

**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 RE: PENALTY & COSTS

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. On December 14, 2023, the discipline committee of the College of Pharmacists of BC (the “Panel”) issued its reasons for finding that the Respondent breached s. 18(8) of the *Pharmacy Operations and Drug Scheduling Act* (“PODSA”) Bylaws and committed professional misconduct under s. 39(1) of the *Health Professions Act*, R.S.B.C. 1996, c. 183 (the “HPA”) by failing to cooperate with an inspector acting under the *HPA/PODSA* (the “Conduct Decision”). These reasons set out the Panel’s findings on the appropriate penalty and costs.
2. The Panel made the following findings in its Conduct Decision:
 - a. The Respondent was an indirect owner of Easton Pharmacy Ltd. through his status as a shareholder of Easton Pharmacy and Medical Supplies Ltd., the direct owner of the Easton Pharmacy, from at least May 2018 to the time the Pharmacy closed on either July 20 or 29, 2020.
 - b. On July 4, 2020, the College received a complaint from the Pharmacy manager of Easton Pharmacy regarding the improper processing of prescription medication, including methadone, through an employee of the Pharmacy. The College investigated this complaint and prepared a report for the Inquiry Committee. On August 28, 2020, the Inquiry Committee directed an investigation of the Pharmacy.

- c. On December 20, 2020, the College investigator sent the Respondent a letter advising of the complaint and the investigation and requesting the Respondent's response to the allegations by January 14, 2021.
- d. Between January and December 2021, the Respondent requested various extensions of time to respond from the College. Beginning on April 30, 2021, the Respondent raised his concern about the College's jurisdiction to require him to respond as an indirect owner as part of the reason for his lack of response. Details regarding the various communications are set out in the Conduct Decision.
- e. On December 9, 2021, the Inquiry Committee directed the issuance of a Citation alleging:
 - 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 [PODSA] Bylaws, including sections 18(2)(i) and 18(7); the [HPA]; or the [HPA] Bylaws; professional misconduct or unprofessional conduct under section 39 (1) of the [HPA].
- f. The Respondent was required to comply with the investigation under s. 18(8) of the *PODSA* Bylaws, but he failed to do so. The facts found by the Panel demonstrated a continued failure to cooperate over the course of almost a year. The stated desire to cooperate and intermittent communication with the College did not amount to cooperation with the investigation.
- g. The Respondent's failure to cooperate with the investigation amounted to professional misconduct or unprofessional conduct under s. 39(1) of the *HPA*. The jurisdictional issue raised by the Respondent's counsel did not excuse or minimize the Respondent's conduct. Owners of pharmacies owe a high standard of professionalism and owe a duty to cooperate with investigations due to the public health concerns that interact with pharmacy ownership:

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.

[Conduct Decision at para. 119.]

3. On April 2, 2024, the Panel declined to grant the Respondent's application to stay the penalty phase of this hearing pending the Respondent's appeal of the Conduct Decision in the B.C. Supreme Court and directed a timeline for the parties to exchange written submissions on penalty and costs.
4. In making the findings set out in this decision, the Panel received and considered the following submissions:
 - a. Submissions of the College on Penalty and Costs dated April 18, 2024, with supporting affidavit of Valerie Tsui;
 - b. Submissions of the Respondent on Penalty and Costs dated June 4, 2024; and
 - c. Reply Submissions of the College on Penalty and Costs dated June 11, 2024.
5. In its written submissions, the College seeks:
 - a. An order that the Respondent is prohibited from being a direct owner or an indirect owner of a pharmacy in British Columbia until such time as he has fully complied with the College investigator's December 24, 2020 request for information;
 - b. An order that the Respondent pay a fine in the amount of \$10,000;
 - c. An order that the Respondent forthwith pay the College's costs and disbursements in the sum of \$34,465.10.
6. The College advises that as of the date of filing its written submissions on penalty and costs, April 18, 2024, it had yet to receive the requested information from the Respondent.
7. The Respondent submits that the appropriate outcome in this case would be an order from the Panel to provide the requested information without need for a fine or costs, or alternatively, a reprimand without costs.
8. On May 13, 2024, counsel for the Respondent requested an extension of time to file the Respondent's submission on penalty and costs and requested that the College provide a Bill of Costs. Counsel for the College responded the following day to oppose this request and provided written submissions in support of its opposition. The College consented to a one-week extension for the Respondent to provide his written submissions starting from May 14, 2021. Counsel for the Respondent replied on May 16, 2024, providing submissions in support of its request for a bill of costs and requesting a one-week extension from the date the College produces its bill of costs. On May 24, 2024, having considered the parties' submissions, the Panel denied the Respondent's request for the College to be directed to produce a full bill of costs, however, it directed the College to provide the percentage of the total legal costs incurred to date that were being claimed. It granted the Respondent an extension to provide his submissions to two days from the date on which the College provided such information. On May 31, 2024, the College advised that the costs sought by the College represented 43.20% of the legal fees, including tax, incurred by the College for legal representation from December 9, 2021 to May 31, 2024 for purposes of preparing for and conducting the discipline hearing.

9. For the reasons below, the Panel finds that the penalty and costs orders sought by the College are appropriate in the circumstances.

II. Jurisdiction

10. On January 12, 2023, the Panel provided its reasons for dismissing the Respondent's preliminary application for a stay of proceedings for lack of jurisdiction (the "Jurisdiction Decision"). The Panel concluded that s. 20 of *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 *HPA* as if he were a registrant of the College. For the same reasons expressed in the Jurisdiction Decision, the Panel finds that it has jurisdiction to make an order regarding the appropriate penalty and costs in this matter under s. 20 of *PODSA* and s. 39 of the *HPA*.

III. Applicable Legislation & Legal Principles

11. The Panel's authority to order the appropriate penalty and costs is set out in s. 20 of *PODSA* and s. 39 of the *HPA*. These provisions provide, in relevant part:

Action by discipline committee

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.

...

(2.1) 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".

...

(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.

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,

...

(2) If a determination is made under subsection (1), the discipline committee may, by order, do one or more of the following:

- (a) reprimand the respondent;
- (b) impose limits or conditions on the respondent's practice of the designated health profession;
- (c) suspend the respondent's registration;
- (d) subject to the bylaws, impose limits or conditions on the management of the respondent's practice during the suspension;
- (e) cancel the respondent's registration;
- (f) fine the respondent in an amount not exceeding the maximum fine established under section 19 (1) (w).

(3) An order of the discipline committee under this section must

- (a) be in writing,
- (b) include reasons for the order,
- (c) be delivered to the respondent and to the complainant, if any, within 30 days after the date the order is made, and
- (d) advise the registrant of the registrant's right to appeal the order to the Supreme Court.

...

(5) If the discipline committee acts under subsection (2), it may award costs to the college against the respondent, based on the tariff of costs established under section 19 (1) (w.1).

...

(7) Costs awarded under subsection (5) must not exceed, in total, 50% of the actual costs to the college for legal representation for the purposes of the hearing.

(8) If the registration of the respondent is suspended or cancelled under subsection (2), the discipline committee may

- (a) impose conditions on the lifting of the suspension or the eligibility to apply for reinstatement of registration,
- (b) direct that the lifting of the suspension or the eligibility to apply for reinstatement of registration will occur on
 - (i) a date specified in the order, or
 - (ii) the date the discipline committee or the board determines that the respondent has complied with the conditions imposed under paragraph (a), and
- (c) impose conditions on the respondent's practice of the designated health profession that apply after the lifting of the suspension or the reinstatement of registration.

...

12. The parties agree on the applicable legal principles. They agree that the purpose of the disciplinary process is protection of the public and preservation of the public's confidence in the proper regulation of the profession and pharmacy licensure and operations, rather than to exact punishment or retribution against the respondent.
13. The parties further agree that the Panel ought to take guidance from disciplinary decisions from the Law Society of BC, which set out a variety of relevant factors to consider in determining an appropriate penalty, to be applied and weighed as relevant depending on the circumstances of that particular case. The parties both agree that the "Ogilvie factors" ought to be considered:
 - (a) the nature and gravity of the conduct proven;
 - (b) the age and experience of the respondent;
 - (c) the previous character of the respondent, including details of prior discipline;
 - (d) the impact upon the victim;
 - (e) the advantage gained, or to be gained, by the respondent;
 - (f) the number of times the offending conduct occurred;
 - (g) whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;
 - (h) the possibility of remediating or rehabilitating the respondent;
 - (i) the impact on the respondent of criminal or other sanctions or penalties;
 - (j) the impact of the proposed penalty on the respondent;
 - (k) the need for specific and general deterrence;
 - (l) the need to ensure the public's confidence in the integrity of the profession; and

(m) the range of penalties imposed in similar cases.

(*Law Society of BC v. Ogilvie*, 1999 LSBC 17, [1999] LSCC No. 45 at para. 10.)

14. The parties both also make reference to *Law Society of BC v. Dent*, [2016 LSBC 5](#), where the discipline panel further categorized the Ogilvie factors into four consolidated groups (at paras. 20-23):

Nature, gravity and consequences of conduct

[20] This would cover the nature of the professional misconduct. Was it severe? Here are some of the aspects of severity: For how long and how many times did the misconduct occur? How did the conduct affect the victim? Did the lawyer obtain any financial gain from the misconduct? What were the consequences for the lawyer? Were there civil or criminal proceedings resulting from the conduct?

Character and professional conduct record of the respondent

[21] What is the age and experience of the respondent? What is the reputation of the respondent in the community in general and among his fellow lawyers? What is contained in the professional conduct record?

Acknowledgement of the misconduct and remedial action

[22] Does the respondent admit his or her misconduct? What steps, if any, has the respondent taken to prevent a reoccurrence? Did the respondent take any remedial action to correct the specific misconduct? Generally, can the respondent be rehabilitated? Are there other mitigating circumstances, such as mental health or addiction, and are they being dealt with by the respondent?

Public confidence in the legal profession including public confidence in the disciplinary process

[23] Is there sufficient specific or general deterrent value in the proposed disciplinary action? Generally, will the public have confidence that the proposed disciplinary action is sufficient to maintain the integrity of the legal profession? Specifically, will the public have confidence in the proposed disciplinary action compared to similar cases?

15. In respect of costs, the tariff of costs established under the *HPA* Bylaw (made applicable through s. 39(5) of the *HPA*), which is attached as Exhibit A to Ms. Tsui's affidavit, provides that the College is entitled to recover expenses for legal representation for the purposes of preparing for and conducting a discipline of hearing up to 50% of actual legal fees incurred, and 100% of actual expenses incurred for reasonable and necessary disbursements.
16. The Panel has the discretion to determine what, if any, costs should be awarded; there is no default rule of awarding costs on a full indemnity basis. The case law provides that the Panel ought to consider the following factors in assessing the appropriate costs award:
- a. The degree of success of the respondent in resisting the charges;

- b. The necessity for calling the witnesses who gave evidence or incurring other expenses associated with the hearing (viewed on a standard of reasonableness);
- c. The financial circumstances of the respondent and the degree to which their financial position has already been affected by other aspects of penalty that has been imposed;
- d. Whether the costs are so large as to be punitive;
- e. Whether the costs are so large that they are likely to deter a respondent from a legitimate defence;
- f. The financial status of the respondent, and whether a costs award would inhibit the registrant from practicing their profession;
- g. The regulatory body must provide support for the amount of costs claimed, while the respondent must provide information to support a contention that a cost award will impose an undue hardship.

(*Jaswal v. Newfoundland*, [1996 CanLII 11630](#) at paras. 50-51 (NL SC); *College of Physicians and Surgeons of Saskatchewan v Leontowicz*, [2023 SKCA 110](#) at paras. 152-160.)

IV. Positions of the Parties

1. *The College*

17. In addressing the *Dent* factors regarding the appropriate penalty, the College submits:

- a. The nature, gravity and consequences of the Respondent’s misconduct are extremely serious and support the imposition of a severe penalty. The purpose of the requirement to cooperate with the College inspector is to ensure the College can 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, which was the issue under investigation in this case. Attempting to evade responsibility to cooperate by closing the pharmacy or stepping down as owner and then refusing to cooperate on the basis that there is no jurisdiction to investigate “former” indirect owners frustrates the College’s ability to carry out its statutory mandate to regulate the licensing and operation of pharmacies.
- b. As the Respondent chose not to attend or testify in the discipline hearing, there is no evidence before the Panel regarding his character or personal circumstances that could mitigate the penalty imposed. The lack of a professional record offers little if any mitigation because of the “fundamental” nature of the misconduct, the fact that it is not to be expected that a non-registrant owner will have previously engaged in misconduct, and the prolonged nature of the misconduct.
- c. The Respondent has not acknowledged or remediated his misconduct. He has still not complied with the College investigator’s request for information. This is not an aggravating factor, but an absence of a mitigating factor.
- d. To preserve public confidence in the College as a regulator, deliberate, prolonged and harmful misconduct must be met with serious consequences. In addition, specific

deterrence is required because the Respondent's behaviour did not substantially change despite him having been made aware of the duty to cooperate. The College submits that this case is factually similar to *Kaburda (Re)*, [2014 CanLII 96656](#) and [2015 CanLII 60483](#) (BC CDS), where the panel imposed a reprimand, \$10,000 fine, a 6-month suspension, an order that the registrant produce a complete copy of the complainant's records to the investigator, costs and disbursements of \$15,083.13 to the College, and an order that if the registrant failed to produce the complainant's records, his suspension would continue until he did so.

18. The College points to the *Pharmacy Operations and Drugs Scheduling Amendment Act, 2016*, S.B.C. 2016, c. 12, which introduced provisions to regulate non-registrant pharmacy owners (see para. 29 of the Jurisdiction Decision), in support of its request for an order prohibiting the Respondent from being a pharmacy owner until he complies with the College's request for information.
19. With respect to the fine, the College notes that the maximum fine established under s. 63 the College's Bylaws is \$100,000. A \$10,000 fine will promote the objectives of maintaining public confidence by sending a strong message of general deterrence and will signal the College's strong denunciation of the Respondent's conduct. In addition, the prohibition on ownership will not act as a sufficient deterrent in this case because the Respondent is no longer a pharmacy owner.
20. The College seeks costs of \$32,000, which represents approximately 43% of its actual legal expenses for preparing for and conducting the discipline hearing. The College also claims \$2,465.10 in disbursements for the costs of engaging a court reporter to facilitate the hearing and ordering transcripts of the proceedings. The College submits that this order is warranted because pursuit of this hearing was in the public interest and in furtherance of the College's public protection mandate given the serious nature of the conduct in question. It submits that the hearing was diligently and fairly prosecuted and was completely successful. Due to the Respondent's lack of participation in the hearing, the College was unable to obtain fact admissions and had to introduce extensive documentary evidence through witnesses. The Respondent has not provided any evidence regarding his financial circumstances, but in any event, the costs sought are not so large as to be punitive or deter another respondent from raising a legitimate defence. With respect to disbursements, it submits the disbursements were all reasonably incurred and that discipline hearings are required to be transcribed by a court reporter under the *HPA*.

2. The Respondent

21. The Respondent submits that the appropriate outcome that would be proportionate to his moral blameworthiness and meet the objectives of denunciation and deterrence in the unique facts of this case would be an order from the Panel to provide the requested information without need for a fine or costs, or alternatively, a reprimand without costs. He emphasizes that the penalty determination must be an individualized process and that public confidence is not satisfied simply by seeking a high penalty for its own sake, but by maintaining proportionality and fairness.
22. The Respondent points to the following factors which he says make this a unique case:
 - a. This matter involved a question raised in good faith about the College's jurisdiction and the scope of the Respondent's obligation to cooperate. The statutory interpretation

exercise this Panel engaged in supports that the jurisdictional issue was unclear and raised in good faith. The Respondent says he would have “attorned jurisdiction” by taking steps to cooperate while raising his concerns regarding jurisdiction.

- b. The College failed to properly investigate the subject matter that resulted in the citation against the Respondent. There ought to have been a separate investigation into whether the Respondent had failed to cooperate with the investigation into Easton Pharmacy. The Respondent relies on the case of Dai Wei Wang in support of this ([CPBC Publication dated April 27, 2023](#)).

23. The Respondent makes the following submissions on the *Ogilvie/Dent* factors:

- a. The gravity and consequences of the misconduct are significantly attenuated by the jurisdictional issue and the fact that the Inquiry Committee was able to dispose of the investigation with respect to the registrant pharmacists.
- b. The Respondent has no professional conduct record. He refutes the College’s submission that this is not mitigating in the circumstances. He submits that his moral blameworthiness is negligible.
- c. The Respondent says that if he is ordered to do so by the Panel, he will take any remedial action necessary, including providing the requested information.
- d. The Respondent submits that any penalty greater than a reprimand in the context of this case would cause the public to lose confidence in the disciplinary process.

24. The Respondent submits that a fine would be disproportionate in this case because denunciation can be achieved through a reprimand and is not needed for deterrence as the jurisdictional dispute will not exist in the future. Further or alternatively, denunciation and deterrence would be achieved through an order prohibiting the Respondent from being an owner until he has complied with the request for information. In the alternative, the Respondent submits that a fine should only be made payable upon the Respondent applying to be reinstated as an indirect owner of a pharmacy in BC.

25. The Respondent submits that the decision in *Re Kaburda*, relied on by the College, is distinguishable because the respondent in that case was a registrant of the College of Dental Surgeons of BC and it was obvious that he had an obligation to cooperate. The panel in that case found the reasons for failing to cooperate to be without any legal or logical justification, whereas the answer to the jurisdiction question in this case was not plain and obvious. Further, there were aggravating factors in that case that are not present here.

26. The Respondent points to the cases of Dai Wei Wang, noted above, Shiv Kumar Sharma ([CPBC Publication dated April 15, 2020](#)), and *Re Britton (Alberta College of Pharmacists Investigating Committee)*, referred to in *Farbeh v. College of Pharmacists of BC*, [2015 BCSC 642](#) at paras. 44-45 and summarized in the Alberta College of Pharmacists Newsletter of Summer 2010,¹ as examples where reprimands have been given in cases involving a failure to cooperate. The Respondent says the circumstances of those cases were more aggravating than in his case.

¹ Accessed online at the following link: < https://abpharmacy.ca/wp-content/uploads/ACPNews_2010_03_Summer.pdf>.

27. In respect of costs, the Respondent submits that the maximum of 50% of actual costs should not be considered automatic, rather, the proper costs award is discretionary. He submits that in the unique circumstances of this case, no costs award is warranted at all due to the lack of clarity on the jurisdiction issue. He further says that the costs of the College are exorbitant in the context of the case. The Respondent made the only admission sought by the College, which was with respect to service of the citation.
28. The Respondent further submits that the costs sought are punitive when considering their cumulative impact with the fine. In the alternative, the Respondent submits that costs should be payable prior to reinstatement

V. Analysis

1. *Consideration of the Ogilvie/Dent Factors*

29. The Panel has considered all of the submissions provided. The Panel makes the following findings with respect to the *Ogilvie/Dent* factors:
30. The nature, gravity, and consequences of the Respondent's misconduct in this case are serious. As noted in the Conduct Decision, the Respondent had nearly a year to cooperate but failed to provide any meaningful cooperation. He was made aware of the College's position on the jurisdictional issue immediately after he raised it. He was made aware throughout that he had an obligation to cooperate and was advised that the failure to cooperate would lead to the matter being considered by the Inquiry Committee. In this context, the Panel disagrees that the College was required to conduct a second investigation into the Respondent's failure to cooperate. It was or ought to have been clear to the Respondent that the College was concerned about his failure to cooperate with the investigation in the circumstances and that it believed he had a duty to do so.
31. The Respondent decided, with the benefit of legal advice, that it was preferable not to provide the requested information and take the risk that a hearing committee would find against him on the jurisdictional issue. In this context, the Panel is not persuaded that the jurisdictional issue should be given much weight in balancing the relevant factors.
32. The Respondent submits that he could not have cooperated with the investigation because if he did so, he would be taken to have attorned jurisdiction. The Panel disagrees that the conflicts of laws principles the Respondent relies on in support of this argument have any application to these administrative law proceedings. The decision he relies on, *Nordmark v. Frykman*, [2019 BCCA 433](#), deals with the territorial competence of courts in British Columbia and whether a BC court ought to decline to exercise its territorial competence where a court in a different state may be a more appropriate forum to hear the proceeding. It has nothing to do with the interpretation of an enabling statute of an administrative tribunal.
33. As further noted in the Conduct Decision at para. 108, the Respondent's non-cooperation resulted in serious consequences; it deprived the College of important information regarding the alleged unauthorized dispensing of drugs by a non-pharmacist at Easton Pharmacy Ltd. The fact that the College closed its investigations of the pharmacists does not mean that the matter was satisfactorily resolved, particularly as the concerns were related to non-pharmacists unlawfully dispensing drugs.

34. With respect to the Respondent's character and professional conduct record, there is minimal evidence before the Panel as the Respondent has not provided any evidence relating to the character factors outlined in *Ogilvie/Dent*. The Panel considers the absence of a professional conduct record to be somewhat mitigating.
35. The Panel finds that the Respondent has not acknowledged or taken any steps to remediate his misconduct. The Panel agrees with the College that this is not aggravating but the absence of a mitigating factor. The Respondent has not provided any evidence of other mitigating circumstances in relation to this factor.
36. Finally, the Panel finds that maintaining public confidence in the regulation of pharmacies requires emphasis on denunciation and deterrence in this case. As noted above, the College was left with unresolved allegations that non-pharmacist employees of the pharmacy that the Respondent owned were unlawfully dispensing drugs. It would erode public confidence in the profession and pharmacies, which the legislature specifically sought to address through legislative amendments (see Jurisdiction Decision at paras. 29-30, 33), to allow such serious allegations to go unresolved by accepting the non-cooperation of pharmacy owners in the College's investigative efforts.

2. The Appropriate Penalty

37. The Panel agrees that an order prohibiting the Respondent from being a direct or indirect owner of a pharmacy in BC until he has complied with the College investigator's request for information is appropriate in this case. The Respondent in his written submissions does not appear to dispute that such an order is appropriate.
38. Having considered the *Ogilvie/Dent* factors and the parties' submissions, the Panel finds that a fine of \$10,000 is a proportionate penalty in the circumstances. The Panel agrees with the College that the prohibition on ownership pending cooperation with a reprimand is not sufficiently denunciatory of the Respondent's conduct and does not provide sufficient specific or general deterrence. The Panel agrees with the College that the prohibition on ownership plus a reprimand provides little denunciation or specific deterrence in this case given the Respondent's stated lack of intention to apply for ownership again in the future. A reprimand is insufficient to meet the objective of general deterrence given the nature and consequences of the misconduct and the need to maintain public confidence in the College's ability to properly investigate and regulate the operation of pharmacies.
39. The Panel has considered the cases cited by the parties and finds the circumstances of this case to be most similar to *Kaburda*. In that case, the Court found that there was no specific obligation in CDSBC's *Code of Ethics* or bylaws requiring a registrant to cooperate with an investigation, but relied on the common law duty to cooperate to find Dr. Kaburda in breach of his obligations. As in this case, Dr. Kaburda's failure to cooperate interfered with the CDSBC's ability to investigate a complaint and thereby carry out its statutory mandate to protect the public.
40. The Panel finds that both of the College of Pharmacists cases relied on by the Respondent (Wang and Kumar) are distinguishable on the basis that they involved consent resolution proposals and the respondents had admitted and acknowledged their misconduct. The *Britton* case that the Respondent relies on was also a joint submission. The Wang case also involved a mitigating factor of the respondent having been experiencing personal issues. The Panel agrees with the College that it was open to the Respondent to propose a consent order any

time before the commencement of the hearing under s. 37.1 of the *HPA* (which is incorporated under s. 20 of *PODSA*), but he did not consider this path given his position that the College's lacked jurisdiction over him.

41. The Panel rejects the Respondent's alternative submission that any fine ordered ought only to be made payable upon reapplication for pharmacy ownership. Given the Respondent's stated intention not to reapply for pharmacy ownership, such a condition would inhibit the denunciatory and deterrent effects of the penalty.

3. Costs

42. The regulatory scheme permits the College to claim up to 50% of its actual legal costs and 100% of its reasonable and necessary disbursements. Here, the College claims approximately 43% of its legal costs and all of its disbursements. Evidence of the amounts claimed is provided through Ms. Tsui's affidavit.
43. The Panel has considered the factors relating to the assessment of costs set out above and finds that the \$32,000 in legal fees claimed by the College ought to be awarded. The College was successful in defending the Respondent's preliminary application for a stay of proceedings and in proving the allegations in the citation. The witnesses called by the College were necessary to prove the allegations and, despite the fact that this was a case that was based almost exclusively on documentary evidence, was not facilitated by admissions of the Respondent other than through admission of service of the citation. The Respondent has not provided any evidence of his financial circumstances and there has been no suggestion that payment of the costs plus the fine would be financially devastating for him. Moreover, as he is an indirect owner of a pharmacy and not a pharmacist, the costs award will not inhibit from practicing his trained profession. The Panel is of the view that the costs award, even when considered in combination with the fine, is not so large as to be punitive or to deter a respondent from a legitimate defence.
44. The Panel also finds the \$2,465.10 in disbursements claimed by the College, which represent the costs of engaging a court reporter and ordering transcripts, are reasonably necessary. The Panel would award the full amount of disbursements claimed to the College.
45. The Panel declines to make the costs payable only prior to reinstatement. As the Respondent has advised that he does not intend to reapply for pharmacy ownership, this would make the costs award effectively meaningless to the College.

VI. Conclusion

46. The Panel makes the following orders:
 - a. Pursuant to s. 20(4) of *PODSA*, the Respondent is prohibited from being an indirect or direct owner of a pharmacy in British Columbia until such time as he has fully complied with the College investigator's December 24, 2020 request for information.
 - b. Pursuant to s. 20(1)(a) of *PODSA* and s. 39(2)(f) of the *HPA*, the Respondent is ordered to pay a fine in the amount of \$10,000.

- c. Pursuant to s. 20(1)(a) of *PODSA*, s. 39(5) of the *HPA*, and Schedule E of the *HPA* Bylaws, the Respondent is ordered to forthwith pay the College's costs and disbursements in the sum of \$34,465.10.

47. Finally, the College seeks a publication order with respect to the Panel's decision on penalty and costs under s. 39.3 of the *HPA*. The Respondent has not addressed this issue in his submissions. The Panel finds it appropriate to grant the direction sought. Accordingly, pursuant to s. 39.3(1)(e) of the *HPA*, the Registrar is directed to notify the public of this decision on penalty and costs.

VII. Notice to Respondent

48. 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 September 24, 2024, and signed in counterpart:



Sarah Pivnick, Chair

Parkash Ragsdale

Omar Saad