

IN THE MATTER OF: *The Chiropractic Act, SNS, 1999 (2nd Sess.), c. 4 and Chiropractic Regulations*

BETWEEN:

NOVA SCOTIA COLLEGE OF CHIROPRACTORS

(College)

- and -

DR. DENA CHURCHILL, DC

(Dr. Churchill)

DECISION REGARDING COSTS

INTRODUCTION

1. By Registrar's complaint dated May 17, 2018, the College alleged that Dr. Churchill engaged in professional misconduct as a chiropractor.
2. By Notice of Charges dated September 27, 2018, the College set out specific charges against Dr. Churchill. Hearing dates were set for May 22, 23, 24, 27, 28, 2019. The College and Dr. Churchill reached a Settlement Agreement dated May 6, 2019. The Settlement Agreement was accepted by the Hearing Committee and incorporated into a Decision and Order dated May 15 2019.
3. The parties advised that despite the Settlement Agreement, the parties had been unable to agree on the issue of costs. As a result, the acceptance of the Settlement Agreement between the parties specifically provided that a hearing to determine costs shall be held at Halifax on May 23, 2019.
4. On May 23, 2019, Dr. Churchill, represented by counsel, and the College, represented by counsel, appeared before the Hearing Committee to argue the issue of costs.

PRELIMINARY MATTER RAISED BY DR. CHURCHILL

5. There were two preliminary issues raised by counsel for Dr. Churchill.
 - (1) Dr. Churchill applied for the exclusion of the public. The College did not object. The public were excluded. There was no practical impact because no member of the public attended the hearing.
 - (2) Counsel for Dr. Churchill applied for a “publication ban relating to the issue of costs based on s. 56(3) of the *Chiropractic Act* which states:

Where it thinks fit, the hearing committee may make orders it considers necessary to prevent the public disclosure of matters disclosed at a hearing, including orders prohibiting publication or broadcasting of those matters.
6. The College agreed that any decision in this matter should not have personal identifying features regarding Dr. Churchill, other than her name.
7. Despite a reasonable level of agreement between the parties regarding a publication ban, the Hearing Committee reserved its decision. The Hearing Committee has now had an opportunity to deliberate regarding the “publication ban” requested by Dr. Churchill. The Hearing Committee finds as follows:
 - There are publication requirements set out in the *Chiropractic Act* and those publication requirements must be met.
 - Any publication of this Decision shall redact any personal identifying features of Dr. Churchill, other than her name. For clarity, information such as address, contact details, or medical information shall be redacted.
8. The Hearing Committee specifically notes that this is a decision regarding costs. As a result of the decision regarding costs, Dr. Churchill and her counsel provided information to the Hearing Committee regarding the alleged impecuniosity of Dr. Churchill. The Hearing Committee does not order the redacting or a publication ban regarding financial matters of Dr. Churchill because Dr. Churchill raised her financial position as a defence to seek a lesser cost award. Dr. Churchill, as one of her arguments to limit any order of costs, has pled that she is impecunious. The Hearing Committee believes that information is relevant to the decision and will not order that that information be redacted or banned.
9. After the first two preliminary matters regarding public attendance at the hearing, and limiting personal information in any publication of this decision, counsel for Dr. Churchill raised a further jurisdictional argument. Counsel argued that under the *Chiropractic Act*, if there is a settlement agreement, the Hearing Committee does not

have the power to award costs. The Hearing Committee reserved its decision in this regard and now sets it out immediately below.

10. Section 61 of the *Chiropractic Act* provides the power to the Hearing Committee regarding costs. For ease of reference we repeat it in full:

Contents of order for costs

61 (1) When a hearing committee finds a member guilty of charges relating to a disciplinary matter, it may order that the member pay the costs of the Board, in whole or in part.

(2) When a member is ordered to pay costs pursuant to subsection (1), the Board may make a condition of the registration or licence of the member that such costs be paid forthwith, or at such time and on such terms as the Board may fix.

(3) For the purpose of this Section, "costs of the Board" include

(a) expenses incurred by the College the Board, the investigation committee and the hearing committee;

(b) honoraria paid to members of the investigation committee and the hearing committee; and

(c) solicitor and client costs and disbursements of the College relating to the investigation and hearing of the complaint.

11. Counsel for Dr. Churchill argued that because the parties reached a Settlement Agreement and there was no finding of guilt by the Hearing Committee, the Committee lost its power or jurisdiction to award costs under section 61(1). We reject that argument.
12. While the Hearing Committee recognizes that a Settlement Agreement has been reached in this matter, the Settlement Agreement is of no force or effect unless it becomes part of the Decision and Order of the Hearing Committee. In this particular matter, the Decision and Order of the Hearing Committee dated May 15, 2019 states as follows:

The Hearing Committee orders that the Settlement Agreement is in full force and effect.

13. The Settlement Agreement states:

Dr. Churchill admits the charges against her, as set out in the Notice of Hearing dated November 1, 2018.

14. The charges that Dr. Churchill admitted state:

That Dr. Dena Churchill engaged in professional misconduct...

15. Dr. Churchill has admitted that she engaged in professional misconduct. The parties reached a Settlement Agreement based on that admission. The Settlement Agreement only becomes effective by Decision and Order of the Hearing Committee. It is the Hearing Committee that has ultimately determined, by their acceptance of the Settlement Agreement, that Dr. Churchill is guilty of professional misconduct. As a result, s. 61(1) applies.

Where a Hearing Committee finds a member guilty of charges relating to a disciplinary matter, it may order that the member pay costs of the Board in whole or in part.

16. The Hearing Committee dismisses Dr. Churchill's jurisdictional argument. The Hearing Committee finds that it has the power, pursuant to s. 61 of the *Chiropractic Act*, to award costs. The Hearing Committee does agree with counsel for Dr. Churchill that costs are discretionary and to be determined by the Hearing Committee. But nonetheless, the Hearing Committee has the jurisdiction to award costs in this matter.

PRELIMINARY MATTER RAISED BY THE COLLEGE

17. After Dr. Churchill's preliminary arguments, counsel for the College raised a preliminary issue, objecting to paragraphs 21-49 of Dr. Churchill's Affidavit filed in this matter. The College alleged that those paragraphs were irrelevant and not related to the issue of costs. The Hearing Committee reserved its decision and the matter proceeded. The decision immediately below is the Hearing Committee's decision on the issue of paragraphs 29-41 of Dr. Churchill's Affidavit.
18. The matter in dispute between the parties is the issue of costs. Costs are at the discretion of the Hearing Committee. In determining whether or not to award costs, the Hearing Committee requires significant background information regarding the matters that gave rise to the finding of professional misconduct. As a result, the Hearing Committee applies a broad definition of relevance and accepts paragraphs 29-41 of Dr. Churchill's Affidavit. The College's application to have those paragraphs struck out is dismissed.

THE DECISION REGARDING COSTS

19. That brings us to the merits of this matter. On the issue of costs, Dr. Churchill filed a 53-paragraph Affidavit with significant exhibits attached. The College filed an Affidavit. There was a full hearing of the matter with full arguments by counsel on behalf of both parties. Subsequent to the hearing, Dr. Churchill filed additional material regarding her dire financial circumstances. The Hearing Committee has reviewed all of the material that was provided.

20. At the costs hearing of this matter, Dr. Churchill argued that the finding of professional misconduct was “not an egregious breach”. The Hearing Committee disagrees. This is an egregious matter. Dr. Churchill has admitted she is guilty of professional misconduct. Dr. Churchill was responsible for social media posts outside her scope of practice which were harmful to the public. Dr. Churchill maintained significant social media activity which is outside the scope of practice of chiropractic in Nova Scotia despite direct instruction to stop. That is egregious conduct.
21. Dr. Churchill was told directly by her regulator that her conduct was inappropriate. Dr. Churchill ignored the direction of her regulator and, when pressed, specifically pushed back disputing the regulator’s ability to require her to conduct herself consistent with the requirements of the College of Chiropractors.
22. Dr. Churchill’s attitude to the charges and her regulator were clear to the Hearing Committee. Dr. Churchill provided an Affidavit and was cross-examined on the Affidavit. When cross-examined, Dr. Churchill admitted:

Her personal views are her personal views.
23. It was clear to the Hearing Committee that Dr. Churchill was maintaining that she was entitled, while practicing as a chiropractor, to state her personal views that vaccinations could be harmful. In a 53-paragraph Affidavit, she does not retreat from those views.
24. The College provided evidence of their costs. They are significant. As of the date of the hearing, the College had incurred \$178,831.34 in costs. It is noted that a small portion of those costs related to another charge against Dr. Churchill which had already been settled with costs determined. The Hearing Committee confirms and finds that no costs related to the previous charges against Dr. Churchill should form part of the costs award in this matter.
25. The College agreed that despite incurring \$178,831.34 in costs, the number should be reduced. The College agreed to deduct any costs from the related charges against Dr. Churchill. The College agreed to waive administrative fees related to College expenses. The College agreed to waive the fee of Dr. Richard MacGillivray. In the end, the College asserted that it should be entitled to costs of \$100,000.
26. In reply, Dr. Churchill asserted that the charges were not egregious, the matter took too long to proceed, and involved too many lawyers. Dr. Churchill asserted that she has suffered significantly personally and financially and is no longer practicing. Dr. Churchill noted that the College is aware that she is ill.
27. Having heard the evidence and the arguments of both parties, the Hearing Committee accepts the arguments of the College. This has been a protracted matter. Dr. Churchill

has disregarded her regulator. A significant investigation was undertaken and a significant proceeding was required before a Settlement Agreement was reached immediately before the hearing dates of this matter.

28. The Hearing Committee is particular mindful that at the very beginning of this matter, the Registrar of the College asked Dr. Churchill to stop her anti-vaccination public posting. Dr. Churchill refused. The Registrar asked again. Dr. Churchill refused. As the charges were being filed, Dr. Churchill maintained public postings contrary to the requests of her regulator. Even after the matter moved forward, Dr. Churchill maintained public posting in contravention of her obligations as a chiropractor. This entire matter could have been avoided if Dr. Churchill deleted offending posts from her social media account. She refused.
29. Dr. Churchill works in a regulated profession. She is regulated pursuant to the rule of law. Her regulator reasonably attempted to regulate her. Dr. Churchill actively and expressly refused to be reasonably regulated necessitating a significant and complex process. That significant and complex process, necessitated by the unlawful and harmful conduct of Dr. Churchill cost thousands of dollars. In a self-funded College, who should pay, Dr. Churchill or her law abiding colleagues?
30. This Hearing Committee determines that it is not for the College to bear the full costs of Dr. Churchill's egregious behaviour. We do recognize that some amount will be borne by the members of this small College. However, Dr. Churchill is responsible and must bear a significant portion of the costs.
31. The Hearing Committee is also aware of the following:
 - Dr. Churchill's conduct brought the profession of chiropractic into disrepute.
 - Dr. Churchill posted on Facebook on September 27, 2018, after receipt of the formal charges in this matter, personally attacking members of the regulator.
 - Dr. Churchill has shown no remorse. There is a genuine concern that she is ungovernable.
 - The College is a small College with only 170 members. Those members will have to bear any costs not paid by Dr. Churchill.
 - We are particularly aware of the relevance of deterrence, particularly in light of the prolific social media posting of views harmful to the public.
32. The Hearing Committee hereby finds that they have the power to award costs under the *Chiropractic Act*. Costs are within the Hearing Committee's discretion and it is our discretion to award costs against Dr. Churchill in the amount of \$100,000.

33. In reviewing the decision on costs, the College is mindful of the cases presented by counsel, including:

Reid v. College of Chiropractors of Ontario, 2016 ONSC 1041;
Ezema (re) 2018 CanLII 105365 (NS CPS);
Osif (re) 2008 CanLII 89674 (NS CPS);
Starr Iola Nelson v. Nova Scotia College of Registered Nurses (July 25, 2017);
Nova Scotia College of Pharmacists v. Fadelle (May 3, 2012).

34. The Hearing Committee has reviewed the cases and is particularly persuaded by the considerations set out in the *Ezema* decision of the College of Physicians and Surgeons of Nova Scotia. At para. 59 of that decision, the Hearing Committee of CPSNS reviewed the “*Jaswal* factors” (*Jaswal v. Newfoundland Medical Board*, [1996] NJ No. 50 (Nfld. SCTD)). We have applied the *Jaswal* factors as follows:

- (1) The degree of success.
 - Dr. Churchill has been found guilty of the charges that have been filed against her.
- (2) The necessity of calling all of the witnesses.
 - No witnesses were called because of the ultimate Settlement Agreement but a full hearing on costs was required and the College has made no claim to the costs related to that hearing.
- (3) Whether the person presenting the case could reasonably have anticipated the result.
 - On the eve of the hearing of this matter, a Settlement Agreement was reached. The Hearing Committee is mindful of that and, as a result, agrees with the College in the reduction of its total costs bill by several thousand dollars and reducing its claim to costs to \$100,000. The Hearing Committee is mindful that the matter was settled very close to the beginning of the hearing. While settlement is to be commended, it was at the eleventh hour. The facts strongly indicate that it could have been resolved much earlier but for the conduct of Dr. Churchill.
- (4) The fourth *Jaswal* factor is not relevant to this matter. It relates specifically to the need for certain witnesses. However, we are mindful of Dr. Churchill’s argument that the College went too far in its investigation. We disagree. Given the proliferation of Dr. Churchill’s

harmful social media posts, a significant effort was required by the College.

- (5) Whether there was cooperation and admissions. The Hearing Committee is mindful that there was a Settlement Agreement and as a result, the College's request for costs has been reduced significantly to \$100,000.
- (6) The Hearing Committee has considered the financial circumstances of Dr. Churchill and as a result, we have allowed for payment over 10 years as set out below.


ORDER

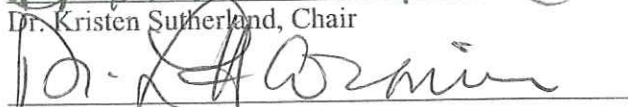
35. The Hearing Committee wishes to provide Dr. Churchill with the best opportunity to pay the costs award and, if she chooses, to undertake required action to return to the practice of chiropractic. As a result, the Hearing Committee orders as follows:

- (1) Dr. Churchill is ordered to pay the total of \$100,000 in costs as set out below.
- (2) The \$100,000 in costs shall be paid over 10 years, in amount of \$10,000 per year, due on January 2nd of each year, beginning on January 2, 2020.
- (3) For clarity, cost shall be due and payable as follows:
 - January 2, 2020 - \$10,000
 - January 2, 2021 - \$10,000
 - January 2, 2022 - \$10,000
 - January 2, 2023 - \$10,000
 - January 2, 2024 - \$10,000
 - January 2, 2025 - \$10,000
 - January 2, 2026 - \$10,000
 - January 2, 2027 - \$10,000
 - January 2, 2028 - \$10,000
 - January 2, 2029 - \$10,000

36. The Hearing Committee does accept that if Dr. Churchill wants to pay off this Order sooner, she may.
37. If, on January 2, 2022 Dr. Churchill has not paid all the payments required by this Order up to January 2, 2022, the entire \$100,000 is due and payable immediately. For clarity, if Dr. Churchill has not paid at least a total of \$30,000 on or before January 2, 2022, the gradual payment plan set out in paragraph 35(3) is of no force and the full total of \$100,000 in costs is due and payable.
38. The Hearing Committee also specifically and expressly states that if any amount of this costs award is not paid on or before the due dates, Dr. Churchill is in breach of this Order and shall not be granted a licence to practice chiropractic in Nova Scotia, or any licence granted shall be revoked. For clarity, pursuant to section 61(2) of the *Act*, payment of the costs as set out in this Order must be satisfied and paid up to date, as a condition of Dr. Churchill's licence to practice chiropractic in Nova Scotia.

Dated the 25TH day of June, 2019.


Dr. Kristen Sutherland, Chair


Dr. Lauren Cormier


Ms. Anne Wilcox, Lay Member