

CITATION: Moore v. College of Chiropractors, 2025 ONSC 6190
DIVISIONAL COURT FILE NO.: 338/24
DATE: 20251105

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

D.L. Corbett, K. Coats, S. Nakatsuru, JJ.

BETWEEN:)
)
)
BRIAN MOORE) *Antoine D’Ailley*, Counsel for the Appellant
)
Appellant)
)
- and -)
)
COLLEGE OF CHIROPRACTORS OF) *Megan Shortreed, Karen Jones*, Counsel for
ONTARIO) The Respondent
)
Respondent) **HEARD at Toronto:** June 11, 2025

2025 ONSC 6190 (CanLII)

REASONS FOR DECISION

S. Nakatsuru J.

[1] Dr. Brian Moore appeals from the decision rendered by a panel of the Discipline Committee of the College of Chiropractors of Ontario (the “College”) on November 8, 2023, finding Dr. Moore guilty of 11 acts of professional misconduct pursuant to s. 51(1)(c) of the *Health Professions Procedural Code of the Chiropractic Act*, 1991, S.O. 1991, c. 21. The appellant contests each of the 11 findings as well as the Panel’s penalty and costs decisions, which ordered, among other things, a fifteen-month suspension and costs to the College in the amount of \$690,376.24.

[2] For the following reasons I would allow the appeal on costs but would otherwise dismiss the appeal.

A. FACTUAL BACKGROUND

[3] The appellant is a chiropractor and sole practitioner at his clinic in Aurora, Ontario. He provides conventional chiropractic treatment and a form of mechanical traction known as “decompression therapy”.

[4] The complainant, Patient A, and her husband attended the appellant’s clinic on August 26, 2019,

to pursue treatment options for Patient A's back pain. Patient A suffered chronic pain and was in a "fragile" state at the time. After assessing her, the appellant recommended a plan for decompression treatment along with conventional chiropractic sessions. He offered to provide this treatment for a "block fee" of \$7,570 paid up front pursuant to the "Corrective Care Decompression Plan". Patient A agreed, and the husband paid the \$7,570 with his credit card on August 27, 2019. He requested a receipt but did not receive one.

[5] The appellant's proposed plan consisted of 30 decompression sessions. However, given her frail state, Patient A was unable to tolerate decompression treatments as they required her to lie still for over 30 minutes, which caused too much pain. The appellant explained that he would proceed with the conventional chiropractic treatment until the pain subsided and she could withstand decompression. After 10 chiropractic sessions, however, Patient A's condition did not improve, and she discontinued treatment on September 12, 2019. Though Patient A was no longer being treated, her husband continued to communicate with the appellant primarily through text and phone calls regarding her condition. On September 28, 2019, he asked the appellant for a medical report on Patient A's condition that he could provide to other treating physicians.

[6] The husband also received his own chiropractic treatment from the appellant from September 27 to October 9, 2019. Rather than paying for each session one at a time, he allowed the appellant to draw from the block fee he paid on August 27, 2019, for Patient A's treatment. However, contrary to this arrangement, and without speaking with Patient A first, the appellant later transferred \$3,034 from Patient A's account to create a new account for the husband.

[7] On October 16, 2019, the husband advised the appellant that he no longer wanted treatment and requested his statement of account. He also asked the appellant again to supply a medical report for Patient A. The appellant finally provided both documents on December 6, 2019. With respect to the statement of account, the appellant placed these in an envelope and left them outside, attached to the entrance of his clinic for Patient A and her husband to pick up. Once they did, they were shocked by some of the charges, including \$1,345 for Patient A's chiropractic fees; \$1,800 for the medical report; and \$2,920 in non-itemized "administrative fees" for a total of \$6,065, leaving only \$1,160 in her account.

[8] According to the appellant, these "administrative fees" were for the text messages and calls he exchanged with the husband regarding Patient A's condition, even after she ceased treatment. The husband was not aware he was being charged for this.

[9] Patient A and her husband complained, especially about being charged for the medical report, which they did not expect. The appellant responded on December 17, 2019, saying he would provide a revised statement and a cheque for a \$1,910 refund. He left the package outside his clinic entrance again for them to retrieve. Patient A cashed the refund, but the new statement was similar to the previous one and included additional charges and administrative fees, unauthorized payments, and was updated to account for the husband's treatments. Only \$1,910 was left in the account. Patient A and her husband wrote to the College asking for refunds for the administrative and medical report fees.

[10] The husband also contacted his bank, CIBC, to dispute his August 27 block payment of \$7,570. The appellant was notified of the dispute by a letter sent by Chase Merchant Services ("Chase") and invited to respond. He provided Chase with evidence documenting services provided to Patient A which contained her personal health information and accounts for both her and her husband. He also included a

“Billing Summary” which provided a more detailed and itemized list of charges. As part of the dispute resolution process, these documents were eventually forwarded to the husband by his bank and shed light on what the appellant was charging them for.

B. THE DISCIPLINARY PROCEEDING

1. The Recusal Motion and Decision – November 15, 2022

[11] On November 4, 2022, prior to the start of his Discipline Committee hearing, the appellant brought a motion to disqualify Panel Member Robert MacKay from chairing or sitting on the panel of the Discipline Committee (the “Panel”). He argued Mr. MacKay’s appointment to the Discipline Committee was unlawful and contrary to the College’s own By-laws.

[12] The appellant made two arguments that are relevant to this appeal. First, he noted that Mr. Mackay is not a chiropractor himself, and thus a “non-member” pursuant to the College By-laws. The only way non-members may be appointed to committees is through By-Law 18 as a “Non-Chiropractic Committee Member”. Mr. MacKay was appointed under By-Law 18 immediately after it was amended to allow such appointments on November 21, 2021. However, as the By-Law itself stated, it did not officially come into force until February 25, 2022. His appointment was therefore defective and made without legal authority.

[13] Second, the appellant argued that Mr. MacKay was temporarily disqualified from serving on the Discipline Committee for having previously served as a member of the Council of the College of Nurses of Ontario from 2015 to 2017. His authority for this argument was By-Law 12.10(h), which stated that Council shall disqualify a member appointed to a committee if they become a member of any other health profession.

[14] Both arguments were rejected by Member MacKay, who presided over the motion. He found that the effective date By-law 18 was brought into force was the date the College Council approved the amendment to the By-law, which was just before Mr. MacKay was first appointed. While the “effective date” of February 25, 2022, was later added to the header of By-law 18, this was not determinative. In any event, he had since been re-appointed a second time on April 21, 2022, well after the February 25, 2022, date in question.

[15] On the disqualification argument, Member MacKay found that By-law 18.1 set out the conditions of eligibility for his appointment to a committee, and that he met all the conditions. He also found that none of the criteria in By-law 12.10 applied to him. After dispensing with various other arguments including reasonable apprehension of bias, he dismissed the motion.

2. Qualification of Dr. Deltoff as an expert – April 18, 2023

[16] At the hearing, the appellant led evidence from four witnesses. This included an expert, Dr. Igor Steiman, to opine on the College’s mandate and how complaints should be handled. The appellant wanted to call a Dr. Marshall Deltoff as his expert, but the Panel declined to qualify Dr. Deltoff in oral reasons delivered April 18, 2023.

3. Liability Decision

[17] On the merits of the decision, the Panel of the Discipline Committee determined that the appellant committed all 11 acts of professional misconduct as alleged.

[18] **Allegation #1:** The Panel found that the appellant contravened a standard of practice of the profession or failed to maintain the standard of practice expected of members of the profession with respect to the assessment, treatment, documentation, and/or billing regarding Patient A.

[19] With respect to assessment standards, the Panel found that when the appellant first met with Patient A on August 26, 2019, she was fragile and in pain. On cross-examination, the appellant agreed that she was unable to tolerate long assessments and had difficulties sitting and standing even for short periods. Despite these observations, he recommended decompression treatment during their meeting the next day even though this requires patients to lie still for a length period. Patient A was ultimately unable to undergo this treatment because of her ailments. The Panel found that the appellant's assessment and treatment of Patient A contravened the standard of practice expected of members in the profession.

[20] The Panel also identified various issues regarding informed consent. It found that the appellant made questionable representations on the success of his treatment during his August 27 meeting with Patient A. The appellant seemed to convey that decompression would be a sure success and that her pain would "disappear", which was a misrepresentation of the treatment. Furthermore, the Corrective Care Decompression Plan he identified and provided to Patient A did not include frequency of chiropractic care visits.

[21] The Panel additionally found that the appellant failed to abide by the standard of practice in keeping secure patient records. The appellant left sensitive health and financial documents outside of his office, after hours, for the complainant to retrieve. This contributed to allegations #2 and #4 as well.

[22] Finally, the appellant failed to meet the standards for fee disclosure. Patient A and her husband were left confused and shocked by the "administrative fees" and the fee charged for the medical report. Furthermore, the billing arrangement he presented to patient A lacked an option to "pay as you go" and the per visit cost was never specified.

[23] **Allegation #2:** The Panel found that the appellant gave information about Patient A to a person other than the patient, her authorized representative, or the appellant's legal counsel or insurer, without the consent of the patient or her authorized representative or as required or allowed by law.

[24] The appellant committed this act of misconduct in his response to Chase regarding the husband's dispute of the August 27 block fee. In his responding letter to Chase, the appellant included an account he had given Patient A, which revealed her name, address, phone number, date of birth, and the type and frequency of treatments she received. He also suggested she suffered mental health conditions including "significant anxiety, emotional, and suicidal tendencies" without any authority to make such diagnoses.

[25] **Allegation #3:** The Panel found that the appellant breached an agreement with Patient A relating to professional services for the patient or fees for such services and failed to disclose to Patient A the fee for a service before the service was provided, including a fee not payable by the patient.

[26] The appellant breached the agreement he entered with Patient A regarding prepaid fees. Their agreement stipulated that additional fees for consulting time and adjustments would not be deducted (i.e., paid) from the prepaid account balance. Notwithstanding this restriction, his account statements show the appellant deducted previously undisclosed administration fees, a fee for a medical report, and even transferred funds from Patient A's account to her husband's account to cover his chiropractic services. These findings also reinforced allegation #8.

[27] **Allegation #4:** The Panel found that the appellant failed to keep records as required by the regulations regarding Patient A.

[28] The Panel found that the appellant committed misconduct by leaving the complainant's medical information and statement of accounts outside his office, easily accessible by others. Failure to secure these sensitive documents was careless and constituted misconduct.

[29] **Allegation #5:** The Panel found that the appellant failed, without reasonable cause, to provide a report or certificate relating to an examination or treatment performed for Patient A within a reasonable time after the patient requested such report or certificate.

[30] Patient A's husband requested a medical report documenting Patient A's physical state for the first time on September 28, 2019. The appellant testified at the hearing that he provided the report by December 6, 2019, but only after repeated requests to do so. The Panel took guidance from the 30-day limit in s. 54(2) of the *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Schedule A, in concluding the appellant's two-month delay was unreasonable. The appellant also failed to communicate or explain to Patient A or the husband why he may have needed additional time.

[31] **Allegation #6:** The Panel found that the appellant signed or issued, in his professional capacity, a document that he knew contained a false or misleading statement.

[32] The appellant had given various discrepancies and inconsistencies in the statements of account he provided. For instance, accounts covering August to December 2019 included unsubstantiated administration fees over \$2,900. The amounts he charged for texts and phone calls were unauthorized since neither the husband nor Patient A were ever made aware they would be charged for these communications. Furthermore, if the appellant had intended to charge for calls and texts he had with the husband, he was required to include details of them in his accounts to Patient A. Referring to these simply as "administrative fees" was erroneous and inadequate.

[33] Further, the appellant's letter and accounts sent to Chase included a \$750.00 fee for "Research morphine and drugs" and a negative payment of \$1,360.00, neither of which were substantiated.

[34] The Panel also noted that in his letter to Chase, the appellant not only improperly included private health information but also suggested Patient A suffered from mental health conditions, including "suicidal tendencies". He was in no position to diagnose this.

[35] **Allegation #7:** The Panel found that the appellant submitted an account or charge for services that he knew was false or misleading regarding Patient A. The findings were those included in allegation #6.

[36] **Allegation #8:** The Panel found that the appellant failed to disclose to Patient A the fee for a service before the service was provided, including a fee not payable by the patient. The findings were those in allegation #3.

[37] **Allegation #9:** The Panel found that the appellant charged a block fee when a) the patient was not given the option of paying for each service as it was provided; b) no unit cost per service was specified; and c) he did not agree to refund to the patient the unspent portion of the block fee, calculated by reference to the number of services provided multiplied by the unit cost per service.

[38] As discussed under allegation #1, the Panel found that the billing arrangement the appellant presented to patient A lacked an option to pay as you go and did not specify a per visit cost.

[39] **Allegation #10:** The Panel found that the appellant failed to itemize an account for professional services when requested to do so by the patient and/or the account included a fee for a product or device or a service other than a treatment. The findings were those referred to in allegation #6.

[40] **Allegation #11:** The Panel found that the appellant engaged in conduct or performed an act, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional with respect to his assessment, treatment, documentation and billing regarding Patient A.

[41] The Panel found that each of the substantiated allegations above contributed to a finding that the appellant's overall conduct would be reasonably regarded as disgraceful, dishonourable, and unprofessional.

4. Penalty Decision

[42] The parties failed to agree on a schedule to exchange written submissions on penalty and were required to attend an in-person hearing on December 13, 2023, to make submissions. Neither the appellant nor his counsel, Mr. D'Ailly, attended. The appellant requested an adjournment two days before the hearing was scheduled to take place. The Panel did not have time to consider the motion in advance of the hearing due to late delivery. The Panel recessed the hearing, granted the adjournment, and ordered a hearing in writing.

[43] In its Penalty Decision, the Panel cited numerous aggravating factors, including the appellant's prior history with the College spanning from 1991-2016 and various complaints before the Inquiries, Complaints and Reports Committee of the College ("ICRC"). It also noted that Patient A was vulnerable, in pain and in need of care, as well as the intentional nature of Dr. Moore's conduct in creating false and misleading documents, and the improper disclosure of Patient A's personal information. No mitigating factors were identified.

[44] The Panel ultimately ordered:

- A reprimand
- A 15-month suspension, with 3 months of the suspension to be suspended if Dr. Moore completed certain remedial measures within a year;

- The imposition of terms, conditions, and limitations;
- Successful completion of the College’s regulatory Excellence Workshop and Legislation and Ethics Examination at his own expense;
- The provision of a written undertaking to the Registrar that he has reviewed, and will comply with, all College By-laws, standards, regulations and guidelines;
- Peer assessment following his return to practice at his own expense; and
- Mentoring for a 2-year period following his return to practice at his own expense.

5. Costs Decision

[45] The costs decision was issued on May 2, 2024. The Panel ultimately concluded that this was an appropriate case to order costs indemnifying the College. It noted the College’s success in proving all 11 allegations, the many “meritless” and irrelevant defences advanced by the appellant, previous cautions he received from ICRC, and his various delay tactics and lack of preparedness.

[46] The Panel ordered the appellant to pay the College \$690,376.24, which was 60% of the costs and expenses the College incurred in legal costs and expenses, and the costs and expenses of the hearing.

C. THE ISSUES ON APPEAL

[47] The appellant raises numerous grounds of appeal. Most were left in writing for the court to consider while the appellant focused in oral submissions on just a few. The grounds of appeal are:

1. Did Member MacKay err in dismissing the appellant’s motion for recusal?
2. Did the Panel err in deciding not to qualify Dr. Deltoff?
3. Did the Panel err in declining to admit Dr. Shankar’s report?
4. Did the Panel violate procedural fairness regarding written submissions on liability?
5. Did the Panel violate procedural fairness regarding the penalty phase?
6. Did the Panel err in finding that the appellant committed unauthorized disclosure of personal health information (Allegation #2)?
7. Did the Panel err in finding that the appellant failed to disclose fees, and that the payment agreement was breached? (Allegations #3 and #8)
8. Did the Panel err in finding that the appellant failed to provide his report to Patient A within a reasonable time? (Allegation #5)

9. Did the Panel err in finding that the appellant knowingly issued false documents? (Allegations #6 and #7)
10. Did the Panel err in finding he improperly charged a block fee?
11. Did the Panel err in finding that the appellant failed to itemize an account for professional services when requested to do so by the patient and/or the account included a fee for a product or device or a service other than treatment? (Allegation #10)
12. Did the Panel err in substantiating allegations #1, #4, and #11?
13. Was the Panel's penalty decision unreasonable?
14. Did the Panel impose excessive costs?
15. Are the Panel's decisions invalid for having not been signed by all Panel members?

D. THE STANDARD OF REVIEW

[48] The standard of review on this statutory appeal is set out in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235. Errors of law are reviewed on a correctness standard. For errors of fact, there must be a palpable and overriding error. Errors of mixed fact and law also require a palpable and overriding error unless there is an extricable error of law or principle, which is reviewed on a correctness standard. The standard of review on questions of procedural fairness in the context of a statutory appeal is correctness: *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29, 470 D.L.R. (4th) 328, at paras. 27, 30.

[49] With respect to the appeal from penalty, the appellant must show that the Panel made an error in principle or that the penalty was clearly unfit. To be clearly unfit, the penalty must be disproportionate or fall outside the range of penalties for similar offences in similar circumstances: *Gill v. College of Physicians and Surgeons of Ontario*, 2022 ONSC 49 (Div. Ct.), at para. 82.

E. ANALYSIS

1. Did Member Mackay err in dismissing the appellant's motion for recusal?

[50] This was an issue that the appellant focused on in his appeal. Thus, I set out the position of the parties.

The Appellant's Position

[51] The Chair of the Panel, Member Robert Mackay, is not a chiropractor and was appointed November 25, 2021, to the Discipline Committee by the College Council.

[52] The College's statutory committees (such as the Discipline Committee) are comprised of members and non-members of the chiropractor profession. Eligibility requirements for committee appointments vary depending on membership status. The College By-law 12 governs appointment of "Non-Council Members" (i.e., chiropractors who have not been elected to Council). The College By-law

18 governs appointment of “Non-Chiropractic Committee Members” (i.e., persons who are not chiropractors or Council members). Member Mackay falls into this latter category.

[53] The appellant argues that three By-laws – 18.1(b), 18.1(e), and 12.10(h) – operate together to disqualify Member MacKay from committee eligibility.

[54] First, By-law 12.10(h) states that “Council shall disqualify a member appointed to a committee from sitting on the committee if the member becomes a member of the Council of the College of Chiropractors of Ontario or a committee of any other health profession.” From 2015 to 2017, Member MacKay served as a member of the Council of the College of Nurses of Ontario.

[55] Since Member Mackay is not a chiropractor/member, By-law 12.10(h) does not directly apply to him and By-Law 18 governs instead. However, the appellant focuses on two eligibility requirements under 18.1:

18.1 An individual is eligible for appointment to a committee as a Non-Chiropractic Committee Member if, on the date of the appointment:

(b) The individual has not been disqualified from serving on Council or a committee within the six years immediately preceding the appointment;

...

(e) The individual would not be disqualified from serving as a Non-Council Member if the individual were a Member.

[56] The appellant submits that given his membership in another health profession within six years of his appointment, Member Mackay should have failed these requirements. With respect to 18.1(e), Member MacKay would be disqualified if he were a member because By-Law 12 would then govern, and he would be disqualified pursuant to 12.10(h) given his prior membership. The appellant submits that the six-year window in 18.1(b) means Member Mackay would not be eligible to sit on the Discipline Committee until June 29, 2023, six years after leaving the College of Nurses.

[57] Thus, Member Mackay should have recused himself as he was not qualified to sit.

The Respondent’s Position

[58] The respondent submits that the appellant’s proposed interpretation of the By-laws runs completely counter to basic principles of statutory interpretation and their plain language. Even if Member Mackay was a member/chiropractor and the disqualification criteria in 12.10(h) were read into By-law 18.1, it is not clear why this would have a retroactive effect of extending disqualification criteria six years preceding his appointment in 2021.

[59] To adopt the appellant’s proposed interpretation of By-law 18 would require the court to ignore the ordinary meaning of the words in By-law 18.1 and, as admitted by appellant, “pretend” that “individual” means “chiropractor” despite the deliberate distinction between the two made in the scheme. It would also require concluding that By-law 12.10 was intended to have a 6-year retroactive effect, which

is not stated in the By-law.

Discussion

[60] Given that resolution of this ground of appeal centers solely on the interpretation of the College's By-laws, the standard of review is correctness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at paras. 36-38; *Bell Canada v. Canada (Attorney General)*, 2019 SCC 66, [2019] 4 S.C.R. 845, at paras. 34-35; *International Air Transport Association v. Canada (Transportation Agency)*, 2024 SCC 30, 496 D.L.R. (4th) 385, at para. 25; 2222868 *Ontario Inc. v. Grimsby (Town)*, 2020 ONCA 376, 1 M.P.L.R. (6th) 163, at para. 32.

[61] The modern rule of statutory interpretation requires that the words of a statute be read “in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21, citing Elmer A. Driedger, *Construction of Statutes, 2nd ed.* (Toronto: Butterworths, 1983), at p. 87; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 29. The goal of the interpretive exercise “is to find harmony between the words of the statute and the intended object”: *R. v. Breault*, 2023 SCC 9, 481 D.L.R. (4th) 195, at para. 26, quoting *MediaQMI inc. v. Kamel*, 2021 SCC 23, [2021] 1 S.C.R. 899, at para. 39.

[62] It is worth pointing out that the text must still anchor the interpretative exercise: *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43, 498 D.L.R. (4th) 316 at para. 24.

[63] I find that the By-laws do not disqualify Member MacKay from sitting on the Discipline Committee.

[64] Member MacKay was appointed a member of the Discipline Committee under By-law 18, the “Appointment of Non-Chiropractic Committee Members”. The By-law refers to “individuals” as opposed to “members”. By-law 18.1 reads in its entirety:

An individual is eligible for appointment to a committee as a Non-Chiropractic Committee Member if, on the date of the appointment:

- (a) The individual resides in Ontario;
- (b) The individual has not been disqualified from serving on Council or a committee within the six years immediately preceding the appointment;
- (c) The individual has never been a Member;
- (d) The individual does not have a conflict of interest in respect of the committee to which they are to be appointed; and
- (e) The individual would not be disqualified from serving as a Non-Council Member if the individual were a Member.

[65] The argument raised by the appellant appears to be that if By-law 18.1(b) and (e) are read together, then anything that would disqualify a member (i.e. a chiropractor) from being appointed to a committee, would also render a non-member ineligible for a six-year period. The appellant then turns to By-law 12.10(h) for a reason for a disqualification. “[I]f [Mr. MacKay] were a Member” he would have been subject to disqualification from 2015-2017 given his prior membership in Council for the College of Nurses.¹

[66] In my view, this argument does not succeed because By-law 18.1(b) and (e) cannot be read together to infuse the provision, By-law 18.1(e), with the same six year “cooling-off” or “time out” period that is found in the provision, By-law 18.1(b). The provisions (a) to (e) are each individual and discrete qualifications that collectively must be met for appointment eligibility. By-law 18.1(b) prevents an individual from serving due to past “disqualifications” of that individual for a six-year period preceding the date of the appointment. It is not disputed that Member MacKay never was so disqualified. By contrast, By-law 18.1(e) refers to the current situation where an individual would be ineligible for appointment at the time of the date of appointment. An individual “is eligible” if they would not be disqualified from serving if they were a Member/a chiropractor. It is only in the present, then, that By-law 12 dealing with the “Appointment of Non-Council Members” to a committee of the College becomes relevant. The text and structure of By-law 18.1 make this abundantly clear.

[67] This interpretation makes sense given the objectives of the governing legislation which is to protect the public and regulate the health profession. To do that, the committees of the College must have members who are capable of fairly and competently performing their duties and being perceived by the profession and the public in doing so. Thus, an individual who has been disqualified in the past does not become eligible to serve on a committee for a six-year period. However, an individual applicant is also not eligible if they would currently be disqualified to sit on a committee if they were a member of the College.

[68] The various provisions of By-law 12.10 also support this interpretation. In that By-law, the grounds for disqualification (as opposed to eligibility requirements) for Non-Council Members sitting on committees are matters that are contemporary and not historical.

The Council shall disqualify a member appointed to a committee from sitting on the committee if the member:

- (a) is the subject of any disciplinary or incapacity proceeding;
- (b) is found to have committed an act of professional misconduct or is found to be incompetent by a panel of the Discipline Committee;
- (c) is found to be an incapacitated member by a panel of the Fitness to Practice Committee;
- (d) fails to attend two consecutive meetings of the committee or of a subcommittee in which he/she is a member, without reasonable cause

¹ By-law 12.9, which sets out the “eligibility” requirements for appointment of a Non-Council Members to committee, does not apply since By-law 18.1 is the By-law that refers to “disqualified.” It is not suggested that By-law 12.9 does.

in the opinion of Council;

(e) fails to attend a hearing or review of a panel for which he/she has been selected; without reasonable cause in the opinion of the Council;

(f) becomes an employee, officer or director of any professional chiropractic association such that a real or apparent conflict of interest may arise, including but not limited to being an employee, officer or director of the OCA, CCA, CCPA, AFC, CCEB, CSCE or the Accreditation Standards and Policies Committee or the CCEC of the FCC;

(g) becomes an officer, director or administrator of any chiropractic educational institution, including but not limited to CMCC or UQTR;

(h) becomes a member of the Council of CCO or a committee of any other health profession;

(i) breaches the conflict of interest provision(s) for members of Council and committees, in the opinion of the Council after giving notice to the member of the concern and giving the member an opportunity to respond to the concern;

(j) fails to discharge properly or honestly any office to which he/she has been appointed or engages in conduct unbecoming of a committee member, in the opinion of the Council after giving notice to the member of the concern and giving the member an opportunity to respond to the concern;

(k) becomes in default of payment of any fees prescribed by by-law or any fine or order for costs imposed by the Discipline Committee;

[69] Consequently, I conclude that the Panel's decision on the recusal motion was correct.

2. Did the Panel err in deciding not to qualify Dr. Deltoff?

[70] The appellant submits that the Panel incorrectly applied the *R. v. Mohan*, [1994] 2 S.C.R. 9 factors in declining to qualify Dr. Deltoff as an expert on the standards of practice of the chiropractic profession. It is argued that the Panel disregarded Mr. Deltoff's past involvement as president of the College, relying on *Mohan* which instructs that the test for qualifying experts should not be applied too stringently. And since the error was in applying the test itself, the appellant submits this ruling is reviewable on a correctness standard.

[71] I would not give effect to this ground of appeal.

[72] First, the ruling is a question of mixed fact and law and reviewable on the grounds of palpable and overriding error. The issue was the application of the test for the admissibility of expert evidence to the facts of Dr. Deltoff's qualifications. In the Panel's view of one of the *Mohan* factors, the qualifications of Dr. Deltoff were lacking.

[73] Second, the Panel did not get the test wrong. The Panel reviewed and applied the relevant principles of law as set out in *Dulong v. Merrill Lynch Canada Inc.*, 80 O.R. (3d) 378 (Sup. Ct.), at para. 8 and *R. v. Evans*, 2019 ONCA 715, 147 O.R. (3d) 577, at para. 134, which, among other things, specifically describe the factors for admissibility of expert evidence contained in *Mohan*.

[74] Third, contrary to the appellant's submissions, the Panel decision did not turn on the *Mohan* factor of whether the expert evidence was necessary. This is clear from the ruling as well as its reference to para. 21 of *Dulong*. Thus, any criticism of the Panel's use of the word "useful" must be seen in that context. Said differently, the reference to "useful" is not an indication of any error of law.

[75] Fourth, the appellant has not identified any error in the reasons. The Panel's decision was a reasonable one. The Panel found Dr. Deltoff: a) was significantly lacking in clinical experience (he had expertise in radiology which was not an issue in the case); b) had not taught or published in the relevant areas; and c) although he had had historical involvement with the College, the involvement was not sufficient to give him the special or peculiar knowledge required of an expert. The Panel thus declined to qualify him as an expert in this case on the specific issues identified by the appellant's counsel.

3. Did the Panel err in declining to admit Dr. Shankar's report?

[76] The appellant very briefly submits that the Panel improperly declined to admit into evidence investigative notes prepared by the College investigator, Dr. Shankar, during the appellant's cross-examination. He submits that they were admissible under the traditional business record exception to the hearsay rule.

[77] As a question of mixed fact and law, no palpable and overriding error has been shown in the Panel's ruling. The notes of Dr. Shankar were just being used to refresh his memory when the appellant tried to make them an exhibit. Thus, the Panel ruled them to be inadmissible.

[78] The appellant never asked that the notes be admitted under the business record exception to the hearsay principle at the hearing. Given their nature, I cannot see how the notes would be admissible on this basis.

4. Procedural Fairness – written submissions on liability

[79] The appellant submits he was denied procedural fairness as he was advised by the Panel on August 17, 2023, that if he wished to provide written submissions, they had to be filed by August 22, 2023. No written submissions were provided. On appeal, no other submissions such as any prejudice this may have caused, were made.

[80] I do not agree that appellant was denied procedural fairness by this.

[81] The opportunity to present written submissions as well as to make oral submissions was offered by the Chair of the Panel at the start of the hearing more than six months in advance of the date of closing

submissions. The date for closing submissions was set almost three months in advance. On August 17, 2023, counsel for the appellant served a notice of motion for an order permitting the appellant to provide written closing arguments 45 days following the oral closing arguments. The next day, the appellant withdrew the motion. On August 21, 2023, the appellant's counsel confirmed on the record that the motion had been withdrawn. When asked whether he planned to deliver Dr. Moore's written submissions, counsel responded the appellant was not in a position to provide written submissions. No good reason was given for this statement. Counsel had the opportunity to provide written submissions and chose not to do so.

[82] I find that the appellant was treated fairly by the Panel on this issue.

5. Procedural Fairness – Penalty Decision

[83] The Panel denied the appellant's December 13, 2023, request for an adjournment to compile and file affidavit evidence in support of his position on penalty. Instead, the Panel ordered the appellant to file any affidavits with respect to penalty that would be subject to cross-examination by December 22, 2023. The Panel ordered the parties to complete cross-examinations no later than January 3, 2024.

[84] The appellant submits that he was denied procedural fairness by this schedule for penalty submissions.

[85] There is little merit to this ground of appeal.

[86] On November 8, 2023, the Panel invited the parties to agree on a schedule to exchange written submissions, failing which a penalty hearing would be held on December 13, 2023. The parties could not agree on a schedule and the appellant brought a motion on December 13, 2023, requesting, among other things, an adjournment of the penalty hearing and an order that penalty submissions be made in writing. Both requests were granted on a schedule agreed to by the appellant's counsel. The Panel subsequently received written submissions from the College but not the appellant. The Panel then received advice from its independent legal counsel and both the College, and the appellant made written submissions on the independent legal counsel's advice. Thus, the Panel did grant the appellant the adjournment he requested, set the date for the provision of affidavits to the date he specifically requested, and provided for a break over the holidays.

[87] While in oral submissions on the appeal, counsel submitted that the timing reduced the available pool of patients who would have provided affidavits at the penalty hearing, no evidence substantiates this submission.

[88] I find that no unfairness arises from the scheduling of the penalty hearing. Overall, considerable latitude was given to the appellant to fully participate in the penalty hearing. It would appear most, if not all, of the difficulties complained about came from defence action or inaction in scheduling the penalty phase.

6. Did the Panel err in finding that Dr. Moore committed unauthorized disclosure of personal health information (Allegation #2)?

[89] The appellant submits the Panel's sole basis for finding that he disclosed personal health information without authorization were the documents he sent to Chase in response to the payment

dispute. The appellant conceded that this document contained confidential information about Patient A. However, he submits first that Chase was the respective agent of the appellant. Secondly, that the appellant's response to Chase is expressly permitted by s. 6 and s. 37 of *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Sched. A ("*PHIPA*"), which allows personal health custodians to provide personal health information to their agents. It is argued that the failure of the Panel to consider this argument is a palpable and overriding error.

[90] The Panel found that the appellant's response to Chase constituted a breach of the College's Standard of Practice S-002, Record Keeping ("Record Keeping Standard"). However, the appellant submits the College acknowledges that in the event of any inconsistency between the Record Keeping Standard and legislation that affects chiropractic practice, the legislation governs. The appellant submits that this was not considered by the Panel leading to a reversible error on this allegation.

[91] The respondent objects and argues that this ground of appeal, raised for the first time on appeal, should not be entertained.

[92] Parties are expected to raise all of their issues at first instance, and it offends the principle of finality to permit parties to raise issues serially on appeal: *Kaiman v. Graham*, 2009 ONCA 77, 245 O.A.C. 130, at paras. 18-20; *DeGroot v. Licence Appeal Tribunal*, 2022 ONSC 6160 (Div. Ct.), at para. 27; *Bloor West Physiotherapy v. Charytoniuk*, 2017 ONSC 7087 (Div. Ct.), at para. 5. Although the court can, in an appropriate case, permit a party to raise an issue for the first time on appeal, this is a power that should be used sparingly. The court must have regard to factors such as: i) the positions advanced at trial; ii) the explanation as to why the issue was not raised at trial; iii) the sufficiency of the record; iv) the likelihood of success of the new argument; and v) the interests of finality: *Kaiman*, at paras. 20-24.

[93] My consideration of these factors leads me to the conclusion that the appellant should not be permitted to raise this argument for the first time on appeal.

[94] First, at his hearing the appellant asserted both in his testimony and in submissions that he was legally allowed to provide this information to Chase because Chase was the agent of Patient A and her husband, and s. 37(1)(i) of *PHIPA* allowed him to provide confidential information to Patient A's agent for the purpose of verifying claims for payment. On appeal, he fundamentally reverses the agency relationship and for the first time, claims that Chase was actually *his* agent and that the Panel erred because it didn't find: a) Chase was the appellant's agent; and b) the appellant was entitled, pursuant to s. 37 of *PHIPA*, to provide Patient A's personal health information to Chase.

[95] Second, the Panel found as a fact that Chase was not Patient A's or her husband's agent. It concluded that nothing before the Panel indicated such an agency relationship existed. Put another way, this was the factual matrix that the Panel had before it to decide this issue given how the case was litigated.

[96] Third, raising the issue that Chase was the appellant's agent for the first time on appeal means that the opportunity to introduce and test evidence on the issue of that agency was denied to the respondent. Thus, there is prejudice. Moreover, the Panel did not have the opportunity to consider and decide whether the agency relationship was established.

[97] Fourth, the Panel's reasons show that if the argument had been raised below, this could have made a difference in how it approached the issue. The Panel held that the appellant's reliance on s. 37 of

PHIPA was misplaced as this dealt with the “use” of confidential health information. Rather, the Panel held that it was dealing with the “disclosure” of confidential health information under s. 38 and the exceptions permitted under that provision did not apply. Had the appellant raised the argument that Chase was his agent, then the Panel would have considered s. 6(1) of *PHIPA* which made disclosure of personal health information between a health information custodian and an agent of the custodian, a “use” by the custodian and not a “disclosure”. This would have required the Panel to consider s. 37(1)(i) and (2) given that it could be a permitted “use” of information. Something the Panel was not required to consider at the hearing given the position taken by the appellant. On the appeal, he now criticizes the Panel for not considering this, despite having chosen not to raise it at the hearing.

[98] Fifth, the appellant could have readily anticipated this issue at the time of the hearing given his reliance on *PHIPA* and his testimony. Moreover, the evidence of an agency relationship between him and Chase was a matter that was within his personal knowledge and if he had that evidence to provide, he could have chosen to give it. No explanation arises as to why this issue was not raised at the hearing. I am driven to the conclusion that this was a tactical decision on his part. One that he seeks to change on appeal after his initial position proved unsuccessful.

[99] Sixth, s. 2 of *PHIPA* defines “agent” for the purpose of the Act to be:

“agent”, in relation to a health information custodian, means a person that, with the authorization of the custodian, acts for or on behalf of the custodian in respect of personal health information for the purposes of the custodian, and not the agent’s own purposes, whether or not the agent has the authority to bind the custodian, whether or not the agent is employed by the custodian and whether or not the agent is being remunerated;

Given this definition, it is highly unlikely that it could be established that Chase was acting as an agent of the appellant. It seems that the appellant’s claim that Chase was his agent resides solely on the basis that it sent him a form letter about the payment dispute.

7. Did the Panel err in finding that Dr. Moore failed to disclose fees, and that the payment agreement was breached? (Allegations #3 and #8)

[100] In its Decision, the Panel made these findings of professional misconduct: a) Dr. Moore never disclosed the administrative fees or the fee for the report prior to providing the services; b) although he was prohibited pursuant to paragraph 3 of the Corrective Care Decompression Plan from deducting administrative fees and the report fee from the block fee, he had deducted the fees; c) he transferred money from Patient A’s block fee to create a block fee to cover her husband’s chiropractic care without Patient A’s knowledge and without a written agreement from her husband.

[101] These findings were available based on the appellant’s own testimony at the hearing.

[102] On appeal, the appellant makes several arguments on this issue. He submits that the Panel ignored evidence, including fee schedules signed by Patient A’s husband and the husband’s testimony, on the issue of whether he failed to disclose the fees. He further submits that there never was any agreement with Patient A but only with her husband. Finally, he submits Patient A’s husband gave the appellant express permission to take payments from her account.

[103] In my opinion, these submissions challenge the factual findings of the Panel. However, no palpable or overriding factual error was made by the Panel in coming to these findings. These factual findings were reasonably available to the Panel in assessing the whole of the evidence including admissions made by the appellant in his evidence.

8. Did the Panel err in finding that Dr. Moore failed to provide his report to Patient A within a reasonable time? (Allegation #5)

[104] The appellant submits that the Panel made two palpable and overriding errors in finding that he did not provide his report to Patient A in a reasonable time pursuant to s. 54(2) of *PHIPA*.

[105] First, the appellant argues that the Panel erred in concluding that the appellant took “two months and one week” to produce the requested report. He submits that his report was ready by November 27, 2019, two months after it was requested on September 28, 2019. However, the husband was delayed in retrieving the report, which he only did on December 6, 2019. The Panel’s assessment of what constitutes “reasonable time in the circumstances” should exclude this additional delay caused by the husband.

[106] Second, Dr. Moore submits that the 30-day requirement for providing a patient’s requested medical records in s. 54(2) of *PHIPA*, which “guided” the Panel’s findings, only applies to records that already exist. It does not apply to requests for documents that have not yet been drafted and do not yet exist. This would provide too short a timeframe.

[107] Regarding the first submission, the Panel concluded based upon evidence the report was ready to be picked up on December 6, 2019. The appellant points to a text and an exchange of communication for a release form to be signed that he contends supports the inference that the report was available on November 27, 2019; evidence that was not referred to by the Panel.

[108] In my opinion, even if the Panel erred in when the report was available for pick up, this was not an overriding error. The difference in between the positions of the parties was a matter of approximately a week in an overall delay of two months. As it made clear in its reasons, the Panel’s determination that the delay in providing the report was unreasonable was based on all the circumstances, including the facts that the appellant did not provide an explanation to Patient A for the delay and that he had merely been asked to provide a brief summary of his dealings with Patient A. Any factual error made as to when the report was ready for pick-up would have made no difference to the outcome of the Panel’s conclusion on this.

[109] Regarding the second submission, no palpable or overriding error has been established. The Panel properly applied the Record Keeping Standard which required Dr. Moore to provide a report “within a reasonable time” after a patient request. The brief allusion to s. 54(2) of *PHIPA* was merely a reference for guidance. The reasons do not reveal that the Panel applied s. 54(2) to its determination.

[110] The Panel’s finding that the appellant failed, without reasonable cause, to provide the report to Patient A within a reasonable time after the report was requested is entitled to deference. No basis to overturn this finding has been shown.

**9. Did the Panel err in finding that Dr. Moore knowingly issued false documents?
(Allegations #6 and #7)**

[111] The Panel found that the description of the billings in the appellant's letter to Chase did not match the enclosed Statement of Account provided to the complainant. The appellant acknowledged the mismatch but claimed his staff made this mistake by enclosing the wrong version of the Statement of Account. On appeal, it is submitted that there was no reason for the Panel to infer "malicious intent" based on this error.

[112] In my view, it was open for the Panel to find on the totality of the evidence that the appellant "had the accounts available and he knew the accounts and documents he sent to Chase Bank were false and misleading."²

[113] The appellant's claim that his staff were responsible for this mistake is inconsistent with what he said at the hearing, which is that he intentionally included the Statement in his correspondence.

[114] Additionally, there was other evidence before the Panel that was relevant to allegations #6 and #7, which it referred to in its reasons. The Panel found other fee discrepancies and fees that were not accounted for or adequately explained. Among numerous other inconsistencies, the Panel identified an account covering August-September 2019 that did not include any charges for text messages and phone calls even though the appellant later claimed that he provided \$280.00 in fees for texts and a phone call during this period. Another account charged "administration fees" totaling over \$2,900 which were not substantiated anywhere. The Panel also determined that describing these as "administration fees" was misleading as the appellant later revealed he charged these fees for services provided over the phone. Another example was that the appellant's letter to Chase included a document titled "Billing Summary" which included a \$750.00 fee for "Research morphine and drugs" that did not appear on any account.

10. Did the Panel err in finding he improperly charged a block fee?

[115] The Panel found the appellant guilty of allegation #9 in that he contravened the College Guideline G-008 because he charged Patient A a block fee when a) the patient was not given the option of paying for each service as it was provided; b) no unit cost per service was specified; and c) he did not agree to refund to the patient the unspent portion of the block fee, calculated by reference to the number of services provided multiplied by the unit cost per service.

[116] On appeal, the appellant argues that this was simply an oversight in his billing practices and forms.

[117] This argument was not made at the hearing and does not give rise to a reversible ground of appeal. The Corrective Care Decompression Plan sets out the block fee arrangements that the appellant provided to Patient A. It is evident on the face of the document that Patient A was given one payment option, that she did not have the option of paying for each service as it was provided. Further, the appellant did not agree to refund the unspent portion of the block fee as required in College Guideline G-008. No error by the Panel has been demonstrated on the appeal.

² Liability Decision, p. 50.

11. Did the Panel err in finding that Dr. Moore failed to itemize an account for professional services when requested to do so by the patient and/or the account included a fee for a product or device or a service other than treatment? (Allegation #10)

[118] The appellant submits that the Panel erred in finding that he committed this count of misconduct because there was no evidence Patient A or her husband ever requested an itemized account detailing their administrative charges. He further states that “[t]he itemized list of text messages, phone calls, and other extended treatment that appeared on the Statement of Account as “Administration Fees” is in evidence.”

[119] I do not accept these submissions.

[120] The two accounts the appellant provided to Patient A in December 2019 did not itemize the administrative fees. The appellant did provide an itemized list to Chase, but not to Patient A or her husband. Whether or not there was a request by the patient for itemization is irrelevant. The language in the allegation is disjunctive - professional misconduct occurs when the chiropractor fails to itemize an account that was either requested by the patient or when the account includes a fee for a product, device or service other than a treatment. In this case, the two December 2019 accounts at issue should have been itemized because they contained administrative fees.

12. Did the Panel err in substantiating allegations #1, #4, and #11?

[121] The appellant makes cursory, essentially one sentence, submissions against these findings including: the assessment of Patient A is literally recorded in evidence; the decompression treatment of Patient A was not at issue in this proceeding according to the College counsel; signed consent forms are contained in the patient record; the Panel failed to distinguish between risks and material risks; the Panel failed to properly consider whether a sealed envelope affixed to a structure, on private property that is only legally accessible by invitation and is monitored by surveillance cameras is “secure”; there are recordings that prove that the appellant did not provide a guarantee of success; and the submissions of respondent’s counsel that “if it isn’t documented, it didn’t happen”. The last of which is impermissibly misleading and constitutes an error in principle.

[122] None of these submissions raise any meritorious ground of appeal. They are simply arguments that were or should have been made at the hearing. They provide no proper basis to overturn the Panel’s findings.

13. Was the Panel’s penalty decision unreasonable?

[123] Deference is owed to a penalty decision of an administrative tribunal. To be overturned by a reviewing court, the Discipline Committee must have made an error in principle, or the penalty must be "clearly unfit". Regarding the latter, in *College of Physicians and Surgeons of Ontario v. Peirovy*, 2018 ONCA 420, 143 O.R. (3d) 596, at para. 57, after referring to the Supreme Court of Canada’s articulation of the very high threshold for appellate review of criminal sentences in *R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089, at para. 52, the Ontario Court of Appeal said the following:

A similarly high threshold applies in the administrative context. To be clearly unfit, the penalty must fall outside of the range of reasonableness. A reasonable penalty will be "guided by proportionality and an assessment of the range of appropriate penalties dependent upon the

facts of each case [and] guided by penalties imposed in other cases."

[124] Citing *Vavilov*, at para. 33, this court in *Ontario College of Pharmacists v. Mourid*, 2023 ONSC 1221 (Div. Ct.), at para. 34, observed that the "legislature gave the Discipline Committee the task of determining penalty and respect for legislative intent is the 'polar star of judicial review'."

[125] The appellant does not point to any error in principle made by the Panel. He relies on *Ontario (College of Physicians and Surgeons of Ontario v. Lee*, 2019 ONSC 4294 (Div. Ct.), 61 Admin. L.R. (6th) 122, for the proposition that penalties must be carefully tailored to reflect the appellant's blameworthiness. He submits that his penalty is clearly unfit and disproportional given that it even exceeds penalties imposed in cases involving allegations of a sexual nature.

[126] I have great difficulty in seeing how any range of penalties set out in cases involving sexual abuse or misconduct can be a measure for the penalty in a case such as this. Even if lesser penalties than a fifteen-month suspension were given in sex abuse cases, those precedents are so case-specific and inherently of such a different nature they have little weight in demonstrating the unfitness of the appellant's penalty.

[127] More to the point, the Panel was given three cases at the College where members had admitted to having committed a range of acts of professional misconduct involving standards, billing, and false documentation.³ In those cases, even with the members' admission of professional misconduct and the acceptance of responsibility for their actions, suspensions ranged from eight months to one year. These precedents support the fitness of the appellant's penalty.

[128] The Panel properly referred to the principles of general deterrence, specific deterrence, and rehabilitation in determining a fit and proportional penalty. It identified aggravating factors. In the Panel's view, the appellant's misconduct was serious and broad in scope. He had committed 11 acts of professional misconduct involving a very vulnerable patient who was in pain and needed care. It found in some respects his misconduct was intentional. Instead of providing appropriate care, he sold her a prepaid treatment plan that he knew she could not tolerate. He knew his accounts were false or misleading. There were several instances of dishonesty including that he falsified patient records, charged for services without disclosing the fees in advance, and provided false and misleading accounts and documents. There were other instances of misconduct including failing to provide documents in a reasonable time when requested and providing no proper reason for the delays. Finally, the appellant improperly disclosed confidential patient information.

[129] In short, in relation to his professional obligations, though it involved a single patient and her husband, his misconduct was not isolated. Moreover, it was serious, and his blameworthiness was high given the finding of intentional misconduct.

[130] In addition, the appellant had a more than 15 year history with the ICRC including cautions in 2014 and 2016 regarding, among other things, his billing practices which bore similarities to the misconduct he committed with Patient A. Said differently, he had been given opportunities in the past to remediate his practice, including his practices concerning block fees and records and had not made any

³ *College of Chiropractors of Ontario v Dr. Brian Nantais*, March 8, 2021; *College of Chiropractors of Ontario v Dr. Carly Butterworth*, February 22, 2021; *College of Chiropractors of Ontario v Dr. Byron Atchison*, August 2, 2017.

of the recommended changes.

[131] No mitigating factors were identified by the Panel, which is not surprising given the College's position that there were none and the defence in their submissions could not specifically identify any. Despite that, the Panel expressly undertook to look for mitigating factors but could not find evidence of any. It did note the compassion shown by the appellant at the hearing but found it did not counter the aggravating factors. In light of his history with the College and his failure to change his behavior, the Panel was clearly concerned that the penalty should consider the principle of specific deterrence. This was reasonable given the facts found by the Panel.

[132] In the end, I find that the appellant has not shown the penalty, though significant, is clearly unfit. This ground of appeal must be dismissed.

14. Did the Panel impose excessive costs?

[133] Although the hearing lasted 28 days, the costs award is significant. It is well over a half a million dollars.

[134] In *Reid v. College of Chiropractors of Ontario*, 2016 ONCA 779, at paras. 24-25, Epstein J.A. in dismissing a motion for an extension of time to file leave to appeal, summarized the standard of appellate review of costs awards:

The courts have recognized this jurisdiction [to award costs] and have described it as being broad and discretionary: *Freedman v. Royal College of Dental Surgeons*, [2001] O.J. No. 1726 (Div. Ct.), at paras. 3, 6; *Aronov v. Royal College of Dental Surgeons*, [2002] O.J. No. 5973 (Div. Ct.), at para. 54. The courts have also identified the College's right and responsibility to protect its members from the weight of the expense of protracted disciplinary hearings: *Aronov*, at para. 53.

The standard of review of reasonableness applies to the Costs Decision as the College was interpreting its own statute and was exercising discretion in making the award: *Veneri v. College of Chiropractors of Ontario*, 2010 ONSC 473, [2010] O.J. No. 334, at para. 6. A decision is only unreasonable if there is no line of analysis in the reasons that could reasonably lead the administrative tribunal from the evidence to the conclusion reached: *Law Society of New Brunswick v. Ryan*, 2003 SCC 20, [2003] 1 S.C.R. 247, at para. 55.

See also *Haydarian v. Royal College of Dental Surgeons of Ontario*, 2023 ONSC 1221, (Div. Ct.), at para. 41.

[135] Unlike before the Panel, the appellant does not argue that a costs award was inappropriate in his case. Rather, the appellant submits the quantum of costs is clearly punitive and the costs decision reflects numerous errors including: a failure to accurately consider the complexity and seriousness of the case; a failure to consider the principles of proportionality and the expectations of the unsuccessful party; an error in concluding that the appellant's actions prolonged the hearing; an error in placing the onus on the appellant to provide evidence of impecuniosity resulting from the costs award; inappropriately considering the appellant's failure to accept an unreasonable offer to settle; and, a failure to take into account access to justice in awarding costs of this magnitude.

[136] The respondent submits that these criticisms are invalid. The costs claimed by the College were justified given their success on all 11 allegations, the seriousness of the misconduct, the appellant's failure to co-operate and provide complete information to the College's investigation, and that his defence was largely meritless. The Panel explained that they were not intended as punitive and grappled with the potential impact on the appellant.

[137] To begin the analysis, I disagree with some of the appellant's submissions on this ground of appeal.

[138] I would not disturb the findings made by the Panel that the appellant's actions prolonged the hearing. This is a relevant factor to consider, and I would defer to the Panel who oversaw the case and is most familiar with its conduct: *Reid v. College of Chiropractors of Ontario*, 2016 ONSC 1041 (Div. Ct.), at para. 232.

[139] As well, the reasonable expectations of the unsuccessful party are not a factor that is considered: *Reid*, at para. 228. In *Clokie v. Royal College of Dental Surgeons*, 2017 ONSC 2773 (Div. Ct.), at para. 72, the Court commented:

The costs award unsuccessfully challenged in *Reid* was \$166,194.50. The court concluded that the panel considered the appropriate principles and upheld the award. In doing so, the court noted that s. 53.1 of the *Code* expressly permits a broader costs claim than the scope of a claim in a civil proceeding. The court held the reasonable expectations of the losing party need not be considered, but that proportionality should be considered, as it was here.

[140] Offers to settle that were made by the respondent were a proper consideration: *Reid*, at para. 233. Given that the settlements offered by the respondent involved substantively shorter periods of suspension than the penalty the appellant received, it cannot realistically be said that they were unreasonable.

[141] That all said, in my view, the Panel made errors of law in deciding the quantum.

[142] In the costs' decision, it referred to the following two factors amongst others in its initial determination of whether the granting of any costs would be appropriate: (1) the previous cautions given to the appellant about his billing practices, and (2) his conduct in challenging the recusal motion in the Divisional Court. These were appropriate considerations on that question. However, the Panel in moving on to the question of quantum, expressly stated it would consider all the factors on the question of the appropriateness of a costs order on the issue of the quantum. I struggle to see how the two factors referred to above have any bearing on deciding what the quantum should be. Neither factor led to any additional time or costs before the Panel. I find that the Panel erred in taking into account irrelevant considerations in fixing the quantum.

[143] More importantly, looking at the Panel's costs decision as a whole, there is merit to the appellant's position that the Panel failed to take into account the principle of proportionality. Proportionality is a key consideration in making a costs award: *Reid*, at para. 227; *Clokie*, at para. 72.

[144] The Panel did consider that costs orders against members who have engaged in misconduct were appropriate so that the profession did not have to bear the weight of the expense of discipline proceedings

through membership fees. As well, it did recognize that the appellant's right to access to justice needed to be balanced against that. And no one can quarrel with its conclusion that a *significant* costs award should be granted given all the relevant factors including the fact this was a 28-day hearing, and the appellant bore much of the responsibility for its length.

[145] Nonetheless, when it came to assessing the quantum, missing from the Panel's reasons, was any consideration of proportionality.

[146] Aside from the lack of any reference to proportionality, portions of the decision support my conclusion that the Panel failed to give it adequate attention.

[147] First, the Panel stated that it did a careful review to determine whether any reasons existed to justify a reduction in the quantum, but briefly concluded that "[n]one were found." In my opinion, this reasoning is indicative of its error in not considering overall proportionality.

[148] Second, there was no consideration of the multiple nature of the allegations, their complexity, or the seriousness of the allegations in assessing whether the overall quantum was proportional. The focus of the decision was almost entirely on the deficiencies of the defence's conduct of the case.

[149] Third, in response to the appellant's submissions that any cost award above \$200,000 - which he argued should be a general cap on costs - would be financially devastating, the Panel gave the impact of the quantum on the appellant little or no weight. This is revealed by its reference to the fact that the appellant presented no evidence of his financial success or lack of it to show it would be so devastating. In addition, it reasoned based on the appellant's evidence given at the liability phase about the number of patients he sees in a day, his billing policy and his fee, that this "suggests a level of financial success". Thereafter, the Panel referred to the "potential" negative effect on the appellant.

[150] I recognize that the lack of evidence on such negative impacts can be a proper factor when calculating costs: *Clockie*, at para. 66. However, it is an unreasonable approach to minimize the impact of such a large costs award based on sparse evidence given by the appellant about what his average day looks like and his general fees for service. Given the large amount of the award, while devastation may not have been proven, it is inevitable that such a large award "would", not "could", have a significant negative impact. It was wrong to reason otherwise and then to briefly conclude there was no reason to reduce the award.

[151] Finally, the Panel failed to consider some of the authorities that have commented about the discomfort of such high costs' awards in a discipline context. Costs awards should not be so high as to create a real practical barrier to Members being able to defend themselves in discipline proceedings. In the instant case, it should be borne in mind that the factual issues concerned a course of treatment for two related persons over a relatively short period of time. There is no good reason that a hearing into these matters should have consumed 28 days of hearing time. While a large portion of the blame for the overlitigation of this case rests on the appellant, as found in the costs' decision below, some of it rests on the tribunal itself for not keeping the proceedings within reasonable bounds. I would have thought the case over litigated if it had taken half as long.

[152] I appreciate the respondent's argument that when the amount awarded in this case is calculated on a per day cost basis, it is less than the costs awards in other cases when fewer hearing days were

involved. However, respect for proportionality cannot simply be reduced to mathematical calculation on a comparative basis and as noted above, the hearing took much longer than it should have taken. In addition, using a percentage of the total actual costs as a method in awarding costs is just a recognition of a guideline, like partial indemnity scale in civil cases: *Bayfield v. College of Physiotherapists of Ontario*, 2014 ONSC 6570 (Div. Ct.), at para. 9. A range such as 2/3rds, 60%, 50%, or less has been used as guideposts in other health professions discipline prosecutions: *Casella v. Ontario College of Chiropractors*, 2024 ONSC 899, at para. 54; *Walia v. College of Veterinarians of Ontario*, 2021 ONSC 4023 (Div. Ct.), at paras. 30-31; *Dhaliwal v. College of Veterinarians of Ontario*, 2025 ONSC 1931 (Div. Ct.), at para. 156; *Chuang v. Royal College of Dental Surgeons of Ontario*, 211 O.A.C. 281 (Div. Ct.), at para. 19; *Yan v. College of Traditional Chinese Medicine Practitioners and Puncturists of Ontario*, 2022 ONSC 5464 (Div. Ct.), at paras. 80-82.

[153] In terms of authorities that have commented on such high costs award, I refer to *Reid*, at paras. 234-236 where an award of \$166,194.50 or 51% of the total sought was described by the majority as “high” but given the reduction already given by the Discipline Committee, it remained reasonable. Yet, noteworthy, given the magnitude of the award, the majority declined to award costs on the appeal. In *Clockie*, a cost award of \$318,297.87, 2/3 of the costs incurred by the college, was upheld on appeal but described by the court as “unusually high” and that the court would expect more moderate awards. The court in *Chuang* determined that costs awarded of \$250,000 of a total cost of \$400,000 was unduly high and fixed costs at a lower amount of \$200,000.

[154] I recognize that committing errors of principle in awarding costs awards and failing to heed the proportionality principle does not automatically lead to appellate interference: *Barry v. Anantharajah*, 2025 ONCA 603, at paras. 31, 44-48. However, in my opinion, even giving due deference to the Panel and applying the deferential standard of review on costs awards, given the errors identified, this costs award is unreasonable. I would accede to this ground of appeal.

[155] Considering the factors that were properly identified by the Panel and having due regard to the principle of proportionality and some division of responsibility for the length of the proceedings, I would fix costs below in the amount of \$450,000.

15. Are the Panel’s decisions invalid for having not been signed?

[156] The appellant argues the Panel’s decisions are invalid because they were originally only signed by Member Mackay on behalf of the other Panel members but not signed by the other Panel members. It is submitted that this does not comply with the College’s By-law 3.6 which states that decisions by the Discipline Committee “shall be signed by all members participating in the decision.”

[157] In addition, the appellant relies on *Pryor v. Ontario Society for the Prevention of Cruelty to Animals*, 2008 ONCA 108, 89 O.R. (3d) 478, where the court held that signing a released reserved decision is not an administrative procedure and that no decision exists until the decision is signed.

[158] In my view, *Pryor* does not rule on the fact scenario here. In *Pryor*, the issue was the running of a limitation period to serve and file a notice of appeal; whether it ran from the date of the faxing of the unsigned decision or the later receipt of the signed decision. The court concluded it ran from the date of the signed decision as no decision existed on the date of the faxing as it was unsigned.

[159] Regardless of the merits of the appellant's submission on the facts here, the issue is essentially moot since on April 22, 2025, the Panel, referencing Rule 27.1 of the Rules of Procedure of the Discipline Committee and s. 21.1 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22, released addendums to their decisions clarifying and confirming that the Chair had signed on all their behalf and that they agree with the decisions. All participating members of the Panel signed the addendums.

F. DISPOSITION

[160] For these reasons, except for the appeal of costs, the appeal is otherwise dismissed.

[161] The parties are encouraged to come to an agreement as to the costs of this appeal. In the absence of an agreement, the respondents will have 15 days from the date of this decision to make costs submissions no greater than two pages in length. The appellant will have 7 days to respond with submissions of a similar length.

Nakatsuru J.

I agree: _____

D.L. Corbett J.

I agree: _____
K. Coats J.

Released: November 5, 2025.

CITATION: Moore v. College of Chiropractors, 2025 ONSC 6190
DIVISIONAL COURT FILE NO.: 338/24
DATE: 20251105

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

D.L. Corbett, K. Coats, S. Nakatsuru JJ.

BETWEEN:

BRIAN MOORE

Appellant

- and -

COLLEGE OF CHIROPRACTORS OF ONTARIO

Respondent

REASONS FOR DECISION

Released: November 5, 2025