

**IN THE MATTER OF
THE HEALTH PROFESSIONS ACT, R.S.B.C. 1996, C. 183**

BETWEEN:

THE COLLEGE OF PHARMACISTS OF BRITISH COLUMBIA

(the “College” or “CPBC”)

AND:

JASPAUL SINGH SIDHU

(the “Respondent”)

DECISION AND REASONS

Discipline Committee Panel:

Sarah Pivnick (Chair)

Parkash Ragsdale

Omar Saad

Counsel for the Panel:

David Eleff

Counsel for the College of Pharmacists of BC:

Fritz C. Gaerdes

Counsel for the Respondent:

Joven Narwal

I. Overview

1. This Panel of the Discipline Committee (the “Panel”) of the College of Pharmacists of British Columbia (the “College”) convened on January 13 and May 15, 2023, to hear and determine the issues raised in a citation dated June 30, 2022 (the “Citation”). The Citation makes allegations against Jaspaul Singh Sidhu (the “Respondent”) in his capacity as a former indirect owner of Easton Pharmacy Ltd. (the “Pharmacy”).
2. This Panel previously considered and dismissed a preliminary application made by the Respondent seeking a stay of proceedings for lack of jurisdiction. The Panel’s reasons for dismissing this application were delivered on January 12, 2023. In short, the Panel concluded that s. 20 of the *Pharmacy Operations and Drug Scheduling Act*, SBC 2003, c. 77 (“PODSA”) applies to the Respondent as a former indirect owner of a pharmacy and as such, the Panel has jurisdiction to make findings and determinations against him under s. 39 of the *Health Professions Act*, R.S.B.C. 1996, c. 183 (“HPA”) as if he were a registrant of the College.
3. For the reasons set out below, the Panel finds that the Respondent failed to cooperate with an inspector acting under the *HPA/PODSA* and that this conduct constitutes a breach of s. 18(8) of the *Pharmacy Operations and Drug Scheduling Act* Bylaws as well as professional misconduct under s. 39(1) of the *HPA*.

II. **Key Provisions**

4. The provision relied on by the College for the statutory obligation to cooperate is s. 18(8) of the *PODSA* Bylaws. That provision sets out the responsibilities of a shareholder indirect owner of a pharmacy by reference to responsibilities that apply to managers, direct owners, directors and officers. It provides:

Responsibilities of Manager, Direct Owners, Directors, Officers and Shareholders

18 (8) Shareholders must comply with subsections (2)(i) and (7)(c).

5. Subsections 18(2)(i) and (7)(c) provide:

(2) A manager must do all of the following:

(i) cooperate with inspectors acting under section 17 of the [*PODSA*] or section 28 or 29 of the [*HPA*];

(7) A direct owner, directors and officers must do all of the following:

(c) notify the registrar of any change of name, address, telephone number, electronic mail address or any other information previously provided to the registrar;

6. Per s. 1 of the *PODSA Bylaws*, “direct owner”, “indirect owner”, “manager”, and “pharmacy” all have the same meaning as in s. 1 of the *PODSA*:

“direct owner” means the owner of a pharmacy, other than an indirect owner;

“indirect owner”, in relation to a pharmacy, means,

(a) in respect of a corporation that is traded publicly, the officers and directors of the corporation, and

(b) in respect of a corporation that is not traded publicly,

(i) the officers, directors and shareholders of the corporation, and

(ii) if a subsidiary corporation, the officers, directors and shareholders of the parent corporation;

“pharmacy” means the area of a premises licensed under this Act, or in respect of which a direct owner seeks to have a pharmacy licence issued, renewed or reinstated, where drugs or devices may be

(a) stored, or

(b) dispensed or sold to the public;

7. Section 20 of *PODSA* provides:

Inquiry and disciplinary actions

20 (1) Sections 32 to 40 of the *Health Professions Act* apply to

(a) a direct owner or an indirect owner as if the direct owner or indirect owner were a registrant, and

(b) a pharmacy licence as if it were the registration of a registrant.

(2) Sections 29, 30 and 31 (2) of the *Health Professions Act* apply for the purpose of an investigation, extraordinary action or discipline committee hearing undertaken under subsection (1).

(2.1) For the purpose of subsection (1), a reference in sections 32 to 40 of the *Health Professions Act* to

(a) "under this Act" is deemed to read "under the *Pharmacy Operations and Drug Scheduling Act* or under this Act", and

(b) "this Act, a regulation or a bylaw" is deemed to read "the *Pharmacy Operations and Drug Scheduling Act*, this Act, or the regulations or bylaws made under either the *Pharmacy Operations and Drug Scheduling Act* or this Act".

(3) For the purpose of subsection (1), a pharmacy licence may be suspended or cancelled or other appropriate action taken if

(a) the operation of the pharmacy is not in compliance with

(i) this Act,

(ii) the *Health Professions Act*,

(iii) the regulations or bylaws made under either this Act or the *Health Professions Act*, or

(iv) the conditions of the pharmacy licence, or

(b) the direct owner ceases to be eligible, under section 3, to hold a pharmacy licence.

(4) For the purpose of subsection (1), the measures that the discipline committee may take under section 39 of the *Health Professions Act* include

(a) prohibiting a person from being a direct owner or an indirect owner, or

(b) setting limits for a specified period on the activities a person can carry out as a direct owner or an indirect owner.

III. Allegations in the Citation

8. The Citation was issued against the Respondent at the direction of the Inquiry Committee of the College, notifying him that a hearing would be conducted into his conduct as an indirect owner of the Pharmacy under s. 38 of the *HPA*.
9. The particulars of the allegations in the Citation are as follows:
 1. Beginning on or about December 24, 2020, you failed to cooperate with an inspector acting under sections 28 and 33(4) of the [*HPA*] when you did not provide in a responsive or timely manner, or at all, information that the inspector requested of you with respect to his investigation of allegations regarding prescriptions being processed onto PharmaNet by Sundeep Sidhu, who was an employee of the Pharmacy, and a person other than the registrants whose names appeared on the PharmaNet records.
 2. The conduct set out at paragraph 1 constitutes a breach of the [*PODSA*]; the *Pharmacy Operations and Drug Scheduling Act* Bylaws, including sections 18(2)(i) and 18(7); the [*HPA*]; or the *Health Professions Act* Bylaws; professional misconduct or unprofessional conduct under section 39 (1) of the [*HPA*].
10. Service of the Citation was admitted by the Respondent's counsel.
11. The hearing was conducted by videoconference. The College led evidence with respect to the allegations in the Citation. The Respondent was represented by counsel on both days of the hearing but did not lead any evidence. By direction of the Panel, the parties' submissions proceeded in writing at the close of evidence.

IV. Standards Applied by the Panel

12. The parties submit and the Panel agrees that the College bears the burden of proof on all allegations in the Citation and must prove them to the standard of a balance of probabilities based on sufficiently clear, cogent and convincing evidence (*F.H. v. MacDougall*, 2008 SCC 53 at paras. 40, 46).

V. Evidence

13. The College called three witnesses: Dean Spottar, Doreen Leong, and Valerie Tsui. The Respondent did not call any evidence.
14. A summary of the witnesses' evidence is below.
15. Dean Spottar was an investigator of complaints for the College from May 15, 2017 until December 31, 2021. He conducted the investigation of the Pharmacy following a complaint from the pharmacy manager that prescriptions were being improperly processed between June 9 and July 1, 2020. Mr. Spottar gave evidence about the steps taken in the investigation, the College's attempts to contact the Respondent to have him

cooperate with the investigation of the Pharmacy, and the responses received by the College from the Respondent.

16. Doreen Leong is the Director of Registration and Licensure with the College. She gave evidence regarding the ownership of the Pharmacy and the opening and closing dates of the Pharmacy.
17. Valerie Tsui is the Manager of the College's Complaints and Investigations Department. She gave evidence about the information and documentation the College had received from the Respondent as of the last date of the hearing. She also gave evidence regarding the version of the *PODSA* Bylaws in force at the time of the events in question.
18. The credibility and reliability of these witnesses was not in dispute. The Panel found these witnesses to be credible and reliable and accepted the evidence of each of them.

VI. Facts

19. Based on the evidence presented and accepted by the Panel, the Panel makes the following factual findings.
20. The Pharmacy was opened on June 22, 2017. The information in the record suggests that the Pharmacy closed on either July 22 or 29, 2020. Nothing turns on this difference for the purposes of this hearing.
21. The direct owner of the Pharmacy was a corporation, Easton Pharmacy and Medical Supplies Ltd. ("Easton"). The Respondent was a shareholder of Easton since at least May of 2018 and continuing at least until the Pharmacy closed. On January 12, 2021, Easton was dissolved.
22. The Panel notes that the Respondent admits he was an indirect owner of the Pharmacy up until the date of its closure.
23. On July 4, 2020, the College received a complaint from the manager of the Pharmacy regarding the improper processing of prescription medication, including methadone, on PharmaNet by a non-pharmacist staff member using the manager's credentials. Mr. Spottar investigated this complaint and prepared a report for the Inquiry Committee.
24. On August 28, 2020, the Inquiry Committee directed an investigation of the Pharmacy pursuant to s. 33(4) of the *HPA* based on the memorandum and evidence prepared by Mr. Spottar.
25. On December 24, 2020, Mr. Spottar sent the Respondent a letter advising that the College had received a complaint about the Pharmacy and was investigating allegations that prescriptions were being improperly processed onto PharmaNet by an employee other than the registrants whose names appeared on the PharmaNet records. The letter enclosed a copy of statements provided to the investigator by the pharmacists who worked at the Pharmacy during the relevant period, as well as the relevant records. The letter advised that the Inquiry Committee was required to investigate the matter and arrive at a disposition under s. 33(4) of the *HPA*. The letter requested the Respondent's response,

including a detailed written statement about the allegations and additional supporting documentation, by January 14, 2021.

26. On January 12, 2021, the Respondent's counsel replied to Mr. Spottar and requested an extension to February 5, 2021, which the College granted. On January 13, the College provided the Respondent's counsel with the Inquiry Committee's Direction to Investigate and affirmed that the matter had not yet been disposed of by the Inquiry Committee and that a response from the Respondent was part of the ongoing investigation.
27. The College granted further extensions at the request of the Respondent's counsel to March 5, March 25, and April 30.
28. On April 29, the Respondent's counsel wrote to Mr. Spottar advising:

We would like to raise a preliminary issue with respect to [the Respondent]'s status. For clarity, [the Respondent] was an indirect owner of Easton Pharmacy; however, the pharmacy was shut down in July 2020 and, accordingly, he was no longer an owner. As such, the corporation was dissolved. Although he is cooperative with the investigation, we have a concern regarding the College's jurisdiction to require our client's responses to inquiries at this stage.

The letter sought direction to authorities addressing the question of whether the Respondent had an obligation to provide the requested information.

29. On April 30, Mr. Spottar responded setting out the College's interpretation that s. 20 of *PODSA* was intended to apply to former indirect owners:

As Mr. Narwal noted in his letter, s. 20 in Part 3 of the *Pharmacy Operations and Drug Scheduling Act* ("PODSA") states that sections 32 to 40 of the *Health Professions Act* ("HPA") apply to direct and indirect owners as if the direct owner or indirect owner were a registrant.

"Registrant" is defined in *PODSA* as "...in Part 3, includes a former registrant within the meaning of the *Health Professions Act*."

Mr. Sidhu was the indirect owner of Easton Pharmacy at the time the alleged matters occurred. The College interprets s. 20 of *PODSA* to be consistent with its intent, and that it includes former direct and indirect owners. Therefore, Mr. Sidhu is obligated to comply with the investigative provisions of the HPA.

30. That same day, counsel for the Respondent requested any authorities that addressed the issue and requested a further extension to assess their obligations. Mr. Spottar replied that there were no authorities addressing the issue to his knowledge and requested information about the length of the extension requested.
31. On May 3, Mr. Spottar followed up regarding the further request for an extension.
32. On May 5, the Respondent's counsel requested a further extension until June 30. The next day, Mr. Spottar responded and requested a reason for the further extension. The College followed up on this request on May 13 and May 21.

33. On May 25, the Respondent's counsel indicated that in their view the College did not have jurisdiction to require a response.
34. On June 6, the Inquiry Committee disposed of the matter in relation to the registrant pharmacists who had been working at the Pharmacy at the relevant time, taking no further action against them. The matter against the Respondent was not reviewed at this time.
35. On September 22, 2021, counsel for the College wrote to Respondent's counsel setting out in detail the College's position as to why it had jurisdiction to require a response from the Respondent, including references to case law and Hansard, and asking for the Respondent's response by October 6, 2021.
36. On October 5, 2021, counsel for the Respondent requested an extension to reply by October 20, 2021 due to scheduling conflicts. This extension was granted.
37. On October 20, the Respondent's counsel requested a further extension to November 10, 2021. The College advised that it would grant a final extension to November 10.
38. On November 10, the Respondent's counsel advised that they required more time to consider their position and requested a further extension to November 30.
39. On November 12, the College wrote to the Respondent's counsel setting out a timeline of the communications and extensions provided to that point and advised that the College would agree to an extension until November 19, 2021 for the Respondent to provide his response to the original December 24 letter. The letter advised that if a response, including the requested statement, documentation, and information, was not provided by this date, the matter would be taken to the Inquiry Committee for its review. It advised that the Inquiry Committee could then direct the Registrar to issue a citation to Mr. Sidhu for a hearing by the Discipline Committee.
40. By the November 19 deadline, the College had not received a response from the Respondent's counsel.
41. On November 30, the Respondent's counsel inquired as to when the Inquiry Committee would be meeting as they may wish to make submissions to the Committee. The College advised the Respondent's counsel that the Inquiry Committee would be meeting on December 9 and that the deadline to provide submissions had passed. The Respondent requested that the matter be moved to the next Inquiry Committee meeting to allow them to make submissions.
42. On December 3, the College declined to postpone the Inquiry Committee meeting but agreed to allow the Respondent until December 6 to provide submissions to be considered by the Inquiry Committee.
43. On December 6, counsel for the Respondent wrote to the College setting out their position that "it is not clear that former owners of a pharmacy are obligated to comply with the investigative provisions of the HPA" due to the lack of direct incorporation of s. 26 of the HPA into s. 20 of the PODSA. The letter further wrote that:

...[the Respondent] is completely cooperative, however we are in a unique scenario which requires a resolution before any further substantive steps can be

taken. In light of this, any citation or disciplinary action would be unwarranted. Further, as his counsel, we are concerned about a breach of Mr. Sidhu's procedural fairness rights if a citation or other disciplinary measures were to be taken for non-compliance in circumstances where the question of whether a response is even required is uncertain.

Notwithstanding the concerns above, if a response is required by the Inquiry Committee, we request an opportunity to provide the response that is directed.

44. The College confirmed receipt of the letter and advised that the letter would be provided to the Inquiry Committee for their consideration.
45. On December 9, 2021, Mr. Spottar confirmed with the Respondent's counsel that their letters had been placed before the Inquiry Committee pursuant to s. 33(5) of the *HPA*. He also advised:

With respect to your comment that Mr. Sidhu would provide a response if directed to do so by the Inquiry Committee, we note that is not the Inquiry Committee's process. A registrant is offered the opportunity, and not directed, to provide a response pursuant to section 33(5) of the Health Professions Act. This opportunity was provided to Mr. Sidhu and has been extended at the request of counsel nine times over the last eleven months.

46. Also on December 9, 2021, the Inquiry Committee directed the issuance of the Citation. The College advised counsel for the Respondent of this decision on December 22, 2021.
47. On several occasions throughout this timeline, the College provided the Respondent's counsel with notice under s. 50.55 of the *HPA* to report about the timeliness of the complaint disposition. Such communications were sent on January 25, 2021, April 23, 2021, and June 7, 2021. Both the April 23 and June 7 letters advised that the reason for the delay in disposing of the investigation into the Respondent's involvement in the matter was because of his requests for extensions to provide a response.
48. On November 4, 2022, counsel for the College wrote to counsel for the Respondent to provide the version of the *PODSA* Bylaws that it would be relying on during the hearing and advising that the College would be relying on sections 18(2)(i), 18(7), and 18(8) of the *PODSA* Bylaws.
49. As of the close of the hearing, the College had not received the information and documents requested from the Respondent in the December 24, 2020 letter.

VII. Issues

50. The issues raised in this hearing can be summarized as follows:
 - a. Did the Respondent have a statutory or common law obligation to cooperate with the investigation?
 - b. If so, did the Respondent fail to cooperate as alleged in s. 1 of the Citation?

- c. If yes to (b), does the Respondent's conduct constitute a breach of the *PODSA*, the *PODSA* Bylaws, the *HPA* or the *HPA* Bylaws; professional misconduct under s. 39(1) of the *HPA*; or unprofessional conduct under s. 39(1) of the *HPA*, as alleged in s. 2 of the Citation?

VIII. Submissions of the Parties

1. *The College's Submissions*

(a) Obligation to Cooperate

51. The College submits that, at all material times, the Respondent was a shareholder of Easton, a non-publicly traded BC corporation that was the direct owner of the Pharmacy. Accordingly, the Respondent was an indirect owner of the Pharmacy as defined in s. 1 of *PODSA*. As an indirect owner, the Respondent had an obligation to cooperate with an inspector under s. 18(8) of the *PODSA* Bylaw.
52. The College submits that all members of self-governing professions also have a common law duty to cooperate with their regulator (citing *Kaburda (Re)*, 2014 CanLII 96656 (BCCDS) at para. 44; *Independent Investigations Office of BC v Vancouver (City) Police Department*, 2018 BCSC 1804 at paras. 139-140; *Ontario (College of Physicians and Surgeons of Ontario) v. Mrozek*, 2018 ONCPSD 17).

(b) Failure to Cooperate

53. The College submits the evidence establishes that the Respondent's communications with the College through counsel, taken as a whole, constitute a persistent and lengthy failure to provide a timely and responsive answer to the College's December 24, 2020 request for information. The failure to provide the requested information in a timely or responsive manner amounts to a failure to cooperate with an investigation directed by the College's inquiry committee under s. 33(4) of the *HPA*.
54. The College submits that it cannot discharge its duty to the public without communication and cooperation from those under investigation (citing *Law Society of BC v. Tak*, 2011 LSBC 01; *Law Society of BC v. McLean*, 2015 LSBC 06). Because of the Respondent's failure to provide information, the Inquiry Committee was unable to perform a proper investigation to find out what happened with respect to the unlawful dispensing of drugs at the Pharmacy.
55. The College submits that the consistent failure to cooperate with the investigation constitutes *prima facie* evidence of professional misconduct under s. 39(1)(c) of the *HPA*. A registrant whose conduct falls markedly below the standard of "honest, open and helpful" assistance constitutes professional misconduct absent compelling evidence that demonstrates they were unable to respond due to an illness or disability (*Chartered Professional Accountants of Ontario v. Hametaj*, 2022 ONCPA 11 at para. 33).
56. The College says the totality of the communications between the College and the respondent's counsel should be considered in determining whether his conduct constitutes professional misconduct. In particular, the evidence establishes a pattern of the Respondent's counsel seeking unwarranted extensions of time to deflect or delay

providing the information sought, as well as instances in which the Respondent's counsel failed to adhere to extension deadlines granted.

57. The College notes that Respondent's counsel did not raise any jurisdictional or other valid objection to providing the requested information for four months after the College first requested information on December 24, 2020, on April 29, 2021. The College has, since April 30, 2021, consistently taken the position that the jurisdictional objection was without merit and the Respondent was obligated to provide the requested information.
58. Following the College advising the Respondent's counsel that the inquiry committee had directed the Citation in December 2021, the Respondent did not apply to cancel the Citation. Once the Respondent was served with the Citation in July 2022, no stay application was brought until December 6, 2022.
59. Despite Respondent's counsel's assurances that he wished to cooperate, the Respondent still failed to provide the requested information after the Panel had determined the jurisdictional issue in the College's favour.
60. It was not open to the Respondent to refuse to provide the requested information based on his unfounded position that the College does not have jurisdiction over him as a former indirect owner (citing *Round v Institute of Chartered Accountants of Ontario*, 2015 ONSC 7099 at paras. 17-19; *D'Mello v. The Law Society of Upper Canada*, 2015 ONSC 5841 at paras. 72-74; *Kaburda* at para. 62).
61. The Respondent's proven conduct constitutes professional misconduct for the purposes of s. 39(1)(c) of the *HPA*. Additionally or in the alternative the Respondent's proven conduct constitutes a breach of s. 18(8) of the *PODSA* Bylaws for purposes of s. 39(1)(a) of the *HPA*.

2. The Respondent's Submissions

(a) Obligation to Cooperate

62. The Respondent acknowledges that he was an indirect owner of the Pharmacy before it closed in July 2020. However, his position is that a former indirect owner does not have an obligation to cooperate with the College's investigation unless there is a court order obtained under s. 29 of the *HPA*. Even where there are obligations of a former indirect owner to cooperate, those obligations are in reference to investigations into the indirect owner, not another non-registrant.
63. The Respondent submits that the investigator did not have authority under s. 28 of the *HPA*, reference to which, and to the broader s. 31(1), was intentionally omitted from s. 20 of *PODSA*. There was similarly no obligation to cooperate with an investigator under s. 33(4) of the *HPA*, as the inspector's authority to request information for an investigation directed under s. 33(4) comes from s. 28. Further and in the alternative, even if the investigator was acting under s. 33(4), there was no obligation for the Respondent to cooperate as s. 31(1) of the *HPA*, which would prohibit obstructing an inspection or search, was not incorporated into s. 20 of *PODSA*.

64. The Respondent argues that he had no obligation to cooperate under the *PODSA* Bylaws because s. 18 of the Bylaws does not apply to former indirect owners. Section 1 of the Bylaws states that “indirect owner” has the same meaning as in s. 1 of *PODSA*, which also does not refer to former indirect owners. The responsibilities for directors and officers set out in s. 18(7) of the Bylaws, including maintaining the required licenses at all times, suggest that the responsibilities set out in s. 18 are not intended to apply to former indirect owners. Accordingly, there could not have been a breach of s. 18 of the Bylaws.
65. The Respondent submits that the cases relied upon by the College in support of a common law duty to cooperate are distinguishable because (1) the Respondent’s relationship with the College as a former indirect owner of a pharmacy is not equivalent to the relationship of a registrant of a regulated profession, as is made clear by the different levels of obligations set out in s. 18 of the Bylaws, and (2) in this case, there is a good faith question raised about the College’s jurisdiction and the scope of the Respondent’s obligations to cooperate, which was not present in the cases cited by the College. Alternatively, if a common law duty does apply to the Respondent, it would be unfair for the Respondent to be aware of it because the College failed to notify him or his counsel of this purported duty in advance of closing submissions.

(b) Failure to Cooperate

66. The Respondent submits that at no time during the College’s investigation did he ever state, directly or through counsel, that he refused to cooperate or would not comply with the investigator’s requests for information. Instead, he repeatedly expressed that he did wish to cooperate, but his counsel raised the issue of whether the College had jurisdiction over him because s. 20 of *PODSA* does not specifically refer to former indirect owners and because the legislation was unclear as to what obligations a former indirect owner has in an investigation.
67. The Respondent argues that the College failed to notify him that failing to cooperate could result in a breach of the *PODSA* or the *HPA*. The letters referred to the complaint process in relation to the matter being investigated but did not state that the Inquiry Committee would consider an alleged breach for failure to cooperate if the information was not provided or that provision of the information was mandatory.
68. The Respondent notes that the College investigator consented to all requests for extensions of time. He says that those extensions must not be used against him. The Respondent’s counsel continually corresponded with the investigator.
69. Finally, the Respondent says that the fact that it is still undecided whether the Respondent has any obligations to cooperate supports counsel’s position that clarification was needed. Cases relied on by the College where the authority to compel cooperation was clear and well-established are distinguishable.

3. The College’s Reply Submissions

70. In Reply, the College says that s. 18 of the *PODSA Bylaws* applies to former indirect owners for essentially the same reasons that the Panel found s. 20 of *PODSA* to apply to former indirect owners. This aligns with the public interest purpose underlying the *PODSA* and the *HPA*, including the specific provisions targeting non-registrant pharmacy owners

introduced through the *Pharmacy Operations and Drug Scheduling Amendment Act, 2016*, SBC 2016, c. 12 (“PODSA Amendment Act”) that came into force on April 1, 2018. It also aligns with the context of the legislation, including the definitions in the *PODSA Bylaws* and the surrounding provisions which deal with pre- and post-licensure issues. The College submits that the Respondent’s interpretation would lead to absurd results.

71. The College submits that while there are some differences in the responsibilities and obligations of pharmacists and non-pharmacist indirect owners, there is no valid reason for a distinction as it relates to the duty to cooperate with college investigations. This common law duty applies to all members of professional regulators.
72. The College says that the Respondent was advised numerous times that a response was mandatory, and that the cases cited by the College in its submissions are equally applicable to the Respondent as an indirect owner.

Analysis

1. Did the Respondent have an obligation to cooperate?

73. In the decision on the Respondent’s Preliminary Application issued January 12, 2023, this Panel concluded that s. 20 of *PODSA* was intended to apply to former indirect owners. The question of the obligations of a former indirect owner to participate in an investigation and cooperate with an inspector acting under the *HPA* and/or *PODSA* were left for determination at the hearing. That issue must be decided now. In addition, the College argues there is a common law duty to cooperate.
74. The question of the extent of the Respondent’s statutory obligations, if any, to cooperate with an investigation as a former indirect owner once again engage the legal principles that an administrative decision maker must follow when interpreting legislation as set out in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 118-121, see also *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras. 66-77. The task of the Panel is to determine the legislative intent by reading the language chosen by the legislature in light of the provision’s purpose and the entire relevant context.
75. As noted at the outset of these reasons, s. 18(8) of the *PODSA* Bylaws sets out the responsibilities of a shareholder indirect owner of a pharmacy by reference to responsibilities that apply to managers, direct owners, directors and officers:

Responsibilities of Manager, Direct Owners, Directors, Officers and Shareholders

18 (8) Shareholders must comply with subsections (2)(i) and (7)(c).

76. Subsections 18(2)(i) and (7)(c) provide:

(2) A manager must do all of the following:

(i) cooperate with inspectors acting under section 17 of the [*PODSA*] or section 28 or 29 of the [*HPA*];

(7) A direct owner, directors and officers must do all of the following:

(c) notify the registrar of any change of name, address, telephone number, electronic mail address or any other information previously provided to the registrar;

77. Per s. 1 of the *PODSA Bylaws*, “direct owner”, “indirect owner”, “manager”, and “pharmacy” all have the same meaning as in s. 1 of the *PODSA*.
78. In order to explain the Panel’s analysis, it is helpful to set out the difference between an investigation of an indirect or direct owner under the *PODSA* and an investigation of a registrant under the *HPA*. The source of the College’s authority to direct and conduct an investigation is slightly different in each context.
79. Where a registrant is being investigated, all the usual provisions under Part 3 of the *HPA* apply to the investigation. The source of the power of the Inquiry Committee to direct an investigation is s. 33 of the *HPA*. The source of the power to carry out that investigation includes s. 28 of the *HPA* (which provides an inspector with authority to take certain steps to further the investigation without a court order), s. 29 of the *HPA* (which allows for search and seizure under court order), and, in the case of a pharmacist registrant, s. 17 of *PODSA*. In addition, s. 31 of the *HPA* prohibits the obstruction of an inspection or search under the *HPA* – both generally (in s. 31(1)) and when acting under ss. 29 or 30 specifically (which allows for detention of seized items) (in s. 31(2)). A similar provision preventing the obstruction of an inspector under *PODSA* exists in s. 19 of that Act.
80. Where an indirect (or direct) owner is being investigated under *PODSA*, the authority of the Inquiry Committee to direct an investigation is s. 20(1) of *PODSA*, which incorporates s. 33(4) of the *HPA* by reference. The source of the authority to conduct the investigation is ss. 17 and 20(2) of *PODSA*, the latter of which incorporates by reference ss. 29, 30, and 31(2) of the *HPA*. Section 19 of *PODSA* and s. 31(2) of the *HPA* prohibit the obstruction of an inspector exercising their powers under those provisions.
81. Section 18(8) of the *PODSA* Bylaw, and by reference s. 18(2)(i), imposes obligations on shareholder indirect owners to cooperate with investigations conducted under s. 17 of *PODSA* and ss. 28 and 29 of the *HPA*. The text does not say anything about the obligations of such indirect owners being limited to the context where they are under investigation themselves. As the provisions referenced in s. 18(2)(i) can apply to an investigation of a registrant or a non-registrant owner, the plain language of s. 18(8) suggests that a shareholder indirect owner has an obligation to cooperate whether the College is investigating a registrant or a non-registrant owner, and whether or not the individual being asked to cooperate is the individual under investigation.
82. For this reason, the Respondent’s submissions about whether s. 28 of the *HPA* is incorporated into s. 20 of *PODSA* are somewhat of a “red herring” with respect to the obligation to cooperate. That question has no bearing on a shareholder’s obligation under s. 18 of the Bylaw to cooperate with an investigation. The Bylaw makes clear that a shareholder indirect owner must cooperate with an investigation, whether it is conducted under section 17 of *PODSA* or sections 28 or 29 of the *HPA*. Regardless of whether the inspector is investigating a registrant or a non-registrant, if they are acting under one of the listed provisions, a shareholder indirect owner is required to cooperate. It does not matter whether the investigation is about themselves or another individual.

83. For similar reasons, the Panel disagrees with the Respondent's argument that, because the authority to investigate an investigation directed under s. 33(4) of the *HPA* comes from s. 28 of the *HPA*, which is not incorporated into s. 20 of *PODSA*, an indirect owner has no obligation to cooperate with such an investigation. When an investigation is directed under s. 33(4), whether it is of a registrant or a non-registrant (as s. 33 of the *HPA* is incorporated via s. 20(1) of *PODSA*), there is an obligation for shareholders to cooperate under s. 18(8) of the Bylaw. In either situation, the power to conduct the investigation will come from one of the provisions listed in s. 18(2)(i) of the Bylaw.
84. The Panel does not accept the Respondent's submission that the fact that s. 20(2) of *PODSA* expressly incorporates s. 31(2) of the *HPA* but not s. 31(1) means there is no obligation for a former indirect owner to cooperate unless there is a court order under s. 29 of the *HPA*. The reason that s. 31(1) of the *HPA* is not incorporated into s. 20 of *PODSA* is likely because there is a separate provision of *PODSA* — s. 19 — that prevents the obstruction of an inspector acting under that Act. Section 31(2) of the *HPA* needs to be incorporated because it specifically deals with circumstances where a person is acting under s. 29 of the *HPA*, which was one of the other *HPA* provisions incorporated into s. 20(2) of *PODSA*.
85. This leaves the question of whether s. 18(8) of the Bylaw applies to “former” indirect owners as well as current ones. The Respondent submits that s. 18 of the Bylaws does not apply to former indirect owners because:
- a. The Bylaws do not contain explicit reference to “former” indirect owners. Section 1 of the Bylaws states that “indirect owner” has the same meaning as in s. 1 of the *PODSA*, which also does not include any reference to former indirect owners.
 - b. Section 18(7)(b) requires direct owners, directors and officers to ensure that the requirements to hold a pharmacy licence are met at all times. It would be unreasonable to interpret this as applying to former directors or officers. It follows that the Bylaws generally, including s. 18(2)(i), do not apply to former indirect owners.
86. The text of the Bylaws does not expressly say that they apply to former indirect owners. As noted in the Preliminary Application Reasons, the absence of an explicit reference to “former” in the text is not determinative on a purposive approach to statutory interpretation; the words of the statute must be considered in conjunction with its purpose and its scheme (*Green v. Law Society of Manitoba*, 2017 SCC 20 at para. 37).
87. With respect to the context, the Respondent points to s. 18(7)(b) to suggest that the Bylaws cannot be meant to apply to former indirect owners, as it would be unreasonable to require former owners to ensure that the requirements to hold a pharmacy license are met at all times.
88. The College, on the other hand, points to the fact that the definition of a “pharmacy” in s. 1 of *PODSA*, and incorporated into the *PODSA* Bylaws by reference, covers pre- and post-licensure periods. The College submits that because ownership is defined in reference to the pharmacy, then ownership must also extend beyond the closure of a pharmacy. The College also points to other provisions in the Bylaws, including ss. 17.1(1), 18(2)(cc), 18(2)(dd), 18(2)(ee), Form 4A, Form 4B, and Form 4C, which deal with pre- and post-closure procedures for a pharmacy, as indicating that the obligations of indirect

owners in the Bylaws sometimes refer to obligations of indirect owners after a pharmacy has closed. However, the Panel notes that these provisions of the Bylaws cited by the College are not directly applicable to indirect owners.

89. The Panel agrees that many of the responsibilities in the Bylaws that apply to direct owners or director and officer indirect owners through s. 18(7)(a) and (b) of the Bylaws would not make sense to apply to former indirect owners after they stop holding that role. For example, it does not make sense to require former indirect owners to be responsible for establishing policies and procedures for pharmacy security, emergency preparedness, or drug recall of pharmacy inventory after they are no longer involved in the operation of the pharmacy. However, this potential inconsistency can be resolved by determining the issue of ownership by reference to the time period under investigation or the period in which compliance with the obligation is said to be at issue, not the time period when the investigation is taking place. In other words, the College could still investigate a former indirect owner for issues that were taking place during the time that they were an indirect owner, even if they no longer hold that role.
90. Further, the purpose of s. 18(8) and (2)(i), especially when considered in the overall context of *PODSA*, weighs heavily in favour of s. 18(8) applying to former indirect owners. In the event of ambiguity in the interpretation of a statute, the interpretation most favourable to the purpose of the statute must prevail (*Pharmascience Inc. v. Binet*, 2006 SCC 48 at para. 35).
91. The purpose of the requirement to cooperate with inspectors acting under the *PODSA* and the *HPA* is to ensure that the College has the ability to gather the information it needs to fulfill its mandate of protecting the public interest, including ensuring the public is protected from the unauthorized or inappropriate sale of drugs (the issue that was under investigation in this case) (*HPA* ss. 16, 25.9). This mandate covers the regulation of both registrants and non-registrant owners. The Panel agrees with the College's submission that it would frustrate the College's statutory powers to regulate the licensing and operation of pharmacies, including registrants and non-registrant pharmacy owners, if an individual who was an owner at the time of the events under investigation could evade cooperation with an investigation and frustrate the inspector's ability to gather information simply by stepping down as owner or closing the pharmacy and then refusing cooperation on the basis that they are now a "former" indirect owner and under no obligation to cooperate.
92. The context of *PODSA* provides further support for this purposive interpretation. The Panel's reasons on the Preliminary Application Decision address this point in relation to s. 20 of *PODSA*, but they are equally applicable to the interpretation of s. 18(2)(i) of the Bylaws:

29. As the College sets out in its submissions, *PODSA* was recently amended to add provisions that enable the College to regulate non-registrant pharmacy owners through the *PODSA Amendment Act*. The *PODSA Amendment Act* brought about the following changes (among others):

- a. Introducing the definition of "direct owner" and "indirect owner" into s. 1;

b. Amending the definition of “pharmacy” in s. 1 to include not only a licensed pharmacy, but also a pharmacy in respect of which a direct owner seeks to have a license issued, renewed or reinstated;

c. Making any direct owner’s eligibility to hold a pharmacy licence subject to a requirement that no direct owner, indirect owner or manager is subject to a limitation imposed by the discipline committee that precludes them from holding such a role (s. 3(b));

d. Making a registrar’s ability to issue, renew or reinstate a pharmacy licence subject to their satisfaction that the direct owner is eligible to hold a pharmacy licence under s. 3 (s. 4(1)([b]));

e. Making it unlawful for a direct owner, indirect owner or manager to operate or permit the operation of a pharmacy if the direct owner ceases to be eligible to hold a pharmacy licence under s. 3 (s. 7(3)); and

f. Amending s. 20 to introduce the current versions of subsections (1)(a), (2.1), (3), and (4), which, broadly summarized, make the use of *HPA* provisions relating to investigation and discipline available against a direct or indirect pharmacy owner and allow for their use to enforce the *PODSA* and *PODSA Bylaws*.

30. These surrounding provisions suggest a concern for ensuring that the College can control who can own a pharmacy, directly or indirectly, and to limit the privilege of owning a pharmacy to those who have not previously conducted themselves in a manner that has warranted serious disciplinary sanctions. There is nothing to suggest that the ability to investigate and discipline an indirect owner under s. 20 of *PODSA* is limited to the time that the pharmacy is open. The fact that the *PODSA* is also concerned with matters such as reinstating pharmacy licenses and preventing the unlawful operation of unlicensed pharmacies suggests that it may be important to have jurisdiction to discipline and impose ownership restrictions on those who are “former indirect owners” of now-closed pharmacies that apply to be reinstated or that are unlawfully operating without a license post-closure. In this respect, the Panel agrees with the College’s submission that s. 20 must be construed in a manner that gives effect “not only those [powers] expressly granted but also, by implication, all powers which are practically necessary for the accomplishment of the object intended to be secured by the statutory regime created by the legislature” (*Green v. Law Society of Manitoba*, 2017 SCC 20, at para. 42, quoting *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2006 SCC 4 at para. 51).

31. As was the case in *Green* (at para. 42), interpreting the statute in this manner is also consistent with the applicable Interpretation Act, which is another important aspect of the legal context in which the Panel must conduct its statutory interpretation exercise. Section 8 of B.C.’s *Interpretation Act* provides that, “[e]very enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.” In the Panel’s opinion, interpreting s. 20 of *PODSA* to apply to former indirect owners is the interpretation that is most consistent with this direction.

...

33. The Panel agrees with the College's submission that it would undermine the purpose of the *PODSA* if an owner were able to avoid scrutiny or sanctions under the legislation simply, for example, by closing a pharmacy and re-opening a new one under a different name. The quotes from the Legislative Assembly debates during the introduction of the *PODSA Amendment Act* amply support that the legislature was concerned with protecting the public from unscrupulous pharmacy owners by providing the College with jurisdiction to regulate them. One express goal of the legislation was to close "loopholes" that allowed non-registrants to open new businesses if a former business was shut down, including through the use of numbered companies (see Debates of the Legislative Assembly of Wednesday, February 10, 2016 (Vol. 32, No. 2) at p. 10233-34; Thursday, April 14, 2016, afternoon sitting (Vol. 37, No. 5) at pp. 12262-12266; Monday, April 25, 2016, afternoon sitting (Vol. 37, No. 7) at p. 12318). It would directly contradict the purpose of s. 20 of *PODSA* if an owner could defeat the College's jurisdiction to investigate and discipline them under the *PODSA* just by closing the pharmacy, as would be the case under the Respondent's proposed interpretation.

93. As previous decisions have recognized, interpretations that would lead to absurd results or that would encourage registrants to avoid disciplinary or other consequences are inconsistent with the legislative object of public protection and must be avoided (*College of Nurses of Ontario v Dumchin*, 2016 ONSC 626 at para. 33; *Re Kim*, 2020 CanLII 36927 (BC REC) at para. 53).
94. For these reasons, the Panel concludes that the interpretation that best supports the text, context and purpose of the legislation is that former indirect owners have an obligation under s. 18(8), read with s. 18(2)(i), of the Bylaws to cooperate with inspectors acting under s. 17 of the *PODSA* or sections 28 or 29 of the *HPA*, whether the inspector is investigating the indirect owner or another owner or registrant.
95. The Panel's decision is limited to the context in which the former indirect owner was a current indirect owner at the time of the incident(s) under investigation. The Panel is not making any determination as to whether there is an obligation to cooperate even if the individual was no longer an indirect owner during the time period under investigation. That question is best left to another day as it does not arise on these facts.
96. Finally, although the Panel has considered s. 19 of *PODSA* and s. 31 of the *HPA* in its statutory interpretation exercise, it has not considered whether those particular provisions create a duty to cooperate in the circumstances as they were not relied upon by the College in the hearing for that purpose.
97. In light of the Panel's conclusion on the statutory obligation to cooperate, there is no need to consider whether there is an additional common law duty on the Respondent to cooperate with the investigation.

2. If the Respondent had an obligation to cooperate, did he fail to cooperate?

98. Paragraph 1 of the Citation alleges:

Beginning on or about December 24, 2020, you failed to cooperate with an inspector acting under sections 28 and 33(4) of the [HPA] when you did not provide in a responsive or timely manner, or at all, information that the inspector requested of you with respect to his investigation of allegations regarding prescriptions being processed onto PharmaNet by Sundeep Sidhu, who was an employee of the Pharmacy, and a person other than the registrants whose names appeared on the PharmaNet records.

99. At the time of the December 24 letter, the inspector was acting under ss. 28 and 33(4) of the *HPA* based on the Direction issued by the Inquiry Committee on August 28, 2020. The fact that s. 28 of the *HPA* does not directly apply to the investigation of the Respondent does not matter because the inspector was acting under that provision at least as it related to the investigation of the registrants who were involved in the conduct being investigated. At least until the matter against the registrants was disposed of in June 2021, the inspector was acting under both ss. 28 and 33(4) of the *HPA*.
100. After the investigation of the registrants was completed in June 2021, the inspector was technically acting under s. 17 and s. 20 of *PODSA*, which incorporates by reference s. 33(4) of the *HPA*. Although ss. 17 and 20 of *PODSA* were not specifically referenced in paragraph 1 of the Citation, it would have been clear to the Respondent in the context that these provisions were at issue, especially s. 20. The Panel notes in particular that the inspector referenced s. 20 of *PODSA* in his April 30, 2021 email to the Respondent's counsel regarding the College's jurisdiction, as did counsel for the College in her September 2021 letter. Section 17 of *PODSA* was also raised in the College's closing submissions (Closing Submissions at para. 9, Reply Submissions at paras. 39, 63-64, 68-69). The College expressly advised the Respondent in November 2022 that it would be relying on s. 18(8) and (2)(i) of the Bylaws, which reference s. 17 of *PODSA* as a provision that triggers an obligation to cooperate for shareholders.
101. In all of the circumstances, the Citation gives the Respondent notice of the allegation that the Respondent was not cooperating with an inspector for the College investigating the unlawful processing of prescriptions on PharmaNet when he had a duty to do so. As the College submits, the factual particulars in a notice of hearing are not to be read like an information in a criminal proceeding but is instead intended to give notice of the alleged misconduct at issue:

In professional discipline, factual particulars should be described in the notice of hearing or in a supplementary document. Both the client and the specific misconduct should be identified. However, a notice should not read like an Information in a criminal proceeding. How detailed it should be depends on the complexity and seriousness of the case. A failure to provide details in the notice of hearing can be cured by full disclosure of the evidence to be filed at the hearing. The tribunal is not restricted to considering only the facts alleged in the notice of hearing, but should make its decision in light of all of the facts adduced at the hearing. The notice is merely an outline of the alleged facts.

...

In addition to the facts and evidence, the essential issues to be decided should be identified. A party should not discover, upon receipt of the tribunal's decision, that it turned on an issue on which the party had not made representations because the party was not aware it was in dispute. Nor is it fair to have an important issue sprung on a party during a hearing without prior notice or an adjournment. This

does not require explicit disclosure of applicable statutory provisions or case law, unless the decision may turn on a new issue not previously disclosed to the parties.

(Sarah Blake, *Administrative Law in Canada*, 7th Ed. at §2.12, footnotes omitted.)

102. The Panel finds that beginning on or about December 24, 2020, the Respondent failed to cooperate with an inspector acting lawfully under the *HPA* and the *PODSA* by failing to provide in a responsive or timely manner, or at all, information requested of him with respect to the investigation.

3. If the Respondent failed to cooperate, does this conduct constitute a breach of the cited enactments?

103. By virtue of s. 20 of *PODSA*, the Panel has jurisdiction to make findings and determinations against the Respondent pursuant to s. 39 of the *HPA* as if he were a registrant of the College. Section 39(1) of the *HPA* provides:

Action by discipline committee

39 (1) On completion of a hearing, the discipline committee may, by order, dismiss the matter or determine that the respondent

- (a) has not complied with this Act, a regulation or a bylaw,
- (b) has not complied with a standard, limit or condition imposed under this Act,
- (c) has committed professional misconduct or unprofessional conduct,
- (d) has incompetently practised the designated health profession, or
- (e) suffers from a physical or mental ailment, an emotional disturbance or an addiction to alcohol or drugs that impairs their ability to practise the designated health profession.

104. In addition, s. 20(2.1) of *PODSA* makes the above provision applicable in relation to the *PODSA* and the *PODSA* Bylaw, in addition to the *HPA* and *HPA* Bylaw:

(2.1) For the purpose of subsection (1), a reference in sections 32 to 40 of the Health Professions Act to

(a) "under this Act" is deemed to read "under the *Pharmacy Operations and Drug Scheduling Act* or under this Act", and

(b) "this Act, a regulation or a bylaw" is deemed to read "the *Pharmacy Operations and Drug Scheduling Act*, this Act, or the regulations or bylaws made under either the *Pharmacy Operations and Drug Scheduling Act* or this Act".

105. At issue under s. 2 of the Citation is whether the Respondent's conduct as proven at the hearing amounts to non-compliance with the *HPA*, the *PODSA*, the *HPA* Bylaw or the *PODSA* Bylaw (under s. 39(1)(a)), or whether his actions amount to professional misconduct or unprofessional conduct (under s. 39(1)(c)). Based on the parties' submissions, the only provision at issue under s. 39(1)(a) is s. 18(8) (read with s. 18(2)(i)) of the Bylaw. The Respondent was notified that this provision was at issue in November of 2022.

(a) Did the Respondent fail to comply with s. 18(8) of the Bylaw?

106. As discussed above, s. 18(8) and s. 18(2)(i) combined require an indirect owner, including a former indirect owner, to cooperate with an inspector acting under s. 17 of the *PODSA* or ss. 28 or 29 of the *HPA*.
107. The facts found by the Panel demonstrate a continued failure to cooperate with the College's investigation. The Respondent had nearly a year to provide the information requested of him, but he failed to do so. The stated desire to cooperate and the intermittent communication with the College during this period does not amount to cooperation when there had been no substantive effort to provide the information sought by the College. This is especially the case where, as soon as the jurisdictional issue was raised by the Respondent's counsel (some four months after the initial December 24 letter), the College immediately responded to the Respondent's counsel's concerns and held the same position consistently throughout.
108. The purpose of the requirement to cooperate would be undermined if an individual could avoid any duty to cooperate simply by stating that they had a desire to cooperate, even if they also raised questions about the College's jurisdiction. The consequences of the failure to cooperate in this case were very serious; the College was unable to complete its investigation of allegations of unauthorized dispensing of drugs.
109. It cannot be that a creative jurisdictional argument can absolve an individual of the requirement to cooperate with the College. The Respondent could have cooperated and, if that cooperation ultimately resulted in a citation against him, he could then raise any jurisdictional issue as a defence to the citation or as a basis to have the citation cancelled under s. 37(4) of the *HPA* (which is included under s. 20(1) of *PODSA*). It would leave the College unable to fulfil its public interest mandate if any jurisdictional argument combined with a stated desire to cooperate could provide a legitimate basis for someone to fail to cooperate with an investigation.
110. The Panel does not agree with the Respondent's assertion that he was not advised that his response was mandatory, as will be discussed below. However, as it relates to the obligation to cooperate under s. 18(8) and (2)(i) of the Bylaw, the failure to comply would not be absolved by a lack of direction that a response was mandatory.
111. For these reasons, the Panel finds that the Respondent failed to comply with his obligation under s. 18(8) of the Bylaw.

(b) Did the Respondent commit professional misconduct or unprofessional conduct?

112. Professional misconduct and unprofessional conduct are defined in s. 26 of the *HPA* as follows:

"professional misconduct" includes sexual misconduct, unethical conduct, infamous conduct and conduct unbecoming a member of the health profession;
"unprofessional conduct" includes professional misconduct.
113. The College submits that the Respondent's communications through his counsel, taken as a whole, constitute a persistent and lengthy failure to provide any sort of meaningful

answer to the College's request for information. This amounts to *prima facie* evidence of professional misconduct and falls far short of the duty to cooperate with a College investigation by providing any information requested in a responsive and timely manner. As noted above, this has serious consequences for its ability to fulfill its public interest mandate.

114. The College's position is that conduct that falls markedly below a standard of "honest, open and helpful" assistance constitutes professional misconduct absent compelling evidence that demonstrates the registrant or member was unable to respond due to illness or disability. Conduct that is deserving of censure need not be disgraceful, dishonourable or reprehensible – attempts to fence with, hedge or delay the regulator breach the rule (*Chartered Professional Accountants of Ontario v. Hametaj*, 2022 ONCPA 11 at para. 33; *Kaburda (Re)*, 2014 CanLII 96656 (BCCDS)).
115. The Respondent submits that he was never notified that a response was mandatory. He also notes that he never expressed a refusal to cooperate and corresponded continuously with the inspector, and that all delays were with the College's consent. He distinguishes the cases relied on by the College on the basis that unlike most registrants in the professional regulatory context, as a non-registrant it was unclear whether the same obligations to cooperate applied to him.
116. The Panel concludes that the Respondent's conduct falls markedly below the expected standard and constitutes professional misconduct and/or unprofessional conduct.
117. The Panel finds that it was or ought to have been clear to the Respondent from the context that a response was required. The following facts support this conclusion:
 - a. In the initial December 24, 2020 letter, Mr. Spottar advised that the Inquiry Committee was required to investigate the matter and arrive at a disposition under the *HPA* and sought the Respondent's response to the complaint/allegations.
 - b. In January 2021, Mr. Spottar provided the Respondent's counsel with the Direction to Investigate and noted that a response from the Respondent was part of the ongoing investigation, which had not yet been disposed of by the Inquiry Committee. This context strongly suggests that the Respondent was required to respond as part of the investigation.
 - c. Various letters sent under s. 50.55 of the *HPA* advised that the reason for the delay in disposing of the investigation into the Respondent's involvement in the matter was because of the fact that he had yet to provide a response.
 - d. Once the jurisdictional issue was raised in April 2021, Mr. Spottar's response to the Respondent's counsel noted that College's position was that the Respondent was "obligated to comply with the investigative provisions of the *HPA*" (emphasis added).
 - e. The Respondent's counsel consistently framed the jurisdictional issue using mandatory language, such as whether the College had jurisdiction to "require a response" or that the respondent was "obligated to comply".

- f. The College's Nov. 12 letter advised that if a response was not provided by November 19, the matter would be taken to the Inquiry Committee for its review, which could then direct the registrar to issue a citation.
118. The Panel does not agree that the Respondent attempted to cooperate by not expressly refusing to cooperate or by periodically corresponding with the inspector. As noted above, simply stating a willingness to cooperate is not meaningful cooperation with the investigation. The Respondent did not provide the College with any real reason for his failure to cooperate other than the jurisdictional argument raised some four months after the December 2020 letter. The Panel finds that the Respondent could have cooperated with the investigation while raising the jurisdictional issue by providing his response while reserving his right to make a jurisdictional argument should the investigation lead to a citation or other disciplinary action.
119. The Panel finds that while the jurisdictional dispute was real, it does not excuse or minimize the Respondent's conduct. In the context of pharmacy ownership, the public interest considerations that apply to registrants and require their cooperation also apply to direct and indirect owners of pharmacies. It is a privilege to own a business whose operations have serious and direct health implications on members of the public (which is why such ownership is regulated by legislation). Owners of pharmacies are therefore held to a high standard of professionalism when it comes to their duty to cooperate with the College, whose role is to protect the public in this field.

IX. Conclusion

120. The Panel finds that the Respondent failed to cooperate with an inspector acting under the *HPA/PODSA*. This conduct amounts to a breach of s. 18(8) of the *PODSA* Bylaws as well as professional misconduct or unprofessional conduct under s. 39(1) of the *HPA*.

X. Action to be taken by the Panel

121. The Panel will receive written submissions from the parties regarding penalty. If the parties cannot agree on timelines for written submissions, this issue should be raised with the Panel within 30 days after the date on which this order is delivered and the Panel will make a direction accordingly.

XI. Notice to Respondent

122. The Respondent is advised that he has the right to appeal the Panel's decision to the BC Supreme Court. Under s. 40(2) of the *HPA*, which is incorporated through s. 20(1) of *PODSA*, an appeal must be commenced within 30 days after the date on which this order is delivered.

Dated December 14, 2023, and signed in counterpart:



Sarah Pivnick, Chair

Parkash Ragsdale

Omar Saad