SUPREME COURT OF NOVA SCOTIA
Citation: *McKinnon v. Ocean View Manor Society*, 2025 NSSC 338

Date: 20251030
Docket: Hfx, No. 518927
Registry: Halifax

Between:

Yvonne McKinnon

Applicant

v.

Ocean View Manor Society carrying on business as
Ocean View Continuing Care Centre

Respondent

DECISION ON MOTION TO STRIKE

Judge:	The Honourable Justice John A. Keith
Heard:	October 21, 2025, in Halifax, Nova Scotia
Final Written Submissions:	October 22, 2025 October 23, 2025
Counsel:	John O'Neill, for the Applicant Matthew McEwen, for the Respondent

By the Court:

Introduction

[1] This proceeding was commenced by Notice of Application filed November 8, 2022. The Applicant, Yvonne McKinnon, primary claim is for damages related to an alleged wrongful dismissal from her employment with the Respondent, Ocean View Manor Society. She also asserts a secondary claim in detinue for an alleged failure to return personal property.

[2] The Respondents have filed a motion to convert this Application in Court to an action. That motion is scheduled to be heard next month.

[3] In advance of that motion, both parties challenge numerous paragraphs in the affidavits filed by the other. By way of summary:

1. The Applicant raises evidentiary objections to portions of the following affidavits filed by the Respondent:
    a. The affidavit of Tracy Bonner filed March 6, 2025 (the "**Bonner Affidavit**"). My findings with respect to these objections are at Schedule "A", attached; and
    b. The affidavit of Martha Cooper filed March 7, 2025 (the "**Cooper Affidavit**"). My findings with respect to these objections are at Schedule "B", attached.
2. The Respondent raises evidentiary objections to portions of the following affidavits filed by the Applicant:
    a. The affidavit of Yvonne McKinnon filed January 17, 2025 (the "**Original Cooper Affidavit**"). My findings with respect to these objections are at Schedule "C", attached;
    b. The rebuttal affidavit of Yvonne McKinnon filed March 31, 2025, and filed in connection with the Bonner Affidavit (the "**McKinnon Rebuttal Affidavit (Bonner)**". My findings with respect to these objections are at Schedule "D", attached; and
    c. The rebuttal affidavit of Yvonne McKinnon filed March 31, 2025, and filed in connection with the Cooper Affidavit (the "**McKinnon**

Rebuttal Affidavit (Cooper)"). My findings with respect to these objections are at Schedule "E", attached.

[4] The balance of these reasons summarizes the law which is reflected in the evidentiary decisions contains in the attached schedules.

THE LAW

Rules of Civil Procedure

[5] A party "may only file an affidavit that contains evidence admissible under the rules of evidence, these Rules, or legislation" (Civil Procedure Rule 39.02). Civil Procedure Rule 39.04(2) continues:

> (2) A judge must strike a part of an affidavit containing either of the following:
>
> (a) information that is not admissible, such as an irrelevant statement or a submission or plea;
>
> (b) information that may be admissible but for which the grounds of admission have not been provided in the affidavit, such as hearsay admissible on a motion but not supported by evidence of the source and belief in the truth of the information.
>
> [Emphasis added]

[6] A judge has no discretion to excuse or ignore evidence deemed inadmissible under Civil Procedure Rule 39.04(2). Civil Procedure Rule 2.03(3)(a) and the mandatory wording of Civil Procedure Rule 39.04(2) codify this legal fact. A motion judge "must" strike inadmissible evidence.

[7] There are two related but important points:

1. The *Civil Procedure Rules* around affidavits reinforce long-standing existing evidentiary standards and reflect the Court's related commitment to protect the integrity of the judicial process. They also re-affirm Justice Davison's warning in *Waverley (Village) v. Nova Scotia (Acting Minister of Municipal Affairs)*, 1993 NSSC 71 ("***Waverley***"), that "Great care should be exercised in drafting affidavits" (para. 13). See also *McDonald v. Hue*, 2024 NSSC 24, at para. 21.

2. At the same time, neither the *Civil Procedure Rules* nor *Waverley* compel parties to insist upon evidentiary perfection at the expense of proportionate proceedings. Nor should these authorities be interpreted as an open-ended invitation to pursue every possible evidentiary objection, regardless of its significance. Trials could never be efficiently concluded if parties felt either entitled or, worse, obliged to object every time any witness makes a statement that might be viewed as potentially offside. A barrage of nitpicking objections based mainly on evidentiary labels such as "submission" or "argument" take on the appearance of reflexive impressions – not considered submissions. Parties are expected to exercise judgement, focussing on that which is material so as to better achieve a judicial determination that is just but also proportionate, speedy and inexpensive (Civil Procedure Rule 1.01 and *Hryniak v. Mauldin*, 2014 SCC 7, at paras. 4 - 5 and footnote 3).

   The risk of delay and inefficiency become more acute in an application where all of the evidence in chief is typically presented through affidavits, and all evidentiary objections are given at one time. Thus, the Court is unable to insist upon proportionality in a timely manner and impose reasonable restraints on the impulse to simply object. Where a claim for wrongful dismissal is brought as an application, additional issues arise around the scope of rebuttal evidence. I return to this issue at paras. 47 - 51 below and at para. 16 in the attached Schedule "B".

   This does not mean that the Court can simply ignore or excuse a party's objection – even it is minor in nature. Indeed, as will be seen in the attached Schedules, the parties in this case engaged in the sort of quibbling involving comparatively trivial evidentiary disputes in too many cases. Most paragraphs were subject to unnecessarily intense scrutiny. Between all of the affidavits mentioned in paragraph 3 above, there were 236 discrete objections. Among those numerous complaints, the Respondent objected to the following words in the other's affidavits: "except where otherwise stated to be based on information and belief" and "I state in this Affidavit the source of any information that is not based on my own personal knowledge, and I state my belief in the source." For its part, the Applicant objected to the fact that the Respondent's affidavits did not include a statement that the affiant swears or affirms that her affidavit contains only information based on personal knowledge, or hearsay with a statement of the source and her belief of the information. I do not deny that these objections may have technical appeal; however, respectfully, it is difficult to say that they

> merit a formal evidentiary objection. And they set the tone for the evidentiary autopsy which followed. In fairness and to the parties' credit, they did identify certain major themes driving many objections (e.g. concerns around improper rebuttal; the statutory requirement for confidentiality regarding investigations under Nova Scotia's *Nursing Act*; and introducing hearsay or opinion through non-party reports). In addition, the Respondent's objections were much more numerous than those of the Applicant. Nevertheless, none of the mundane or minor objections were withdrawn meaning that the Court was still obliged to address each one.

Evidence Must be Relevant, Material, and Admissible

[8] To be receivable ... evidence must be relevant, material and admissible" (*R. v. Candir (E.)*, 2009 ONCA 915 ("***Candir***"), at para. 46). These three words ("relevant", "material", and "admissible") share the common goal of ensuring that the evidence which is folded into the judicial decision-making process meets established standards – and are often used interchangeably. However, they are conceptually distinct, and it is useful to begin with a summary of definitions and differences.

Relevance

[9] Relevance generally refers to the reasoning process through which a particular piece of evidence is connected to (or contributes to the proof of) a fact. In *R. v. Schneider*, 2022 SCC 34 ("***Schneider***"), the Supreme Court of Canada provided a useful and succinct description of relevance and the process for filtering relevant evidence at para. 39:

> To determine relevance, a judge must ask whether the evidence tends to increase or decrease the probability of a fact at issue. Beyond this, there is no "legal test" for relevance. Judges, acting in their gatekeeping role, are to evaluate relevance "as a matter of logic and human experience". When doing so, they should take care not to usurp the role of the finder of fact, although this evaluation will necessitate some weighing of the evidence, which is typically reserved for the jury. The evidence does not need to "firmly establish ... the truth or falsity of a fact in issue", although the evidence may be too speculative or equivocal to be relevant. The threshold for relevance is low and judges can admit evidence that has modest probative value.
>
> (Citations excluded)

[10] As further support for the conclusion that the threshold for relevance must be low, the Supreme Court of Canada in *Schneider* also pointed to the practical reality that judges are often asked to make assessments as to relevance at an early stage in the proceeding, where the evidence is still emerging or may be “embryonic”. Thus, preliminary, threshold relevance is often based on counsel’s submissions and requires only that it slightly affect a fact’s probability, not prove it (para. 39).

Materiality

[11] Materiality ensures that relevant evidence remains tethered to (or grounded in) the controlling law. A piece of evidence may be "**relevant**" in the sense that it makes the existence of some particular fact more probable than not. However, that same piece of evidence is not "material" unless the fact in question actually bears upon a live legal issue (*R. v. Calnen*, 2019 SCC 6, at para. 109).

[12] A "material" fact will affect the outcome of a trial (*Tri-County Regional School Board v. 3021386 Nova Scotia Limited,* 2021 NSCA 4, at para. 20).

[13] The inquiry into materiality often begins with the pleadings. Among other things, the pleadings must state the key material facts that ground the legal cause of action being pursued and, as well, provide enough detail to avoid surprising the other party (Civil Procedure Rule 38.02). On this, it should also be noted that a fact or piece of information does not magically become material simply because it has been mentioned in a pleading. Artful pleadings containing information of marginal significance or a tangential matter which may have piqued one party’s interest are not determinative of materiality (*Intact Insurance Company v. Malloy*, 2020 NSCA 18, at para. 35). Materiality anchors evidence in the law - not one party’s imagination or prurient interest or desire for extraneous information.

[14] While conceptually distinct, notions of "relevance" and "materiality" work in tandem. By definition, evidence only becomes relevant if it is also material. In *R. v. L.S.*, 2017 ONCA 685, the Ontario Court of Appeal wrote at para. 89: "Evidence does not have to establish or refute a fact in issue to be relevant; it need only, as a matter of common sense and human experience, have some tendency to make the existence or non-existence of that material fact more or less likely" (emphasis added). For clarity and unless otherwise noted, where I use the words "relevant" or "relevance" below, it incorporates the notion of materiality by definition.

[15] Finally, the concept of admissibility involves the application of overarching evidentiary principles designed to protect the integrity of the evidence and the judicial process. Even if a piece of evidence is relevant and material, the judge may

deem it inadmissible if it violates these additional principles. These principles include the broad, residual discretion to reject evidence as inadmissible if its prejudicial effect exceeds its probative value.

[16] The rule against hearsay evidence offers a helpful illustration of how these principles and residual discretion operate. Hearsay evidence is an out-of-court statement presented for its truth but in the absence of a contemporaneous opportunity to cross-examine the person who made the statement. The hearsay statements may be relevant and material, but the dangers associated with simply admitting such statements without the ability to cross-examine the declarant are great and cannot be simply brushed away. At the risk of oversimplification, hearsay statements may only be received if they either fall within certain accepted, categorical exceptions or, alternatively, meet what has been called the "principled exception" involving an examination into whether the presumptively inadmissible hearsay meets the requirements of necessity and threshold reliability. Even if one of these types of hearsay exceptions apply, the judge still retains the residual discretion to exclude it if its prejudicial effect outweighs its probative value (see *R. v. Khelawon*, 2006 SCC 57; *R. v. Bradshaw*, 2017 SCC 35 ("***Bradshaw***"); *R. v. Charles*, 2024 SCC 29 ("***Charles***"); and *R. v. Seaboyer*; *R. v. Gayme*, [1991] 2 S.C.R. 577).

Hearsay

[17] As indicated, hearsay is presumptively inadmissible unless it meets one of the traditional, categorical exceptions or may be admitted under the principled exception – subject, again, to a judge's residual discretion to exclude it for prejudice surpassing probative value.

[18] The following traditional, categorical exceptions are germane in this matter:

1. Party Admissions (Statements by a Party): The basic policy reason supporting this exception can be simply stated: a party "cannot complain of the unreliability of his or her own statements" (at para. 53 of *Schneider*, quoting from *R. v. Evans*, [1993] 3 S.C.R. 653, at p. 664, para. 28). There is a "rare case" (or exception) where judges may exercise their residual discretion to exclude this type of hearsay evidence because its probative value is exceeded by prejudicial effect, but that is rarely exercised.
2. Declarations in the Course of Duty/Business Records: See *Canada Evidence Act*, RSC 1985, c. C-5, s. 30 and NS *Evidence Act*, RSNS 1989, c. 154, s. 23. These statutory provisions add to but do not replace the

> common law. The basic requirement is that the record was prepared during the ordinary course of business. The rationale for this exception is practical and rationally grounded in the presumption of reliability based on, for example, the routine or "mechanical" and contemporaneous nature of the record combined with an existing duty to accurately record the information in question. Note that the person who prepares the record may rely on information prepared by others (e.g. invoices etc.); however, this is not an issue so long as the chain of events (including the prior information being relied upon) occurred as part of the ordinary course of business and, again, the persons preparing the information/records were under a duty to provide the information in question.

[19] As to the principled exception, the question becomes whether the hearsay evidence meets the requirements of necessity and threshold reliability.[1]

[20] The requirement of necessity is applied in a flexible manner and has been described as "reasonably necessary" (*R. v. B. (K.G.),* [1993] 1 S.C.R. 740). Examples may include where the declarant is dead; or recants; or refuses to testify; or no longer recalls the events; or suffers from a condition that has impaired their ability to testify (e.g. dementia).

[21] The requirement of threshold reliability can be more complicated factually and legally. Threshold reliability can be determined either through procedural reliability, or substantive reliability, or a combination of the two.

[22] Procedural reliability arises if there were sufficient substitutes for the reliability guarantees given when a witness testifies in Court, such as swearing to tell the truth and submitting to cross-examination. Examples of sufficient substitutes include "video recording of the statement, the presence of an oath, and a warning about the consequences of lying …. Some form of cross-examination of the declarant, such as preliminary inquiry testimony, is usually required" (*Charles* at para. 46).

[23] Substantive reliability arises if the hearsay statement is found to be inherently trustworthy because of the circumstances in which it was made (i.e. circumstantial

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[1] The concept of "threshold reliability" is to be distinguished from the concept of "ultimate reliability". "Threshold reliability" refers to the standard which must be met simply to be included as part of the body of admissible evidence. "Ultimate reliability" involves assessing whether, and to what degree, this piece of admissible evidence should "ultimately" (as the name suggests) be believed and relied upon. The finder of fact considers "ultimate reliability" at the end of trial, when any one piece of evidence can be more properly considered in the context of all admissible evidence (*Bradshaw* at para 39).

guarantees of reliability) and/or because corroborating evidence supports the trustworthiness of the hearsay statement (*Bradshaw* at paras. 44 – 57 and *Charles* at para. 47).[2]

Opinion Evidence

[24] As a general rule, witnesses are expected to testify only to facts within their personal knowledge. Witnesses are not supposed to offer their opinions regarding what appropriate inferences might be drawn from the evidence. That is for the trier of fact. At para. 15 of the seminal decision on expert opinion (*White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23 ("***WBLI***"), Cromwell, J. quoted from J.B. Thayer's authoritative text: "As one great evidence scholar put it long ago, it is "for the jury to form opinions, and draw inferences and conclusions, and not for the witness.".

[25] There are two exceptions: qualified expert opinion and permissible lay opinion.

[26] Expert evidence is required where the issues which impinge upon a finding of fact fall outside an ordinary person's experience. Thus, to properly understand the factual implications or inferences that might be drawn, the trier of fact requires help from a person with specialized knowledge. In these circumstances, experts may be called to assist the Court.

[27] That said, expert opinions can pose unique dangers to the fact-finding process. Experts are normally paid by one party with a clear interest in a particular outcome which creates concerns around bias. There is also the risk that, because experts are uniquely qualified to testify on subject matters outside an ordinary person's experience, the trier of fact may be easily led astray or, alternatively, simply accept an expert's opinion without any critical analysis. Thus, the law establishes certain minimal standards that must be me before an expert opinion will be admitted into evidence. Those standards are mainly devoted to:

1. Providing clarity around the expert's qualifications and how expert opinion must be presented (see Civil Procedure Rule 55 and *Graca v. Carter*, 2024 NSSC 225);

[2] The legal requirements for assessing corroborative evidence as part of the substantive reliability analysis are complicated. At the risk of over-simplification, the judge assessing the hearsay evidence must: (1) identify the material aspects; (2) identify hearsay dangers; (3) consider alternative explanations; and (4) decide whether corroboration rules them out (*Charles* at para. 57).

2. Perhaps more importantly, ensuring that any expert opinion meets minimal standards around impartiality and independence (*WBLI*, including para. 1); and
3. Preserving the Court's gatekeeping function so that the Court's fact-finding function is neither compromised nor usurped.

[28] For present purposes, it is unnecessary to say more except to note that the Respondent accuses the Applicant of seeking to slip expert opinion evidence into her affidavit evidence, without first complying with the procedural and substantive requirements. I address those issues in the attached Schedules.

[29] As to permissible lay opinion, there are certain rational, everyday inferences (or opinions) that an ordinary person may make without requiring any particular expertise. These types of observations and opinions are sometimes referred to as a "compendious statement of fact" – a phrase that can be traced back to 19th century common law in Britain (see the decision of Parke B. in *Wright v. Tatham* (1838), 4 Bing. N.C. 489 at 543-44, 132 E.R. 877 (H.L.)) and, more recently, was adopted by the Supreme Court of Canada in *Graat v. R.*, [1982] 2 S.C.R. 819 ("***Graat***"). See also *R. v. Kotio*, 2021 NSCA 76.

[30] A "compendious statement of fact" is an efficient and necessary way to articulate everyday observations in a coherent manner – without demanding that the witness provide a detailed breakdown or frame-by-frame audit of every discrete, embedded factual observation that led to the permissible lay opinion. Rather, the opinion and the underlying facts are so closely intertwined in everyday experience as to be virtually inseparable.

[31] In short, a lay person's inferences (or opinions) occupy a practical but narrow evidentiary space which recognizes that there are certain basic observations that a witness might reasonably offer based simply on ordinary human experience. Examples of permissible lay opinion may include observations regarding a person's emotional state (angry or happy); or whether a person appeared to be struggling under some physical ailment; or the rough speed at which a car was travelling (fast or slow); or whether a person's clothing was worn.

[32] The legal framework governing the admissibility of lay opinion evidence confirms that:

1. The witness must be better positioned than the trier of fact to draw the factual conclusion or inference;

2. The conclusion or inference must be rational and stem from ordinary experience - not specialized knowledge which would require expert qualification; and
3. The witness must be able to present their observations coherently.

See *Graat* at pp. 835–841; *Mi'kmaw Family and Children's Services v. Sipekne'katik*, 2022 NSSC 313, at paras. 12 – 13.

[33] Finally, with respect to both expert opinion and lay opinion, the Court must also remain mindful of the logical distinction between:

1. Permissible opinions based on certain appropriate factual assumptions and rational inferences which can be drawn from those assumptions; and
2. Inadmissible opinion based on speculation (*R. v. Umeadi*, 2023 ONCA 7, at paras. 31 – 35, and *Kern v. Steele*, 2003 NSCA 147, at para. 98).

Argument or Submission

[34] This is a very common objection.

[35] Civil Procedure Rule 39.04(2)(a) properly recognizes that affidavit evidence in the form of an argument or submission is inadmissible. However, the nature of an inadmissible argument or submission is often misunderstood. Affidavit evidence which rejects or disputes a factual assertion is not a submission or argument. Evidence which reveals an argument over the facts does not amount to a legal argument or legal submission for the purposes of Civil Procedure Rule 39.04. In *Canadian Imperial Bank of Commerce v. CNH Capital Ltd.,* 2013 NSCA 35, the Nova Scotia Court of Appeal defined a submission or argument as: "… a conclusory statement that embodies or assumes a *point of law*" (para. 82, emphasis added). Thus, a bare factual rejection may be of limited evidentiary weight, but it is not an inadmissible submission.

[36] On a related point, I return to the observation made in para. 7 above. The potential benefit associated with attacking every possible evidentiary objection is often outstripped by the time and energy devoted to bringing these challenges. This is particularly true with respect to disputes around "submissions" or "argument" - particularly in a judge-alone civil proceeding where the Court is perfectly capable of distinguishing between evidence and a submission.

[37] For clarity, this does not mean that the Court will obligingly excuse or ignore affidavits containing inadmissible submissions. Nor does it mean that parties may freely incorporate legal submissions into affidavits, confident that the Court will separate the wheat from the chaff. As indicated, a party must take great care to ensure affidavit evidence is not contaminated by submissions. Moreover, a party that presumes to introduce argument masquerading as evidence might expect negative consequences. The evidence will be struck as is required by Rule 39.04.

[38] However, again, opposing parties are expected to exercise some degree of judgment. There may be more proportionate ways to raise an alarm other than demanding a preliminary, painstaking review of affidavits alleged to contain improper submissions. Even if a party's objection proves technically correct, there may well be adverse consequences when the Court exercises its general discretion to make a cost award designed to achieve justice and the promise of Rule 1.01 ("…a just, speedy, and inexpensive determination of every proceeding").

Rebuttal

[39] This is an Application in Court which includes the possibility of rebuttal affidavit evidence (Rule 5.13(7)(l)).

[40] The scope of rebuttal affidavit is limited. To understand those limitations, it is helpful to review the underlying concerns.

[41] Evidence is presented in a way which conforms with the applicable burden of proof and related expectations around procedural fairness.

[42] Generally speaking, the term "burden of proof" refers to the evidentiary obligation of convincing the Court that the material facts have been proven to the applicable standard (or the degree to which the Court must be convinced). In a civil proceeding, the plaintiff or applicant typically bears the burden of proving the material facts. And the governing standard (or the degree to which the Court is convinced) is the balance of probabilities.

[43] All parties are afforded a fair opportunity to present their respective cases in a way which reflects the underlying burden of proof. (*R. v. Sanderson*, 2017 ONCA 470 ("***Sanderson***"), at para. 33). Because the plaintiff or applicant seeks a judicial remedy and the defendant or respondent faces the threat of a binding judgment, the plaintiff or applicant goes first followed by the defendant/respondent. The defendant/respondent is not obliged to predict what evidence the plaintiff might tender or proactively defend against an uncertain body of evidence. Furthermore,

the defendant or respondent also should not be trapped within (or held to) a particular evidentiary position until such time as it has heard the evidence against it.

[44] Rebuttal evidence presents unique challenges to this procedural balance. On the one hand, exceptions will arise where the plaintiff or applicant fairness demands that it be given a further opportunity to present evidence. In *R. v. S.M.*, 2025 ONCA 18, the Ontario Court of Appeal explained at para. 16:

> …[T]he Crown may call rebuttal evidence where: 1) the defence raised a new matter which the Crown has had no opportunity to deal with and could not reasonably have anticipated; or 2) some matter that emerged during the Crown's case took on added significance as a result of evidence adduced by the defence: *R. v. D.W.*, 2023 ONCA 767, at para. 21; *R. v. R.D.*, 2014 ONCA 302, 120 O.R. (3d) 260, at para. 17; *R. v. K.T.*, 2013 ONCA 257, 295 C.C.C. (3d) 283, at para. 43.

See also, for example, *Warnell v Cumby*, 2016 NSSC 356, at paras. 22 - 23 and *Rudd v Hayward*, 2001 BCCA 454, at paras. 10 - 11.

[45] On the other hand, the Court must remain vigilant to avoid the significant prejudice that arises if the plaintiff or applicant improperly holds evidence back and presumes to tender it for the first time in rebuttal. In this circumstance, the responding party is unfairly denied the opportunity to present a full answer because the evidence mustered against it is only belatedly revealed, after its evidence has already been presented. This is sometimes referred to as "case splitting" referring to the act of splitting (or separating) some of the evidence until after the opposing party's ability to respond has been compromised. The collateral fact rule was developed to address a similar form of prejudice. In *Sanderson*, the Ontario Court of Appeal addressed all of these concerns at para. 33 when quoting with approval the following passage from Rosenberg, J.A.'s decision in *R. v. P. (G.)* (1996), 31 O.R. (3d) 504 (Ont. C.A.):

> They [i.e. the rule against case splitting and the collateral fact rule] are designed, so far as is possible, to avoid unfair surprise, confusion of the issues, and prejudice. The rules ensure that trials are not unduly prolonged but that, as it was put by McIntyre J. in *Krause* . . . "at the end of the day each party will have had an equal opportunity to hear and respond to the full submissions of the other".

[46] Beyond issues around fundamental fairness, unduly expanding the scope of rebuttal evidence could also lead to protracted and disproportionate proceedings as evidence continues to be introduced deep into the process.

[47] In sum, the scope of rebuttal evidence is must be limited and circumscribed in the manner described above. These concerns become increasingly significant in

applications where the evidence in chief is normally introduced entirely through affidavits, well in advance of the hearing.

[48] Finally, as mentioned, the plaintiff/applicant typically bears the burden of proving the material facts. Their evidence in chief is typically presented in a way which reflects the underlying burden of proof. That said, the burden can shift where the defendant or respondent asserts a positive defence. This type of complication arises in cases like this one, where an employee alleges wrongful dismissal and the employer asserts the defence of just cause (i.e. it has just cause to terminate the employee/applicant). In that case, the employer bears the burden of proving just cause (*Burton v. Howlett*, 2001 NSCA 23, at para. 35). A procedural issue arises regarding how evidence is presented when that burden shifts. This issue obviously impacts what might be properly considered rebuttal evidence. The basic question is: can the employee wait and present evidence in response to the allegation of just cause after the employee has presented its case (i.e. effectively a form of rebuttal)?

[49] The Court retains the discretion to resolve this problem. In doing so, the Court balances the same concerns about fairness and efficiency. Related factors include avoiding overlap of evidence, unnecessary confusion, and procedural complexity. The Court retains the jurisdiction and procedural flexibility to control its own processes with a view to achieving justice, efficiency, and proportionality (*Saturley v. CIBC World Markets Inc.*, 2011 NSSC 129 ("***Saturley***"), at paras. 17 – 26).

[50] The Applicant's main claim in this proceeding is wrongful dismissal. The Respondent defends on the basis that the Applicant's employment was terminated for just cause. Prior to this motion, neither party raised the burden of proof issue; or how the evidence would be presented; or how this issue would impact the scope of rebuttal evidence in advance. Rather, both parties effectively presumed that the evidence would be presented in a manner which reflected the greatest procedural advantage for themselves. The Applicant presumed it was entitled to broad rights of rebuttal because that the Respondent bore the burden of proving just cause. So, it could wait to provide a fulsome answer to that issue in rebuttal. By contrast, the Respondent asserted that the scope of rebuttal was narrow given that its pleadings contained detailed information as to why the Applicant's employment was terminated. The Respondent argued that there were no surprises regarding its defence and that the Applicant was obliged to address it in its original affidavits – not wait until rebuttal to provide a full answer to the allegation of just cause.

[51] In the circumstances, the Court is required to weigh in on these issues at this stage – and in advance of a motion which the Respondents have filed to convert this Application to an action. That motion to convert is to be heard in the near future.

That said, these reasons only touch upon the scope of rebuttal evidence to the extent is has become necessary to do so at this stage of the proceeding and given the Respondent's requests to strike numerous paragraphs from the Applicant's affidavits on the basis of improper rebuttal. My decision on this issue is summarized at Schedule "B", para. 16.

Conclusion

[52] The attached Schedules apply the law summarized above against each discrete objection.

[53] I ask that:

1. Each party prepare the initial draft of Orders reflecting the decisions which impact their respective client's affidavit (i.e. the Applicant shall prepare a draft Order reflecting my decisions regarding her affidavit and the Respondent shall do likewise). A copy of the revised Defendant's Affidavits containing the necessary redactions should be attached to the Order. The parties shall otherwise follow Civil Procedure Rule 78.04(3) for finalizing the operative terms of this Order; and
2. The parties file any submissions on the issue of costs within 30 calendar days of receiving this decision.

Keith, J.

Schedule "A"
Respondent's Objections to Original Affidavit of Yvonne McKinnon 2025 01 17

Paragraph/Exhibit	Impugned Words/Statements	Decision
2	"... except where otherwise stated to be based on information and belief."	**Admissible.** It is not necessary to redact this statement. Although the impugned statement is not evidence but is a commonplace statement in many affidavits. In my view, the objection was unnecessary. I refer to paras. 25 – 29 of my decision 2025 NSSC 300.

		The Court is aware that hearsay evidence is presumptively inadmissible. The rule against hearsay is relaxed somewhat for motions or purely procedural matters but apply with respect to evidence being relied upon for a determination as to the merits of the main, substantive claims or defences being advanced in any originating proceeding (application or action).
3	"I state in this Affidavit the source of any information that is not based on my own personal knowledge, and I state my belief in the source."	**Admissible**. See my comments regarding para. 2 above.
16	"...I have reviewed Ocean View's Affidavit of Documents, Supplementary Affidavits [sic] of Documents, and other disclosure provided and Dion's letter was not included in Ocean View's disclosure."	**Admissible**. I refer to my comments at para 20 of my decision 2025 NSSC 300. The Respondent properly does not contest the relevance of the first sentence. The extent of disclosure (or non-disclosure) regarding this evidence is similarly relevant.
22	"Attached to my Affidavit as Exhibit "10" is a true copy of Martha's October 7, 2022 email to Dion. It reads: "From: Martha Cooper mcooper@oceanv.ca Sent: Friday October 7, 2022 2:10:21 PM To: Dion Mouland-Pettipas dmoulan@oceanv.ca Subject: Yvonne McKinnon.doc Hi Dion, I will add address details etc after you approve. I am very comfortable defending the cause. M"	**Admissible.** The Respondent properly does not dispute the admissibility of the Applicant's termination letter sent by Martha Cooper on October 12, 2022 and attached as Exhibit 9 – even though the Respondent did not write this letter. This is appropriate because it is a party admission which is a traditional categorical exception to the hearsay rule. The same arguments apply here. At all material times, Dion Mouland-Pettipas was the President of the Respondent. Martha Cooper was Respondent's Director of Care and a main affiant. The sort of prejudices that give rise to the hearsay rule (e.g. the inability to conduct an effective cross-examination of a person making the hearsay statement) do not apply because the party cannot object no opportunity to cross-examine itself.
Exhibit 10		**Admissible.** See my comments regarding para. 22 above.
29	"Paragraph 29 of my Notice of Application reads:	**Admissible**.

	"Despite repeated requests OVCCC refused to return personal property belonging to Yvonne that was in OVCCC's possession."	An alleged refusal to return person property is a relevant fact in the circumstances – it is not a pleading. The weight which might be attached to this assertion is to be determined.
30	"Paragraph 19 of Ocean View's Statement of Contest reads: "Ocean View denies that it refused to return personal property belongings to Ms. McKinnon and submits that all personal property has been returned.""	**Admissible** The pleading contains admissions and allegations of material fact. A party is bound by them. In addition, this paragraph provides relevant context for the paragraphs which follow.
32	"Attached to my Affidavit as Exhibit "15" are true copies of the October 2 and 3, 2022 email exchanges between Martha and Dion."	**Admissible.** See my comments in para. 22 above. At all material times, Dion Mouland-Pettipas was the President of the Respondent. Martha Cooper was Respondent's Director of Care and a main affiant**.**
Exhibit 15		**Admissible.** See my comments in paras 22 and 32 above.
33	"Attached to my Affidavit as Exhibit "16" are true copies of the October 5 and 6, 2022 email exchanges between Martha and Dion."	**Admissible**. See my comments at para. 22 above.
Exhibit 16		**Admissible.** See my comments at paras. 22 and 33 above.
34	"Attached to my Affidavit as Exhibit "17" are true copies of the October 7, 2022 email exchange between Martha and Dion."	**Admissible**. See my comments at para. 22 above.
Exhibit 17		**Admissible.** See my comments at paras. 22 and 34 above.
35	Attached to my Affidavit as Exhibit "18" are true copies of the October 12 and 13, 2022 email exchanges between Martha and Dion."	**Admissible.** I refer to my comments at para. 22 above.
Exhibit 18		**Admissible.** I refer to my comments at paras. 22 and 35 above.
36	"Attached to my Affidavit as Exhibit "19" are true copies of the	**Partially admissible**.

	December 1, 2022 email exchanges between Tracy Bonner and Staci Corbett."	The email authored by Tracy Bonner is admissible. At all material times, she worked for the Respondent and is one of the Respondent's main affiants. See my comments at para. 22 above. The responding email authored by Staci Corbett is hearsay and cannot be admitted for the truth of its contents. Ms. Corbett appears to be an employee of the Province of Nova Scotia. In addition, Ms. Corbett is testifying as to what she believes she was told the Applicant but cannot "confidently report this". There is neither procedural reliability nor substantive reliability. Prejudicial effect greatly exceeds any probative value.
Exhibit 19		**Partially Admissible.** I refer to my comments at paras. 22 and 36 above.
37	"Attached as Exhibit "20" is a true copy of the June 20, 2023 Nova Scotia College of Nurses' ("College of Nurses") Notice to Produce correspondence."	**Inadmissible.** Evidence confirming a complaint against the Applicant was opened and corresponding evidence confirming the complaint was closed is admissible to the extent it was made public. Sections 130(f) and 132(2) of Nova Scotia's *Nursing Act* confirms *inter alia*, that any person who received or has knowledge of information as a result of a regulatory process under this Act must maintain the confidentiality of this information **except where the information is otherwise publicly available**. However, paras. 37 and Exhibit 20 relates to communications with the NS College of Nurses involving the investigation itself. They involve a Notice to Produce issued to the Respondent by an investigator authorized to demand information under s. 61 of Nova Scotia's *Nursing Act.* The Respondents properly invokes s. 132(1) of that statute which states: 132 (1) A witness in a legal proceeding, whether a party thereto or not, shall not answer any question as to any proceedings of a regulatory process and shall not produce any report, statement, memorandum, recommendation or other document prepared for the purpose of the regulatory process, including any information gathered in the course of

		an investigation or produced for a regulatory committee. This is not to say that the information disclosed by the Respondent in response to this demand is irrelevant or confidential. It may form part of the Respondent's disclosure obligations <u>in this proceeding</u> – but not as part of an investigation commenced under the *Nursing Act*.
Exhibit 20		**Inadmissible.** I refer to my comments at para. 37 above.
38	"I have reviewed the documents included in Ocean View's Affidavit of Documents, Supplementary Affidavits [sic] of Documents, and further disclosure. Ocean View did not include its response to the College of Nurse's Notice to Produce."	**Inadmissible.** I refer to my comments at para. 37 above.
43	"On June 20, 2023 I was advised by the College of Nurses that I was the subject of four complaints as referenced in the College of Nurses' June 20 and 23, 2023 correspondence to Ocean View and that an investigation had been opened."	**Partially Admissible**. Evidence confirming a complaint against the Applicant was opened and corresponding evidence confirming the complaint was closed is admissible to the extent it was made public. While this is hearsay evidence, in my view, it is admissible under the traditional exception. This information is necessary as only the regulator can provide information regarding the opening and closing of a complaint against the Applicant. It also has the hallmarks of substantive reliability given the regulator's role. Moreover, the associated risks are easily addressed as the information regarding whether a complaint was opened and then closed is public and is therefore exempted from the confidentiality provisions of the *Nursing Act*. The final phrase stating that "an investigation has been opened" is inadmissible. This additional information is confidential under the provisions of the *Nursing Act*.
44	"On July 22, 2024 I was informed by the College of Nurses that the four complaints were dismissed at the investigative stage in their entirety."	**Partially Admissible.** The final phrase "at the investigative stage in their entirety" is confidential and inadmissible. The balance of the paragraph is admissible. I refer to my reasons at para. 43 above.

Schedule "B" Respondent's Objections to Rebuttal Affidavit of Yvonne McKinnon (Martha Cooper) 2025 03 31		
Paragraph	**Impugned Words**	**Decision**
2	"... except where otherwise stated to be based on information and belief."	**Admissible**. See my comments at Schedule "A", para. 2.
3	"I state in this Affidavit the source of any information that is not based on my own personal knowledge, and I state my belief in the source."	**Admissible** See my comments at Schedule "A", para. 3.
10	"Except for the PPCA BIRC 2022-07 investigation, Martha Cooper's affidavit did not attach copies of the Birches Nursing Home's records, resident file, care plan, chart, occurrence reports, follow up reports, or hospital records for the residents involved."	**Admissible** These are statements of fact, not a submission. It does not provide embody a legal conclusion. See paras. 93 – 94 of my decision 2025 NSSC 300. The allegation of non-disclosure is similarly factual in nature. The ultimate impact of any alleged non-disclosure (including issues around credibility and evidentiary weight) is to be determined. I note parenthetically that no party has raised concerns regarding the potential relevance of these records.
11	"If Ms. Cooper is saying that I personally assured her that the resident's chart was in order that statement is not correct. I read her statement to be saying someone else told her I said that."	**Admissible** This is not argument embodying a legal conclusion. At most, Ms. MacKinnon is attempting to interpret and respond to Ms. Cooper's affidavit evidence. Ms. MacKinnon is merely stating her disagreement with the facts being alleged. The weight which might be attached to this evidence is to be determined.

12	"I disagree with several statements made by Ms. Cooper in paragraphs 44, 57, and 58 and her overall account of my October 6, 2022 meeting with her and Ms. Bonner."	**Admissible** I refer to para. 11 above.
13	"... Martha Coopers's affidavit does not include copies of the deceased resident's Birches Nursing Home's records, resident file, care plan, chart, occurrence reports, follow up reports, or hospital records. Hereinafter I collectively refer to these documents as "Ocean View's records for deceased resident.""	**Admissible** I refer to para. 10 above. The Respondent also alleges that it is irrelevant. I disagree. It is relevant information This is a statement of fact, not submission. I note that the allegations in the Notice of Application state, in very simple terms that: 1. Yvonne McKinnon was wrongfully dismissed by Ocean View Manor Society (OVCCC) despite receiving positive performance evaluations and bonuses during her probationary period. 2. She was terminated for cause shortly after leading efforts to address deficiencies in medical care protocols following a substantiated complaint under the Person in Protective Care Act. OVCCC had praised her work prior to termination. However, Ms. McKinnon states that she was not informed during hiring of known inadequacies in care protocols and was not properly oriented to medical procedures. Her

		dismissal followed her proactive leadership in correcting these issues, which OVCCC had acknowledged and supported. 3. She further claims OVCCC failed to return her personal property despite repeated requests, constituting the tort of detinue. This evidence is relevant to the issue of termination. I note that the Notice of Contest refutes but refers to similar allegations in support of her termination. I refer to paras. 11 - 13 of the Notice of Contest, for example.
14	"Ms. Cooper's affidavit did not include copies of any file that she may have opened in relation her [sic] involvement in PPCA REPORT BIRC-2021-02 - THE PRESSURE INJURY INVESTIGATION ("pressure injury investigation/investigation/pressure injury"), day timer entries, notes, memos, statements, or reports of any kind that she made in relation to the investigation, in preparation for/or follow up for meetings with Dion Mouland-Pettipas, Tracy Bonner, Board meetings, *Protective Persons[sic] in Care Act* ("PPCA") investigator, Department of Health and Wellness, Nova Scotia College of Nurses, or with me. Hereinafter I collectively refer to these documents as "pressure injury investigation records"."	**Admissible.** This is neither speculation nor argument. This is a statement of fact on a relevant issue. It does not embody a legal conclusion. I also refer to para. 10 above. I make no comment regarding any confidentiality issue that may arise regarding an investigation under the *Nursing Act* but refer to para. 37 of Schedule "A" on this issue.

16	"Martha Cooper's affidavit did not include a copy of the Nova Scotia Seniors Long-Tenn Care Notice of Investigation under the Protection for Persons in Care Act for the pressure injury investigation that would have been provided to Ocean View/Birches/Dion Mouland-Pettipas."	**Admissible**. This is neither inadmissible argument subject to any confidentiality issues that may arise regarding an investigation under the *Nursing Act*. I refer to para. 37 of Schedule "A". The Respondent alleges improper rebuttal. The Respondent states that its Notice of Contest contains a detailed account as to the reasons for the Applicant's dismissal. As such, there should be no surprises. In the circumstances, the Respondent continues, the Applicant was obliged to fully address the allegations in the Notice of Contest when filing its original affidavits – not wait until rebuttal. The Respondent further alleges that it was prejudices because it based its responding affidavits entirely on the Applicant's original affidavits. When the Applicant failed to address each issue raised in the Notice of Contest, the Respondent maintains that it was entitled to presume that the allegations were not being addressed – and it was not required to provide a more detailed or fulsome account of its own evidence regarding just cause. Finally, the Respondent points to a unique form of prejudice it suffers when issues around wrongful dismissal are raised in an Application in Court and the Applicant/employee only provides a more detailed response to the issue of just cause in rebuttal. In particular, the Respondent points out that, absent Court approval in

		exceptional circumstances, there are no supplementary affidavits in an Application in Court (Rule 5.15). Thus, the Respondent implicitly denies the opportunity for "surrebuttal". Because the Applicant waited until rebuttal to fully address unjust cause, the Respondent argues that it is being unfairly denied the chance to respond. Given the burden of proof placed upon the Respondent employer to prove just cause, I decline to find that that Applicant-employee was required to provide a full evidentiary response to the matters which bear upon an issue where the employer bears the burden of proof. The fact that the Respondent-employer raised issues regarding reasons for the Applicant's termination at paragraphs 11 – 13 of its Notice of Contest does not change the burden of proof. A pleading is simply comprised of allegations. The party alleging a particular fact is required <u>to prove it, with admissible evidence</u>. The Respondent bears the burden of proving just cause. The Respondent was not entitled to presume that the pleading was sufficient to meet its evidentiary burden for the purpose of triggering a responding evidentiary obligation on the part of the Applicant. The Applicant was entitled to see the Respondent's evidence in chief in support of just cause -not simply read the allegations in a pleading.

		As to the argument that the Respondent elected not to provide a more complete response to just cause because the Applicant failed to address it in a more fulsome manner, again, I decline to find that the Respondent was entitled to make the presumptions that support this election. Neither party has sought directions regarding presentation of evidence having regard to the procedural flexibility which arises in cases involving allegations of wrongful termination. See my comments on rebuttal evidence in the attached decision and, in particular, the decision in *Saturley*. I appreciate the concerns around Rule 5.15 and the default prohibition against "supplementary affidavits". However, the Court retains a discretion to allow a supplementary affidavit in appropriate circumstances. In saying this, I do not find (and have not been asked to find) that the Respondent is entitled to file a supplementary affidavit or surrebuttal on the issue of just cause. In fairness, this issue may also be relevant to the Respondent's pending motion to convert. However, for clarity and emphasis, I make no determination on these issues and I certainly am not pre-determining either the right to file surrebuttal or the Respondent's request to convert. These issues are for another day. I simply am compelled to make these points in response to arguments being made regarding

		the issue of rebuttal in the context of this motion to strike. These conclusions are without prejudice the parties' rights to argue and seek relief both with respect to surrebuttal within the confines of this application and/or conversion to an action.
20	"I disagree with Ms. Cooper's characterization of the meeting…"	**Admissible**. These are impressions or lay opinions that the Applicant is entitled to assert. They are admissible. The suggestion that the institution was non-compliant is similarly admissible, subject to weight. Ms. McKinnon is entitled to make this assertion as it is related to her allegation that she was essentially scapegoated. However, Ms. McKinnon's impressions are subject to weight.
20	"… Neither Ms. Cooper nor Ms. Bonner wanted to discuss or hear anything I wanted to say about the inspection of findings of the investigations. They took the position that I was solely to blame for the deficiencies and resident's death. Neither Ms. Cooper nor Ms. Bonner wanted to accept any responsibility for the facility being noncompliant well before I was hired, that the job listing did not disclose that the facility was noncompliant, that I was not advised of the noncompliance or provided any policy training in this regard when I was hired. Neither Ms. Cooper nor Ms. Bonner wanted to accept the final report disclosed the "Source ? bedsores" note that was drawn from the hospital records did not	**Admissible**. These are impressions or lay opinions that the Applicant is entitled to assert. They are admissible. The suggestion that the institution was non-compliant is similarly admissible, subject to weight. Ms. McKinnon is entitled to make this assertion as it is related to her allegation that she was essentially scapegoated. However, Ms. McKinnon's impressions are subject to weight.

	confirm the investigator's finding but rather raised it as a possibility."	
22	"Attached to my affidavit as Exhibit "1" is a true copy of the Nova Scotia Health and Wellness Licensing Inspection Report for the Birches September 9, 2020 annual inspection. Paragraph I of the Report states: "L TCPR 6.2.16 The licensee shall ensure a stand-alone would care committee is implemented, or would care issues/practices are included as a standing agenda item on another appropriate committee (i.e.) Quality Committee) [sic] The committee shall be interdisciplinary ensuring that would prevention and management is regularly reviewed and revised to reflect leading practices and provincial direction and identify trends for quality improvement.""	**Admissible** This is relevant to the issue of compliance by the employee and the related allegation of wrongful termination. It is not hearsay. It either falls under the categorical exception as a business record or otherwise under the principled exception in which the Court assesses threshold reliability and necessity.
Exhibit 1		**Admissible**. See my comments regarding para. 22 above.
23	"The Birches was issued with 22 requirements for licensing deficiencies."	**Admissible** Ms. McKinnon asserts personal knowledge that the Birches was issued 22 requirements for licensing deficiencies. She does not provide dates or evidence as to the nature of deficiencies. Thus, the evidence may be of limited weight but it is relevant and there is no basis for the hearsay objection.

		I also refer to my comments at para. 22 above.
24	“Martha Cooper was the Birches Director of Care between September 2020 and January 2021.”	**Admissible**. Ms. Cooper’s role provides relevant context both in terms of understanding the allegations and the communications.
25	“I disagree with Ms. Cooper's paragraph 56 statement that "Unfortunately, we were unable to meet two of the outstanding requirements due to Ms. McKinnon 's poor work performance. Failing a licensing inspection put the Birches in danger of having its license suspended."”	**Admissible** Ms. McKinnon’s denial of a fact asserted is not argument. It does not embody a legal conclusion.
26	“Attached to my affidavit as Exhibit "2" is a true copy of the September 13, 2022 Minutes of the Board of Directors meeting. This exhibit is also found in Ms. Bonner's affidavit as Exhibit 27. Ms. Bonner presented the following remarks to the Board. "14.0 Licensing Visits Tracy provided this update. Several things were found; however the items found occur in 90% of all homes."”	**Admissible** This is neither hearsay (Board Minutes from the Respondent, a party statement). It is also not argument. It does not embody a legal conclusion.
28	“I again refer the Court to the Confirmation of Compliance with Licensing Requirements that Ms. Bonner submitted to the ministry is [sic] attached to her affidavit as Exhibit 30. Ms Bonner did not include the September 30, 2022 email she sent to the ministry attaching the	**Admissible**. This is not argument embodying a legal conclusion.

	Confirmation of Compliance Document with that Exhibit. ..."	
29	"Ms. Bonner advised the ministry that the delay in providing the documents was "due to significant technology challenges because of the hurricane. TBNH did not have restored internet services until yesterday at 4pm.""	**Admissible** Ms. Bonner represents a party and is an affiant. Her statements given the course of her duty are not hearsay. This is also not argument embodying a legal conclusion. This is subject to judicial determinations as to weight and credibility.
30	"I refer to paragraph 22 of my affidavit, Exhibit "1" which is a true copy of the Nova Scotia Health and Wellness Licensing Inspection Report for the Birches September 9, 2020 annual inspection. Paragraph 1 of the Report states: "LTCPR 6.2.16 The licensee shall ensure a stand-alone would care committee is implemented, or would care issues/practices are included as a standing agenda item on another appropriate committee (i.e.) Quality Committee) [sic] The committee shall be interdisciplinary ensuring that would prevention and management is regularly reviewed and revised to reflect leading practices and provincial direction and identify trends for quality improvement.""	**Admissible** This is not hearsay. It either falls under a categorical exception (business or government record) or satisfied the principled exception. in terms of threshold reliability and necessity.
31	"The Birches were issued with 22 requirements for licensing deficiencies."	**Admissible** This is repetitive but it is neither hearsay nor irrelevant. See my comments for para 23 above.

32	"Martha Cooper was the Director of Care for the Birches in September 2021"	**Admissible**. Repetitive but not irrelevant. See my comments for para. 24 above.
33	"I disagree with Ms. Cooper's recall and characterization of our October 6, 2022 conversation where she states "In the October 6, 2022 meeting I raised with Ms. McKinnon several concerns that I had with the staffing schedule at the Birches. Ms. McKinnon's response was that scheduling was not her responsibility and that no one ever told her she was responsible for scheduling. We took a break during the meeting and when Ms. McKinnon returned, she advised that she had reviewed her job description to see if scheduling was referenced in it and said it was not included in her position description.""	**Admissible** Repetitive but relevant. See my comments for para 20 above.
34	"... Neither Ms. Cooper nor Ms. Bonner wanted to discuss or hear anything I wanted to say about the inspection or findings of the investigator.	**Admissible** See my comments under para 20 and 33 above. Also, it is not speculative for the Affiant to describe her personal conclusions regarding Ms. Cooper's and Ms. Bonner's reaction. This is not to say the allegations are true. The impact of this evidence is subject to the Court's assessment of weight and credibility.
35	"I attempted to explain to Ms. Cooper that my job description had changed three times since I was hired. Ocean View has not disclosed my updated (third) job description in its ADDS or Ms. Cooper's or Ms. Bonner's affidavits. I tried to explain that	**Admissible.** This evidence is relevant to the issue of wrongful termination and just cause. I refer to my comments above at para. 16 regarding rebuttal.

	my staffing responsibilities had been shifted over to Human Resources. Day to day staffing was handled by a scheduler and not me. My role was more centred [sic] to developing staffing plans and identifying current and future staffing needs. The Birches was having trouble in being able to meet the staffing requirements for the facility. We, being me, Shirley Landry, Dion Mouland-Pettipas, and later Martha Cooper had begun and tried to meet these needs through student placements, recruitment of international workers, offering fulltime positions to parttime employees, etc. Ms. Cooper berated me rather than listen to anything I had to say."	
37	"I disagree with respect to Ms. Cooper's paragraphs 65, 66, and 67 statements alleging I made scheduling errors, failed to provide sufficient coverage, and missed funding opportunities. Ms Cooper has provided no documents to support these claims against me."	**Admissible**. This is not submission or argument embodying a legal conclusion.
38	"I disagree with respect to Ms. Cooper's paragraphs 65, 66, and 67 statements alleging I made scheduling errors, failed to provide sufficient coverage, and missed funding opportunities. Ms Cooper has provided no documents to support these claims against me."	**Admissible**. This is repetitive but it is not argument.
39	"Ms. Cooper assumed the role of Senior Director of Long Term Care in October 2022. This position oversaw her previous her replacement [sic] at Ocean View and Ms. McKinnon's role	**Admissible** This is relevant context (Ms. Cooper's position and her duties) in the context of allegations of wrongful termination.

	as Director of Care at the Birches. Ms Cooper remained in this role until June 2023."	
40	"Attached to my affidavit as Exhibit "4" is a true copy of the NS Seniors Long-Term Care Licensing Report (Semi-Annual Visit) for the December 7, 2023 semi-annual inspection. Paragraph 3 reads: "Outstanding requirements form previous inspection(s): Date of inspection: August 29-30, 2022; December 8, 2022; March 8, 2023; July 16, 2023, August 29, 2023 and December 7, 2023 L TCPR 11.1.11 Additional Requirements for Nursing Homes - The licensee shall ensure the home is staffed in accordance with the staffing model as funded by the Department of Health and Wellness.""	**Admissible**. This is not hearsay. It either falls under a categorical exception (business or government record) or satisfies the principled exception in terms of threshold reliability and necessity.
41	"... Attached to my affidavit as Exhibit "5" is a true copy of the June 21, 2023 Nova Scotia College of Nurses' correspondence and Notice to Produce with regard to an investigation against Shirley Landry."	**Inadmissible.** I refer to para. 16 above and para 37 of Schedule "A".
Exhibit 5		**Inadmissible.** I refer to para. 16 above and para 37 of Schedule "A".
42	"I disagree with Ms. Cooper's paragraph 78 statement that "Ms. McKinnon's behaviour that day (October 6, 2022) confirmed my opinion that she should be terminated for cause. [sic] I	**Admissible** This is not argument embodying a legal conclusion.

	repeat my previous statements that on October 6, 2022 Martha Cooper and Tracy Bonner simply berated me for the entire meeting. I again refer the Court to Ms. Cooper's October 6, 2022 email to Dion Mouland-Pettipas where she states "Tracy and I tore a strip off of her today (to Leanne) and she didn't do anything wrong, and said if her hands are slapped the staff's hands will be slapped harder)[sic]"(See Martha Cooper affidavit, Exhibit 18).”	
43	“I have reviewed the affidavit Martha Cooper has filed with the Court. Ms. Cooper's affidavit did not include copies of the Birches Nursing Home's records, resident file, care plan, chart. occurrence reports, post occurrence follow up and recommendations reports for the resident whose catheter had not been changed since her admission. Hereinafter I collectively refer to these documents as "Ocean View records for catheter resident."”	**Admissible.** This is neither argument embodying a legal conclusion nor irrelevant. I refer to para. 10 above. The concerns go to weight, not admissibility.
44	“Ms. Cooper's affidavit did not include copies of any file that she may have opened in relation her [sic] involvement in the BIRC-2022-06 ("catheter investigation"), day timer entries, notes, memos, statements, or reports of any kind that she made in relation to the investigation, in preparation for/or follow up for meetings with Dion Mouland-Pettipas, Board meetings, Protective Persons[sic] in Care Act ("PPCA") investigator, Department of Health and	**Admissible.** I refer to paras 10 and 42 above.

	Wellness, Nova Scotia College of Nurses, or with me. Hereinafter I collectively refer to these documents • as "pressure injury investigation records".”	
46	“I cannot properly respond to the allegations when Ms. Cooper has not provided the resident's care plan, chart, occurrence reports, etc.”	**Admissible** This is not argument. The ability to respond to a particular issue in the face of alleged disclosure issues is not argument. Any additional concerns go to weight.
47	“This matter was not the subject of a complaint made to the Nova Scotia College of Nurses”	**Inadmissible** I agree that the issue of whether a complaint was made is irrelevant. There are related concerns around confidentiality under the *Nursing Act.*
52	“As previously stated herein, Ms. Cooper s affidavit only included the occurrence reports and post occurrence follow up and recommendation reports. Ms. Cooper's affidavit did not include the occurrence reports and follow up and recommendation reports for the March 17, 2022 incident.”	**Admissible.** I refer to para 10, 42, and 44 above**.**
Exhibit 6		**Admissible.** I refer to para 52 above. As to improper rebuttal, I refer to para. 16 above.
53	“Ms. Cooper's allegations are drawn from and rest primarily on the investigator's findings.”	**Inadmissible** Irrelevant. The Applicant does not testify as to any personal observations or facts within her knowledge. The Applicant’s comparisons between Ms. Cooper’s allegations and the investigator’s findings may form part of her submissions but do not constitute relevant evidence.

55	".. .I believe it is fair to say that R's dementia prevented him from forming what I would call a criminal law intent to engage in non-consensual activity with other residents, i.e., to sexually assault someone as in commonly known form the charges in criminal court. I also believe that it is fair to say that the residents that R attempted and/or engaged in sexual contact also do not have the capacity to consent in sexual activity. Prior to the January 31, 2022 incident there were no known attempts by R to engage in physical or sexual contact with other residents that resulted in physical harm."	**Partially admissible.** The final sentence is within the Applicant's personal knowledge as she worked at this facility. The balance of this passage involves medical opinion evidence around the existence, severity, and symptoms of dementia that the Applicant is not entitled to offer. As to the argument that this is improper rebuttal, I refer to my comments at para. 16 above.
56	"The Protection for Persons in Care Regulations state: 3(1) Subject to subsection (2), in the Act and these regulations, "abuse" means, with respect to adult patients or residents, any of the following: (e) non-consensual sexual contact, activity or behavior between patients or resident; (2) "Abuse" does not occur in situations in which (a) A service provider carried out their duties in accordance with professional standards and practice and health- facility-based policies and procedures; or (b) A resident or patient who has a pattern of behavior or a range of behaviors that include unwanted physical contact uses physical force against another patient or resident which does not result in serious physical harm , and the service provider has established a case plan to	**Admissible, to the extent she was aware of this legislation, and it informed her evidence in the paragraphs that follow.** As to the argument that it is improper rebuttal, I refer to my comments at para. 16 above.

	correct these behaviors.”	
57	“R's care/case plan was designed to mitigate the risk of him attempting to engage in sexual activity with other residents: 1. R's dementia ruled out psychotherapy or counselling as a possible means to correct his behaviour. 2. R's dementia precluded an effective police or criminal law response, i.e. what could the police or the Court do to stop him from engaging in these behaviors. 3. Because R's sexual history was non-aggressive (not resulting in physical harm), he was not considered to be someone who should be removed to another longterm care facility. 4. Because R's sexual history was non-aggressive, he would not have had government funding approved for a one on one sitter/security person to provide constant supervision and guard against the risk that he would attempt to engage in sexual activity.”	**Admissible.** The Applicant worked at the facility and can speak to her understanding regarding a resident’s particular case plan as it would have impacted her duties. She obviously cannot provide an opinion as to whether the plan and underlying diagnosis was correct. All of this is subject to cross-examination and weight. As to the argument around improper rebuttal, I refer to my comments at para. 16 above.

58	"For these reasons, the care/case plan that been [sic] developed, in place, and implemented for R was: l. The Birches' physician had prescribed R risperdone to curb his behaviors. Hypersexuality and inappropriate sexual behaviour (ISB) may be the first symptoms of early onset frontal dementia. Frontal cortical brain atrophy on MRI is important for diagnosis. ISB may be under control with risperidone treatment, 2. For all staff to be constantly monitoring him, and 3. Follow the Seniors Mental Health recommendations."	**Admissible** I refer to my comments at para. 57 above.
60	"The investigator's preliminary and final reports for both investigations do not challenge: 1. The form of the Reports used, 2. The factual accounts of the incidents set out in the Reports, or 3. The Occurrence Severity Scale determinations male and reported by staff for these incidents."	**Inadmissible** The Applicant does not testify as to any personal observations or facts within her contemporaneous knowledge at the time in question. The Applicant's comparisons between the investigator's preliminary and final reports may form part of her submissions but do not constitute relevant evidence.
61	"The protocol is for the care giver to report an incident to the charge nurse. The charge nurse's responsibility of determining whether he/she has the discretion to report the incident to the Team Leader and/or the Director of Care is based on the	**Admissible** I refer to my comments regarding rebuttal evidence at para. 16 above. This is subject to cross-examination (including the Applicant's contemporaneous knowledge of the protocols) and,

	occurrence severity level. The Director of Care will report the incident to the CEO based on the occurrence severity level determined by the staff member."	as well, the Court's assessment as to credibility and weight.
62	"A staff member is not required to report a 1p (near miss/no injury) to the charge nurse"	**Admissible** I refer to my comments regarding rebuttal evidence at para. 16 above. This is subject to cross-examination (including the Applicant's contemporaneous knowledge of the protocols) and, as well, the Court's assessment as to credibility and weight.
63	"A staff member is required to report lA (minor injury), 2P (no injury but risk of moderate injury), and 2A (moderate injury) to the charge nurse. "As appropriate" a charge nurse has the discretion to report a lA aggression with minor or psychological impact, 2P (no injury but risk of moderate injury), and 2A (moderate injury and to the Director of Care. [sic] (emphasis mine)."	**Admissible** I refer to my comments regarding rebuttal evidence at para. 16 above This is subject to cross-examination (including the Applicant's contemporaneous knowledge of the protocols) and, as well, the Court's assessment as to credibility and weight.
64	"A staff member is required to report 3P no injury but risk of serious injury) [sic] to the charge nurse. A charge nurse must report a 3P level incident to the Director of Care and the Director of Care notifies the CEO as appropriate."	**Admissible** I refer to my comments regarding rebuttal evidence at para. 16 above This is subject to cross-examination (including the Applicant's contemporaneous knowledge of the protocols) and, as well, the Court's assessment as to credibility and weight.
65	"A staff member is required to report 3A level incident [sic] (serious injury) to the charge nurse. A charge nurse must immediately repot a 3A level incident to the Director of Care and the Director of Care notifies	**Admissible** I refer to my comments regarding rebuttal evidence at para. 16 above This is subject to cross-examination (including the Applicant's contemporaneous

	the CEO as appropriate. The CEO informs the Board as appropriate."	knowledge of the protocols) and, as well, the Court's assessment as to credibility and weight.
66	"A staff member is required to report SE level incident (critical event) to the charge nurse. A charge nurse must immediately report a SE level incident to the Director of Care and CEO. The CEO informs the Bard and DHW as per policy."	**Admissible** I refer to my comments regarding rebuttal evidence at para. 16 above. This is subject to cross-examination (including the Applicant's contemporaneous knowledge of the protocols) and, as well, the Court's assessment as to credibility and weight.
67	"The Occurrence Severity Scale Form states: All Managers - must report any situation with potential for PPCA reporting, media attention or other extra ordinary anticipated outcome to the Director of Care and to the President/CEO immediately upon learning of the event/s. For example: Physical aggression with or without injury; Significant repetitive challenging behaviour or other recurrent types of events; emergency situations; any event for which law enforcement is brought on site."	**Admissible** I refer to my comments regarding rebuttal evidence at para. 16 above This is subject to cross-examination (including the Applicant's contemporaneous knowledge of the protocols) and, as well, the Court's assessment as to credibility and weight.
68	"The investigator finds no fault with the form, design, or questions staff is asked to answer when documenting an incident on the Occurrence Report, Post Occurrence Follow-Up and Recommendations, or Occurrence Severity Level Forms."	**Inadmissible.** The Applicant does not testify as to any personal observations or facts within her contemporaneous knowledge at the time in question. The Applicant's interpretation of the investigator's findings may form part of her submissions but do not constitute relevant evidence.

69	"The Occurrence Report Form provides: Section 2: Type of Occurrence and Best Descriptor Actual Near Miss Fall Fire Equipment Documentation Damage/Missing Property Treatment Clinical Care Diagnostic Procedure Verbal Aggression Physical Aggression Other"	**Admissible** I refer to my comments regarding improper rebuttal at para. 16 above.
70	"There is no "sexual descriptor" box for staff to check if the incident being reported involves Regulation 3(1)(e) non-consensual sexual contact, activity, or behavior between patients or residents. Staff use the "Other" descriptor and as per the January 25, 27, 31, and March 17, 2022 Reports do not check anything, note sexually appropriate, sexual aggression, or sexual touching."	**Admissible.** The Applicant's evidence around how staff complete the forms in question may be within the Applicant's knowledge. The balance of the paragraph provides relevant context for that evidence. It also provides relevant context for the evidence given at para. 77. This is subject to cross-examination, and assessment of credibility and weight. I refer to para. 16 above for the arguments regarding improper rebuttal.
71	"Staff provide a factual description of the incident in Section 13 of the Report."	**Admissible** See my comments at para. 70 above.
72	"The Occurrence Severity Scale Form identifies seven different level classifications, being 1 P, 1A, 2P, 2A, 3P, 3A, and SE. None of the "General Descriptions" provide a description for a Regulation 3(1)(e) non-consensual contact, activity, or behaviour between patients and residents."	**Admissible** See my comments at para. 70 above.

73		**Admissible** See my comments at para. 70 above.
74		**Admissible** See my comments at para. 70 above.
75		**Admissible** See my comments at para. 70 above.
76	"The Birches had determined that R's sexual behavior fell under the Regulation 3(2) which states: 3(2) "Abuse" does not occur in situations in which (a) A service provider carried out their duties in accordance with professional standards and practice and health-facility-based policies and procedures; or (b) A resident or patient who has a pattern of behavior or a range of behaviors that include unwanted physical contact uses physical force against another patient or resident which does not result in serious physical harm, and the service provider has established a case plan to correct these behaviours."	**Admissible** See my comments at para. 70 above.
77	"It had been determined that the January 25, 27, 31 and March 17, 2022 incidents did not need to be reported to PPCA, the police, or any outside agency because staff was carrying out their duties in accordance with professional standards, practices,	**Admissible** This may be within the Applicant's personal knowledge, subject to cross-examination, an assessment of credibility and weight. See my comments at para. 70 above.

	policies, and procedures and a care/case plan had been developed, implemented, and followed to curb R's sexual behaviours and safeguard residents."	
78	"Neither the Act nor the Regulations require a long-term care facility to complete [sic] eliminate risk or prevent an incident from occurring. But rather the legislation requires the facility to adhere to professional standards, practices, policies, and procedures that minimize risk to legally acceptable levels."	**Inadmissible** This is a conclusory statement which embodies a legal proposition.
79	"The particulars of the January 25, 2022 incident were clearly documented in the Report. Dr. MacPhee was notified and noted on the doctor's clipboard."	**Admissible.** I refer to my comments regarding rebuttal evidence at para. 16 above.
80	"The staff member reported the Incident as an Occurrence Severity Level 1A. Being a Level 1 A incident the charge nurse has the discretion to report the [sic] Director of Care."	**Admissible.** I refer to my comments regarding rebuttal evidence at para. 16 above.
81	"The Post Occurrence Follow-Up and Recommendations Form recommended "closer observation/supervision of resident.""	**Admissible.** I refer to my comments regarding rebuttal evidence at para. 16 above.
82	"The Comments/Follow-Up stated: "Ensure resident is monitored for sexual inappropriateness. This has occurred in the past - staff day care. Resident female did not appear to be upset. Will monitor closely - g 15- 30 min checks as possible all residents. Team lead to notify the DOA. K. Williamson""	**Admissible.** I refer to my comments regarding rebuttal evidence at para. 16 above.

83	"Director of Care or Other Manager Comments: "Close observation & monitoring is required""	**Admissible.** I refer to my comments regarding rebuttal evidence at para. 16 above.
84	"The Birches' staff, Charge Nurses, and I followed the required protocol. The protocol gave the Charge Nurse the discretion whether to notify me about the January 25, 2022 incident. The Charge Nurse notified me on Friday, January 28, 2022 and on Monday, January 31, 2022 I confirmed staff's recommendation to keep R on close observation and monitoring."	**Admissible.** I refer to my comments regarding rebuttal evidence at para. 16 above.
85	"It is my position that the Birche's [sic] staff, Charge Nurse, and I followed all the required protocols to responds to and deal with the January 25, 2022 incident."	**Admissible.** I note this refers to the Applicant's "position" as opposed to facts. However, it largely repeats what was said in para. 84. The same comments at para 84 apply.
86	"The same protocols were followed for the January 27, 2022 incident as were followed for the January 25, 2022 incident. The particulars of the incident are well documented and identified as a Level 1P on the Occurrence Severity Scale. The Charge Nurse is not required to report a Level 1P incident to the Director of Care. But she did. I signed off on the Post Occurrence Follow-Up and Recommendations Form with the following comments: "Close observation of resident & his whereabouts, MMSE 9/30 therefore unable to collaborate story. Geriatrics have been consulted.""	**Admissible.** I refer to my comments regarding rebuttal evidence at para. 16 above.

87	"It is my position that the Birche's [sic] staff, Charge Nurse, and I followed all the required protocols to respond to and deal with the January 27th incident."	**Admissible.** I note this refers to the Applicant's "position" as opposed to facts. However, it largely repeats her earlier evidence regarding matters within her personal knowledge.
88	"... The PPCA investigator may disagree with the decision of the Charge Nurse to have notified me, but it is the Charge Nurse and not the Investigator who had ownership of that decision."	**Admissible to the extent it confirms the Applicant's personal knowledge of responsibility for decision-making.** This is subject to cross-examination, the Court's assessment of credibility and weight. As to the argument regarding improper rebuttal, I repeat my comments regarding improper rebuttal at para. 16 above**.**
89	"The investigator states that the Occurrence Reports (plural) were not signed by me. These statements are incorrect. I signed off on the January 25 and 27 2022 Reports. I also signed off on the March 17, 2022 Report. As per the Occurrence Severity Level protocols the charge nurse was not required to report any of these four incidents to me. The charge nurse exercised her discretion to report the January 25, 27 and March 17, 2022 incidents to me, but not the January 31 2022 incident. The Investigator has no right to complain that the charge nurse exercised a discretion that the Occurrence Severity Levels protocols clearly vested in her."	**Partially admissible.** The last sentence regarding the Investigator's "rights" is a conclusory statement embodying a legal proposition. It is also opinion evidence. It shall be struck. The balance of the passage speaks to the Applicant's personal knowledge on issues relevant to the allegations of wrongful dismissal. As to the argument regarding improper rebuttal, I repeat my comments at para. 16 above.
90	"The existing care plan recognized the reality that the Birches were left with only three options to minimize the risk R posed to other residents:	**Admissible, to the extent she was aware of the care plan and her own understanding of the steps to be taken by the facility. It also provided**

	1. Attempt to curb his sexual behavior by prescribing risperidone, 2. Increased monitoring by staff, and 3. Follow Senior Mental Health recommendations."	**context for the evidence at para. 91.** This is subject to cross-examination, the Court's assessment of credibility and weight. As to the argument regarding improper rebuttal, I repeat my comments at para. 16 above.
91	"The Birches did all three."	**Admissible.** I refer to my comments regarding rebuttal evidence at para. 16 above.
92	"The investigator seems to be unaware that R was prescribed risperidone to attempt to curb his behaviour."	**Partially Inadmissible.** The Applicant is not entitled to speak to the investigator's level of awareness. The words "The investigator seems to be unaware that…." Shall be struck. The Applicant is entitled to speak to the risperidone prescription as it is within her personal knowledge. As to the argument around improper rebuttal, I refer to my comments at para. 16 above.
93	"We did not come to understand that the affected residents suffered trauma because of R's behaviour. The staff physician did not make any recommendation on the affected residents' charts that the should be assessed. Ocean View has not disclosed the affected residents' records or charts."	**Admissible.** The Applicant is not entitled to speak to the investigator's level of awareness. She is entitled to speak to the risperidone prescription as it is within her personal knowledge. As to the argument around improper rebuttal, I refer to my comments at para. 16 above.
94	"It had been previously determined that because R suffered from dementia that external referrals, i.e., referral to behavioural resource specialists, were very limited and/or not equipped to resolve or mitigate the risks associated with his	**Admissible, to the extent she was aware of the care plan and her own understanding of the steps to be taken by the facility and this informed her actions. It also provides context for the statements at para. 93.**

	behaviors."	This is subject to cross-examination and the Court's assessment of credibility and weight. As to the argument regarding improper rebuttal, I repeat my comments at para. 16 above.
95	"It has been previously determined that the police and the Courts were not equipped to deal with an 87-year-old physically disabled individual who was suffering from progressive dementia."	**Admissible, to the extent she was aware of the care plan and her own understanding of the steps to be taken by the facility and this informed her actions. It also provides context for the statements at para. 93.** This is subject to cross-examination and the Court's assessment of credibility and weight. As to the argument regarding improper rebuttal, I repeat my comments at para. 16 above.
96	"It had previously been determined that a one- on-one sitter was not an option because his behaviour was not aggressive and there were no further incidents while I was employed by the Birches as we devised a care plan that was working, and it would not be approved by the government because it was too cost prohibitive."	**Admissible, to the extent she was aware of the care plan and her own understanding of the steps to be taken by the facility and this informed her actions. It also provides context for the statements at para. 93.** This is subject to cross-examination and the Court's assessment of credibility and weight. As to the argument regarding improper rebuttal, I repeat my comments at para. 16 above.
97	"There was no way to update R's care plan for the purpose of obtaining a more desirable outcome. Unfortunately, R's dementia resulted in a risk that we recognized and did our best to minimize."	**Admissible to the extent she was aware of the care plan and her own understanding of the steps to be taken by the facility and this informed her actions.** This is subject to cross-examination and the Court's assessment of credibility and weight.

		As to the argument regarding improper rebuttal, I repeat my comments at para. 16 above.
98	"The Nova Scotia College of Nurses dismissed the complaint relating to this incident in its entirety at the investigative stage."	**Partially Admissible.** The mere fact that a complaint was dismissed is admissible. I refer to my comments at para. 16 above and para. 37 of Schedule "A". However, the final phrasing "at the investigative stage" shall be struck. It is protected under the *Nursing Act.*
99	"Again, the same protocols were followed for the March 17, 2022 incident as were followed for the January 25, 27, and 31, 2022 incidents. The particulars of the incident were well documented and identified as a Level 1P on the Occurrence Severity Scale. The protocol provides the Charge Nurse with the discretion on whether to report a 1P Level incident to the Director of Care. The Charge Nurse notified me. My comments are found on the Director of Care or Other Manager Comments section. I stated: "Spoke to team lead Shirley; we will reach out to seniors mental health for an assessment and guidelines.""	**Admissible.** As to the argument regarding improper rebuttal, I repeat my comments at para. 16 above.
100	"This was done. My efforts to reach out to Seniors Mental Health would not be reflected on the Post Occurrence Follow-Up and Recommendations Form. It is my belief that the written record supporting these efforts will be found in the Birches'	**Admissible.** As to the argument regarding improper rebuttal, I repeat my comments at para. 16 above.

	Itacit and email records. Ocean View has not disclosed these records."	
101	"It is my position that the Birche's [sic] staff, charge nurse, and I followed all the required protocols to respond to, deal with, and follow up with Seniors Mental Health for the March I 7th incident."	**Admissible.** I note this refers to the Applicant's "position" as opposed to facts. However, it largely repeats her earlier evidence regarding matters within her personal knowledge.
103	"Ocean View's ADDs and Ms. Cooper's affidavits provide [sic] any documentation to support this claim."	**Admissible** This relates to the admissible evidence at para. 102 and involves factual assertions regarding disclosure. The impact of any alleged non-disclosure (including evidentiary weight) is to be determined.

Schedule "C"
Respondent's Objections to Rebuttal Affidavit of Yvonne McKinnon (Tracy Bonner) 2025 03 31

Paragraph	Impugned Words	Decision
2	"... except where otherwise stated to be based on information and belief."	**Admissible**. See my comments at Schedule "A", para. 2.
3	"I state in this Affidavit the source of any information that is not based on my own personal knowledge, and I state my belief in the source."	**Admissible** See my comments at Schedule "A", para. 3.
10	"Ms. Bonner sets out several statements in paragraph 19 of her affidavit that I dispute. The paragraph is lengthy and for ease of reference I have reproduced it below. My position and disagreements then follow. 1. On December 7, 2021 I had an in-	**Admissible.** I acknowledge the word "position" is an unfortunate choice as it may imply legal argument. However, this evidence does not embody a legal conclusion but rather confirms a factual dispute. It is subject to cross-examination, an assessment as to credibility and an assignment of weight.

	person conversation with Ms. McKinnon regarding the death of the patient. During this conversation Ms. McKinnon stated the following to me: i. that the patient's daughter was blaming the Birches for her mother's death because she had infected wounds which caused her to become septic. ii. that she had personally reviewed the patient's chart and that the Birches nurses had documented everything regarding wound care and that the resident only had a stage 1 pressure ulcer when she left the Birches for the hospital. iii. that the resident had been in the Emergency Department for hours and her condition could have worsened there. iv. that the resident's daughter was in denial, that the daughter had guilt about not being able to care for here mother and that the resident was moved into the Birches because she was palliative. During this conversation I offered to review the resident's chart. I was concerned that we were going to be sued. Ms. McKinnon assured me that this was not necessary and that the chart was in order. I accepted that what Ms. McKinnon was telling me was accurate."	As to the allegation of non-disclosure, I refer to para. 10 of Schedule "B". I refer to para. 11 of Schedule "B". This is not improper rebuttal. I refer to para. 16 of Schedule "B".
11	"I have reviewed the affidavits that Tracy Bonner and Martha Cooper have filed with the Court. Neither Tracy Bonner's nor Martha Cooper's affidavits include copies of the deceased resident's Birches Nursing Home's records, resident file, care plan, chart, occurrence reports, follow up reports, or hospital records. Hereinafter I collectively refer to these documents as	**Admissible.** This evidence does not embody a legal conclusion but, rather confirms a factual dispute regarding non-disclosure. I refer to para. 10 of Schedule "B". I refer to para. 11 of Schedule "B" regarding legal argument. I refer to para. 16 of Schedule "B" regarding improper rebuttal.

	"Ocean View records for deceased resident".”	
12	“Tracy Bonner's affidavit did not include copies of any file that she may have opened in relation her [sic] involvement in PPCA REPORT BIRC-2021-02 - THE PRESSURE INJURY INVESTIGATION ("pressure injury investigation/investigation/pressure injury"), day timer entries, notes, memos, statements, or reports of any kind that she made in relation to the investigation, in preparation for/or follow up for meetings with Dion Mouland-Pettipas, Tracy Bonner, Board meetings, Protective Persons[sic] in Care Act ("PPCA") investigator, Department of Health and Wellness, Nova Scotia College of Nurses, or with me. Hereinafter I collectively refer to these documents as "pressure injury investigation records".”	**Admissible.** This evidence is not speculative. It confirms a factual dispute regarding non-disclosure. I refer to para. 11 above.
17	“With regard to paragraph 19 of Tracy Bonner's affidavit, I do not recall having an in-person conversation with her on December 7, 2021. There is no question that Ms. Bonner and I discussed the pressure injury investigation over time. I told her that the resident's daughter was blaming the Birches for her mother's wounds becoming infected and that led to her becoming septic. But I also told Ms. Bonner that was the daughter's position and did not reflect my understanding about what might have occurred.”	**Admissible** This is not improper rebuttal. I refer to para. 16 of Schedule “B”.
18	“My December 6, 2021 email to Dion Mouland-Pettipas summarizes my understanding of what occurred. "It was reported that there were several deep tissue open areas and this is what they are saying that caused the sepsis and thus her passing. Last week I read her chart and documentation was great, all areas were described, staged and well documented to the measures that were taken to prevent breakdown of the skin."	**Admissible** This is not improper rebuttal. I refer to para. 16 of Schedule “B”.

	(See Tracy Bonner Affidavit, paragraph 16, Exhibit 1)(emphasis mine)"	
19	"I do not believe that I would have said the resident had a stage l pressure ulcer when she left the Birches and was transported to the hospital. My recollection is that I would said stage 1 pressure area."	**Admissible** I refer to para. 16 of Schedule "B".
20	"I told Ms. Bonner that was the daughter's position and did not reflect my understanding of what could have occurred."	**Admissible** I refer to para. 16 of Schedule "B".
21	"The Dartmouth General Hospital Emergency Department informed me that the resident had deep tissue open wounds whereas the Birches had only documented a pressure injury which is not an open wound. I told Ms. Bonner that based on my experience as emergency room nurse patients lay on stretchers for hours at a time, and that if the resident was on a stretcher for an extended period her injury could have worsened. The thought I expressed were based on the fact that the resident left with the Birches with no open areas, and it was only after she had been in the hospital that it is reported she had open wounds."	**Admissible** This is neither speculative nor improper rebuttal. I refer to para. 16 of Schedule "B". The hearsay evidence regarding what was said by an unnamed person at the Dartmouth General Hospital is not tendered for the truth but as context for the Applicant's subsequent statement to the Respondent.
25	"I dispute Ms. Bonner's paragraph 24 statements that during our in-person February 22, 2022 conversation she "offered" to review the resident's chart and that I "stated this was not necessary and again assured me that the resident only had a stage 1 pressure ulcer and that there was documentation "all over the file" and that it was "well documented by the staff'."	**Admissible.** This is neither speculative nor improper rebuttal. I refer to para. 16 of Schedule "B". It is also not argument as it does not embody a legal conclusion. Merely confirming a factual dispute does not give rise to an inadmissible legal submission or "argument" unless the statement embodies a legal conclusion. The statement is subject to cross-examination, an assessment of credibility, and assignment of weight.
26	"Neither Ms. Bonner's nor Ms. Cooper's affidavits included copies of the deceased's Ocean View records."	**Admissible.** I refer to paras. 11 (regarding non-disclosure) and 25 (regarding "argument") above.
27	"Tracy Bonner's affidavit did not include copies of her pressure injury investigation records."	**Admissible.** I refer to paras. 11 (regarding non-disclosure) and 25 (regarding "argument") above.

28	"I refer the Court to the statements I have made in paragraph 25 of my affidavit and again ·say that Tracy Bonner's statements that she offered to review the resident's chart"[sic] and that I "again assured" her "that this was not necessary" are not true."	**Admissible.** This is neither argument nor improper rebuttal. I refer to paras. 16 of Schedule "B" and 25 above regarding these issues.
29	"I again refer the Court to Ms. Bonner's December 15, 2021 email whereby she states "At first glance, the staff did provide excellent care and Yvonne has acknowledged that with them. We have also identified some documentation improvements we are implementing immediately." (See McKinnon affidavit, Exhibit "1")."	**Admissible.** This is neither argument nor improper rebuttal. I refer to para. 16 of Schedule "B" and para 25 above regarding these issues.
31	"With regard to Ms. Bonner's stage 1 pressure ulcer statements, I repeat the position I expressed in paragraph XXXX of my affidavit."	**Admissible.** This is not improper rebuttal. I refer to para. 16 of Schedule "B".
32	"Ms. Bonner sets out several statements in paragraph 31 of her affidavit that I dispute. The paragraph is lengthy and for ease of reference I have reproduced it below. My position and disagreements then follow."	**Admissible** This is not "argument" as that terms in understood in respect of inadmissible evidence. I refer to para. 25 above.
33	"When I looked at the chart I was dumbfounded as Ms. McKinnon had told me the resident's chart was in good shape. The chart was in abysmal shape and revealed the following: i. As stated in paragraph 13 above, Ms. McKinnon had told me that the resident was palliative when in fact the resident was "full measures" and never deemed palliative. Full measures means that medical personnel would do everything possible to save the resident's life in a medical emergency. ii. The nurses caring for the resident had not for the three entire days prior to the resident being transferred to the hospital made any nurses notes or any other documentation.	**Admissible** The nature of the concern is unclear. In any event, Ms. McKinnon explains that she is simply reproducing the evidence to which she objects and then elaborates on her objection (see para. 32 above). The same structure was used earlier in Ms. McKinnon's affidavit (see para. 10 above). This is subject to cross-examination, the Court's assessment as to credibility, and ultimate findings as to weight.

	iii. The resident had several full thickness wounds, and the Wound Care protocol was never implemented. iv. There was no Care Plan in the resident's file. v. There was no turning and positioning plan in the resident's file."	
34	"Neither Ms. Bonner's nor Ms. Cooper's affidavits included copies of the deceased's Ocean View records. Tracy Bonner's affidavit did not include copies of her pressure injury investigation records. Ms. Bonner's affidavit did not include a copy of the deceased resident's chart."	**Admissible.** This is not speculative. It is a factual assertion regarding non-disclosure. I refer to para. 11 above.
35	"Again, I disagree with Tracy Bonner's statement that I told her that the resident was palliative when in fact the resident was "full measures" and never deemed palliative. I told Tracy Bonner that the resident's daughter wanted to place her in long term care because she was burned out from taking care of her admission."	**Admissible** This is not improper rebuttal. I refer to para. 16 of Schedule "B".
36	"Tracy Bonner statement that the "nurses caring for the resident had not for the three entire days prior to the resident being transferred to the hospital made any nurses notes or any other documentation" mimics the investigators [sic] statement there "were no documented progress notes in the affected resident's medical file from November 26, 2021, at 2130h until November 29, 2021 at 1820h, at which point the affected resident was transported to hospital with decreased level of consciousness and low blood pressure." (See Tracy Bonner Affidavit, Exhibit 7, Preliminary Report, page 5, paragraph 30)"	**Admissible.** This is not "argument" as that terms in understood in respect of inadmissible evidence. I refer to para. 25 above. This is not improper rebuttal. I refer to para. 16 of Schedule "B".
37	"I disagree with Tracy Bonner's statement that "there was no care plan in the resident's file.[sic] I reviewed the care plan myself and the investigator herself states 'The investigation included	**Admissible.** This is not "argument" as that terms in understood in respect of inadmissible evidence. I refer to para. 25 above.

	interviews with relevant parties. The resident's chart, care plan, facility policies, and other related documents were reviewed as part of this investigation. (see Tracy Bonner Affidavit, Exhibit 7, Preliminary Report, Overview Comments, page 1 of report)"	This is not improper rebuttal. I refer to para. 16 of Schedule "B".
38	"Ms. Bonner's statement that "there was no turning and positioning plan in the resident's file" mimics the investigator's finding that "Turning/repositioning schedules were not observed as part of the affected resident's medical file. Additionally progress notes did not indicate if the affected resident was being turned or repositioned)[sic] See Bonner affidavit, Exhibit 7, preliminary report, page 5, comment 28."	**Admissible.** This is not "argument" as that terms in understood in respect of inadmissible evidence. I refer to para. 25 above. This is not improper rebuttal. I refer to para. 16 of Schedule "B".
39	"Ms. Bonner's statements about wound care protocol are incorrect. Ms. Bonner was correct in saying that wound care protocol was not in place when this resident was at the Birches. The nurses charted what they observed and what they did to off load, i.e., meaning to take pressure off a certain area, ie. Booties were put on and legs raised on pillow to take pressure off heals."	**Admissible.** This is not "argument" as that terms in understood in respect of inadmissible evidence. I refer to para. 25 above. This is not improper rebuttal. I refer to para. 16 of Schedule "B".
41	"Ocean View's job listing did not disclose that the facility's medical care processes, protocols, and policies that were required to be in place were not in place, deficient, or inadequate."	**Admissible.** This is not improper rebuttal. I refer to para. 16 of Schedule "B".
42	"At no time in the hiring process did Dion Mouland-Pettipas state or provide me with any indication that the medical care processes, protocols, and policies, including wound care protocols, that were required to be in place were not in place and known not to be in place, deficient, or inadequate."	**Admissible.** This is not improper rebuttal. I refer to para. 16 of Schedule "B".
43	"At no time prior to the receipt of the PCCA [sic] complaint did the Director of Long-Term Nursing Care (former Director of Care) Krista Stewart, Interim DOC	**Admissible.** This is not improper rebuttal. I refer to para. 16 of Schedule "B".

	state or provide me with any indication that the medical care processes, protocols, and policies, including wound care protocols, that were required to be in place were not in place, deficient, or inadequate."	
44	"I was provided with two-and one-half-day orientation to facility procedures but was not given any formal orientation to medical care processes, protocols, and policies for residents in nursing homes. This meant I had to research and learn these processes, protocols, and policies on my own."	**Admissible.** This is not improper rebuttal. I refer to para. 16 of Schedule "B".
45	"When I commenced work on September 13, 2021 I was not advised that a formal wound care team/protocol was not in place. I only learned of this fact after the resident's death. I then learned that no wound care team/ protocol was in place before I became Director of Care."	**Admissible.** This is not improper rebuttal. I refer to para. 16 of Schedule "B".
46	"Attached to my affidavit as Exhibit "3" is a true copy of the Nova Scotia Health and Wellness Licensing Inspection Report for the Birches September 9, 2020 annual inspection. Paragraph 1 of the Report states: "L TCPR 6.2.16 The licensee shall ensure a stand-alone would care committee is implemented, or would care issues/practices are included as a standing agenda item on another appropriate committee (i.e.) Quality Committee) [sic] The committee shall be interdisciplinary ensuring that would prevention and management is regularly reviewed and revised to reflect leading practices and provincial direction and identify trends for quality improvement.""	**Admissible.** This is admissible hearsay under the business record exemption. This is subject to cross-examination, an assessment of credibility and assignment of evidential weight.
Exhibit 3		**Admissible.** See para. 46 above.
47	"The Birches was issued with 22 requirements for licensing deficiencies."	**Admissible.** See para. 23 of Schedule "B"
48	"Martha Cooper was the Birches Director	**Admissible.**

	of Care between September 2020 and January 2021."	See para. 24 of Schedule "B".
49	"After the resident's death, Shirley Landry LPN, Team Leader and I began to recruit staff to become a wound care lead. A licensed practical nurse("LPN") stepped up and began organizing manuals and protocols for wound care. This LPN was the go-to person if a resident required wound care. The LPN resigned from the Birches a few months later. I/we continued to search for a new wound care lead. I am unsure of the date, but I believe that the new wound care team was formed in August 2022."	**Admissible.** This is not improper rebuttal. I refer to para. 16 of Schedule "B".
50	"We used inter-staff emails regarding the wound care team, i.e., forming the team in August, terms of reference, and standing agenda, September 2022 meeting regarding expectations, role and scheduling of consultant. These emails are not included in Tracy Bonner's affidavit."	**Admissible.** This is not "argument" as that terms in understood in respect of inadmissible evidence. I refer to para. 25 above. As to non-disclosure, I refer to para. 11 above.
52	"Ocean View's protocol is that staff only reports the medical status of residents to the Director of Care if there is a health issue that cannot be handled by the staff, charge nurse, etc., on the floor. Having said this I did rounds twice daily and I would ask if there were any issues with residents that required my assistance."	**Admissible.** This is not improper rebuttal. I refer to para. 16 of Schedule "B".
53	"After receiving notice of the PCCA [sic] complaint but prior to the Birches' receipt of the investigator's preliminary report Shirley Landry and I began to ask the questions of what if anything went wrong in the handling of the resident's medical care, how to prevent an incident (failure) of this type from happening again, further investigate and identify what inadequacies (if any existed) in the medical care processes and protocols, address and implement all necessary changes to ensure that appropriate medical care processes and protocols were in place ensure the health and safety of residents."	**Admissible.** This is not improper rebuttal. I refer to para. 16 of Schedule "B".
54	"After receiving the notice of the	**Admissible.**

	investigator's report, we continued the work that was started and began to act on and implement the investigator's preliminary findings."	This is not improper rebuttal. I refer to para. 16 of Schedule "B".
55	"I kept Dion Mouland-Pettipas informed of our efforts to ask the questions of what if anything went wrong in the handling of the resident's medical care, how to prevent an incident (failure) of this type from happening again, further investigate and identify what inadequacies (if any existed) in the Birches' medical care processes and protocols, address and implement all necessary changes to ensure that appropriate medical care processes and protocols were in place ensure the health and safety of residents, and to act on and implement the investigator's preliminary findings."	**Admissible.** This is not improper rebuttal. I refer to para. 16 of Schedule "B".
56	"At no time did Dion Mouland-Pettipas take charge, lead, and/or direct me and/or my team's efforts in asking the questions of what if anything went wrong in the handling of the resident's medical care, how to prevent an incident (failure) of this type from happening again. further investigate and identify what inadequacies (if any existed) in the Birches' medical care processes and protocols, address and implement all necessary changes to ensure that appropriate medical care processes and protocols were in place ensure the health and safety of residents, and to act on and implement the investigator's preliminary findings."	**Admissible.** This is not improper rebuttal. I refer to para. 16 of Schedule "B".
57	"Dion Mouland-Pettipas praised my leadership, efforts and skill sets in addressing and instituting changes to the inadequacies of the Birches' medical care processes and protocols from the receipt of the complaint up until her my termination"	**Admissible.** This is not improper rebuttal. I refer to para. 16 of Schedule "B".
58	"Shirely and I began to review the Long-Term Care Program Requirements Nursing Homes and Residential Care Facilities Standards Manuel [sic] ('	**Admissible.** This is not improper rebuttal. I refer to para. 16 of Schedule "B".

	Manuel") to assess the medical care processes and protocols in place at that time. We identified areas of concern and began working on what was needed to be done to bring the medical care processes and protocols to meet or exceed the safety demands required by the Manuel. At the time of the submission of the final PCAA [sic] Report we had all wound care protocols, audits, and committees in place and implemented."	
61	"Ms. Bonner states that "On December 15, 2021 I was onsite at the Birches and met with Erin Beaton and Ms. McKinnon because Ms. McKinnon had received the notification of the investigation. Ms. McKinnon had received a request for documentation. Some of the documents (forms) were missing. These documents related to documentation of wound care as required by the Birches policy. I recall Ms. McKinnon telling me that the staff did not document on those specific forms, but there was documentation "all over the chart". My understanding of what she told me was that the documentation was in the progress notes versus on the forms and was sufficient to demonstrate good care.""	**Admissible.** This is context for relevant factual assertions made by the Applicant.
62	"Ms. Bonner's affidavit did not include copies of the deceased resident's Ocean View's records."	**Admissible.** This is not speculative. It is a factual assertion regarding non-disclosure. I refer to para. 11 above.
63	"Ms. Bonner's affidavit did not include copies of her pressure injury investigation records."	**Admissible.** This is not speculative. It is a factual assertion regarding non-disclosure. I refer to para. 11 above.
64	"Ms. Bonner provides a general commentary about the type of documents that: i. Were missing rather than a detailed listing of what specific forms were missing, ii. But has not provided a copy of the Birche's [sic] policy and/or related the [sic] forms to any policy provision, provided copies, and/or	**Admissible.** This is not speculative or argument. This is context for the Applicant's evidence. This is also not improper rebuttal. I refer to para. 16 of Schedule "B".

	iii. Explained why the information contained in the progress notes was not sufficient to satisfy the investigator's request."	
66	"I disagree with Ms. Bonner's paragraph 33 and 34 statements about what an appropriate response to the preliminary investigative report for BIRC-2021-01 should be and her she [sic] agreed I should state '"that there was nothing to add at this time" because "based on the preliminary findings, there was no defence that could made [sic] to the actions/inactions identified."	**Admissible.** This is not "argument" as that terms in understood in respect of inadmissible evidence. I refer to para. 25 above. This is also not improper rebuttal. I refer to para. 16 of Schedule "B".
67	"Neither Ms. Bonner's nor Ms. Cooper's affidavits included copies of the deceased's Ocean View records."	**Admissible.** This is not speculative. It is a factual assertion regarding non-disclosure. I refer to para. 11 above. This is not "argument" as that terms in understood in respect of inadmissible evidence. I refer to para. 25 above.
68	"Tracy Bonner's affidavit did not include copies of her pressure injury investigation records."	**Admissible.** This is not "argument" as that terms in understood in respect of inadmissible evidence. I refer to para. 25 above. This is not speculative. It is a factual assertion regarding non-disclosure. I refer to para. 11 above.
69	"Tracy's Bonner's [sic] affidavit did not include copies of any day time entries, notes, memos, statements, or reports of any kind that she made in relation to the investigation, in preparation for/or follow up meeting with Dion Mouland-Pettipas, Martha Cooper, Board meetings, Protective Persons [sic] m Care Act ("PPCA") investigator, Department of Health and Wellness, Nova Scotia College of Nurses, or with me that speaks to her statement that "I agreed this was an appropriate response because, based on the preliminary findings, there was no defence that could made [sic] to the actions/inactions identified.""	**Admissible.** This is not "argument" as that terms in understood in respect of inadmissible evidence. I refer to para. 25 above. This is not speculative. It is a factual assertion regarding non-disclosure. I refer to para. 11 above.
70	"My email exchange with Tracy Bonner	**Admissible.**

	reads: From: Yvonne McKinnon Yvonne.McKinnon@thebirchesns.ca Sent: September 1, 2022 9:18 AM To: Tracy Bonner TB0nner@oceanv.ca Subject: PPCA Morning Tracey [sic] I am going to send a note off to Stacy regarding the PPCA prelim report. That we have reviewed the report and have nothing to add at this time. Yvonne McKinnon, RN Director of Car TBNH To: Yvonne.McKinnon@ thebirchesns.ca; Tracy Bonner Sent: Thur 9/1/2022 9:31:21 AM Subject: RE: PPCA Just saw this now (was printing booklets with Janelle for TBNH lol!) I can't think of anything you could add that would make the case any better, so I think it is fair to send that message. I like the way you have worded it, "nothing to add at this time" is great. Thanks, Tracy Bonner, BSCN, RN Quality & Risk Manager (See Tracy Bonner affidavit, Exhibit 8)(emphasis mine)"	This is not "argument" as that terms in understood in respect of inadmissible evidence. I refer to para. 25 above. This is also not improper rebuttal. I refer to para. 16 of Schedule "B".
71	"Ms. Bonner's paragraph 35 description of what she said, i.e., "that there was nothing to add at this time" is incomplete. Ms. Bonner ended her statement by saying "'[sic]I like the way you have worded it, "nothing to add at this time" is great.""[sic]"	**Admissible.** This is not speculative or argument. This is context for the Applicant's evidence and it is not "argument" as that terms in understood in respect of inadmissible evidence. I refer to para. 25 above. This is also not improper rebuttal. I refer to para. 16 of Schedule "B".
73	"I advised Ms. McKinnon on September 7, 2022 about the conduct of a meeting	**Admissible.**

	scheduled for that day with the investigator Staci Corbett regarding BIRC-2021-01. Attached to Ms. Bonner's affidavit as Exhibit "9" is a copy of this email."	The nature of the evidentiary objection is not entirely clear although it appears to be a concern that Ms. Bonner's evidence is being relied upon improperly. This concern can be addressed in cross-examination and it subject to the Court's assessment as to credibility and assignment of evidential weight.
75	"Ms. Bonner did not include any meeting notes in her affidavit."	**Admissible.** This is not speculative. It is a factual assertion regarding non-disclosure. I refer to para. 11 above.
77	"I have reviewed Ocean View's Affidavit Disclosing Documents, Supplementary Affidavit of Documents, and additional disclosure provide in Ocean View's November 22, 2024 correspondence ("Ocean View's ADDs[sic]) No statements from Paula V., Kelly D. Bridge, Kim W., or any other employee were disclosed in Ocean View's ADDs, Ocean View's records, preliminary investigation records, or Ms. Bonner's affidavit."	**Admissible.** This is not speculative. It is a factual assertion regarding non-disclosure. I refer to para. 11 above.
79	"Ms. Bonner makes a number of statements that I disagree with in paragraph 43 of her affidavit. Paragraph 43 reads:"	**Admissible.** This is not an argument. It does not embody a legal conclusion. It is an assertion confirming a factual disagreement. It is subject to cross-examination, an assessment of credibility and assignment of evidential weight.
80	"When we met with Ms. McKinnon on October 6, 2022 we sat down with her for two hours and went through everything in the report. We explained to her that the care the resident had received was unacceptable. Ms. McKinnon denied that the care the resident received was poor and defended the nursing care the resident had received. She accepted no responsibility or accountability for what occurred with the resident. Despite me explaining to her that pressure injuries were identified within 1.5 hours of the resident being picked up by the ambulance from the Birches, Ms. McKinnon continued to deny that the Ministry could prove that the pressure injuries occurred	**Admissible.** The nature of the evidentiary objection is not entirely clear although it appears to be a concern that Ms. Bonner's evidence is being relied upon improperly. This concern can be addressed in cross-examination and it subject to the Court's assessment as to credibility and weight.

	while the resident was at the Birches."	
81	"Neither Ms. Bonner's nor Ms. Cooper's affidavits include the deceased resident's Ocean View records, the resident's chart, hospital records or notes made by either of them during the meeting."	**Admissible.** This is not speculative. It is a factual assertion regarding non-disclosure. I refer to para. 11 above.
85	"The investigator's final report does include [sic] any statement that the "pressure injuries were identified within 1.5 hours of the resident being picked up by the ambulance form the Birches." (See Bonner Affidavit, Exhibit 11)"	**Admissible.** This is not an argument as that term is understood in terms of admissible evidence. I refer to para. 25 above. This is a factual assertion subject to cross-examination, an assessment of credibility and weight.
86	"The investigator stated: "An internal medicine consultation record was received form the hospital. A physician progress note written on the consultation record from November 30, 2021 stated the following: "80 y/o with end stage dementia and sepsis. Source ? bedsores." (See Bonner Affidavit, Exhibit 11, Final Investigation Report, page 6, paragraph 35)"	**Admissible.** This is not "argument" as that terms in understood in respect of inadmissible evidence. I refer to para. 25 above. This is also not improper rebuttal. I refer to para. 16 of Schedule "B".
87	".... Neither Ms. Cooper nor Ms. Bonner wanted to discuss or hear anything I wanted to say about the findings of the investigator. ... Neither Ms. Cooper nor Ms. Bonner wanted to accept any responsibility for the facility being noncompliant well before I was hired ... ... Neither Ms. Cooper nor Ms. Bonner wanted to accept that the final report disclosed the "Source? bedsores" note that was drawn from the hospital records did not confirm the investigator's finding but rather raised it as a possibility. ... and put all the blame on me for the death of the resident and left the meeting. . . .I do not accept that I was responsible	**Admissible.** This is neither speculation nor "argument" as that terms in understood in respect of inadmissible evidence. I refer to para. 25 above. This is also not improper rebuttal. I refer to para. 16 of Schedule "B".

	or to blame of for the resident's death."	
88	"I again refer to the Nova Scotia Health and Wellness September 9, 2020 Licensing Inspection Report for the Birches. Paragraph 1 of the Report states: "L TCPR 6.2.16 The licensee shall ensure a stand-alone would care committee is implemented, or would care issues/practices are included as a standing agenda item on another appropriate committee (i.e.) Quality Committee) [sic] The committee shall be interdisciplinary ensuring that would prevention and management is regularly reviewed and revised to reflect leading practices and provincial direction and identify trends for quality improvement.""	**Admissible.** I refer to para. 46 above. It is also relevant to the issue just cause and compliance with the terms of employment.
89	"Martha Cooper was the Director of Care for the Birches in September 2021"	**Admissible.** Ms. Cooper's role and authority is relevant.
90	"I have reviewed the affidavits that Tracy Bonner and Martha Cooper have filed with the Court. Neither Tracy Bonner's nor Martha Cooper's affidavits include copies of the resident's Birches Nursing Home's records, resident file, care plan, chart, occurrence reports, post occurrence follow up reports for the resident who was the subject of the PPCA Report Birc-2021-05 - The Restraint of a Resident Investigation Hereinafter [sic] I collectively refer to these documents as ""Ocean View restrain resident investigation records.""	**Admissible.** This is not "argument" as that terms in understood in respect of inadmissible evidence. I refer to para. 25 above.
91	"Tracy Bonner's affidavit did not include copies of any file that she may have opened in relation her [sic] involvement in PPCA Report Birc-2021-05 - The Restraint of a Resident Investigation ("resident restraint investigation/investigation/restraint"), day timer entries, notes, memos, statements, or reports of any kind that she made in relation to the investigation, in preparation for/or follow up for meetings with Dion	**Admissible.** This is neither speculation nor "argument" as that terms in understood in respect of inadmissible evidence. I refer to para. 25 above. It is a factual assertion regarding non-disclosure. I refer to para. 11 above.

	Mouland-Pettipas, Martha Cooper, Board meetings, Protective Persons[sic] in Care Act ("PPCA") investigator, Department of Health and Wellness, Nova Scotia College of Nurses, or with me. Hereinafter I collectively refer to these documents as "pressure injury investigation records" .”	
95	“...The Birches should have inter-departmental and staff emails to corroborate my belief, but these have not been disclosed in Ms. Bonner's and Ms. Cooper's affidavits.”	**Admissible.** This is neither speculation nor “argument” as that terms in understood in respect of inadmissible evidence. I refer to para. 25 above. It is a factual assertion regarding non-disclosure. I refer to para. 11 above.
97	“As per paragraph 43 of my March 17, 2025 affidavit on June 20, 2023 I was advised by the College of Nurses that I was the subject of four complaints as referenced in the College of Nurses' June 20 and 203, 2023 correspondence to Ocean View and that an investigation had been opened. The complaints arose from and were based on the PPCA Report Birc-2021-05 - The Restraint of a Resident Investigation, PPCA Report Birc-20205 - The Restraint of a Resident Investigation [sic], The Non-Consensual Touching Investigation BIRC-2022-08 as described in Ms. Bonner's and Ms. Cooper's affidavits.”	**Partially admissible.** The complaints process is subject to statutory provisions creating confidentiality. The first part of this paragraph “As per paragraph 43 of my March 17, 2025 affidavit on June 20, 2023 I was advised by the College of Nurses that I was the subject of four complaints” is admissible. The balance is inadmissible as confidential. I refer to Schedule “A”, para 37.
98	“Attached to my affidavit as Exhibit 4 is a true copy of the College of Nurses June 20, 2023 Notice to Produce issued against the Birches. Copies of i. any relevant witness statements of current or former staff, management or residents, and ii. Any relevant correspondence to the nurse where the incidents are referenced have not been disclosed in Ocean View's ADD or Ms. Cooper's or Ms. Bonner's affidavits.”	**Inadmissible.** I refer to para. 37 of Schedule “A”.
Exhibit 4		**Inadmissible.** I refer to para. 98 above.
99	“On July 22, 2024 I was informed by the College of Nurses that the four complaints were dismissed at the investigative state in	**Partially admissible.** The first phrase **“**On July 22, 2024 I was informed by the College of Nurses that the four complaints

	their entirety."	were dismissed" is admissible. The balance of this paragraph shall be struck as it is subject to the confidentiality provisions of the *Nursing Act.* I refer to para. 37 of Schedule "A".
102	"The notes that Ms. Bonner says took [sic] in our August 30, 2022 meeting with the investigator were not included in her affidavit."	**Admissible.** This is not "argument" as that terms in understood in respect of inadmissible evidence. I refer to para. 25 above. It is a factual assertion regarding non-disclosure. I refer to para. 11 above.
103	"I disagree that I said, "that wasn't too bad" and that she replied by saying "yest it was bad, we have 15 deficiencies." I agree that we spoke about the deficiencies and what was required to correct them, but Ms. Bonner said what she now purports to say she did and it never took on the tone she suggests."	**Admissible.** This is not "argument" as that terms in understood in respect of inadmissible evidence. I refer to para. 25 above.
104	"I refer the Court's attention to Exhibit 27 of Ms. Bonner's affidavit, being the Minutes of the Board of Director's September 13, 2022 meeting whereby she stated: "14.0 Licensing Visits Tracy provided this update. Several thing were found; however, the items found occur in 90% of all homes.""	**Admissible** I refer to para. 26 of Schedule "B"**.**
109	"... neither of these tests [sic] are not [sic] included in Ocean View's ADDS or Ms. Bonner's affidavit."	**Admissible.** This is not "argument" as that terms in understood in respect of inadmissible evidence. I refer to para. 25 above. It is a factual assertion regarding non-disclosure. I refer to para. 11 above.
110	"I disagree with Ms. Bonner's statements that I was "nowhere near to completing the documents", and that I showed her "6 incomplete documents of the over 20 documents that we needed to complete". Ms. Bonner does not identify what documents were incomplete or identify the 20 that required completion...."	**Admissible.** This is not "argument" as that terms in understood in respect of inadmissible evidence. I refer to para. 25 above.
119	". . . Ms. Bonner advised the ministry that	**Admissible.**

	the delay in providing the documents was "due to significant technology challenges because of the hurricane. TBNH did not have restored internet services until yesterday at 4pm."	This is relevant as it goes to issues regarding employee compliance and just cause. This is not hearsay in that it is a statement attributed to party. It is subject to cross-examination, an assessment of credibility, and assignment of evidential weight.
120	"I have reviewed the affidavit that Tracy Bonner has filed with the Court. Ms. Bonner's affidavit did not include copies of the resident's Birches Nursing Home records, resident file, care plan, chart, occurrence reports, follow up reports, PPCA Notice of Investigation for BIRC-2022-06, preliminary of [sic] final investigation reports whose catheter had not been changed since her admission. Hereinafter I collectively refer to these documents as "Ocean View records for catheter resident"."	**Admissible.** This is not "argument" as that terms in understood in respect of inadmissible evidence. I refer to para. 25 above. It is a factual assertion regarding non-disclosure. I refer to para. 11 above.
121	"Tracy Bonner's affidavit did not include copies of any file that she may have opened in relation her [sic] involvement in the BIRC-2022-06 ("catheter investigation"), day timer entries, notes, memos, statements, or reports of any kind that she made in relation to the investigation, in preparation for/or follow up for meetings with Dion Mouland-Pettipas, Tracy Bonner, Board meetings, Protective Persons[sic] in Care Act ("PPCA") investigator, Department of Health and Wellness, Nova Scotia College of Nurses, or with me. Hereinafter I collectively refer to these documents as "catheter investigation records"."	**Admissible.** This is not "argument" as that terms in understood in respect of inadmissible evidence. I refer to para. 25 above. It is a factual assertion regarding non-disclosure. I refer to para. 11 above.
123	"I have reviewed paragraphs 97-101 of Tracy Bonner's affidavit and Exhibits 35 and 36. I am unable to determine the identity of the resident from the narrative and Exhibits."	**Admissible.** This relates to the Applicant's concerns regarding the evidence and her ability to respond factually to the allegations being made.
126	"I do not understand the relevance of Ms. Bonner's paragraph 102 statement that "continuing care workers were not permitted to document care of residents" to the catheter investigation or any other matter."	**Admissible.** This relates to the Applicant's concerns regarding the evidence and her ability to respond factually to the allegations being made.

Schedule "E"
Applicant's Objections to Affidavit of Tracy Bonner 2025 03 06

Paragraph	Impugned Words	Decision
Opening	Ms. Bonner's affidavit does not include a statement that she swears or affirms that her affidavit contains only information based on personal knowledge, or hearsay with a statement of the source and her belief of the information.	**This can be addressed in cross-examination.**
28/Exhibit 7	"Mr. Mouland-Pettipas included me on an August 25, 2022 email with Staci Corbett of the Department of Seniors and Long-Term Care which provided the preliminary investigative findings in BIRG2021-01. Attached as Exhibit "7" is a copy of this email and a copy of the preliminary report."	**Admissible subject to the comments at paras. 32 of Schedule "D"**.
31	"When I looked at the chart I was dumbfounded as Ms. McKinnon had told me the resident's chart was in good shape. The chart was in abysmal shape and revealed the following: i. As stated in paragraph 13 above, Ms. McKinnon had told me that the resident was palliative when in fact the resident was "full measures" and never deemed palliative. Full measures means that medical personnel would do everything	**Admissible.** I note that the Respondent objected to Ms. McKinnon including the Respondent's own evidence in her affidavit (see Schedule "C", para. 33). In any event, this evidence either refers to alleged statements by the Applicant (i.e. not hearsay) together with certain additional allegations regarding protocols that were not followed or documentation that was not contained in the file. These are factual assertions, not matters for which expert opinion is required. They are subject to cross-examination, an assessment of credibility and assignment of weight in the context of the totality of the evidence.

	possible to save the resident's life in a medical emergency. ii. The nurses caring for the resident had not for the three entire days prior to the resident being transferred to the hospital made any nurses' notes or any other documentation. iii. The resident had several full thickness wounds, and the Wound Care protocol was never implemented. iv. There was no Care Plan in the resident's file. v. There was no turning and positioning plan in the resident's file."	
37/Exhibit 11		**Admissible.** I refer to para. 32, Schedule "D".
56/Exhibit 19	"The final report in BIRG2021-01 was released on September 29, 2022. Attached as Exhibit "11" is a copy of the final report."	**Admissible.** I refer to para. 32, Schedule "D" and, as well, para. 97 of Schedule "D" given that this report was received after the Applicant's employment was terminated.
57/Exhibit 20	"The preliminary investigative report was received in this matter on December 6, 2022. Attached as Exhibit "19" is a copy of the preliminary investigation report related to this incident."	**Admissible.** I refer to para 56/Exhibit 19 above.
58	"The final investigative	**Admissible.**

	report into this incident was received on January 31, 2023. Attached as Exhibit "20" is a copy of the final investigative report."	I refer to para. 57 above.
59	Ms. McKinnon had already departed the Birches by the date this report was received having been terminated in October 2022. The final report contained a specific directive in respect to Ms. McKinnon. This directive provides as follows at p. 12 of the report: 8. During the investigation, the member of facility management who was assisting with the PPCA process did not schedule investigation reviews with many relevant staff, despite the investigator's attempts. Additionally, during the PPCA inquiry process, that same member of the facility management reported one-on-one education was completed with the implicated person on the facility's Least Restraint Policy, and that education for all staff on the facility's Least Restraint Policy would be offered. The implicated person and staff that were interviewed reported there was no education offered to them relating to the facility's Least Restraint Policy. As such, if this member of the facility management were to be employed at the facility, a process shall be developed	**Admissible.** I refer to para. 57 above.

	for them to receive education on the following: (a) the requirement to comply with PPCA, specifically section 9(2) of the Act which states "an investigator may require any person who is able, in the investigators opinion, to get information about a matter being investigated to". (6) leadership training, education on their role in the completion of internal investigations."	
60	"Further, the final report detail, amongst other things, many breaches of the facility's Least Restraint Policy, that the Birch's documentation standards and requirements were not followed, that charge staff did not intervene appropriately when the when the restraint was reported to them and that after restraint being required on two consecutive days, that staff did not explore referrals for a restraint order or other interventions."	**Admissible.** These are statements of fact within the affiant's personal knowledge. They are subject to cross-examination, an assessment of credibility and assignment of weight in the context of the totality of the evidence.
68	"As the Director of Care, who oversees nursing practice and establishes policy, Ms. McKinnon was responsible for conducting monitoring activities to ensure policies were carried out in accordance with legislative requirements and the Nova Scotia College of Nursing standards of practice. I saw no evidence of monitoring activity.	**Admissible.** These are statements of fact within the affiant's personal knowledge. They are not conclusory embodying a legal proposition or opinion. They are subject to cross-examination, an assessment of credibility and assignment of weight in the context of the totality of the evidence.

	Furthermore, Ms. McKinnon demonstrated a lack of concern for the importance of compliance."	
97	"I attended the Birches on August 29 and 30, 2022 as I wanted to present while the inspection was carried out given that it was the first inspection that Ms. McKinnon had participated in. During the inspection, Ms. Corbett came to me and asked that she be provided with the licensing status check on the RN's and LPN's as she did not see licensing status checks in their personnel files. I went to Ms. McKinnon and asked her to provide me with the licensing status checks. I assumed she kept it as a separate list. Ms. McKinnon informed me that she did not check the licensing status of any RN's or LPN's that were hired since she took over the role as Director of Care. She said she accepted that they had a valid license if they applied for the position. This statement shocked me. The fact that she did not complete the license checks as required by the Nova Scotia Long Term Care Program Requirements was unfathomable to me. I directed her to immediately check to determine if all the RN's and LPNs were licensed. This task can be completed online in a matter on minutes. I further	**Inadmissible.** This is evidence from a third party (Ms. Landry who was originally identified as a witness but did not offer an affidavit). The email referenced in this affidavit is not attached. In any event, it is being offered for its truth and is hearsay. It is not subject to any exception and the Court's residual discretion is not engaged.

	directed her that if she discovered that that any RN or LPN was currently working on the floor and was not licensed that they were to be immediately sent home. I further directed her, that if she determined that an RN or LPN who was not working was unlicensed, she was to contact them immediately and advise them that there were not able to work. Ms. McKinnon was able to quickly prepare a list which I then passed on to Ms. Corbett. Had I not been in attendance for the inspection, Ms. Corbett would have gone to Ms. McKinnon seeking the licensure checks. The fact that Ms. McKinnon would have to have told Ms. Corbett that she had not carried them out would have been another serious contravention of the Nova Scotia Long Term Care Program Requirements and would be noted as a deficiency in the report."	
98	"Ms. Landry informed me by email dated October 17, 2022 of a resident who had been at the Birches since May 2022 and had never had her catheter changed. It required intervention at the Emergency Department to remove and change the catheter."	**Inadmissible..** See para. 97 above.
99	"I was stunned that this could occur, as we had a catheter audit policy which	**Inadmissible.** See para. 97 above.

	should prevent this very thing from happening. I had created, educated and implemented a catheter audit protocol across both Ocean View and the Birches many months prior to this resident moving in. Had the audit protocol been in place and completed weekly or monthly as per standard work protocol, staff would have picked up the error and saved the resident from the negative effects they experienced. Ms. McKinnon was aware of catheter audit protocol through discussions at monthly Quality Committee meetings and conversations l had with her and her manager onsite."	
102	"In short, we had a catheter audit policy that had not been implemented for this resident. There should have been a catheter audit attached to this resident's chart. There was not."	**Inadmissible.** This affiant's reaction to information contained in the referenced report is irrelevant. While post-termination evidence may be relevant, this affiant's information is entirely derivative and her reactions to discoveries made while reading another report are of no legal consequence. The report referenced in this paragraph is addressed above.
	"As I assisted with the management of the Birches following Ms. McKinnon's termination I was continually shocked by the processes and procedures Ms. McKinnon allowed to occur. I was particularly shocked that continuing care workers were permitted to not document care of residents. This was particularly upsetting due to the issues raised in BIRG2021-0l. I discovered this while assisting with investigations by the	

	Ministry of incidents that occurred while Ms. McKinnon was the Director of Care but were not discovered until after she had been terminated.”	