**H130006**
**H140034**

**IN THE MATTER OF** a Hearing of a panel of the Discipline Committee of the Royal College of Dental Surgeons of Ontario held pursuant to the provisions of the Health Professions Procedural Code which is Schedule 2 to the *Regulated Health Professions Act, 1991*, Statutes of Ontario, 1991, Chapter 18 ("*Code"*) respecting one **DR. CAMERON CLOKIE,** of the City of Cambridge, in the Province of Ontario;

**AND IN THE MATTER OF** the *Dentistry Act* and Ontario Regulation 853, Regulations of Ontario, 1993, as amended ("Dentistry Act Regulation").

**AND IN THE MATTER OF** the *Statutory Powers Procedure Act*, Revised Statutes of Ontario, 1990, Chapter S.22, as amended; 1993, Chapter 27; 1994, Chapter 27.

**Members in Attendance:**

Dr. Richard Bohay, Chair
Dr. Richard Hunter
Dr. Lisa Kelly
Ms. Beth Deazeley – Public Member[1]
Mr. Manohar Kanagamany – Public Member

**Appearances:**

Mark Sandler and Amanda Ross
for the RCDSO

Scott Fenton and Lynda Morgan
for Dr. Cameron Clokie

Brian Gover, Independent Legal Counsel
to the Discipline Committee of the RCDSO

Kelly Gray and Rachel Gibbons,
Hearings Clerks

## AMENDED DECISION AND REASONS

[1] Ms. Deazeley was present throughout the hearing and participated in the Panel's deliberations to their conclusion. However, she resigned from the Discipline Committee effective December 31, 2015 and has not participated in the drafting of these reasons, nor has she approved them.

**Introduction**

On August 24, August 25, August 26, September 9, October 7 and October 29, 2015, a Panel of the Discipline Committee of the Royal College of Dental Surgeons of Ontario ("Panel") conducted a hearing respecting allegations against Dr. Cameron Clokie ("Dr. Clokie" or the "Member"), pursuant to the provisions of the *Health Professions Procedural Code* ("Code"), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18.

The Panel received and reviewed two (2) Notices of Hearing (filed as **Exhibits 1 and 2**), which contained seven allegations of professional misconduct against the Member, together with associated particulars. When called upon to admit or deny the allegations, the Member pleaded not guilty.

In the course of the hearing, the allegations of professional misconduct contained in Notice of Hearing H130006 (**Exhibit 1**) were all withdrawn. Allegations #1, #2 and #4 set out in Notice of Hearing H140034 (**Exhibit 2**) were also withdrawn. Consequently, only two allegations remained for determination at the conclusion of the hearing. These were Allegations #3 and #5 as set out in Notice of Hearing H140034 (**Exhibit 2**), and they were as follows:

3. You committed an act or acts of professional misconduct as provided by s.51(1)(b.1) of the Code, and as provided by s.51(1)(c) of the Health Professions Procedural Code and paragraph 8 of Section 2 of the Dentistry Act Regulation, in that, during the years 2006, 2007, 2008, 2009, 2010 and/or 2011, you sexually abused a patient, namely R.B.

   Particulars:

   - Ms. R.B. was your patient from September 7, 2006 until January 2013.
   - In or about October 2006 until 2009, you engaged in sexual intercourse or other forms of sexual relations with your patient, R.B.
   - During this time you also engaged in touching of a sexual nature with your patient, R.B.
   - Further, during this time you exhibited behaviour or made remarks of a sexual nature towards your patient, R.B.

5. You committed an act or acts of professional misconduct as provided by s.51(1)(c) of the Code, in that, during the years 2006, 2007, 2008, 2009, 2010 and/or 2011, you engaged in conduct or performed an act or acts that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, unprofessional or unethical relative to one of your patients, namely R.B. contrary to paragraph 59 of Section 2 of the Dentistry Act Regulation.

   Particulars:

   - Ms. R.B. was your patient from September 7, 2006 until January 2013.
   - In or about October 2006 until 2009, you engaged in sexual intercourse or other forms of sexual relations with your patient, R.B.
   - During this time you also engaged in touching of a sexual nature with your patient, R.B.
   - Further, during this time you exhibited behaviour or made remarks of a sexual nature towards your patient, R.B.
   - On or about September 28, 2011 you threw a model skull during a consultation meeting with R.B.[2]

**Overview**

Dr. Clokie is an Oral and Maxillofacial Surgeon who has been in practice for approximately 30 years. During the material time, he practised out of his private office "Profiles" at 66 Avenue Road and at Mount Sinai Hospital, both located in Toronto, Ontario.

On October 26, 1993 R.B. was involved in a motor vehicle accident that resulted in jaw-related dental and medical issues. She underwent surgical procedures provided by two Toronto surgeons, that failed to provide complete resolution of R.B.'s issues. In 2006, while living in Sweden, R.B. obtained a referral from her family dentist for a consultation appointment with Dr. Clokie. This appointment occurred at Mount Sinai Hospital on September 7, 2006. Over the next week, two additional Mount Sinai Hospital chart entries were recorded relating to R.B.'s previous records and treatment plans. On September 21,

[2] The Panel made an order pursuant to subsection 47(1) of the Code, that no person shall publish the identity of R.B. or any information that could disclose the identity of that witness.

2006, R.B. attended for a second appointment with the Member at Mount Sinai Hospital. At that appointment, Dr. Clokie removed a bone sequestrum.

On October 10 and 11, 2006, emails were exchanged between the Member and R.B. for the purpose of arranging to meet in Gothenburg, Sweden, where Dr. Clokie was to attend a conference. On October 14, 2006, the Member and R.B. met in Gothenburg, Sweden. The meeting included a walk, dinner, a movie, a drink and they ultimately went up to his hotel room where they kissed and had sexual intercourse and oral sex. This testimony was unchallenged by Dr. Clokie and the numerous, subsequent email messages corroborate the testimony of R.B.

Following this encounter, the Member and R.B. exchanged email and text messages between October 19, 2006 and April 28, 2009 which at various times indicate a personal relationship that includes a sexual relationship and a professional relationship.

R.B. testified that subsequently, there were sexual encounters on March 7, 2007 in Dr. Clokie's faculty office, March 23, 2007 in the hospital recovery area, March 30, 2007 in Dr. Clokie's Profiles office, April 14, 2007 in Dr. Clokie's vehicle and on April 25, 2007 in the house of R.B.'s cousin. R.B. recounted three other encounters that occurred around this time but could not provide dates.

Over a period of approximately 20 months between March, 2007 and November, 2008, R.B. underwent a number of dental/medical procedures, some performed by Dr. Clokie. Notably, in March, 2007, the Member performed surgery to remove a chin implant for R.B. at Mount Sinai Hospital, and she attended for a post-surgical appointment at the Member private practice. R.B. had a follow-up appointment with the Member in April, 2007, shortly after which Dr. Clokie sent a fee estimate letter to her insurer. Also in April, 2007, R.B. underwent a sleep study on referral from the Member. R.B. attended an appointment with Dr. Clokie at Mount Sinai Hospital in January 2008. In November, 2008 the Member wrote a letter to R.B. summarizing her previous surgeries and recommends an evaluation.

Much later, in August and September, 2011, Dr. Clokie performed surgery on R.B. and she had several appointments with him.

R.B.'s last appointment with Dr. Clokie was on October 6, 2011 at Mount Sinai Hospital. She attended the appointment with her husband and they audio-recorded the appointment. Both R.B. and her husband testified that Dr. Clokie lost his temper at that appointment and threw a plastic skull across the room.

The Panel considered the Agreed Statement of Facts, the medical/dental records, the evidence of R.B., the evidence of R.B.'s husband, e-mail, text messages and audio-recordings and the submissions by counsel for the College and Dr. Clokie.

The College's allegations are set out above. Essentially, the College alleged that the Member sexually abused his patient R.B; and that he engaged in conduct or performed an act or acts that, when considering all the circumstances, he would reasonably be regarded by members as disgraceful, dishonourable, unprofessional or unethical relative to R.B. in that he sexually abused R.B. and on or about October 6, 2011 he threw a model skull during a consultation meeting with R.B.

Key issues for the Panel in its consideration of this case were when the doctor-patient relationship between the Member and R.B. existed (i.e., when did it start and when did it end?), what constitutes "sexual abuse" under the *Health Professions Procedural Code*, how the credibility of the witnesses (and especially the Member and R.B.) should be assessed, and inferences that could be drawn from Dr. Clokie's lies to the College about his sexual relationship with R.B. (which included a fabricated explanation that a former employee had sent the emails to R.B. rather than himself) and his failure to testify in his own defence.

Based on the evidence, the Panel unanimously agreed that Dr. Clokie sexually abused his patient R.B; and when considering all the circumstances, he would reasonably be regarded by members as disgraceful, dishonourable, unprofessional and unethical.

However, the Panel also unanimously agreed that it was unable to find that the Member engaged in conduct or performed an act or acts that, having regard to all the circumstances,

would reasonably be regarded by members as disgraceful, dishonourable, unprofessional or unethical relative to the allegation that he threw a model skull during a consultation meeting with R.B.

## Onus and Standard of Proof / Approach to the Case

In its determination of this case, the Panel accepted that the College bears the onus (sometimes called the "burden") of proof. The standard of proof that must be met is the standard applicable to civil litigation; that is, proof on a balance of probabilities. Evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. It should be scrutinized with care.

In other words, in order to succeed, the College must convince the Panel on a balance of probabilities (i.e., that it is more likely than not) that the Member has engaged in the forms of professional misconduct set out in the two allegations.

## The Evidence

### *The Complainant, R.B.*

The primary witness for the College was R.B. She testified that following a motor vehicle accident in 1996 she suffered injuries to the right side of her face and to her jaw. She developed temporomandibular joint ("TMJ") dysfunction and in 1997 underwent jaw surgery by Dr. Venia. This surgery changed R.B.'s appearance and in 2006 had another surgery on her jaw by Dr. Ellis. This surgery included a chin implant. According to R.B. this surgery was not successful and the implant started to move up the right side of R.B.'s face. R.B. was very dissatisfied with her appearance following this surgery. Following this surgery, R.B. relocated to Sweden, in part, to avoid hearing comments about her changed appearance.

### *Referral to Dr. Clokie*

While in Sweden, R.B. came across the Member's name while searching the Internet. She contacted Mount Sinai Hospital and was told that she would need a referral to see Dr. Clokie.

Her family dentist, Dr. Julian Bower provided the referral and an appointment was arranged for September 7, 2006.

***Appointment with Dr. Clokie, September 7, 2006***

According to hospital records the Member conducted a history and examination and recorded a plan that included completing a full work up once R.B.'s previous records had been obtained and the chin implant removed. The Member's records indicate that R.B. contacted the Dental Department at Mount Sinai Hospital on September 13, 2006 requesting that the hospital request records from Dr. Vigna. On September 14, 2006, a chart entry indicated that Dr. Clokie had asked a staff person to request models from a Dr. Levin, that it was too early to develop a treatment plan, and that she would return to Mount Sinai Hospital for re-evaluation and treatment plan after the chin implant was removed.

On September 20, 2006 R.B. saw a periodontist, Dr. Gerczuk, and following that appointment, Dr. Gerczuk sent a letter that was in the Mount Sinai Hospital Dental Department. In that letter, Dr. Gerczuk wrote "I told her to have Dr. Clokie check this and remove it when he sees her." This was in reference to a bone sequestrum in R.B.'s lower left jaw. Dr. Gerczuk also wrote in that letter "Dr. Clokie will be looking after her in that regard." This was in reference to R.B.'s jaw and TMJ. According to the Mount Sinai Hospital records,

***Appointment with Dr. Clokie, September 21, 2006***

R.B. attended a second appointment with Dr. Clokie on September 21, 2006. The Member removed one or more fragments of bone from R.B. jaw in the area of tooth #3-6. This was done with tweezers. R.B. testified that she believed Dr. Clokie was her doctor and that she never terminated this professional relationship and neither did the Member.

Based on the testimony of R.B. and the corroborative evidence of the hospital records, the Panel concluded that as early as the first appointment, the doctor-patient relationship was forming and this was further established through the chart entries on September 13 and 14, 2006, the letter from Dr. Gerczuk, and the appointment on September 21, 2006 where there was a minor procedure performed.

***R.B.'s Return to Sweden and Subsequent Appointments***

Following the September 21, 2006 appointment, R.B. returned to Sweden and there was a break in the appointments with the Member at either Mount Sinai Hospital or at his private office. When R.B. returned to Canada she attended a CT appointment at Mount Sinai Hospital on March 7, 2007 that was arranged by Dr. Clokie. On March 23, 2007, the Member removed R.B.'s chin implant. R.B. attended a post-surgical appointment at Dr. Clokie's private office on March 30, 2007. Another follow-up appointment occurred on April 5, 2007 and on April 12, 2007 the Member wrote a fee estimate letter to R.B. for insurance purposes. On April 15, 2007, R.B. attended a sleep study arranged by the Member. On June 22, 2007 a CT scan was performed on R.B. at Mount Sinai Hospital.

***Formation of an Intimate Relationship***

After she returned to Sweden, R.B. communicated with the Member by email regarding a conference he would be attending in Sweden and to arrange for a meeting while he was there. R.B. testified that on October 14, 2006 she and Dr. Clokie met in Gothenburg. According to R.B., she and Dr. Clokie went for a walk, had dinner together, and saw the movie "Click" where he both placed his hand on her knee and held her hand. According to R.B., after the movie they had a drink in a restaurant and then went to his hotel room where they kissed and ultimately had sexual intercourse and oral sex.

Following this encounter, e-mail or text messages were exchanged on October 19, 23, 2006; November 2, 20, 29, 2006; December 1, 2006; January 10, 21, 2007; February 4, 5, 14, 25, 2007; March 12, 2007; April 4, 7, 8, 21, 22, 2007; June 2, 6, 2007; September 21, 2008, November 7, 2008; December 9-15, 30, 2008; January 1, 2009 and April 28, 2009 which at various times indicate a personal relationship that includes a sexual relationship and a professional relationship.

R.B. testified that on March 7, 2007 the Member changed his clothing in front of her in his faculty office, they kissed in his office and in his vehicle, where he also touched her between her legs. It was R.B.'s evidence that on March 23, 2007, Dr. Clokie rubbed her leg when she

was in the recovery room. She also testified that they kissed in his office on March 30, 2007. According to R.B., on April 14 and another time in April 2007, she and the Member kissed and touched in his vehicle. She recounted a similar prior occasion, but was unable to provide a specific date. R.B. testified that on April 25, 2007 they had sexual intercourse at her cousin's home. R.B. testified that at another time in 2007 or 2008 Dr. Clokie performed oral sex on R.B. Finally, R.B. testified that on September 20, 2008 they had a conversation of a sexual nature over the telephone.

***Dentist/Patient Relationship***

Overlapping with the period in which Dr. Clokie and R.B. were exchanging the email and text messages described above and when at times when, on R.B.'s evidence, their intimate relationship continued, R.B. underwent the following dental/medical procedures, some of which were performed or directed by Dr. Clokie:

- On March 7, 2007, R.B. had a CT scan done at Mount Sinai Hospital;
- On March 23, 2007, the Member performed surgery to remove a chin implant for R.B. at Mount Sinai Hospital;
- On March 30, 2007 R.B. attended for a post-surgical appointment at the Member's private practice;
- On April 5, 2007 R.B. attended a follow-up appointment with the Member. Dr. Clokie sent a fee estimate letter to State Farm Insurance on April 12, 2007;
- R.B. had a sleep study on referral from the Member on April 16, 2007;
- On June 22, 2007 R.B. had a CT scan done at Mount Sinai Hospital;
- On July 4, 2007 the Member signed a cheque to R.B. in the amount of $12,523.50;

- On January 31, 2008, R.B. attended an appointment with Dr. Clokie at Mount Sinai Hospital; and

- On November 11, 2008 the Member wrote a letter to R.B. summarizing her previous surgeries and recommending evaluation using 3D imaging.

On August 18 and September 28, 2011, Dr. Clokie performed surgery on R.B. Around this time R.B. attended several appointments with Dr. Clokie.

In addition, R.B. attended an appointment on October 6, 2011 at Mount Sinai Hospital. R.B. testified that the purpose of the appointment was to answer questions regarding the surgery and to find out what had gone wrong. R.B. attended the appointment with her husband and they audio-recorded the appointment. The Member Dr. Clokie was not told the appointment was being recorded. Both R.B. and her husband testified that Dr. Clokie lost his temper and threw a plastic skull across the room.

## The Parties' Submissions

### *Submissions on the College's Behalf*

The College argued that the Member and R.B. were in a doctor-patient relationship during the time they were engaged in a sexual relationship, and that consequently, Dr. Clokie sexually abused his patient R.B. and that this would be reasonably regarded by members as disgraceful, dishonourable, unprofessional or unethical. The College relied on the testimony of R.B. (the patient) and R.B.'s husband, as well as confirmatory evidence in the form of email and text messages between R.B. and Dr. Clokie that demonstrated both a sexual and professional relationship. The College also presented evidence of semen stained underwear belonging to R.B. Dr. Clokie admits that the semen on this underwear is his. The College contended that the fact that Dr. Clokie lied to the College about having engaged in sexual activity with R.B. in Sweden and contrived a false explanation for the email exchanges between R.B. and Dr. Clokie is evidence that Dr. Clokie was aware that he was engaged in professional misconduct with R.B. and that he needed to fabricate a story to avoid responsibility. The College contended that even if there was no sexual activity in Canada the

relationship and sexual activity in the fall of 2006 would still constitute professional misconduct. The College argued that the uncontradicted evidence of R.B. was that sexual intercourse occurred at her cousin's home in April 2007 and that it was at this time that the semen stained underwear was inadvertently stored. Finally, the College contended that the Panel is entitled to draw an adverse inference against the Member, given his decision not to deny his guilt under oath or affirmation; and that this is particularly relevant given Dr. Clokie's admission that he lied to the College about having sexual relations with R.B. and about the authorship of his emails with R.B.

The College made submissions on the issues of the existence and duration of the doctor-patient relationship, noting that the *Health Professions Procedural Code* does not define the term "patient". The College provided factors the College of Physicians and Surgeons of Ontario has used in the determination of a doctor-patient relationship:

- Whether a patient file existed that included history, examination, diagnosis, plan of management, prognosis, reports and written record of treatments
- Whether there were OHIP billing records
- The number and nature of the treatments and where the treatments occurred
- Whether the services involved psychotherapy
- Whether the complainant completed a consent to treatment form
- Whether there was documentary evidence that the professional referred to the complainant as his/her patient
- Whether there was any letters of consultation written to the complainant's primary physician

- Whether there were any letters reporting back to the professional about the complainant

- Whether the complainant was seeing other physicians, and particularly whether the complainant had her own family physician when the sexual relationship began

- Whether there were referrals of the complainant by the professional to other professionals

- Whether the professional prescribed medication to the complainant

The College argued that Dr. Clokie never terminated the doctor-patient relationship and R.B. testified that she believed Dr. Clokie was her doctor. The College argued that the mere fact that there are gaps in patient care does not mean the doctor-patient relationship has ended. The Panel accepted this submission and recognizes within Dentistry it is not unusual for some patients not to see there family dentist on a regular basis or have treatments beyond dental check up and prophylaxis. Yet, the patient would reasonably believe that the dentist remains "their" dentist.

The College contended that it is reasonable for the Panel to draw an adverse inference against Dr. Clokie because he chose not to testify in his defence. In making this argument the College relied on a decision of the College of Physicians and Surgeons of Ontario's Discipline Committee.[3]

Finally, the College presented admissions by Dr. Clokie that he lied to the College about his sexual relationship with R.B. and presented a fabricated explanation that a former employee had sent the emails to R.B. rather than himself. The College argued that these admissions demonstrate consciousness of guilt and that the Panel was entitled to infer that Dr. Clokie did so because he was conscious that he had engaged in sexual abuse of R.B.

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[3] *McIntyre (Re)* [2015] OCPSD No 25

The College also alleged that Dr. Clokie threw a model skull during a consultation with R.B. and that this also would be reasonably regarded by members as disgraceful, dishonourable, unprofessional or unethical. In support of that allegation, the College relied on the evidence of R.B. and her husband that in a fit of anger, Dr. Clokie threw a plastic skull in R.B.'s direction.

***Submissions on Dr. Clokie's Behalf***

Counsel for the Member submitted that the College failed to establish on a balance of probabilities based on clear, cogent and convincing evidence that

- R.B. was a patient of Dr. Clokie's when the sexual intercourse occurred on October 14, 2006 such as to constitute sexual abuse;
- Any "sexual abuse" took place in 2007 or later while R.B. was a patient; and
- Dr. Clokie threw a plastic model skull at or near R.B. on October 6, 2011.

Dr. Clokie's counsel also argued that R.B. was not a credible witness, and that her testimony should not be accepted on key points. Counsel submitted that R.B. gave conflicting versions of events respecting key issues relevant to the allegations both during the College investigation and while testifying under oath; and that this was to further her agenda in pursuing a multi-million dollar civil claim against Dr. Clokie and that her conduct over the years was of someone constantly gathering evidence to gain leverage over Dr. Clokie. Dr. Clokie contended that she kept underwear with Dr. Clokie's DNA for over seven years and this is the action of someone who, from the outset, was determined to hurt Dr. Clokie. Dr. Clokie argued the selective emails and text messages that she kept, while destroying others was again calculated to hurt Dr. Clokie. It was also argued that R.B.'s actions in surreptitiously audio-recording appointments and telephone calls over a three year period were also part of her plan to harm Dr. Clokie.

The Panel addresses the submissions advanced on Dr. Clokie's behalf more fully below.

**Discussion and Findings**

***Contemporaneous Sexual and Doctor-Patient Relationship***

The Member's own submissions include an admission that there was sexual intercourse between R.B. and Dr. Clokie on October 14, 2006. Regardless of the reason why R.B. kept the semen stained underwear, Dr. Clokie admits that it was his semen on the underwear. While the Panel accepts that for one reason or another, some of the emails and text messages between the R.B. and the Member were deleted, the evidence is nonetheless clear that their relationship simultaneously involved both professional and sexual aspects. The onus is not on the patient, but on the health professional to ensure that a sexual relationship and a professional relationship do not coexist, and therefore that sexual abuse between a patient and doctor does not occur. The panel saw no evidence that Dr. Clokie ever terminated the doctor-patient relationship and in fact, lied to the College about this.

The Member's counsel contended that R.B. was not a patient when sexual intercourse occurred on October 14, 2006. The panel rejected this argument. The actions of R.B. in seeking out Dr. Clokie and arranging the initial consultation clearly indicated to the Panel that R.B. was searching for a surgeon that could deal with her ongoing concerns related to her face. She contacted Mount Sinai Hospital, requested that her general dentist in Toronto make the necessary referral to Dr. Clokie as advised by his staff and attended to the scheduled appointment on September 7, 2015. Dr. Clokie's records indicate that an initial assessment had been completed and that further consultation, including the development of a treatment plan would follow. R.B. stated that she believed Dr. Clokie was her doctor. The consultation letter sent to Dr. Bower and copied to Clokie by Dr. Gerczuk, a periodontist, supports this belief. While the panel accepted that Dr. Gerczuk's letter cannot be used as evidence that Dr. Clokie would ultimately deal with R.B.'s TMJ problems, it does support R.B.'s conviction that Dr. Clokie was her doctor.

The Mount Sinai Hospital chart for R.B. contained notes made on September 13, 2006 and September 14, 2006 that again indicate that R.B. was a patient of Dr. Clokie's asking that Mount Sinai Hospital retrieve her previous records and that Dr. Clokie provide her with a

treatment plan. The chart entries indicate that Dr. Clokie was facilitating the collection of patient records and on September 21, 2006, R.B. attends a second appointment where Dr. Clokie removed bone from R.B.'s mouth. Dr. Clokie had seen R.B. twice at Mount Sinai Hospital prior to the meeting in Sweden. The Panel unanimously concluded that the patient-doctor relationship was established prior to the sexual intercourse occurring in Sweden on October 14, 2006. Dr. Clokie submitted that there was no doctor-patient relationship because R.B. was established in Sweden in September and October 2006 and there was no reason to expect that she would return to Canada. The Panel concluded that these assumptions on the part of Dr. Clokie do not exonerate him from the professional responsibility he had to R.B. as a patient.

Counsel for the Member argued that R.B. was not Dr. Clokie's patient because the possible facial surgery or other treatments that might be necessary were predicated on Dr. Clokie's review of her past records, having a previously placed chin implant removed and then, following a period of 4-6 weeks, Dr. Clokie would reassess the situation and develop a treatment plan. The Panel concluded that given the findings and need for further information that it set out, the proper characterization of what Dr. Clokie charted in relation to R.B.'s September 7, 2006 attendance at his office at Mount Sinai Hospital is that this was the treatment plan,. The Member arrived at that plan as R.B.'s doctor. The Panel rejected the argument that Dr. Clokie would only have become her doctor at the time and place that he actually provided facial surgery. The Member suggests that if R.B. had never returned to Canada after October 14, 2006, the incident would not have amounted to sexual abuse of R.B. The panel does not accept this position. In addition, the fact is, R.B. did return to Canada and did continue to see Dr. Clokie, who was his patient. During the time when Dr. Clokie and R.B. were engaging in sexual intercourse and other sexual activity, there was a subsisting doctor-patient relationship that was not terminated by the Member. Dr. Clokie did not dismiss R.B. as his patient before engaging in a sexual relationship with her.

The Panel rejected the idea that Dr. Clokie could not be R.B.'s doctor because she already had other doctors (Dr. Ellis, Dr. Bower). In dentistry it is not uncommon for a patient to be seen by a variety of dentists, for example a patient undergoing orthognathic surgery would in most

cases have a general dentist, an orthodontist and an oral and maxillofacial surgeon. All of these dentists would reasonably be considered the patient's doctors at the same time.

Similarly, the Panel did not accept that for R.B. to have been a patient of Dr. Clokie's after September 21, 2006, a subsequent appointment would have been required. In the Panel's opinion, this would not have been possible given the need to obtain records and have an implant removed, followed by a presumed period of healing. It does not follow from the fact that the appointment had not been scheduled that an appointment would never be scheduled. The Panel does not believe that R.B., or any patient, would necessarily have shared the understanding that Dr. Clokie professes. R.B. considered herself a patient of Dr. Clokie's and that he would ultimately provide her surgery. The fact is that when R.B. did return to Canada, within one month, Dr. Clokie had removed the chin implant as was first noted on the chart entry of September 7, 2006. The Panel does not accept that the doctor patient relationship ended the day R.B. returned to Sweden following the September 21, 2006 appointment and then began anew on March 23, 2007. The email messages that were exchanged during this time reflect Dr. Clokie's continuing professional interest in R.B.'s face and jaw issues (emails of October 23, 2006, November 2, 2006, November 29, 2006, December 1, 2006, January 10, 2007, January 21, 2007) and on March 23, 2007, Dr. Clokie surgically removed the chin implant.

However, whether or not sexual intercourse occurred on April 25, 2007, the Panel was convinced, that on the balance of probabilities R.B. and the Member were in a doctor-patient relationship when sexual intercourse and other sexual activity occurred. The Panel considered the fact that R.B. actively sought out an Oral and Maxillofacial surgeon in Toronto, obtained the necessary referral from her family dentist, attended several appointments where records were made, plans discussed, and procedures provided. Dr. Gerczuk wrote a letter to Dr. Clokie stating that Dr. Clokie should remove a bone sequestrum and that Dr. Clokie would be looking after R.B. in regards to her jaw problems. This letter demonstrates to the Panel the impression R.B. had with respect to the Member's role as her doctor. The Panel was not presented with any evidence that either R.B. or Dr. Clokie had at any point terminated the professional relationship; and given the email communications between R.B. and Dr. Clokie it

is inconceivable that it was terminated. The Panel is convinced that on the balance of probability R.B. and the Member began a doctor-patient relationship on September 7, 2006, were in a doctor-patient relationship on October 14, 2006 and that that doctor-patient relationship continued into 2011. Semen stained underwear belonging to R.B. was submitted as evidence and Dr. Clokie admits that the semen was his is compelling evidence that sexual intercourse or other forms of physical sexual relations occurred between R.B. and Dr. Clokie. The fact that Dr. Clokie lied to the College about who wrote the emails indicates to the Panel that Dr. Clokie was aware of his guilt.

Dr. Clokie admitted that he had sexual intercourse with R.B. on October 14, 2006, but took the position that R.B. was not a patient at that time. The Panel rejected this position and unanimously agreed that any reasonable member of the public or dental profession would have recognized R.B. as Dr. Clokie's patient on October 14, 2006. Reasons for this position have been presented previously. Dr. Clokie submitted CPSO guidelines and provides the following quote from the CPSO: "However, if a physician saw a patient on one or two occasions to provide routine clinical care, it may not be inappropriate to have a sexual relationship with the former patient within a short period of time following the end of the physician-patient relationship…" Here the CPSO was discussing a "former" patient following the "end of the physician-patient relationship". The Panel concluded that on October 14, 2006, R.B. was not a former patient and that there was no evidence that either R.B. or Dr. Clokie had terminated the dentist-patient relationship prior or after October 14, 2006. Dr. Clokie suggests that the patient's domicile and whether or not surgery has occurred would determine if and when a doctor-patient relationship exists. The Panel did not accept either criterion in the determination of whether a doctor-patient relationship exists. As pointed out in *Sliwin*,[4] paragraph 72, "It is clear that a doctor-patient relationship between a surgeon and a patient includes a time period for assessment and treatment pre- and post-surgery." Email communications between the Member and R.B. in late fall 2006 and early 2007 indicate that the doctor-patient relationship was ongoing. On November 29, 2006, Dr. Clokie advised that he planned to remove the chin implant the next time R.B. was in Canada

[4] *Ontario (College of Physicians and Surgeons of Ontario) v. Sliwin, S. J.*, 2013 ONCPSD 29 (CanLII)

and that surgery planning would follow. On January 21, 2007 Dr. Clokie advised that he would get the CT scan within days of her arrival. On February 25, 2007 another email to R.B. advised her that the CT scan request would be prepared and on March 7, 2007, R.B. had a C.T. scan performed at Mount Sinai Hospital. On March 23, 2007 Dr. Clokie removed R.B.'s chin implant at Mount Sinai Hospital. All of this clearly demonstrated to the Panel that the doctor-patient relationship was ongoing prior to and after October 14, 2006. Dr. Clokie contended that R.B.'s continued consideration of whether or not she would return to Dr. Ellis indicated that the doctor-patient relationship had not been established. The Panel rejected the contention, be it implicit or otherwise, that a patient can only have one doctor at any particular time. Whether or not sexual intercourse occurred after R.B. returned to Canada does not change the fact that Dr. Clokie and R.B. were in a doctor-patient relationship when sexual intercourse and other sexual activity occurred on October 14, 2006.

Dr. Clokie submitted that the College failed to establish any instances of sexual abuse pertaining to 2007 and following on a balance of probabilities. Dr. Clokie further submitted that the evidence presented by R.B. was neither credible nor reliable. He pointed out that credibility relates to veracity and reliability to accuracy. If a witness is not credible, they cannot be reliable; credibility is not a proxy for reliability. Considering the evidence in its entirety, the Panel accepted R.B.'s evidence that she believed Dr. Clokie was her doctor beginning in September 2006 and that she expected that he perform do her jaw surgery.

The parties agree that sexual intercourse occurred on October 14, 2006 and the email evidence shows that there was an ongoing sexual context to this relationship that continued into 2009.

The Panel was not convinced, based on R.B.'s testimony that sexual intercourse occurred on April 25, 2007. The email messages do not support this testimony and while the College counsel suggests this is because the relationship is becoming acrimonious at this time, it could just as easily be argued that sex did not occur because the relationship was becoming strained. The Panel was troubled by the fact that the College investigator did not have a record of the sexual intercourse on April 25, 2007 and nor did Dr. Ramsey, R.B.'s psychiatrist, who noted the encounter in October 2006, but not the encounter in April 2007. Further, R.B.'s husband's report to the College investigator did not include the sexual intercourse that R.B.

testified occurred on April 25, 2007. The Panel was therefore unable to conclude that the College's evidence as to sexual abuse occurring on April 25, 2007 met the standard of proof.

On the whole of R.B.'s testimony, however, the Panel believed that a sexual relationship occurred between R.B. and the Member when R.B. was his patient. The corroborative evidence of the emails and the underwear were important to substantiate her testimony. There were aspects of R.B.'s testimony that were contradicted on cross-examination, such as whether or not oral sex had occurred on October 14, 2006. The Panel addresses R.B.'s credibility in greater detail below, under a separate heading.

The Panel referred to the *Health Professions Procedural Code* for the definition of sexual abuse of a patient. The Code defines sexual abuse of a patient as (a) sexual intercourse or other forms of physical sexual relations between the member and the patient, ( b) touching, of a sexual nature, of the patient by the member, or (c) behaviour or remarks of a sexual nature by the member towards the patient. On the basis of the evidence of the patient, the corroborative evidence of the email and text messages and the semen stained underwear, all of which it found to be clear, cogent and convincing, the Panel found that on the balance of probabilities, Dr. Clokie was involved in all three of these forms of sexual abuse of his patient, R.B.

Having found that Member sexually abused his patient R.B. on the basis of the evidence outline above, it was therefore unnecessary to consider whether it should draw adverse inference from Dr. Clokie's failure to testify.

***R.B.'s Credibility***

Dr. Clokie's counsel contended that the College had not proven its case on the balance of probabilities, based on clear, cogent and convincing evidence because R.B. gave false testimony under oath and that she had a strong motive to fabricate and exaggerate her story. The Panel rejected this contention given the corroborative evidence used by the College in the form of medical records, emails and text messages and the semen stained underwear. The Panel believed R.B. when she stated that she believed Dr. Clokie was her doctor. Given the

testimony of R.B. and the corroborative evidence, the Panel was satisfied that the evidence is clear, cogent and convincing. The Panel did not dispute that R.B. appears to have had some understanding of the unacceptability of a doctor and a patient having sexual relations, but at the end of the day, it is up to Dr. Clokie to ensure that the boundary is not crossed, not R.B.

The Panel did not accept, however, that R.B.'s civil suit against Dr. Clokie makes her a non-credible witness. Dr. Clokie further contended that R.B.'s failure to recall conversations with Dr. Ellis and her ability to recall conversations with Dr. Clokie are examples of selective recall and hence indicate a lack of credibility and reliability. The Panel did not agree that the comparison is fair as R.B. was presented with Dr. Clokie's medical records but not Dr. Ellis'. In fact, this comparison is unfair. With respect to the inconsistent testimony of R.B. related to whether or not she performed oral sex on Dr. Clokie, the Panel concluded that these inconsistencies did not change the agreed facts that sexual intercourse did occur on October 14, 2006, as R.B. testified. In his submissions, counsel for Dr. Clokie provided examples of R.B.'s failure to recall certain events and argued that her answers to questions related to oral sex and email deletions make R.B. rendered her testimony unreliable. In its deliberations, the Panel assessed all of the evidence led at the hearing. Taking all of that evidence into account, the Panel accepted that R.B. did not recall all events completely accurately. However, that fact and R.B.'s explanation for her altered accounts related to the sexual acts that occurred on October 14, 2006 and her explanation as to why some emails were deleted and some were not, does not negate the entirety of R.B.'s testimony, nor does it diminish the weight of the corroborative evidence.

The Panel accepts the testimony of R.B. and believes that other encounters of a sexual nature occurred. This is supported by the corroborative email messages that were sent during this time.

***Consciousness of Guilt/Post-Offence Conduct***

With respect to the issue of consciousness of guilt or post-offence conduct, Dr. Clokie submitted that in *Hall*,[5] the Court of Appeal made it clear that "the trial judge must provide a clear cautionary instruction to the jury against drawing incriminating inferences from post-offence conduct without considering alternate explanations for the impugned conduct."[6] In a letter from Dr. Clokie to the College dated March 28, 2013, Dr. Clokie wrote that on September 21, 2006, he "expressly told her that he could not assist or treat her … When Ms. R.B. left my office that day, it was clear to both of us that she was no longer my patient." No evidence was presented that supports this statement and the Panel could find no alternative explanation for this statement except that in the fall of 2006, Dr. Clokie was concerned about the propriety of his relationship with R.B. Similarly, Dr. Clokie initially denied sexual relations with R.B. and that he did not exchange emails with R.B. that were sexual in nature, but now Dr. Clokie admits that there was a sexual relationship and that emails of that nature were exchanged.

The Panel concluded that the fact that Dr. Clokie now admits to having a sexual relationship with R.B. and that he did exchange email messages with R.B. was sufficient to conclude that Dr. Clokie fabricated a defence because he was aware that his relationship with R.B. was problematic for him. Thus, the Panel concluded that in light of all the evidence, although circumstantial, Dr. Clokie's representations to the College were consistent with guilt and inconsistent with any other rational conclusion. Dr. Clokie quoted Justice Doherty's statement in *Coutts*[7] that "[e]vidence that supports the case for the Crown, which if accepted would result in the rejection of the accused's evidence as unworthy of belief, should not be equated with evidence of concoction." This argument cannot be made in this case as Dr. Clokie did not present evidence.

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[5] *R. v. Hall*, 2010 ONCA 724
[6] *Ibid*., at para. 136
[7] *R. v. Coutts*, **[**1998] O.J. No. 2555 [CA]

***The Member's Failure to Testify***

The Panel concluded that the evidence presented by the College was clear, cogent and convincing and with the exception of what was alleged in the fifth particular in relation to the second allegation (disgraceful, dishonourable, unprofessional or unethical conduct or act(s)),[8] that the College had made out its case in relation to both of the allegations on the balance of probabilities, based on clear, cogent and convincing evidence. It was therefore, not necessary for the Panel to deliberate further on whether to draw an adverse inference on account of the Member's failure to testify.

***Alleged Throwing of a Model Skull at the September 28, 2011 Consultation Meeting***

With respect to the allegation that Dr. Clokie threw a plastic skull at the September 28, 2011 consultation meeting, the Panel accepted Dr. Clokie's submission that the audio-recording does not support the testimony of R.B. who testified that the plastic skull was thrown with such velocity that it flew across an examination room or that it caused her hair to be blown by the wind from it being thrown in her proximity.

With respect to this aspect of Allegation #5, the Panel heard the testimony of R.B. and her husband, that Dr. Clokie threw a model skull during a consultation on October 6, 2011. R.B. and her husband had audio-recorded this session and the Panel listened to the audio-recording during its deliberations. Both R.B. and her husband testified that the Member lost his temper during the meeting and threw a plastic skull across the room. During its deliberations, the Panel listened to the audio-recording from the start of the appointment to the time where the skull was heard to strike a surface.

The tone of the conversation at the time of and immediately following the incident did not suggest that R.B. was so scared that she "almost peed [her]self". Nor did the response of R.B.'s husband suggest violent throwing of an object across the room. The Panel did not find that the tone his voice or the content of the Member's remarks demonstrated that he had lost

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[8] That particular alleged that "[o]n or about September 28, 2011 [Dr. Clokie] threw a model skull during a consultation meeting with R.B."

his temper. While there is audible noise of an object striking a surface, the Panel did not believe this was the sound of a full plastic skull being thrown across a room a striking a surface. Based on the content, tone and sounds heard on the audio-recording, the Panel did not find that the Member had lost his temper or that he threw a plastic skull across a room.

Consequently, the Panel made no finding in relation to this particular.

***Conclusions***

On the balance of probabilities and based on clear, cogent and convincing evidence, the Panel was satisfied that that R.B. and Dr. Clokie were in a doctor-patient relationship on October 14, 2006 when R.B. and Dr. Clokie had sexual intercourse. Dr. Clokie contended that they were not in a doctor-patient relationship because he had only seen R.B. on two occasions at Mount Sinai Hospital and he had not developed a treatment plan to address her concerns, he had not received records from other doctors, he had not agreed to or provided any surgery at that point, that R.B. had other doctors at that time and because R.B. was living in Sweden at this time. The Panel carefully considered each of these submissions, but concluded that whether taken individually or collectively, they did not alter our conclusion that R.B. was his patient at a time when he was engaged in a sexual relationship with her.

It is clear from the documentary evidence that R.B. wanted to consult with Dr. Clokie. She contacted Mount Sinai Hospital to arrange an appointment with Dr. Clokie and followed the advice from Dr. Clokie's office to obtain that appointment. R.B. attended two appointments in September 2006 and contacted Dr. Clokie's office on two other occasions in September 2006 in relation to her desire to have her concerns regarding her jaw addressed. Dr. Clokie had created a patient chart and clearly documented his findings and a preliminary plan to address R.B.'s concerns. He conducted a minor procedure at the second visit. A periodontist whom R.B. had seen at that time wrote a letter indicating that R.B. had told him that Dr. Clokie would be looking after her jaw problems. All of this clearly demonstrated to the Panel that R.B. and any other dentist or member of the public would reasonably conclude that Dr. Clokie was R.B.'s doctor.

Although R.B. returned to Sweden in the fall of 2006, email communications after R.B. returned to Sweden clearly show that there was continuing consideration of R.B.'s jaw problems and that both R.B. and Dr. Clokie understood that Dr. Clokie would continue to be involved in the management of her jaw problems. Upon her return to Canada in early 2007, Dr. Clokie obtained a CT scan for R.B. and removed her chin implant in March 2007. At no point during this period from September 2006 to March 2007 was the doctor-patient relationship terminated and then re-initiated by Dr. Clokie or R.B. Therefore, the Panel found that Dr. Clokie committed sexual abuse on R.B. when he engaged in sexual intercourse with her on October 14, 2006. The lies Dr. Clokie told to the College with respect to his dismissal of R.B. as a patient, that they never had sex, that he was not the author of the emails and that R.B. had confessed that she had lied to another doctor about having sex was considered strong circumstantial evidence to the Panel that Dr. Clokie knew that his relationship with R.B. violated the doctor-patient relationship. The ongoing email messages that were entered into evidence from 2006 to 2009 demonstrated that Dr. Clokie continued to engage is sexual conversation with R.B while she was his patient. The Panel was not convinced that sexual intercourse occurred on April 25, 2007, but this did not affect the Panel's finding with respect to Allegation #3.

Dr. Clokie vigorously challenged R.B.'s credibility and reliability. Although R.B. could not recall all the details put to her on the witness stand, including some basic personal information regarding education and her description of whether or not oral sex occurred in 2006, the Panel accepted R.B.'s testimony concerning the events that occurred in Sweden and noted that these were in fact, admitted by Dr. Clokie. In concluding that the allegation of sexual abuse has been proven by the College, the Panel also considered the circumstantial evidence (including the medical records, email and text message exchanges and the semen stained underwear) and agreed statement of facts.

As previously, noted, the Panel was not convinced, on the balance of probabilities that Dr. Clokie threw a model skull during a consultation meeting with R.B. In her testimony, R.B. described the skull being thrown with such velocity that it caused her hair to move as it flew by her and that it scared her almost to the point of incontinence. Upon listening to the audio-recording the Panel did not hear a skull striking any object with a velocity described by R.B.

Additionally, in listening to the tone of the conversation during this alleged throwing of the skull neither R.B. nor her husband, who was in the room, indicate a level of fear or concern described by R.B. For these reasons, the Panel rejects this particular in Allegation #5.

The Panel found Dr. Clokie's sexual abuse of R.B. to be disgraceful, dishonourable, unprofessional and unethical. Disgraceful conduct is defined as conduct that shames the member and by extension the profession. Clearly, engaging in sexual abuse with a patient is shameful for both the member and the profession and there can be no tolerance for such behaviour by a dentist. Dishonourable conduct is similar to disgraceful conduct, but not necessarily as severe. It typically has an element of dishonesty or deceit. Dr. Clokie's lies to the College in regard to his dismissal of R.B. as a patient, not having had sex with her and not having sent the e-mail messages to her was clearly deceitful and hence dishonourable conduct. Dr. Clokie's actions cannot be considered by anyone to have been simple errors in judgement. Dr. Clokie and any dentist should have no doubt that it is not acceptable to have sexual intercourse with a patient, and the Panel had no difficulty in concluding that R.B. was Dr. Clokie's patient at the time and remained so after the fact. This is unprofessional conduct. And finally, unethical behaviour is behaviour that fails to meet a moral standard of the profession. Clearly, Dr. Clokie's actions were unethical.

**Findings of Professional Misconduct**

After deliberating, the Panel concluded that that standard of proof as set out above had been met in relation to both allegations and all particulars set out in them, except for the fifth particular set out in Allegation #5 (that "or about September 28, 2011 (the Member) threw a model skull during a consultation meeting with R.B."). Consequently, the Panel made findings of professional misconduct in relation to both Allegation #3 and Allegation #5 as set out in the Notice of Hearing (**Exhibit 2**), with the exception of that particular.

**Attendance for Penalty Hearing**

The parties are directed to contact Ms. Gibbons, the College's Administrative Assistant, Hearings, in order that the penalty hearing may be scheduled.

February 1, 2016

Dr. Richard Bohay, Chair
on behalf of the Panel:

Dr. Richard Hunter
Dr. Lisa Kelly
Ms. Beth Deazeley – Public Member
Mr. Manohar Kanagamany – Public Member

**H130006**
**H140034**

**IN THE MATTER OF** a Hearing of a panel of the Discipline Committee of the Royal College of Dental Surgeons of Ontario held pursuant to the provisions of the Health Professions Procedural Code which is Schedule 2 to the *Regulated Health Professions Act, 1991*, Statutes of Ontario, 1991, Chapter 18 ("*Code*") respecting one **DR. CAMERON CLOKIE,** of the City of Cambridge, in the Province of Ontario;

**AND IN THE MATTER OF** the *Dentistry Act* and Ontario Regulation 853, Regulations of Ontario, 1993, as amended ("Dentistry Act Regulation").

**AND IN THE MATTER OF** the *Statutory Powers Procedure Act*, Revised Statutes of Ontario, 1990, Chapter S.22, as amended; 1993, Chapter 27; 1994, Chapter 27.

**Members in Attendance:**

Dr. Richard Bohay, Chair
Dr. Richard Hunter
Dr. Lisa Kelly
Mr. Manohar Kanagamany – Public Member

**Appearances:**

Mark Sandler and Amanda Ross
for the RCDSO

Scott Fenton and Lynda Morgan
for Dr. Cameron Clokie

Brian Gover, Independent Legal Counsel
to the Discipline Committee of the RCDSO

Natalie Ramtahal, Hearings Clerk of RCDSO

## AMENDED DECISION AND REASONS – CONSTITUTIONAL ISSUES AND PENALTY[1]

### Introduction

On May 3, 2016, a panel of the Discipline Committee (the "Discipline Panel") of the Royal College of Dental Surgeons (the "RCDSO" or "College") considered a (revised) Notice of Constitutional Question in the matter of the RCDSO and Dr. Cameron Clokie ("Dr. Clokie" or the "Member").

Dr. Clokie questions the constitutional validity of ss. 1(3),[2] 51(1)(b.1),[3] 51(5)2[4] and 72(3)(a)[5] (the "Mandatory Revocation Provisions") of the *Health Professions Procedural Code* (the

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[1] Originally released on June 7, 2016, the Discipline Panel's Decision and Reasons have been amended at page 6 to correct a formatting issue in the reference to the *Mussani* decision (cited at note 8) and to clarify when the revocation of Dr. Clokie's certificate of registration will become effective (see page 13).

[2] Subsection 1(3) defines "sexual abuse" as follows:

> (3) In this Code,
>
> "sexual abuse" of a patient by a member means,
>
> (a) sexual intercourse or other forms of physical sexual relations between the member and the patient,
>
> (b) touching, of a sexual nature, of the patient by the member, or
>
> (c) behaviour or remarks of a sexual nature by the member towards the patient.
>
> (4) For the purposes of subsection (3),
>
> "sexual nature" does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided.

[3] This provision defines sexual abuse of a patient as a form of professional misconduct:

> 51. (1) A panel shall find that a member has committed an act of professional misconduct if,
> ...
> (b.1) the member has sexually abused a patient ...

[4] Subsection 51(5) provides for mandatory consequences in the event of a finding of professional misconduct being made:

> (5) If a panel finds a member has committed an act of professional misconduct by sexually abusing a patient, the panel shall do the following in addition to anything else the panel may do under subsection (2):
> 1. Reprimand the member.
> 2. Revoke the member's certificate of registration if the sexual abuse consisted of, or included, any of the following,
>  i. sexual intercourse,
>  ii. genital to genital, genital to anal, oral to genital, or oral to anal contact,
>  iii. masturbation of the member by, or in the presence of, the patient,
>  iv. masturbation of the patient by the member,
>  v. encouragement of the patient by the member to masturbate in the presence of the member.

[5] Paragraph 72(3)(a) prescribes an extended waiting period before a health professional may apply for reinstatement following a finding of professional misconduct based on sexual abuse of a patient. Instead of the

"*Code*"), being Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, Chapter 18 and takes the position that the Mandatory Revocation Provisions violate sections 7 and 12 of the *Canadian Charter of Rights and Freedoms* (the "*Charter*") and are of no force or effect under section 52 of the *Constitutional Act, 1982*. It was understood that in the event that the Discipline Panel rejected Dr. Clokie's constitutional argument, the Discipline Panel would impose penalty upon him.

In the Notice of Hearing dated January 16, 2015, [6] Dr. Clokie was accused of professional misconduct contrary to s.51(1)(b.1) of the *Code*, and as provided by s. 51(1)(c) of the *Code* and paragraphs 8 (abusing a patient) and 59 (engaging in conduct or performing an act or acts that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, unprofessional or unethical) of Section 2 of O. Reg. 853/93, under the *Dentistry Act, 1991*, S.O. 1991, c.24 (the "Dentistry Act Regulation").

In a decision dated February 1, 2016,[7] the Discipline Panel found that Dr. Clokie had committed "sexual abuse", including an act particularized at s. 51(5)2 of the *Code*, which by virtue of the Mandatory Revocation Provisions would result in the mandatory revocation of his license to practise dentistry (referred to in the legislation as his "certificate of registration"). The Discipline Panel also found that Dr. Clokie committed professional misconduct paragraph 59 of Section 2 of the Dentistry Act Regulation in that he engaged in conduct or performed an act or acts that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, unprofessional or unethical relative to the patient whom he sexually abused.

On behalf of Dr. Clokie, the following submissions were made:

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usual one year waiting period prescribed by paragraph 72(2)(a), it provides that an application for reinstatement in relation to a revocation for sexual abuse of a patient "shall not be made earlier than five years after the date on which the certificate of registration was revoked".

[6] Exhibit 2 at the hearing.

[7] See the Amended Decision and Reasons, dated February 1, 2016 (referred to below at the "Amended Decision and Reasons").

1. The Mandatory Revocation Provisions are unjustified infringements of the *Charter* right to liberty and security of the person (s.7), and freedom from cruel and unusual punishment (s.12), and are therefore of no force or effect;

2. The Mandatory Revocation Provisions violate Dr. Clokie's liberty interest and are vague and fail to provide fair notice of conduct that is prohibited, as they do not define the term "patient" and do not delineate when the dentist-patient relationship commences or ends;

3. The Mandatory Revocation Provisions result in a grossly disproportionate penalty in circumstances where involved parties have engaged in consensual intimate sexual relations that does not involve exploitation, and therefore violate s. 12 of the *Charter*;

4. The infringements of section 7 and 12 of the *Charter* cannot be justified under s. 1 of the *Charter*;

5. The Discipline Panel has the jurisdiction and authority to declare legislation unconstitutional under s. 52 of the *Constitution Act, 1982*. To the extent that the Mandatory Revocation Provisions are unconstitutional, they are of no force and effect; and

6. Dr. Clokie cannot be found guilty of or penalized for offences created by an unconstitutional law, and therefore has standing to raise the issue before this Discipline Panel.

**Section 7 of the *Charter* – Liberty Interests**

Central to Dr. Clokie's submission was the decision of the Supreme Court of Canada in *Carter v Canada*, 2015 SCC 5 at para. 44 which states:

> [44] The doctrine that lower courts must follow the decisions of higher courts is fundamental to our legal system. It provides certainty while permitting the orderly development of the law in incremental steps. However, *stare decisis* is not a straitjacket that condemns the law to stasis. Trial courts may reconsider settled rulings of higher courts in two situations: (1) where a new legal issue is raised; and (2) where there is a change in the circumstances or evidence that "fundamentally shifts the

> parameters of the debate" (*Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101, at para. 42).

Dr. Clokie argued the issues he seeks to raise have not been determined by a court. In doing so, he referred to the *Mussani* decision,[8] where Blair J.A. wrote in paragraph 33:

> [33] What is not at issue on this appeal, however, is (a) whether there is a general s. 7 "liberty" right to choose a consensual sexual partner; or, (b) whether, if there is such a right, a limitation prohibiting health professionals from engaging in consensual sexual relations with their patients, deprives them of their liberty right in accordance with the principles of fundamental justice. It is this decision that Dr. Clokie relied upon in arguing that since these issues were not decided in *Mussani*, this Discipline Panel should consider Dr. Clokie's liberty interests in choosing a consensual sexual partner. He further argued that the vagueness of the term "patient" and the lack of legislated guidelines respecting the commencement and termination of a doctor-patient relationship violate the principles of fundamental justice.

The Discipline Panel did not accept this submission. The Discipline Panel accepts that Dr. Clokie and any individual have the freedom to choose a consensual sexual partner. However, it rejected the contention that this would extend to a doctor choosing a patient as a sexual partner. If a doctor and a patient decide to enter into a sexual relationship, the doctor-patient relationship must be terminated before the sexual relationship begins.

This is clearly addressed by Blair JA in the *Mussani* decision. In paragraph 21 of the *Mussani* case Blair J.A. summarized the reasons why zero tolerance and mandatory revocation were recommended by a task force established by the College of Physicians and Surgeons of Ontario ("CPSO") that reported in 1991.[9] They include:

1. The general vulnerability of patients in such relationships;

2. The power imbalance that almost invariably exists in favour of the practitioner, thus facilitating easy invasion of the patient's sexual boundaries;

3. The privileged position of doctors in society, based on their education, status and access to resources;

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[8] *Mussani v. College of Physicians and Surgeons of Ontario*, 74 O.R. (3d) 1 [2004] O.J. No. 5176 (ONCA).
[9] This was known as the Task Force on Sexual Abuse of Patients and is referred to below as the "Task Force".

4. The breach of trust entailed in such conduct by physicians;

5. The serious, long term injury to the victim, both physical and emotional, that results from sexual abuse, including the harmful effects on future care caused by the victim's inability to place her trust in other doctors and caregivers;

6. The fact that sexual abuse tarnishes public trust in the entire profession;

7. The results of an historical review by the Task Force of sanctioning decisions by the College's Discipline Committee and the Divisional Court, which demonstrated a leniency that reflected "a profound non-appreciation of the harm done to victims; and

8. The significant risk of recidivism by abusers, enhanced by the ineffectiveness of rehabilitation measures and previous restrictions on doctors' practices in providing protection against the re-occurrence of abuse.

It is true that the *Mussani* decision did not specifically address the questions of whether there is a general s. 7 "liberty" to choose a consensual sexual partner, or, whether, if there is such a right, a limitation prohibiting health professionals from engaging in consensual sexual relations with their patients deprives them of their liberty right in accordance with the principles of fundamental justice. However, the Discipline Panel notes and agrees with Blair J.A.'s statement in the next paragraph (para. 34):

> [34] Although much was said about these latter two points in argument, all parties to this proceeding agree that government may limit the rights of health professionals in the public interest, and that a zero tolerance policy prohibiting sexual relations between a health professional and his or her patient is both acceptable and desirable.

Dr. Clokie further argues that given the vagueness of the term "patient" and the lack of any legislated guidelines respecting the commencement and termination of a doctor-patient relationship, including whether a doctor-patient relationship can be episodic, as opposed to enduring, violate his s. 7 liberty interest to choose a consensual sexual partner.

Blair J.A. addressed the issues of vagueness and when the doctor-patient relationship terminates. He stated in paragraph 63, that unconstitutional vagueness would occur when the standard "is not intelligible, that cannot provide the basis for coherent judicial interpretation

and that is not capable of guiding legal debate:" Blair J.A. further went on to state, in paragraph 64, "Doctors know who their patients are, by and large. While there may be difficulties in some individual circumstances in determining when a health professional-patient relationship has terminated or begun, an examination of various disciplinary and Court decisions demonstrates that such situates are capable of resolution ..." He concluded, in paragraph 66, the appellant's argument that the word "patient" is unconstitutionally vague is not supportable. This Discipline Panel agrees.

In paragraphs 95-98 of his written submissions, Dr. Clokie suggested that the Discipline Panel erred in its determination that R.B. was a patient of Dr. Clokie's when sexual intercourse occurred. In paragraph 97, he contended that R.B. could not be a patient because Dr. Clokie had not provided any "treatment" to R.B. Yet, in the same sentence Dr. Clokie admitted parenthetically "beyond a minor incidental procedure on September 21, 2006". The Discipline Panel reiterates its finding that Dr. Clokie was R.B.'s doctor at this time and provides the reasons for that determination in the Amended Decision and Reasons (pages 14-18).

Dr. Clokie argued that not only does the legislation fail to define the term "patient" and despite the Court of Appeal's statement in *Leering v. College of Chiropractors* that determining whether someone is a "patient" is "up to the discipline tribunal",[10] the RCDSO's Discipline Committee has also failed to provide a definition of that term. Therefore, his counsel submitted, Dr. Clokie would not know whether someone was regarded as a patient or not until confronted with allegations of sexual abuse of a patient in the context of a discipline hearing.

The Discipline Panel did not accept that Dr. Clokie, or any other dentist or member of the public would not have reasonably known that R.B. was a patient of his before, on and after the date when he had sexual intercourse with her (that is, on or about October 14, 2006). In the Amended Decision and Reasons (pages 14-18 and 21), the Discipline Panel explained why Dr. Clokie should have known and, in fact, did know that R.B. was his patient at the same time as they were involved sexually.

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[10] *Leering v. College of Chiropractors of Ontario*, 2010 ONCA 87 at para. 38.

Citing Supreme Court of Canada authority,[11] Dr. Clokie argued that despite the decision of the Ontario Court of Appeal's decision in *Mussani* and more recently in the CPSO Discipline Committee's decision in *Sliwin*, this Discipline Committee could reconsider the constitutionality of the Mandatory Revocation Provisions because a new legal issue is being raised and there is a change in the circumstances or evidence that fundamentally shifts the parameters of the debate. Dr. Clokie put forward two bases for reconsidering the constitutionality of the Mandatory Revocation Provisions: a Supreme Court of Canada decision dealing with the acquisition of a DNA sample;[12] and the spousal exemption amendments to the *Code*'s definition of sexual abuse of a patient.[13] The Discipline Panel did not find either of these bases a sufficient reason to reconsider this issue and ignore Blair J.A.'s decision in the *Mussani* case.

**Section 12 of the *Charter* – Cruel and Unusual Treatment Punishment**

Dr. Clokie's counsel argued that the Mandatory Revocation Provisions are grossly disproportionate in the circumstances of this case, which, he submitted, involved consensual sex and no exploitation. In doing so, counsel relied on the Supreme Court of Canada's decision in R. v. Nur,[14] and more particularly, paragraphs 39, 56 and 76-77.

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[11] *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101

[12] *R. v. Rodgers*, 2006 SCC 15

[13] These provisions constitute the balance of subsection 1(3) of the Code, excerpted in part above in note 1. They read as follows:

> **Exception, spouses**
> (5) If the Council has made a regulation under clause 95 (1) (0.a), conduct, behaviour or remarks that would otherwise constitute sexual abuse of a patient by a member under the definition of "sexual abuse" in subsection (3) do not constitute sexual abuse if,
> (a) the patient is the member's spouse; and
> (b) the member is not engaged in the practice of the profession at the time the conduct, behaviour or remark occurs. 2013, c. 9, s. 1 (1).
> **Definition**
> (6) For the purposes of subsection (5),
> "spouse", in relation to a member, means,
> (a) a person who is the member's spouse as defined in section 1 of the *Family Law Act*, or
> (b) a person who has lived with the member in a conjugal relationship outside of marriage continuously for a period of not less than three years.

[14] 2015 SCC 15

In *Mussani*, Blair J.A. for the Court of Appeal upheld the Divisional Court's decision that mandatory revocation provisions do not constitute punishment or treatment[15] and further that if it did it was neither cruel nor unusual.[16] In *Sliwin (Re)*,[17] the CPSO's Discipline Committee ("CPSO's Discipline Committee") decided that it remains appropriate to follow the *Mussani* decision.

Dr. Clokie contended that his rights under s. 12 of the *Charter* have been violated in that the Mandatory Revocation Provision constitute "punishment" and "treatment"[18] and having regard to more recent court decisions the Discipline Panel has the authority to revisit the constitutionality of the provisions.

**Conclusion re: *Charter* Issues**

Ultimately, the Discipline Panel concluded that the Court of Appeal has addressed these issues, and that unequivocal and binding jurisprudence holds that the Mandatory Revocation Provisions are constitutionally permissible. The Discipline Panel did not find that the more recent authority referred to by Mr. Clokie's counsel or creation of the spousal exemption had any bearing on the facts of this case. The Discipline Panel concluded that there was no need to re-consider the decision of Blair J.A. in *Musanni*, which it considered to be binding authority, or to depart from the reasoning of the CPSO Discipline Committee in *Sliwin*.

Therefore, the Discipline Panel rejected Dr. Clokie's submissions that:

1. The Mandatory Revocation Provisions are unjustified infringements of the *Charter* right to liberty and security of the person (s. 7), and freedom from cruel and unusual punishment (s.12), and are therefore of no force or effect;

2. The Mandatory Revocation Provisions violate the Applicant's liberty interest and are vague and fail to provide fair notice of conduct that is prohibited, as they do not define

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[15] Paragraphs 95 and 96
[16] Paragraph 97
[17] [2015] O.C.P.S.D. No. 12, ("*Sliwin*")
[18] In *R. v. Rodgers*, cited above at note 11, the Supreme Court of Canada pointed out that DNA sampling imposed as a consequence of a criminal conviction constitutes a form of "treatment" and that "if the physical method for obtaining a DNA sample were cruel and unusual, redress could be obtained under s. 12." (para. 63)

the term patient and do not define when the dentist-patient relationship commences or ends; and

3. The Mandatory Revocation Provisions result in a grossly disproportionate penalty in circumstances where involved parties have engaged in consensual intimate sexual relations that does not involve exploitation, and therefore violates s.12 of the *Charter*.

Given the Discipline Panel's conclusions that ss. 7 and 12 of the *Charter* are not infringed by the Mandatory Revocation Provisions, it is unnecessary to consider whether those provisions can be justified under s.1 of the *Charter*.

**Submissions as to Penalty**

Dr. Clokie submitted that if the Mandatory Revocation Provisions are of no force or effect, the appropriate penalty in this case would involve suspension of his certificate of registration for a period in the range of three to eight months. In doing so, his counsel referred to the charitable and *pro bono* services that Dr. Clokie has performed in Russia, Haiti and Canada and to reference letters from his professional colleagues and business associates. Counsel described Dr. Clokie as one of the leading maxillofacial surgeons in the world and contended that Dr. Clokie should not lose his career over a consensual sexual relationship that took place in Sweden during a short period in 2006.

College counsel described the Member as a very senior leader in the profession who deliberately flouted the rule prohibiting sexual relationships with patients. The evidence at the hearing indicated that Dr. Clokie told the complainant that this was an old fashioned rule and that they should keep their sexual relationship a secret. Other aggravating factors included the fact that the Member concocted and presented to his professional regulator false but sworn evidence to hide what he did and to blame others. In order to try to escape the consequences of his acts, he attempted to obstruct the College's process and to implicate others. Dr. Clokie counseled others to provide false evidence and fabricated a false confession. College counsel argued that the aggravating factors in this case called for revocation in and of themselves.

College counsel also disputed the Member's counsel's assertion that Dr. Clokie's sexual relationship was limited to the short time they were together in Sweden, submitting that the Discipline Panel was entitled to rely on all of the evidence led at the hearing, even if it was not specifically referred to in the Amended Decision and Reasons, provided that it was not rejected.

As important as they are, the parties' submissions as to penalty were eclipsed by the Discipline Panel's rejection of Dr. Clokie's constitutional arguments.

**Penalty Order**

In connection with the finding that the Member committed professional misconduct by sexually abused the patient (Allegation #3 on Exhibit 2, the "Sexual Abuse Allegation"), the Discipline Panel orders as follows:

1. The Registrar is directed to revoke Dr. Clokie's certificate of registration (*Code*, ss. 51(2)1 and 51(5)1; and

2. Dr. Clokie is required to appear before the Discipline Panel to be reprimanded (*Code*, ss. 51(2)4 and 55(5)1).

Operation of the Mandatory Revocation Provisions in relation to the finding on the Sexual Abuse Allegation largely renders academic the Discipline Panel's consideration of the appropriate penalty relating to the finding that the Member committed professional misconduct by engaging in conduct or performing an act or acts that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, unprofessional or unethical (Allegation #5 on Exhibit 2, the "Disgraceful, Dishonourable, Unprofessional or Unethical Conduct Allegation"). The particulars proven in relation to the two allegations were identical.[19] Although (like the provision in the Dentistry Act Regulation

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[19] Those particulars were as follows:

- Ms. R.B. was your patient from September 7, 2006 until January 2013.

on which it is founded[20]) the Disgraceful, Dishonourable, Unprofessional or Unethical Conduct Allegation is framed alternatively or disjunctively (through use of the word "or"), the Discipline Panel found that the Member's conduct was disgraceful, dishonourable, unprofessional and unethical. In doing so, the Discipline Panel referred to the fact that the conduct included sexual abuse of a patient, and also to the Member's deceitful conduct once he knew that he was under investigation:

> The Panel found Dr. Clokie's sexual abuse of R.B. to be disgraceful, dishonourable, unprofessional and unethical. Disgraceful conduct is defined as conduct that shames the member and by extension the profession. Clearly, engaging in sexual abuse with a patient is shameful for both the member and the profession and there can be no tolerance for such behaviour by a dentist. Dishonourable conduct is similar to disgraceful conduct, but not necessarily as severe. It typically has an element of dishonesty or deceit. Dr. Clokie's lies to the College in regard to his dismissal of R.B. as a patient, not having had sex with her and not having sent the e-mail messages to her was clearly deceitful and hence dishonourable conduct. Dr. Clokie's actions cannot be considered by anyone to have been simple errors in judgment. Dr. Clokie and any dentist should have no doubt that it is not acceptable to have sexual intercourse with a patient, and the Panel had no difficulty in concluding that R.B. was Dr. Clokie's patient at the time and remained so after the fact. This is unprofessional conduct. And finally, unethical behaviour is behaviour that fails to meet a moral standard of the profession. Clearly, Dr. Clokie's actions were unethical.[21]

In connection with that finding concerning the Disgraceful, Dishonourable, Unprofessional or Unethical Conduct Allegation, the Discipline Panel orders as follows:

1. The Registrar is directed to revoke Dr. Clokie's certificate of registration (*Code*, s. 51(2)1);

2. Dr. Clokie is required to appear before the Discipline Panel to be reprimanded (*Code*, s. 51(2)4).

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- In or about October 2006 until 2009, you engaged in sexual intercourse or other forms of sexual relations with your patient, R.B.
- During this time you also engaged in touching of a sexual nature with your patient, R.B.
- Further, during this time you exhibited behaviour or made remarks of a sexual nature towards your patient, R.B.

No finding was made concerning a further particular set out in the Disgraceful Dishonourable, Unprofessional or Unethical Conduct Allegation, that "[o]n or about September 28, 2011 [the Member] threw a model skull during a consultation meeting with R.B.": Amended Decision and Reasons, pp. 22-23, 24-25.

[20] O.Reg. 853/93, s. 2(59).

[21] Amended Decision and Reasons, p. 25.

In addition, should Dr. Clokie ever apply for reinstatement of his certificate of registration, the Discipline Panel strongly recommends that the panel hearing his reinstatement application require evidence that Dr. Clokie has both:

1. Successfully completed, at his own expense, a College approved course or program of counseling related to prevention of sexual abuse of patients and the need to maintain doctor-patient boundaries; and

2. Successfully completed, at his own expense, the ProBE Program for Professional/Problem-Based Ethics, and provided proof of successful completion and an unconditional pass in writing to the Registrar.

Both parties invited the Discipline Panel to make the revocation of Dr. Clokie's certificate of registration effective 10 days after release of this decision. The Discipline Panel therefore directs that the revocation will become effective on June 18, 2016.

**Reasons for Penalty Order**

Revocation of Dr. Clokie's certificate of registration serves to protect the public, and to provide for specific and general deterrence. In this case, Dr. Clokie violated the essential trust between a doctor and his patient. This Discipline Panel had no difficulty in determining that R.B. was Dr. Clokie's patient when sexual intercourse and other forms of sexual abuse occurred. No dentist, dental patient or member of the public would have had any difficulty in arriving at the same conclusion having heard the evidence presented.

In connection with its finding concerning the Sexual Abuse Allegation, Discipline Panel is legally required to impose both the revocation of Dr. Clokie's certificate of registration and the oral reprimand. Both are mandatory. The Discipline Panel notes that even if the Mandatory Revocation Provisions were not in force, this would be the appropriate penalty in this case for the reasons identified by the CPSO Task Force, which included:

a) The general vulnerability of patients in such relationships;

b) The power imbalance that almost invariably exists in favour of the practitioner, thus facilitating easy invasion of the patient's sexual boundaries;

c) The privileged position of doctors in society, based on their education, status and access to resources;

d) The breach of trust entailed in such conduct by physicians;

e) The serious, long term injury to the victim, both physical and emotional, that results from sexual abuse, including the harmful effects on future care caused by the victim's inability to place her trust in other doctors and caregivers; and

f) The fact that sexual abuse tarnishes public trust in the entire profession.

While these were general considerations of the Task Force, they were in clear evidence to the Discipline Panel during the hearing and this case is yet another example of why serious, mandatory revocation provisions are the law.

Even if revocation of Dr. Clokie's certificate of registration were not mandatory in relation to the finding concerning the Sexual Abuse Allegation, the circumstances of this case called for a penalty that emphasizes deterrence, one that required revocation of the Member's Certificate of Registration. There are serious aggravating factors against Dr. Clokie. The first is the false sworn evidence Dr. Clokie provided to the College during the investigation. The second is Dr. Clokie's failure to accept responsibility and accountability for his actions and this was emphasized by his submission during the hearing that it was the patient who had ulterior motives from the outset. This demonstrates a profound lack of insight on Dr. Clokie's part.

In themselves, the Discipline Panel's findings of fact in relation to the Disgraceful, Dishonourable, Unprofessional or Unethical Conduct Allegation called for revocation of the Member's certificate of registration. As the Discipline Panel noted in the Amended Decision and Reasons, that conduct involved sexual abuse of a patient and deceitful behavior toward his professional regulator, and it found that Dr. Clokie's conduct would reasonably be regarded by members of the profession as each of disgraceful, dishonourable, unprofessional and unethical.

The Discipline Panel was provided with Dr. Clokie's *curriculum vitae* and letters of support. These demonstrated to the Discipline Panel the accomplishments and contributions of Dr. Clokie as an Oral and Maxillofacial Surgeon. However, the Discipline Panel does not consider these submissions as having any impact on the finding that he sexually abused a patient who was in his professional care and the penalty that is required to be imposed.

The penalty imposed in this case demonstrates to Dr. Clokie, the entire profession and the public that the dentists in Ontario believe that sexual abuse of a patient is one of the most serious offences a dentist can commit. It should serve as a clear reminder, notwithstanding the spousal exemption, that the onus lies entirely with the dentist to ensure that sexual relations with a patient do not occur and that if sexual relations are anticipated it is the dentist who is obligated to sever the doctor-patient relationship before any sexual activity occurs.

**Costs**

The Discipline Panel is prepared to receive written submissions from the parties before determining whether Dr. Clokie should be ordered to pay costs pursuant to s. 53.1 of the *Code*, and the quantum of those costs. If it seeks costs, the College shall serve and file its submissions within 14 days from the date of the release of this decision. For service and filing of his responding submissions (if any), Dr. Clokie shall have 14 days from the date on which the College serves and files its submissions.

June 8, 2016

Dr. Richard Bohay, Chair
on behalf of the Panel:

Dr. Richard Hunter
Dr. Lisa Kelly
Mr. Manohar Kanagamany – Public Member

**H130006**
**H140034**

**IN THE MATTER OF** a Hearing of a panel of the Discipline Committee of the Royal College of Dental Surgeons of Ontario held pursuant to the provisions of the Health Professions Procedural Code which is Schedule 2 to the *Regulated Health Professions Act, 1991*, Statutes of Ontario, 1991, Chapter 18 ("*Code*") respecting one **DR. CAMERON CLOKIE,** of the City of Cambridge, in the Province of Ontario;

**AND IN THE MATTER OF** the *Dentistry Act* and Ontario Regulation 853, Regulations of Ontario, 1993, as amended ("Dentistry Act Regulation").

**AND IN THE MATTER OF** the *Statutory Powers Procedure Act*, Revised Statutes of Ontario, 1990, Chapter S.22, as amended; 1993, Chapter 27; 1994, Chapter 27.

## ORDER

WHEREAS by Amended Decision and Reasons dated February 1, 2016, the panel of the Discipline Committee of the Royal Dental Surgeons of Ontario (the "Discipline Panel") found that Dr. Cameron Clokie engaged in professional misconduct by sexually abusing a patient and by engaging in conduct or performing an act or acts that, having regard to all the circumstances, would reasonably be regarded by members of the College as disgraceful, dishonourable, unprofessional or unethical relative to one of his patients;

AND WHEREAS by Amended Decision and Reasons dated June 8, 2016, the Discipline Panel determined the penalty to be imposed upon Dr. Clokie in consequence of those findings of professional misconduct;

AND WHEREAS the Discipline Panel has been informed that the Honourable Mr. Justice Dambrot has reserved judgment in relation to Dr. Clokie's application to stay the Discipline Panel's penalty Order pending the hearing of Dr. Clokie's appeal to the Divisional Court;

THE DISCIPLINE PANEL THEREFORE ORDERS AS FOLLOWS:

1. The Registrar is directed to revoke Dr. Clokie's certificate of registration revocation, such revocation to become effective at 5:00 p.m. on the day immediately after the day on which the Honourable Mr. Justice dismisses the application for a stay pending appeal or, if Justice Dambrot grants the stay, to become effective if and when the Divisional Court or a member of that Court so orders; and

2. Dr. Clokie is required to appear before the Discipline Panel to be reprimanded on a date to be fixed by the Registrar in consultation with Dr. Clokie's counsel.

June 16, 2016

Dr. Richard Bohay, Chair
on behalf of the Panel:

Dr. Richard Hunter
Dr. Lisa Kelly
Mr. Manohar Kanagamany

**CITATION:** Clokie v. Royal College of Dental Surgeons (Ontario), 2016 ONSC 4164
**DIVISIONAL COURT FILE NO.:** 276/16
**DATE:** 20160622

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**DIVISIONAL COURT**

| | | |
|---|---|---|
| **B E T W E E N :** | ) | |
| | ) | |
| DR. CAMERON CLOKIE | ) | *Ian Smith* and *Lynda Morgan*, for the Moving party/ Appellant |
| | ) | |
| Moving Party/Appellant | ) | |
| | ) | |
| **– and –** | ) | |
| | ) | |
| ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO | ) | *Mark Sandler* and *Amanda Ross*, for the Respondent |
| | ) | |
| Respondent | ) | |
| | ) | **HEARD: June 15, 2016** |
| | ) | |

**M. DAMBROT J.:**

[1] The appellant is a dental surgeon. On February 1, 2016, the Discipline Committee of the Royal College of Dental Surgeons of Ontario (the "committee") found that the appellant had committed professional misconduct. Specifically it found that he committed the offence of sexual abuse of a patient and that he engaged in conduct or performed an act or acts that would reasonably be regarded as disgraceful, dishonourable, unprofessional and unethical in relation to that same patient.

[2] On June 8, 2016, the committee ordered the revocation of the appellant's licence to practice dentistry effective June 18, 2016.

[3] The appellant has appealed both decisions to the Divisional Court, and brings this motion for a stay of the penalty pending the disposition of his appeal.

[4] The test for such a stay is well known. The moving party must satisfy the Court that:

1. there is a serious question to be determined;

2. irreparable harm will be suffered by the moving party if the stay is not granted; and

3. the balance of convenience favours a stay.

[5] I will consider each prong of the test in turn.

**Serious Question**

[6] I need say very little about the details of the misconduct found to have been committed. However it is necessary to know the following in order to assess the grounds of appeal.

[7] On October 26, 1993, RB was in a motor vehicle accident and sustained injuries to her face and jaw. She underwent two surgeries prior to consulting Dr. Clokie, but was unsatisfied. She moved to Sweden and was living and working there in 2006, in part to avoid encountering friends because of her appearance.

[8] Following her second surgery RB began searching for an oral maxillofacial surgeon who could perform a reversal surgery, and was referred to Dr. Clokie. She came to Toronto to see him.

[9] She consulted Dr. Clokie on September 7, 2006 at Mount Sinai Hospital. Dr. Clokie examined her, discussed surgery and proposed a plan. A second appointment took place on September 21, 2006. On that occasion Dr. Clokie removed a bone fragment or fragments from RB's mouth with tweezers, and they discussed removal of a chin implant. I will not recite the considerable body of evidence entirely aside from the evidence of RB suggesting that a doctor-patient relationship had been formed during this period.

[10] RB was "back and forth" between Sweden and Canada at this time. She was in the process of returning to Canada. Following the second appointment, a series of emails were exchanged between the appellant and RB to arrange for them to meet in Sweden.

[11] On October 14, 2006 the appellant met RB. They had dinner, saw a movie and ultimately had sexual intercourse in his hotel room.

[12] Following this encounter, the appellant exchanged emails about both her treatment and their relationship. They also saw each other when she was in Canada.

[13] On March 23, 2007, the appellant removed RB's chin implant. On March 30, 2007, RB attended at the appellant's office for a post-surgical appointment.

[14] I will not outline the various encounters RB said she had with the appellant during March and April 2007 that were both professional and sexual. She was not challenged on most of this evidence in cross-examination. However I will note that RB testified that they had sexual intercourse for a second time sometime around April 25, 2007. The panel was unable to find that this event occurred as described.

[15] During the College's investigation, the appellant presented the College with an affidavit from an employee who falsely claimed that she had authored the emails, and gave an elaborate explanation for doing so. In the appellant's letter accompanying that affidavit, he denied authoring these emails and texts, and denied having sexual relations with RB. The appellant also

represented to the College that RB had confessed to another doctor that she had never had sexual relations with him. By the time of the hearing, it was clear that affidavit was demonstrably false. As a result, the appellant admitted that the texts and emails were his and did not dispute that he had had sexual intercourse with RB.

[16] These texts and emails demonstrate beyond any doubt that the appellant made repeated sexual remarks to RB while they were unquestionably in a doctor-patient relationship during the period from October 14, 2006 to April 28, 2009.

[17] On his appeal, the appellant will argue that:

1. the committee erred in finding that a doctor-patient relationship existed between him and RB on October 14, 2006, when he had sexual intercourse with RB;

2. the committee erred in assessing RB's credibility;

3. the committee erred in finding that RB's testimony was corroborated;

4. the committee erred in its analysis of evidence relevant to consciousness of guilt;

5. the committee erred in finding that it was required to resolve a credibility contest;

6. the committee erred in finding that the appellant had engaged in deceitful and dishonourable conduct that did not form part of the allegations against him in the notice of hearing;

7. the reasons of the committee failed to adequately explain the basis on which the decision was made, and constitutes a decision that falls outside the range of possible, acceptable outcomes;

8. the committee erred in finding that the mandatory revocation provisions of the *Health Procedure Code* do not violate ss. 7 and 12 of the *Charter*; and

9. the penalty was inappropriate.

[18] In my view, the appellant is most unlikely to be successful on this appeal. Grounds 3, 4, 5, 6, 7, 8 and 9 seem to me to be entirely unmeritorious. In particular, the constitutional issues raised in ground 8 have already been decided adversely to the appellant by the Court of Appeal save for one entirely unpersuasive sub-issue. However with respect to grounds 1 and 2, I am only able to say that they are weak but, when viewed together, they are arguable. I say they are weak but arguable for the following reasons.

[19] It is hard to imagine an issue in relation to which an expert panel of medical professionals would be owed greater deference by the Divisional Court than whether or not the appellant and RB were in a doctor-patient relationship on October 14, 2006. Given that the standard of review on the issue is reasonableness, success for the appellant is an uphill battle. However when this issue is combined with the committee's alleged error in assessing the credibility of RB, I conclude that the two grounds together, while weak, are arguable. Describing these two issues as

arguable is a far cry from an opinion that they are meritorious. But the standard on this prong of the test for a stay is a very low one.

[20] However the question of whether or not there is a serious question to be determined involves more than a determination that there is an arguable ground of appeal. The arguable ground of appeal must be capable of affecting the outcome of the appeal in a relevant way. Here, it is not. However much force there is to the argument that RB's credibility was not properly evaluated, which in turn might have affected her evidence about the existence of a doctor-patient relationship in October 14, 2006, in the end her credibility cannot affect the conclusion that the findings of misconduct will be upheld in whole, or at least in part, and that revocation or, at least, a period of suspension is inevitable. I say this for two reasons.

[21] First, even if the evidence of RB relating to the existence of a doctor-patient relationship at the time of the intercourse is entirely discounted, the remaining evidence, including powerful documentary evidence, is overwhelming. Second, and perhaps more important, there can be absolutely no question that the appellant subsequently sent sexually-laden messages to RB and repeatedly expressed his desire to engage in more sexual activity with her in the midst of what was undeniably a doctor-patient relationship. The committee found that this constituted sexual abuse of a patient, as it indisputably did. Even if this finding of misconduct stood alone, it would undoubtedly attract a penalty of suspension for a substantial period of time.

[22] Given the inevitability of a finding of misconduct and a suspension, I cannot say that there is a serious question to be determined that would be decisive of the outcome in the appellant's favour in the sense that it would leave him free to practice his profession immediately.

**Irreparable Harm**

[23] Revocation has serious consequences for the appellant, both financial and reputational. But if at least a period of suspension is inevitable, then the appellant will not be harmed by being required to begin serving his penalty now. I am assured by counsel for the College that the period of time that the appellant cannot practice between now and the ultimate release of a decision on appeal will count towards any period of suspension that may ultimately be imposed.

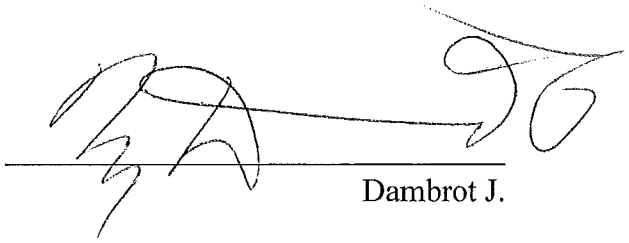
**Balance of Convenience**

[24] In view of my conclusions on the first two prongs of the test, this question does not really arise.

**Disposition**

[25] For these reasons, the motion is dismissed.

[26] Counsel agreed that costs should follow the event, and should be fixed at $5,000 all-inclusive. As a result, I award costs to the moving party fixed in that amount.



Dambrot J.

**RELEASED:** JUN 2 2 2016

**CITATION:** Clokie v. Royal College of Dental Surgeons (Ontario), 2016 ONSC 4164
**DIVISIONAL COURT FILE NO.:** 276/16
**DATE:** 20160622

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**DIVISIONAL COURT**

**B E T W E E N :**

DR. CAMERON CLOKIE

Moving Party/Appellant

**– and –**

ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO

Respondent

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**REASONS FOR JUDGMENT**

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**M. DAMBROT J.**

**RELEASED:** June 22, 2016

**H130006**
**H140034**

**IN THE MATTER OF** a Hearing of a panel of the Discipline Committee of the Royal College of Dental Surgeons of Ontario held pursuant to the provisions of the Health Professions Procedural Code which is Schedule 2 to the *Regulated Health Professions Act, 1991*, Statutes of Ontario, 1991, Chapter 18 ("*Code*") respecting one **DR. CAMERON CLOKIE,** of the City of Cambridge, in the Province of Ontario;

**AND IN THE MATTER OF** the *Dentistry Act* and Ontario Regulation 853, Regulations of Ontario, 1993, as amended ("Dentistry Act Regulation").

**AND IN THE MATTER OF** the *Statutory Powers Procedure Act*, Revised Statutes of Ontario, 1990, Chapter S.22, as amended; 1993, Chapter 27; 1994, Chapter 27.

**Members in Attendance:**

Dr. Richard Bohay, Chair
Dr. Richard Hunter
Dr. Lisa Kelly
Mr. Manohar Kanagamany – Public Member

## DECISION AND REASONS ON COSTS

### 1. Introduction

On February 1, 2016, this panel of the Discipline Committee of the Royal College of Dental Surgeons of Ontario (the "Panel") found that Dr. Cameron Clokie ("Dr. Clokie" or "the Member") engaged in professional misconduct in that he sexually abused a patient and engaged conduct or performed an act or acts that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, unprofessional or unethical relative to that patient.[1] On May 3, 2016, the Panel heard submissions as to the

[1] The Panel released its Decision and Reasons regarding these findings of professional misconduct on February 1, 2016. An Amended Decision and Reasons document was released on February 2, 2016. In addition to

appropriate penalty to be imposed on the Member, and on June 7, 2016, the Panel ordered that Dr. Clokie's certificate of registration be revoked and that he appear before the Panel in to be reprimanded.[2] Subsequently and with the agreement of both parties, the Panel received written submissions as to the appropriate costs order to be made in this case. The Panel has considered those submissions, and this constitutes its decision and reasons regarding costs.

## 2. Summary of the Parties' Submissions

The College submitted that this is an appropriate case in which to impose costs. In doing so, it referred to the decision of the Discipline Committee of the College of Physicians and Surgeons of Ontario in *College of Physicians and Surgeons of Ontario v. Sazant*[3] and submitted that the seriousness of Dr. Clokie's misconduct and its ongoing nature are relevant considerations in determining that a costs award is appropriate. The College pointed out that the Member's misconduct reflected on the reputation and integrity of the profession as a whole. The real issue, the College submitted, was the amount of costs to be paid. Ultimately, it was the College's submission that the Panel should order the Member to pay $318,297.87 by way of costs award in its favour, with a timetable for payment in the Panel's discretion. This amount represented two-thirds (2/3) of the costs incurred by the College (not including the College's investigation costs). The College submitted that this amount was reasonable in that it was consistent with the approach taken by it in other cases and takes into consideration the circumstances surrounding withdrawal of standards of practice allegations and the amount of time spent in attempting to prove a particular which was ultimately not proven.

On behalf of Dr. Clokie it was submitted that a costs award of $318.297.87 would not be "fair and reasonable". His counsel pointed out that (1) the hearing was conducted in an efficient and focussed way, (2) Dr. Clokie was successful in defending himself in relation to a

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correcting some minor typographical errors, it addressed a failure in one instance to anonymize the patient's name in the original document.

[2] The Panel's Decision and Reasons regarding penalty and the constitutional issue raised on the Member's behalf were also amended to correct a formatting issue in the reference to a decision of the Ontario Court of Appeal and to clarify when the revocation of Dr. Clokie's certificate of registration is to become effective.

[3] 2009 CarswellOnt 9623 (CPSDC). Affirmed: *College of Physicians and Surgeons of Ontario v. Sazant*, 2011 ONSC 323 (Div.Ct.)

number of allegations, (3) Dr. Clokie expended considerable resources in defending himself against the withdrawn standards of practice allegations, (4) Dr. Clokie's licence to practise dentistry has been revoked and so his ability to earn an income has been seriously compromised, (5) Dr. Clokie is funding an appeal against the Panel's findings of professional misconduct and the penalty the Panel has ordered, and (6) Dr. Clokie's right to practise was at stake and he was therefore entitled to defend himself vigorously. It was Dr. Clokie's submission that a costs award of $100,000.00, with one year to pay, would be appropriate.

## 3. Issues To Be Addressed

a. Is it appropriate to order that Dr. Clokie pay for some portion of the College's costs?

b. What is a fair and reasonable costs award to be made in the College's favour?

c. What is a fair and appropriate schedule of payment?

## 2. Decision and Reasons

a. *Is it appropriate to order that Dr. Clokie pay for some portion of the College's costs?*

The Panel unanimously agreed Dr. Clokie should pay costs.

The *Health Professions Procedural Code* provides for the authority of the Panel to award costs in favour of the College when it has found that a member has committed an act of professional misconduct.[4]

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[4] This authority is found in section 53.1 of the *Health Professions Procedural Code*, Schedule 2 to the *Regulated Health Professions Act, 1991*, SO 1991, c 18:

> **College's costs**
> **53.1** In an appropriate case, a panel may make an order requiring a member who the panel finds has committed an act of professional misconduct or finds to be incompetent to pay all or part of the following costs and expenses:
> 1. The College's legal costs and expenses.

Dr. Clokie does not dispute that costs can be awarded to the College.

b. *What is a fair and reasonable costs award to be made in the College's favour?*

The Panel unanimously agreed that costs in the amount of $318,297.87 be awarded to the College.

The Panel recognizes that the costs awarded are substantial. However, they reflect only a portion of the true costs associated with the investigation and hearing. The College did not include any costs related to the investigation of the allegations; and the College further reduced the costs by one-third (1/3). The Panel found this approach fair and reasonable.

The Panel agreed with the College's submission that while the hearing was run efficiently the hearing days alone do not reflect the amount of time needed to deal with all the issues in this case.[5]

The Panel agrees that the conduct of counsel for the College and Dr. Clokie during the hearing was focused and efficient. While this certainly helped contain the cost of the hearing, it does not change the cost to conduct this hearing.

Dr. Clokie submits that there are mitigating factors that the Panel should consider in determining the amount of costs that he should be ordered to pay. The Panel accepts that the agreed statement of facts and supplemental agreed statement of facts resulted in a more efficient hearing. It also accepts the College's argument that these admissions were received

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2. The College's costs and expenses incurred in investigating the matter.
3. The College's costs and expenses incurred in conducting the hearing.

[5] The College summarized the complexities of this case in its reply submissions at paragraph 2(b)(i-ix). Many of these complexities were created or magnified by Dr. Clokie or his previous counsel. No admissions were made by Dr. Clokie until very shortly before the hearing. Dr. Clokie successfully moved to delay the sexual abuse hearing until the standards of practice allegations were referred to Discipline. Dr. Clokie challenged the Chair's jurisdiction to set hearing dates even after all the allegations were referred to Discipline and consolidated. Dr. Clokie claimed that independent counsel was biased. Dr. Clokie applied to the Divisional Court to quash the hearing dates set by the Chair, and while it was abandoned when Mr. Fenton was retained, the application was based on a "completely meritless argument". Though no breach of the Panel's order was ever disclosed, Dr. Clokie alleged that the Chair should be disqualified due to a reasonable apprehension of bias. Dr. Clokie moved for broad-based relief based on counsel for the complainant speaking with Dr. Ramsay. Dr. Clokie challenged the constitutionality of the mandatory revocation provisions. Finally, a number of legal issues had to be addressed, including Dr. Clokie's position that certain aspects of his conduct did not amount to consciousness of guilt.

only near the beginning of the hearing – in other words, at a time when the College had already undertaken its hearing preparation. The Panel rejects Dr. Clokie's contention that the College achieved only mixed success in proving Dr. Clokie sexually abused a patient and that this should be factored into the determination of costs. Ultimately, Dr. Clokie was found to have sexually abused his patient. In this there is no mitigating consideration. With respect to the issue of the withdrawal of the standards of practice allegations, the Panel agrees with Dr. Clokie that he should not be required to bear all of the costs associated with the prosecution and defence of those allegations. However, the Panel accepts that this has been taken into consideration in the costs award proposed by the College.

Dr. Clokie contends that the legal fees assessed by College counsel and the Panel's independent counsel should be capped and that their fees assessed are excessive. This College does not apply caps to counsel fees and does not believe this should be done on an *ad hoc* basis. The Panel agrees and adds that this should not be done after the fact, as Dr. Clokie would appear to suggest.

With respect to the proportionality of costs awarded in other matters, Dr. Clokie refers to *Chuang* where the costs award in the College's favour was reduced from $250,000 to $200,000 by the Divisional Court.[6] This represented a 20% reduction in costs. In the *Kothari* case,[7] the College was awarded $180,000 (not $190,000 as submitted by Dr. Clokie), the panel in that case having stated that this represented 60% of the College's actual costs.

In this case, the College has already waived the investigation costs and made a further reduction in costs of 33.33%. The two concessions made by the College in its submissions concerning the quantum of costs to be awarded in this case appear, to be fair and reasonable, and to lead to a costs award that is in line with the examples provided by Dr. Clokie in his submission.

Dr. Clokie submits that because his licence to practise[8] has been revoked, this will result in a loss of a significant portion of his income and that he has other demands on his resources,

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[6] *Chuang v. Royal College of Dental Surgeons (Ontario)*, [2006] OJ No 2300 (Div.Ct.)
[7] *Ontario (College of Pharmacists) v. Kolthari*, 2015 ONCPDC 17 (CanLii)
[8] Referred to in the *Health Professions Procedural Code* as a "certificate of registration".

including funding his appeal against the Panel's findings of professional misconduct and the penalty that it has imposed. However, Dr. Clokie presented no evidence that he is unable to pay a portion of the costs borne by the College as a result of his professional misconduct or that it would be an undue burden or hardship for him to do so. His decision to expend his financial resources on an appeal is simply irrelevant to this panel's determination of the appropriate costs award to be made in this case.

c. *What is a fair and appropriate schedule of payment?*

The Panel orders that Dr. Clokie pay the costs over a period of 12 months on a monthly basis (that is, 12 monthly payments of $26,524.82), starting one month after this order taking effect.

The Panel accepted a one year to pay costs as suggested by Dr. Clokie.

In his submissions, Dr. Clokie presented no evidence that he would be unable to meet this financial obligation or that it would impose undue hardship.

September 13, 2016

Dr. Richard Bohay, Chair
on behalf of the Panel:

Dr. Richard Hunter
Dr. Lisa Kelly
Mr. Manohar Kanagamany – Public Member

**CITATION:** Clokie v. The Royal College of Dental Surgeons of Ontario, 2017 ONSC 2773
**DIVISIONAL COURT FILE NO.:** DC 276/16
**DATE:** 20170519

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**DIVISIONAL COURT**

**NORDHEIMER, TAYLOR & MATHESON JJ.**

| | |
|---|---|
| **BETWEEN:** | |
| DR. CAMERON CLOKIE<br>Appellant | *Scott K. Fenton*, for the Appellant |
| **– and –** | |
| THE ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO<br>Respondent | *Mark J. Sandler* and *Amanda M. Ross*, for the Respondent |
| | **HEARD at Toronto:** April 25, 2017 |

**PUBLICATION RESTRICTION NOTICE**

Pursuant to s. 47(1) of the *Health Professions Procedural Code,* Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, there is an order directing that that no person shall publish the identity of the witness R.B. or any information that could disclose the identity of that witness.

**W. MATHESON J.**

[1] This is an appeal from a decision of a panel of the Discipline Committee of the Royal College of Dental Surgeons of Ontario (the "Panel") dated February 1, 2016, the related penalty decision dated June 8, 2016 and the costs decision dated September 13, 2016. The Panel found that the appellant had committed sexual abuse of a patient, as defined in s. 1(3) of the *Health Professions Procedural Code* (the "*Code*") and had engaged in conduct that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, unprofessional and unethical. Given the sexual abuse finding that was made, mandatory revocation of the appellant's licence to practice was required under s. 51(5) of the *Code*.

[2] A constitutional challenge to the mandatory revocation provisions of the *Code* was withdrawn before the hearing of this appeal as a result of the recent decision in *Sliwin v. College of Physicians and Surgeons of Ontario*, 2017 ONSC 1947 (Div. Ct.).

[3] After withdrawal of the constitutional challenge, the main issue on the appeal became the Panel's finding that R.B. was the appellant's patient on October 14, 2006. It was ultimately admitted that the appellant had sexual intercourse with R.B. on that day. If R.B. was Dr. Clokie's patient, the finding of sexual abuse and the penalty of mandatory revocation unquestionably follow. I conclude that the appellant has failed to show that the finding that R.B. was the appellant's patient on October 14, 2006 was unreasonable. Similarly, the appellant has failed to show that the costs order was unreasonable. The appeal should therefore be dismissed.

***Brief background***

[4] R.B. was in a motor vehicle accident in October 1993 and sustained injuries to her face and jaw. She had jaw surgery in April 1996 by Dr. Vigna, but was unsatisfied with her post-surgical condition.

[5] R.B. moved from Canada to Sweden in approximately 2004. She returned to Canada for a second surgery in April 2006. Dr. Ellis, an ear, nose and throat doctor, conducted surgery on R.B. to address problems arising from the prior surgery as well as inserting chin and jaw implants, among other procedures. R.B. then returned to Sweden.

[6] R.B. began to have problems with the chin and jaw implants. She began searching for an oral maxillofacial surgeon who could perform reversal surgery.

[7] R.B. found Dr. Clokie's name online and learned that he practised in Toronto. R.B. obtained a referral to Dr. Clokie through her family dentist in Ontario. She then returned to Toronto to see Dr. Clokie.

[8] R.B.'s first consultation with Dr. Clokie took place on September 7, 2006 at Mount Sinai Hospital. Dr. Clokie examined R.B., discussed surgery and developed a plan. Dr. Clokie's clinical notes set out the plan as follows: "Plan: 1) try to find pre-tx [treatment] records (pt [patient] to find); 2) pt to have chin implant removed; 3) wait 4-6 weeks; 4) full work up + plan."

[9] On September 13, 2006, R.B. called Dr. Clokie's office to ask that his office obtain her records from Dr. Vigna's office. R.B.'s patient chart indicates that R.B. also requested a treatment plan on that call.

[10] On September 14, 2006, as noted by a staff member in R.B.'s chart, Dr. Clokie asked the staff member to request models from another doctor's office. That note also recorded that Dr. Clokie indicated that R.B.: "needs chin implant out – back to [Mount Sinai] to re-evaluate then tx plan will be completed."

[11] On September 20, 2006, R.B. had an appointment with Dr. Gerczuk, a periodontist. Dr. Gerczuk's letter regarding the appointment, dated October 4, 2006, referred to R.B. having significant problems in regards to her jaw. The letter stated, "Dr. Clokie will be looking after her

in that regard." The letter was copied to Dr. Clokie, and there is no evidence that he disputed the description of his role set out in this letter at the time.

[12] R.B. had a second appointment with Dr. Clokie on September 21, 2006 at Mount Sinai Hospital. On that date, Dr. Clokie removed a bone fragment from R.B.'s mouth using tweezers. After noting that procedure, Dr. Clokie's notes of that appointment say, "Review options with patient." His notes set out the "Plan" including R.B. arranging for removal of the chin implant, followed by a "workup."

[13] During the September 21, 2006 appointment, Dr. Clokie and R.B. also discussed Dr. Clokie's upcoming trip to Sweden for a conference. The conference was only a few weeks away. Emails were exchanged following the appointment to arrange for the two to meet when Dr. Clokie was in Sweden.

[14] On October 14, 2006, in Sweden, Dr. Clokie and R.B. met and they went back to Dr. Clokie's hotel room later that day. As was admitted in final argument before the Panel, that night they had sexual intercourse.

[15] There was no evidence introduced at the hearing before the Panel demonstrating that, at any point between the initial consultation on September 7, 2006 and October 14, 2006, Dr. Clokie told R.B. that the doctor-patient relationship had terminated or that he would not continue to see her in relation to the contemplated surgery.

[16] Dr. Clokie returned to Canada the next day and continued his contact with R.B. by email, including personal emails, emails about upcoming treatment and emails that included both subjects.

[17] Dr. Clokie's emails immediately after the events of October 14, 2006 included a personal email on October 15, 2006; an email exchange on October 23, 2006 about the 3D imaging software that Dr. Clokie had told R.B. he would like to use to assess her face; and, an email on November 2, 2006. In the November 2 email, a matter of weeks after October 14, 2006, Dr. Clokie emailed R.B. that: "I was thinking that maybe I will take out the chin implant when you are next in town." Emails continued.

[18] R.B. returned to Canada in February of 2007. Dr. Clokie performed surgery to remove the chin implant in March 2007 at Mount Sinai Hospital. He performed another surgery in 2011. There were also appointments at other times.

[19] The personal and professional relationship between Dr. Clokie and R.B. continued until late 2011 and is amply documented in emails, texts and medical records. There is no dispute that R.B. was a patient during the period after her return to Canada in 2007. There is also no issue that personal and sexualized emails, as well as emails about R.B.'s dental care, were sent by Dr. Clokie in that period. There is, however, considerable dispute about whether there were more instances of sexual intercourse or other sexual conduct that would give rise to mandatory revocation. Only the one instance of sexual intercourse, on October 14, 2006, is admitted.

***Decision under appeal***

[20] The Panel found as follows:

(1) that the appellant sexually abused a patient, namely R.B., in the period from 2006 to 2011, contrary to s. 51(1)(c) of the *Code* and s. 2(8) of O. Reg. 853/93 (Professional Misconduct), under the *Dentistry Act, 1991*, S.O. 1991, c. 24; and,

(2) that the appellant engaged in disgraceful, dishonourable, unprofessional and unethical conduct relative to R.B. over that same time period, contrary to s. 2(59) of O. Reg. 853/93.

[21] The College withdrew other allegations at the outset of the hearing regarding alleged failures to meet the standard of practice of the profession.

[22] In final submissions before the Panel, the appellant admitted that he and R.B. had sexual intercourse on October 14, 2006. The Panel found that Dr. Clokie and R.B. were in a doctor-patient relationship at that time. The Panel noted the events that were recorded in Dr. Clokie's own patient records from the appointments on September 7, 2006 and September 21, 2006; the chart entries made by his staff on September 13 and 14, 2006; and, the letter from Dr. Gerczuk in September 2006. Although the events described in the medical records were the main focus of the Panel's reasons for decision in this regard, the Panel also relied on R.B.'s testimony that she believed Dr. Clokie was her doctor at that time, which was corroborated by Dr. Gerczuk's letter.

[23] The Panel recognized that within Dentistry it is not unusual for some patients not to see their family dentist on a regular basis or have treatments beyond dental checkups and prophylaxis. Yet, the patient would reasonably believe that the dentist remained "their" dentist.

[24] The Panel concluded that any reasonable member of the public or dental profession would have recognized R.B. as Dr. Clokie's patient on October 14, 2006.

[25] The Panel found no evidence that Dr. Clokie ever terminated the doctor-patient relationship and, in fact, Dr. Clokie had lied to the College about doing so. Although Dr. Clokie did not testify at the hearing, he had written to the College in 2013 saying that he specifically told R.B. at the September 21, 2006 appointment that he could not assist or treat her. This proposition was not documented in the 2006 medical records, was contrary to some of the medical records and emails from around that time and was not pursued at the hearing through evidence from Dr. Clokie.

[26] The Panel rejected the arguments put forward on behalf of Dr. Clokie regarding the issue of whether there was a subsisting doctor-patient relationship on October 14, 2006, including submissions based upon R.B. living in Sweden, there being no subsequent appointment scheduled, there being no reason to expect R.B. to return to Canada and because the facial surgery or other treatments were predicated on certain events and the involvement of other practitioners, among other arguments. The Panel gave reasons addressing these arguments.

[27] On the issue of whether conduct that fell within the definition of sexual abuse took place, Dr. Clokie admitted only sexual intercourse on October 14, 2006. The Panel's other findings of sexual conduct are best understood within the context of the definition of sexual abuse, which is set out in s. 1(3) of the *Code* as follows:

> "sexual abuse" of a patient by a member means,
>
> > (a) sexual intercourse or other forms of physical sexual relations between the member and the patient,
> >
> > (b) touching, of a sexual nature, of the patient by the member, or
> >
> > (c) behaviour or remarks of a sexual nature by the member towards the patient.

[28] With respect to s. 1(3)(a), R.B. testified about one other incident of sexual intercourse, on April 25, 2007. The Panel was unable to conclude that the College's evidence of that second incident met the standard of proof. With respect to "remarks of a sexual nature" under s. 1(3)(c), there was an ample record of emails and texts from Dr. Clokie of a sexual nature. With respect to s. 1(3)(b), R.B. testified to other incidents of "touching" of a sexual nature.

[29] Only conduct within s. 1(3)(a) or (b) gives rise to mandatory revocation. The Panel concluded that "other encounters of a sexual nature" did occur. However, the Panel did not make any specific finding of conduct that would fall within s. 1(3)(a) or (b) other than with respect to October 14, 2006.

[30] The Panel was not persuaded about another incident that R.B. testified to, when, at a September 2011 medical appointment at which her then husband also attended, Dr. Clokie allegedly threw a plastic skull across the examining room narrowly missing R.B.

[31] The Panel expressly considered R.B.'s credibility and accepted some but not all of her testimony. The Panel referred to evidence corroborating R.B.'s testimony in some respects, including not only medical records, emails and texts but also a pair of R.B.'s underwear that was stained with Dr. Clokie's semen.

[32] Although noting that a cautious approach was required when considering this type of evidence, the Panel also found evidence of consciousness of guilt in Dr. Clokie's post-offence conduct. That conduct included Dr. Clokie's 2013 letter to the College stating that he had told R.B. on September 21, 2006 that he could not assist or treat her, which the Panel found to be false. There was also a fabricated affidavit and confession. Dr. Clokie presented the College with a concocted affidavit from an employee who (wrongly) claimed that she authored Dr. Clokie's incriminating emails, not him. Dr. Clokie also fabricated a "confession" purportedly made by R.B. saying that she had falsely reported having a sexual relationship with Dr. Clokie.

[33] The Panel found that this conduct demonstrated Dr. Clokie's awareness that he was in a "problematic" relationship with R.B., and that he needed to fabricate a defence.

[34] On penalty, the Panel was obliged to and did order mandatory revocation of the appellant's licence to practice under s. 51(5) of the *Code,* as well as the mandatory reprimand under that section. The Panel found that even if s. 51(5) had not prescribed the penalty, the same outcome would have been the appropriate penalty in this case.

[35] Section 53.1 of the *Code* provides that in an appropriate case, a panel may make an order requiring a member who the panel finds has committed an act of professional misconduct pay all or part of the College's legal costs and expenses, investigation costs and hearing costs.

[36] Before the Panel, the appellant conceded that costs in the amount of $100,000 were appropriate, but challenged the larger award sought by the College. The College sought, and the Panel awarded, $318,297.87, which was two-thirds of the costs incurred by the College excluding the investigation costs. The Panel recognized that the award was substantial but found it fair and reasonable in the circumstances. In its decision, the Panel took into account the exclusion of the investigation costs and the reduction of the other costs by one-third. The Panel also considered other relevant factors such as efficiencies achieved at the hearing, the withdrawal of the standard of practice charges and proportionality. It also considered the absence of any evidence that the quantum of costs would cause undue hardship.

[37] The Panel ordered that the costs be paid over a period of 12 months in monthly installments.

***Issues and analysis***

[38] There is no issue that the standard of review on this appeal is reasonableness. The main issue is whether the Panel's decision that R.B. was Dr. Clokie's patient on October 14, 2006 was reasonable. If so, revocation is mandatory and the only remaining issue is the quantum of costs. Other issues were also raised on the appeal but do not affect the outcome except as they relate to the doctor-patient relationship issue.

***Doctor-patient relationship***

[39] The appellant submits that the Panel's finding that R.B. was a patient on October 14, 2006 was unreasonable.

[40] The appellant has accepted that the issue of whether there is a doctor-patient relationship is a factual inquiry: *Leering v. College of Chiropractors of Ontario*, 2010 ONCA 87, 98 O.R. (3d) 561, at para. 38.

[41] The appellant submits that a doctor-patient relationship can be episodic, and that sexual relations could take place during breaks in the doctor-patient relationship without constituting sexual abuse. The appellant relies on a case involving an emergency room physician that mainly serves to underscore that the issue of whether there is a doctor-patient relationship is a factual inquiry: *College of Physicians and Surgeons of Ontario v. Redhead,* 2013 ONCPSD 18. The appellant also relies on *G.L. and College of Physicians and Surgeons* (1993), 110 D.L.R. (4th) 214 (Alta. C.A.), which also arises in markedly different circumstances and emphasizes that the issue must be resolved by "a close examination of the relationship": at para. 17.

[42] Because the term "patient" is not defined in the *Code*, "it is up to the discipline tribunal to apply its expertise in considering all the facts and circumstances in order to determine whether a complainant who was having a sexual relationship [with a member]... was also a patient...": *Leering*, at para. 38.

[43] The Panel considered the appropriate factual context, applying its expertise in Dentistry. The Panel decided that R.B. was Dr. Clokie's patient on October 14, 2006. In the reasons for decision, the Panel set out the facts upon which its decision was based. Those facts are mainly found in the medical records, including the following:

(i) after obtaining a referral from her family dentist, R.B. attended for an appointment with Dr. Clokie on September 7, 2006;

(ii) at that appointment, Dr. Clokie examined R.B., discussed surgery and put forward a plan that indicated that there would be further consultation;

(iii) the plan set out in the patient records of September 7, 2006, was itself a treatment plan, and it contemplated a full "workup" and further plan once certain steps had been taken;

(iv) the chart for R.B. included staff notes made on September 13 and 14, 2006, showing that Dr. Clokie was facilitating the collection of patient records, and noting a request from R.B. for a treatment plan;

(v) R.B. attended for a second appointment with Dr. Clokie on September 21, 2006, for the removal of a bone fragment; and,

(vi) at the September 21, 2006 appointment, Dr. Clokie's notes indicate that R.B. needed to have the chin implant removed and there would then be a workup.

[44] The Panel also relied on R.B.'s evidence that she believed Dr. Clokie was her doctor. The Panel found that this belief was supported by the letter by Dr. Gerczuk, dated October 4, 2006 and copied to Dr. Clokie. That letter reported on Dr. Gerczuk's appointment with R.B., her problems in regards to her jaw, and said that, "Dr. Clokie will be looking after her in that regard."

[45] The appellant submits that there were inconsistent findings by the Panel regarding R.B.'s credibility, giving rise to an unreasonable decision. The appellant submits that since the Panel was not persuaded that certain events took place (specifically, the April 25, 2007 instance of sexual intercourse and the throwing of the plastic skull), and given other inconsistencies in R.B.'s evidence, the Panel's reasons for decision did not adequately explain its findings.

[46] In my view, the Panel was free to accept some, all or none of R.B.'s evidence. The Panel gave reasons for its various findings. Further, the key finding – that R.B. was a patient on the October date – did not rest on R.B.'s testimony. That finding was mainly founded on facts set out in medical records including the charted notes of what transpired at appointments and the

plan after each appointment. While the Panel did refer to R.B.'s belief, it reasonably found that her belief in that regard was corroborated by Dr. Gerczuk's letter.

[47] The appellant further submits that the Panel's finding of a doctor-patient relationship was unreasonable because it did not consider all of the relevant circumstances, such as R.B.'s residency in Sweden, the lack of a next appointment, the steps that had to be taken before a further treatment plan could be made, some of which had to be taken by R.B., and the possibility that R.B. would have another doctor remove the chin implant. However, these arguments were addressed by the Panel.

[48] The appellant also submits that the Panel's finding that the "Plan" recorded in the chart entry for the first appointment was a treatment plan was unreasonable. This argument presupposes that there could be only one treatment plan, yet no authority was provided for that proposition.

[49] The appellant also submits that the Panel erred by relying on unspecified emails and on semen-stained underwear as evidence as corroborating R.B.'s testimony. The appellant mainly submitted that since R.B. testified that her semen-stained underwear was from the April 25, 2007 incident, and the Panel found that intercourse on that day had not been proved, the underwear could not be corroborative of anything.

[50] I find it unsurprising that the Panel would make general references to the semen-stained underwear as corroborative of sexual abuse given the testimony of R.B. about incidents of sexual abuse and the admission that it was Dr. Clokie's semen on her underwear. However, as of final argument at the discipline hearing, there was an admitted incident of sexual intercourse on October 14, 2006 that needed no corroboration. Further, the finding of a doctor-patient relationship on that day was not predicated on the semen-stained underwear. Given the now admitted instance of sexual intercourse on October 14, 2006, this corroboration issue no longer affects the outcome of this appeal.

[51] The appellant further submits that the Panel erred in its analysis of consciousness of guilt, but this has also become an issue that does not affect the outcome of this appeal. The fabrication of evidence was not relied upon by the Panel in its determination that there was a doctor-patient relationship and there is an admitted instance of sexual intercourse.

[52] The appellant also seeks to rely on guidelines of the College of Physicians and Surgeons (the "CPSO"). However, those guidelines address the propriety of a sexual relationship between a physician and a *former* patient. In that context, the CPSO guidelines indicate that it "may not be inappropriate" to have a sexual relationship with a former patient within a short time following the end of the doctor-patient relationship. These guidelines were considered by the Panel, which noted the absence of evidence that Dr. Clokie had terminated the doctor-patient relationship with R.B.

[53] The appellant also submits that the Panel's reasons for decision are faulty or insufficient for appellate review. Reasons for decision need not mention every piece of evidence. They too must be reviewed on the basis of reasonableness. Although the Panel's reasons for decision are

somewhat repetitive, they are sufficient to understand why the Panel made its decision and to determine whether its conclusion is within the range of reasonable outcomes.

[54] The Panel considered relevant agreed facts and evidence, and concluded that Dr. Clokie and R.B. were in a doctor-patient relationship at the material time in October 2006. This was well within the Panel's expertise. The appellant has not demonstrated that this finding was unreasonable.

***Costs order***

[55] The appellant does not dispute that this was an appropriate case for the Panel to order costs under s. 53.1 of the *Code*. Section 53.1 provides as follows:

> 53.1 In an appropriate case, a panel may make an order requiring a member who the panel finds has committed an act of professional misconduct or finds to be incompetent to pay all or part of the following costs and expenses:
>
> 1. The College's legal costs and expenses.
>
> 2. The College's costs and expenses incurred in investigating the matter.
>
> 3. The College's costs and expenses incurred in conducting the hearing.

[56] This section allows for a costs order that includes not only the College's legal costs and expenses but also costs and expenses of the investigation and of the hearing.

[57] The power to award costs is discretionary. The standard of review is reasonableness. As is accepted by the appellant, to overturn the cost award, he must demonstrate that there was an error of principle or that the award is "plainly wrong": *Venneri v. College of Chiropractors of Ontario*, 2010 ONSC 473 (Div. Ct.), at para. 6.

[58] The appellant disputes the quantum of costs. The appellant submitted to the Panel that the appropriate quantum was $100,000.

[59] The Panel ordered that $318,297.87 be paid to the College in respect of costs. This figure was two-thirds of the amount incurred by the College for its legal costs and expenses (under s. 53.1 #1) and the costs and expenses incurred in conducting the hearing (under s. 53.1 #3). The College did not make a claim for its costs and expenses incurred in its investigation, although permitted under s. 53.1 #2.

[60] The appellant submits that the quantum of costs ordered by the Panel was unreasonable because of a number of factors, including the following: the withdrawal of the standard of care allegations; the failure to prove all of the particulars of sexual abuse, including the instance of

sexual intercourse on April 25, 2007, and efficiencies resulting from the appellant's conduct of the hearing.

[61] The appellant has not demonstrated any error in principle in the Panel's decision on costs. The Panel recognized that its costs award was substantial. It took into account the factors now put forward on appeal.

[62] The Panel took into account the efficiencies achieved at the hearing, but noted that they contained the costs rather than changing what was claimed. The appellant had changed counsel prior to hearing, after which there was a more efficient approach. But beforehand, that was not the case. A considerable portion of the costs incurred related to the prehearing stage.

[63] The Panel took into account the admissions that were made and also took into account when various admissions were made. The admission regarding sexual intercourse was not made until final argument.

[64] The Panel took into account the withdrawal of the allegations regarding standards of practice. The College submitted that those costs were not significant. The appellant put forward no specific information about his actual costs regarding those allegations or anything else.

[65] The Panel considered and rejected the appellant's submission that the outcome was "mixed success" because certain particulars were not proven. The Panel made no error in principle in that regard. The breaches of the *Code* that proceeded at the hearing, as alleged in the Notice of Hearing, were proved without the need to prove every particular. Further, the appellant could have, but did not, put forward evidence that he had incurred substantial costs in relation to the unproven particulars.

[66] The Panel considered and rejected a submission based on the financial impact of the award, given no evidence to support it. Before the Panel, the appellant had submitted that his "principal" source of income had "decreased dramatically" as result of the penalty of mandatory revocation, but his submissions also made it clear that he had other sources of income. No evidence was put forward regarding the overall financial impact.

[67] The appellant submits on this appeal that the quantum of the costs award essentially penalized him for mounting a defence. This concern is not borne out in the circumstances of this case.

[68] There is no doubt that costs are compensatory only. And in its award, the Panel gave only partial compensation to the College for the costs that were incurred and may be awarded under s. 53.1 of the *Code*. The Panel properly focused on the particular circumstances of the case before it, and how it been conducted, giving rise to the substantial costs incurred by the College. It was open to the appellant to put forward information to show that the College's costs were dramatically more than his own costs. This would have been another measure of whether the College's costs were reasonable. The Panel also considered proportionality in comparison to costs awards in other matters.

[69] The appellant chose not to put forward his own costs as a measure of reasonableness, but he did make a significant concession about the College's costs claim. The appellant agreed before the Panel that the number of hours spent was reasonable.

[70] The appellant did not expressly raise his own reasonable expectations as a factor before the Panel. However, that factor is an established consideration in civil cases: *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.).

[71] This court has recently rejected the proposition that the reasonable expectations of the losing party is a factor that must be considered when ordering costs under s. 53.1 of the *Code*: *Reid v. College of Chiropractors of Ontario,* 2016 ONSC 1041 (Div. Ct.), at para. 228 (per Marrocco ACJSC and Pattillo J.). The appellant relies on the minority judge's costs decision in *Reid.*

[72] 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.

[73] The minority judge in *Reid* raised a number of issues about the costs award arising from the particular circumstances of that case. Unlike the appellant's case, *Reid* was a relatively simple case, involving much less serious allegations, where the College nonetheless claimed for two senior counsel at a high total hourly rate, which was a significant component of the amount. There is no suggestion that in *Reid* the pre-hearing steps were made more complex by the appellant, and thus more costly, as is the case here. Further, the minority judge in *Reid* held that the only reasonable inference in the case before her was that the appellant in that case would suffer "profound financial hardship" and there was therefore no need for evidence to establish that inference. Here, the appellant admits to other sources of income but has not quantified them.

[74] There is no question that the costs award here is high. It is unusually high. I would expect much more moderate awards in most cases. However, the quantum was largely driven by the defence strategy before the hearing, and admissions made only late in the process, resulting in a large number of hours having already been spent that the appellant agrees were reasonable. While the number of hours is only one factor, the Panel considered all relevant factors in the particular circumstances of this case. In doing, the Panel made no error of principle, and its decision is not plainly wrong.

[75] The Panel concluded that the position of the College, which waived the costs of the investigation and reduced the other costs by one-third, was fair and reasonable, and made its order accordingly. The appellant has failed to demonstrate that this was an unreasonable exercise of discretion in the circumstances of this case.

***Order***

[76] The appeal is dismissed with costs to the respondent in the agreed amount of $7,500, all inclusive.

Justice W. Matheson

I agree

Justice I.V.B. Nordheimer

I agree

Justice G.E. Taylor

**Released:** MAY 19 2017

**CITATION:** Clokie v. The Royal College of Dental Surgeons of Ontario, 2017 ONSC 2773
**DIVISIONAL COURT FILE NO.:** DC 276/16
**DATE:** 20170519

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**DIVISIONAL COURT**

**NORDHEIMER, TAYLOR & MATHESON JJ.**

**BETWEEN:**

DR. CAMERON CLOKIE

Appellant

**– and –**

THE ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO

Respondent

**REASONS FOR DECISION**

**Released:** May 19, 2017

SHARPE J. A. BLAIR J. A. Epstein J.A.

Court File No. M47928

COURT OF APPEAL FOR ONTARIO
BEFORE
DATE 06 - Oct - 17
DISPOSITION OF MOTION

The motion for leave to appeal is dismissed. Costs to the respondent fixed at $1000.00 all inclusive

RA Blair J.A.
Epstein J.A.
Sharpe J.A.

COURT OF APPEAL FOR ONTARIO

BETWEEN:

**DR. CAMERON CLOKIE**

Applicant/Moving Party

- and -

**THE ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO**

Respondent/Responding Party

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# MOTION RECORD FOR LEAVE TO APPEAL
## Volume 1 of 6

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Appellant/Moving Party

**TEXT OF PUBLIC REPRIMAND**

**Delivered February 15, 2018**

**in the case of the**

**ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO**

**and**

**DR. CAMERON CLOKIE**

The Discipline Panel found that you sexually abused a patient, namely R. B. The Discipline Panel also found your conduct to be disgraceful, dishonourable, unprofessional and unethical.

As part of its Penalty Order the Discipline Panel has ordered that an oral reprimand be given. This reprimand is being administered in a hearing room that is open to the public and is on the record. Furthermore, the fact that you have received this reprimand will be part of the public portion of the Register and as such part of your record with the College.

Dr. Clokie, by your conduct you have disgraced the profession and yourself. The Panel is certain that you knew what you were doing was wrong and that you knew a patient/doctor relationship existed when you had sexual intercourse with R.B. It was clear to the Panel that you took advantage of a patient who placed her trust in you to manage her concerns related to previous surgery. It is untenable to suggest that R.B. or any patient can be held responsible in any way for the inappropriate actions of a doctor. It is even more incredulous to this Panel that someone in your position, a prominent oral and maxillofacial surgical specialist, a faculty member and a teacher, would engage in such serious professional misconduct. You were someone who should be viewed as a role model, and on the evidence before us you were in fact viewed as one. You were responsible for the education of oral surgeons.

That you would act in the way you did make your actions all the more egregious and deplorable. You have embarrassed the profession, your specialty, the University of Toronto Faculty of Dentistry and Mount Sinai Hospital, all of whom put their trust in you to act professionally.

The emotional, mental and physical harm you may have caused R.B. is not fully understood by the Panel but it was abundantly clear to us that what you did caused serious harm. How your actions may have affected her family, her friends and her acquaintances remains unknown to the Panel but it is not difficult to believe that they too were likely impacted in some adverse way.

This Panel hopes that you will have come to have remorse for the pain you have caused R.B. and most of all the Panel hopes that R.B. can come to terms with the abuse she suffered by your actions.

Your Certificate of Registration has been revoked; you are ineligible to apply for reinstatement for a period of five years. The Panel hopes that you might use this time in some positive way. For example, you might consider helping to prevent sexual abuse of other patients who have placed their trust in a dentist or oral surgeon or some other health professional.