court as follows:
>
> > The importance of full disclosure to the fairness of the disciplinary proceedings before the Board cannot be overstated. Although the standards of pre-trial disclosure in criminal matters would generally be higher than in administrative matters (see *Biscotti et al. v. Ontario Securities Commission, supra)*, tribunals should disclose all information relevant to the conduct of the case, whether it be damaging to or supportive of a respondent's position, in a timely manner unless it is privileged as a matter of law. Minimally, this should include copies of all witness statements and notes of investigators…. The absence of a request for disclosure, whether it be for additional disclosure or otherwise, is of no significance. The obligation to make disclosure is a continuing one. The Board has a positive obligation to ensure the fairness of its own processes. The failure to make proper disclosure impacts significantly on the appearances of justice and the fairness of the hearing itself. Seldom will relief not be granted for a failure to make proper disclosure. *Markandey v. Board of Ophthalmic Dispensers (Ontario), supra.*

107. The Panel associates itself with and adopts these statements.

108. Accordingly, the Panel finds there is a duty on the College and the Panel to ensure that the principles of procedural fairness are complied with during the conduct of disciplinary proceedings pursuant to the Act.

109. The Panel accepts the Respondent's submission that the Panel's decision in the discipline hearing may adversely impact his right to continue his profession or employment. The Panel finds that based on the nature and importance of the

potential decision in the discipline hearing a high standard of procedural fairness is required.

110. The Panel accordingly finds that as a matter of procedural fairness, the College has a disclosure obligation in the context of this discipline process that goes beyond the disclosure provided for by section 38(4.1) of the Act. In this regard, the Panel finds the Respondent is entitled to the disclosure of documents in the possession or under control of the College that are relevant to the issues to be decided in the discipline hearing.

111. As already noted, the College submits *Carducci* correctly defines the relevance of a document for purposes of the discipline hearing as follows:

> (23) … "[a] document is 'relevant' if it is logically connected to and tending to prove or disprove a matter in issue" (see *Sky Solar (Canada) Ltd. v. Economical Mutual Insurance Company,* 2015 ONSC 4714 ….

112. In this case, the Citation was issued pursuant to the direction of the Inquiry Committee pursuant to sections 33(6)(d) and 37 of the Act.

113. The College submits the discipline hearing will involve evidence by the College that the Respondent made the comments listed in the Citation, and argument about whether they were contrary to the statutory provisions, standards, and Bylaw rules also listed. It says the documents that were before the Inquiry Committee are irrelevant for the discipline hearing.

114. In considering whether to direct the issuance of the Citation, the Inquiry Committee would have had to conduct a provisional assessment of any evidence of the Respondent's alleged misconduct and College submissions how that conduct breaches College Standards, Bylaws, or the Act. This is clear from the reasons for *Decision No. 2010-HPA-0003(a)* (2010 BCHPRB 33), (November 18, 2010), and *Decision No. 2011-HPA-0036(b)* (2012 BCHPRB 53) (July 5, 2012), referenced in *Ridsdale* at paragraph 53, as follows:

> …

[53] In *Decision No. 2010-HPA-0003(a)* (2010 BCHPRB 33) (November 18, 2010), the Review Board stated:

> [24] On one hand, it is true that the Inquiry Committee is not the Discipline Committee. The Inquiry Committee is not tasked with the type of ultimate fact finding that would happen after a Citation was issued and a hearing held before the Discipline Committee. At the same time, it may not be fully accurate to describe the Inquiry Committee as being solely a "screening" body that has no mandate to critically examine conflicting evidence. For one thing, in the Act, the Inquiry Committee does have its own independent power to take or suggest action adverse to the member without issuing a Citation. It cannot do that without some provisional assessment of the facts. For another, it is difficult to see how the Inquiry Committee can decide meaningfully whether to issue a Citation without forming some provisional assessment of what took place, including whether the evidence needs to be more fully fleshed via the Citation and discipline process. In this latter regard, an analogy might be drawn to the role of Crown Counsel. While the Crown does not find facts – that is the ultimate role of the Court – it must critically examine the evidence to determine whether there is a substantial likelihood of conviction. To merely say "we cannot lay charges because there is conflicting evidence" would be wholly inadequate in many cases. While not being a final conclusion, a meaningful, albeit provisional, assessment of the evidence is required.
>
> ….
>
> [Emphasis added.]

[54] In *Decision No. 2011-HPA-0036(b)* (2012 BCHPRB 53) (July 5, 2012), the Review Board detailed the role of the inquiry committee when an investigation discloses a conflict in the evidence:

> [45] This dispute between the parties raises a very important question regarding the proper role of the Inquiry Committee where an investigation discloses a conflict in the evidence received during an investigation - oftentimes a conflict between the version of events given by a complainant and a registrant. The Review Board cannot properly exercise its role in reviewing the adequacy of the investigation and the reasonableness of the disposition unless there is clarity regarding the Inquiry Committee's proper role in situations where "credibility" is in issue.
>
> [46] We can state by way of overview that we do understand why the lay public would find the College's response regarding an inquiry committee's inability to address credibility issues to be confusing and troubling. The College's explanation could appear to be highly technical and difficult to understand. If the Inquiry Committee can do nothing when faced with conflicting evidence, does this mean it must withdraw in the face of a conflict in the evidence?
>
> [47] As we will point out in more detail below, it is true that an inquiry committee has no power to convene any proceeding to try the facts, compel and cross-examine witnesses. However, an inquiry committee has the means to engage in some evaluation of credibility other than through a formal hearing process. In fact,

> in exercising its discretion and judgment on how best to stream the complaint and which sanction is the most appropriate under the circumstances, it must necessarily make some determinations of fact and credibility, even if provisionally. We concur with our fellow Member David Hobbs that "the Inquiry Committee does have its own independent power to take or suggest action adverse to the member without issuance a Citation. It cannot do that without some provisional assessment of the facts".
>
> [Emphasis added.]

115. The Panel has no doubt that there is considerable overlap between the evidence and arguments about the Respondent's alleged misconduct the College investigator presented to the Inquiry Committee for purposes of it making a direction pursuant to sections 33(6) and 37 of the Act, and the evidence and arguments the College will present to the Panel for purposes of it making an order pursuant to section 39 of the Act.

116. The Panel accordingly cannot accept the College's position that the documents and information that were before the Inquiry Committee (and the Registrar) during the investigative stage of the proceedings are irrelevant to the discipline hearing.

117. The Panel finds that those documents, including any submissions made to the Inquiry Committee by the College's investigator or staff, and the Inquiry Committee's provisional assessments or findings, are relevant to the matters that will ultimately be decided in the discipline hearing. In the context of this case, procedural fairness accordingly demands the disclosure of those documents to the Respondent forthwith because they will enable the Respondent to better understand the matters that will be in issue during the discipline hearing i.e., to know the case he must meet. Also, importantly, advance disclosure of those documents will provide the Respondent with a meaningful opportunity to endeavour to obtain the necessary evidence to answer the College's case, including expert opinion evidence.

118. For the above reasons, the Panel is satisfied that the Respondent's legitimate interest in having a procedurally fair discipline hearing, by knowing the case he must meet and having a meaningful opportunity to meet it, would be unduly prejudiced if the relevant documents he requests are not provided sooner than 14 days before the commencement of the hearing.

119. The Panel further finds that it would not be unjust or inequitable to order disclosure of the documents the Respondent requests on a timeline longer than the 14 days provided for by section 38(4.1) of the *Act*. As the Panel already found, section 38(4.1) party does not abrogate or override the common law rules of disclosure inherent to procedural fairness which are applicable to discipline hearings.

120. As noted, the College and Respondent also agreed during the PHC that the College would immediately provide the Respondent with the investigator's affidavit, which includes many of the documents the Respondent seeks in this Disclosure Application. The Respondent has accordingly already received a substantial portion of the disclosure he seeks. The Panel is of the opinion that any of the documents that were considered by the Inquiry Committee to issue the direction which have not yet been disclosed, and also any documents containing the Inquiry Committee's provisional assessments, should be disclosed as soon as practicable and, in any event, no later than 10 days after the date of the Panel's order.

121. Lastly, the Panel acknowledges the Respondent's submission that the Citation does not indicate precisely which practice standards or provisions of the Bylaws or Act the College alleges he breached. It is the Panel's experience that the College usually provides that information to respondents during the discipline hearing. While the Panel is not persuaded that the Citation as presently worded is deficient as a matter of procedural fairness, it is of the view that it would aid in the disposition of the discipline hearing if the College provides the Respondent, and the Panel, with the particulars the Respondent requests in advance of the commencement of the hearing.

D. <u>Order</u>

122. For all the above reasons, the Panel directs pursuant to section 38(4.2) of the Act and section 208(6) of the College's Bylaws that the College will as soon as practicable, but not later than 10 days after the date of this order, provide the Respondent with:

    a. all documentation, not already disclosed, that were reviewed and considered by the Inquiry Committee that resulted in the direction to the Registrar to issue the Citation, including the following documents in the

possession or control of the College considered by the Inquiry Committee:

i. all emails, meeting minutes, correspondence, notes of any and all individuals at Interior Health, the College, the Ministry of Health, concerning Mr. Taylor and his employment with Interior Health Authority, his standing with the College, and the issues raised in the citation issued September 22, 2022 (the "Citation");

ii. all audio or video or transcripts of the incidents referenced in the Citation that form the basis of the Citation, including a copy of the complaint and all material supplied by the complainant in support of the complaint as well as copies of any and all emails, letters, fax, or correspondence between the complainant and the College, or Interior Health Authority, including any notes of any conversations between the College or the Interior Health Authority, and the complainant that is in the possession or control of the College.

b. any documents containing the Inquiry Committee's provisional assessments and findings; and

c. written particulars how each paragraph of the Citation and the conduct referred to therein, violates any statute, bylaw or practice standard.

Dated April 24, 2023.

By the Panel.