

**IN THE MATTER OF THE *HEALTH PROFESSIONS ACT*, BEING CHAPTER H-7
OF THE REVISED STATUTES OF ALBERTA, 2000**

**AND IN THE MATTER OF AN APPEAL OF A DECISION OF A HEARING TRIBUNAL RELATING TO A
COMPLAINT AGAINST DONALD HINGLEY AND RYLEY PALS, REGULATED MEMBERS OF THE
ALBERTA COLLEGE OF PARAMEDICS**

Decision of a Panel of the Appeal Committee of Council of the
Alberta College of Paramedics

30 March, 2022

Introduction

1. A meeting of a panel of the Appeal Committee of Council (the “Appeal Committee”), of the Alberta College of Paramedics (the “College”), properly constituted under section 18 of the *Health Professions Act* RSA 2000, c. H-7 (the “HPA”), was held on 15 February 2022 in Edmonton, Alberta, via videoconference, to consider an appeal of a decision of the Hearing Tribunal of the College (“Hearing Tribunal”) made on September 23, 2021.

2. Present were:

Members of the Appeal Committee:

- Tim Dyck, Chair and Public Member
- Lynda Cherry, Public Member
- Melissa Manion, Paramedic
- Adam Swendsen, Paramedic

Also in attendance were:

- Jennifer Kirk, Complaints Director for the College, (“Complaints Director”)
- Blair E. Maxston, Q.C., Legal Counsel for the Complaints Director (“Mr. Maxston”)
- Skye van Dyk, Hearings Director for the College (“Ms. van Dyk”)
- Maya C. Gordon, Independent Legal Counsel for the Appeal Committee
- Sandra Burns, Court Reporter

3. A stay of the Hearing Tribunal decision had been sought by the Complaints Director on October 26, 2021 pursuant to section 86(1) of the HPA. The Appeal Committee understands from the materials that the stay was granted by Tim Ford, Registrar, as Council delegated its power to issue a stay to him in a motion. The stay remained in place at the time of the appeal.

4. The appeal was conducted in accordance with sections 87 and 89 of the HPA.

Documents Reviewed by the Appeal Committee

5. The following documents were reviewed:

- Written decision of the Hearing Tribunal dated September 23, 2021 (“the Decision”);
- Record of the Hearing under section 84(1)(b) of the HPA, containing:
 - Hearing Transcripts; and
 - Marked Exhibits 1-7;
- Notice of Appeal of the Complaints Director dated October 21, 2021;
- Letter Seeking Stay of the Complaints Director dated October 26, 2021;
- Record of Electronic Vote – Request for Stay – dated October 24, 2021;
- Written Submissions of the Appellant Complaints Director of the Alberta College of Paramedics dated January 21, 2022, with enclosures; and
- Written Submissions (via email) of Ryley Pals dated February 3, 2022, with enclosures.

Preliminary Matters

6. The parties confirmed there were no objections to the members of the Appeal Committee. The parties also confirmed that there were no jurisdictional issues to address.
7. Mr. Maxston then advised on two preliminary issues before the Appeal Committee:
 - a. First, whether the Appeal Committee would be willing to hear this matter notwithstanding that neither Donald Hingley (“Mr. Hingley”) nor Ryley Pals (“Mr. Pals”) was present; and
 - b. Second, to ensure that everyone had received the recent written submission (an email and enclosures) from Mr. Pals.

Proceeding in the Absence of the Members

8. On the first issue, proceeding in the absence of the regulated members, the Appeal Committee carefully considered section 89(3) of the HPA, which allows for an Appeal Committee to use the powers under section 79(6) of the HPA. That section allows a proceeding to occur in the absence of investigated persons so long as the tribunal is provided with “proof that the investigated person has been given a notice to attend”.¹
9. The Appeal Committee asked the Hearings Director, Ms. van Dyk, to be sworn in and to give evidence about the notice provided to Mr. Hingley and Mr. Pals.
10. Ms. van Dyk’s evidence was as follows:
 - a. Mr. Hingley and Mr. Pals were served with a copy of the Notice of Appeal via email (by the Complaints Director) on October 21, 2021;
 - b. Mr. Hingley and Mr. Pals were provided with the Zoom link to the hearing by email on November 16, 2021;
 - c. On January 21, 2022, Ms. van Dyk sent an email to all parties with a link allowing them to access all hearing documents and advised of the date of the appeal once more;
 - d. On February 3, 2022, Ms. van Dyk asked both Mr. Hingley and Mr. Pals if they would like to provide any response to the appeal;
 - e. Mr. Pals provided such a response on February 4, 2022 and it was provided to all parties in an updated Exhibit Binder. Mr. Hingley did not provide a response;
 - f. On the morning of the hearing (February 15, 2022), Ms. van Dyk contacted both Mr. Hingley and Mr. Pals. She did not reach Mr. Hingley (she left a voicemail), but did reach Mr. Pals who was aware the appeal was proceeding but was on shift and could not attend; and
 - g. On the morning of the hearing (February 15, 2022), Ms. van Dyk re-sent the Zoom link to the hearing to all parties, including Mr. Hingley and Mr. Pals.

¹ HPA, section 79(6).

11. Upon consideration of the evidence of Ms. van Dyk and the submissions of Mr. Maxston, the Chair of the Appeal Committee advised that the Committee was satisfied that Mr. Hingley and Mr. Pals were provided with notice of the hearing, and that they were aware that the hearing was proceeding.

Submissions of Mr. Pals

12. The second item noted by Mr. Maxston was the fact that Mr. Pals had provided written submissions (enclosing new evidence) to the Hearings Director on February 4, 2022.
13. Mr. Maxston did not make any submissions about this new evidence being admitted by the Appeal Committee, but only wished to note that it be added as a new document for the appeal. He wanted to ensure it could be reviewed in the deliberations and that it was before the Appeal Committee today.
14. The submissions of Mr. Pals were included in the updated Hearings Binder provided to the Appeal Committee.

Background²

15. At all material times, Mr. Hingley and Mr. Pals were both regulated members of the College. Mr. Hingley became a regulated member of the college on July 20, 1989. Mr. Pals became a regulated member of the college on March 25, 2011.
16. In October 2020, the Complaints Director received a complaint regarding Mr. Hingley, and then another complaint regarding Mr. Pals.
17. The complaints both related to the evening of October 7, 2020, when Mr. Hingley and Mr. Pals were both working out of the Medavie Health Services West-Prairie EMS at the Elk Point Station.
18. That evening, Mr. Hingley and Mr. Pals responded to the RCMP Elk Point Detachment (“the Detachment”) who was holding a male patient (“the Patient”) who was having seizure-like activity in a holding cell at the Detachment.
19. The Patient was non-responsive and unconscious. The Members administered anti-seizure medication “Keppra” to the Patient using magill forceps. Mr. Hingley, as the senior and supervising Primary Care Paramedic, prepared the Patient Care Record (“PCR”) relating to their attendance at the Detachment.
20. The Allegations against both members were as follows:

Mr. Hingley

- 1) On or about October 7, 2020, and while treating Patient A at the Elk Point Alberta RCMP detachment you committed unprofessional conduct concerning one or more of the following:

² Paragraphs 14 – 19 contain facts from the Joint Agreed Statement of Facts (Exhibit Binder, pp. 55 - 59)

- a) You failed to conduct a proper assessment of Patient A.
- b) The choice of treatment and/or the manner in which the treatment was carried out was inappropriate having regard to a non-responsive and/or vulnerable patient.

2) On or about October 7, 2020 and while treating Patient A at the Elk Point Alberta RCMP detachment you committed unprofessional conduct concerning one or more of the following:

- a) You incorrectly administered an oral epilepsy or seizure medication (Keppra) rectally.
- b) You administered an oral epilepsy or seizure medication (Keppra) using Magill forceps.

3) On or about October 7, 2020 and while treating Patient A at the Elk Point Alberta RCMP detachment you committed unprofessional conduct concerning one or more of the following:

- a) The ePCR for Patient A contains inappropriate and/or clinically unrelated comments about Patient A as follows:
 - “Dispatched to Elk Point RCMP Detachment for a male PT previously assessed on Frog Lake First Nation for seizure activity that upon investigation is more of a voluntary muscle twitching that the Pt utilizes to avoid being incarcerated by RCMP and then can spend the night or period of the time in a hospital room.”;
 - and or
 - “Pt has “Hx” of a traumatic brain injury in past and numerous episodes of pseudo seizure activities to get his way and as an excuse as to his action in life.”;
 - and or
 - “Pt very non-compliant with meds when on his own and more interested in alcohol and street drug ingestion.”
- b) The ePCR for Patient A contains no or appropriate documentation of refusal of care by Patient A.
- c) The ePCR for Patient A contains no or no appropriate documentation for vital signs for Patient A.

Mr. Pals

1) On or about October 7, 2020 and while treating Patient A at the Elk Point Alberta RCMP detachment you committed unprofessional conduct concerning one or more of the following:

- a) You failed to conduct a proper assessment of Patient A.
- b) The choice of treatment and/or the manner in which the treatment was carried out was inappropriate for a non-responsive and/or vulnerable patient.

2) On or about October 7, 2020 and while treating Patient A at the Elk Point Alberta RCMP detachment you committed unprofessional conduct concerning one or more of the following:

- a) You incorrectly administered an oral epilepsy or seizure medication (Keppra) rectally.

b) You administered an oral epilepsy or seizure medication (Keppra) using Magill forceps.

21. A hearing before a Hearing Tribunal on the allegations proceeded on July 27, 2021, via videoconference.³ At the commencement of the hearing, Mr. Maxston advised that the parties would be proceeding by way of a Joint Agreed Statement of Facts, Admissions of Unprofessional Conduct for both Mr. Hingley and Mr. Pals, and a Joint Submission Regarding Penalty (“JSRP”) for both Mr. Hingley and Mr. Pals.
22. At the conclusion of the hearing, the Hearing Tribunal issued its decision, dated September 23, 2021.⁴
23. The Hearing Tribunal found unprofessional conduct on the part of both Mr. Hingley and Mr. Pals, noting their signed Admissions of Unprofessional Conduct as well as the documentary evidence provided to the Hearing Tribunal.⁵
24. The Hearing Tribunal then went on to consider the JSRP for both Mr. Hingley and Mr. Pals.
25. After consideration, the Hearing Tribunal decided to deviate from the JSRP, accepting all penalty orders in the JSRP but adding an additional eight (8) day suspension for Mr. Hingley and a condition on his practice permit that he could not supervise students enrolled in a program, under section 18 of the *Paramedics Profession Regulation*, for a period of one year.⁶ For Mr. Pals, they added an eight (8) day suspension.⁷
26. On October 21, 2021, the Complaints Director appealed the Decision.⁸

Grounds of Appeal

27. The grounds of appeal advanced by the Complaints Director were:
 - a. The Hearing Tribunal failed to properly consider and apply the applicable penalty factors concerning the unprofessional conduct of the Members, issued penalty orders that were unreasonable or both; and
 - b. The Hearing Tribunal failed to properly apply the public interest test concerning the Joint Submission Regarding Penalties, improperly rejected and amended the Joint Submission Regarding Penalties penalty orders or both.

The Complaints Director’s Position

28. The Complaints Director was represented by legal counsel, Mr. Maxston.

³ Exhibit Binder, p. 5.

⁴ Exhibit Binder, pp. 5 – 26.

⁵ Decision, para. 27; Exhibit Binder, p. 11.

⁶ Decision, para. 91; Exhibit Binder, p. 20

⁷ Decision, para. 92; Exhibit Binder, p. 20

⁸ Exhibit Binder, p. 2.

Introduction

29. Mr. Maxston began by noting that he had provided written submissions to the Appeal Committee and that the appeal was occurring on the record. He noted that Mr. Pals had provided new evidence, which the Complaints Director was not objecting to being included, but that it was otherwise based on the documents and information that were before the Hearing Tribunal.
30. Mr. Maxston commenced by emphasizing that the fact that the Complaints Director had appealed the Decision, which was unusual, and suggested how serious and significant the issue was to the Complaints Director.
31. Mr. Maxston then went through the mechanics of the hearing itself, identifying that the hearing had proceeded by way of a “consent hearing”. He noted that there had been an Agreed Statement of Facts, establishing the basic facts, and that there was a JSRP.
32. He identified that both Mr. Hingley and Mr. Pals did not have legal counsel at the hearing itself. They were both self-represented.

The Facts

33. Mr. Maxston noted that the facts were agreed upon by all parties and that the Hearing Tribunal took no issue with the facts as presented by the parties. The appeal was only with respect to the new penalty orders that the Hearing Tribunal added to the JSRP.

The Joint Submission Regarding Penalties

34. The JSRP, put forth by both parties, contained a number of sanctions which were carefully considered by the Complaints Director and agreed to by both regulated members. Mr. Maxston summarized the JSRP as including:
 - a. A reprimand;
 - b. A \$500.00 fine;
 - c. \$500.00 in costs;
 - d. Equal monthly payments of fines and costs and if there is a default, a cancellation of registration remedy;
 - e. The completion of the PROBE Ethics and Boundaries course at the cost of the members within 6 months of the date of the hearing (that did not count towards continuing education); and
 - f. Mandatory publication of the Decision with the names of Mr. Hingley and Mr. Pals.
35. Regarding the PROBE Course, Mr. Maxston gave the Appeal Committee additional information on that course. He noted that it is not an online course that is taken in an hour or completed at the leisure of the affected member. It is a two and a half day intensive boundaries intervention program that costs just over \$2,200.00 USD. The course is designed, according to Mr. Maxston, to assess both Mr. Hingley and Mr. Pals, look at why they have acted in the way they have, and provide remedial steps for each of them.

36. Mr. Maxston wished to emphasize just how significant, important, rigorous and fulsome that particular course is. He noted it was included in the sanctions to be remedial in nature, and to provide a pathway to safe, competent and ethical practice.
37. During the hearing, Mr. Maxston noted that he had strongly encouraged the Hearing Tribunal to accept the JSRP. However, as noted above, the Hearing Tribunal deviated from the JSRP, adding a suspension for each regulated member and a condition on Mr. Hingley's member file prohibiting him from supervising a student.
38. Mr. Maxston then went through the Grounds of Appeal and the powers of the Appeal Committee.

Standard of Review

39. Mr. Maxston then addressed the applicable standard of review applicable to the appeal. In his written and oral submissions, Mr. Maxston advised that he felt that the standard of review was correctness. In support of this position, Mr. Maxston put forth the case of *Carooben v. Workers' Compensation Board*, 2021 ABQB 232.
40. The error of law identified by Mr. Maxston, in his submissions, were that "the Hearing Tribunal made an error in law by failing to apply penalty factors appropriately and by failing to apply the public interest test and then inappropriately amended the JSRP penalty orders."⁹
41. Mr. Maxston gave examples of when a reasonableness standard would apply, but noted that here, on a question of law, it was "something that the lower decision-maker didn't do, some way they didn't comply with legal requirements."¹⁰ And in this case, the Complaints Director was submitting that the standard of review was correctness.
42. He summarized his submissions on standard of review by noting that the Complaints Director was urging the Appeal Committee to place itself in the shoes of the Hearing Tribunal and to make the appropriate decision concerning penalties.

First Ground of Appeal: The Hearing Tribunal Failed to Properly Consider and Apply Applicable Penalty Factors

43. Firstly, Mr. Maxston submitted that in the Decision, the Hearing Tribunal placed undue weight on the penalty factor of the nature and gravity of the unprofessional conduct. Both members, at the Hearing and in the Admissions, acknowledged that their actions were a departure from the acceptable standards for paramedics in Alberta, and took full responsibility for their actions.
44. Secondly, Mr. Maxston argued that the Hearing Tribunal failed to comment in any meaningful way on three other important penalty factors:

⁹ Exhibit Binder, p. 81.

¹⁰ Transcript, pp. 25-26.

- a. Previous character of the members;
 - b. Number of times the offence occurred; and
 - c. The role of the members in acknowledging what had occurred.
45. In each case, Mr. Maxston noted that the Decision included only a single sentence in respect of the three above factors, while other factors, like the nature and gravity of the proven allegations, had a significant amount of information included.
46. Mr. Maxston stressed that the members had no previous misconduct and that this offence occurred one time, and was not a repeating pattern over multiple occasions. In addition, he emphasized that the members had taken full responsibility for their actions, had cooperated fully with the College, and had made admissions resulting in a consent hearing which avoided the time, cost and uncertainty of a contested hearing.
47. The submission on the part of the Complaints Director is that in overemphasizing one factor (nature and gravity of the proven allegations) and underemphasizing others, the Hearing Tribunal erred in law and should have placed proper weight on all penalty factors.

Second Ground of Appeal: The Hearing Tribunal Failed to Properly Apply the Public Interest Test and Improperly Amended the Joint Submission Regarding Penalties

48. The second ground of appeal was that the Hearing Tribunal failed to properly apply the public interest test when it improperly amended the JSRP.
49. To begin, Mr. Maxston reviewed the case law on joint submissions regarding penalty, including the *Rault v. Law Society of Saskatchewan*, 2009 SKCA 81 and *R. v. Anthony-Cook*, 2016 SCC 43 (“*Anthony-Cook*”).
50. He noted some of the important considerations when a Hearing Tribunal is considering a JSRP, including:
- a. Decision makers should only interfere with JSRPs in very limited circumstances;
 - b. If a decision maker is considering interfering, they must demonstrate that the JSRP is demonstrably unfit and unreasonable and fails to meet the “public interest” test;
 - c. Hearing Tribunals must give JSRPs serious consideration. They must only depart from it where there are “good and cogent reasons” to do so; and
 - d. There are strong policy reasons to defer to JSRPs, including that those types of agreements should be encouraged to avoid protracted, costly, and resource intensive contested hearings, they demonstrate accountability on the part of the members, and ensure that parties entering negotiations know that they can rely upon a decision maker respecting the joint agreements.
51. In explaining the “public interest” test, Mr. Maxston stated the test put forth by the Supreme Court of Canada in *Anthony-Cook*, which is that a joint submission will fail if “if it so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the

importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down.”¹¹

52. He noted that the Supreme Court of Canada had called this test “an undeniably high threshold.”¹²
53. Mr. Maxston’s submissions were that the Hearing Tribunal had failed to show the considerable deference owed to JSRP and that this was an error of law.
54. Finally, under this ground of appeal, Mr. Maxston took the Appeal Committee through the JSRP, submitting that the JSRP arrived at in this case was “fair, reasonable and proportionate and should not have been changed by the Hearing Tribunal.”¹³
55. He noted in his oral submissions two particular concerns with the Hearing Tribunal’s reasoning:
 - a. First, that the Hearing Tribunal had incorrectly concluded that simply because other Colleges around the Province publish member’s names, that publication on a named basis being ordered in this case was not a serious punishment¹⁴; and
 - b. Second, he noted that the Hearing Tribunal had found that because there was an RCMP videotape of the incident, that if this had proceeded to a contested hearing, it would have been “relatively easy to prove and the hearing [would have been] relatively straightforward”.¹⁵
56. Regarding publication, Mr. Maxston submitted that publication by name was a very significant penalty, “one of the most serious sanctions that a professional can be exposed to during a hearing, publication to the peers and the public of their name.”¹⁶ His submission was that by underplaying this penalty, the Hearing Tribunal made an error.
57. On the matter of the hearing, Mr. Maxston made submissions about how unusual it was for the Hearing Tribunal to opine on how a contested hearing against Mr. Hingley and Mr. Pals would have proceeded.
58. He noted that there is no way to know how the members would have proceeded at a contested hearing. They could have called expert witnesses to justify their actions, they could have vigorously defended the charges and possibly needed a one, two or three-day hearing. Mr. Maxston called this an “absolutely astonishing statement”¹⁷ that showed the Hearing Tribunal’s fundamental disregard for the value of a JSRP and the significant cost, time and resource expenditure that would have been involved in a contested hearing.

¹¹ *R. v. Anthony-Cook*, 2016 SCC 43, para. 34; Exhibit Binder, p. 192.

¹² *Anthony-Cook, supra*, para. 34; Exhibit Binder, p. 192.

¹³ Exhibit Binder, p. 85.

¹⁴ Decision, para. 95; Exhibit Binder, p. 23.

¹⁵ Decision, para. 96; Exhibit Binder p. 23.

¹⁶ Transcript, p. 31.

¹⁷ Transcript, p. 32.

Conclusion

59. In closing, Mr. Maxston wished to emphasize the lasting impacts of the Hearing Tribunal's Decision for the College, if it was upheld on appeal. He noted that it would have an effect on the College moving forward, and how members of the profession would proceed with consent hearings and joint submissions if this decision was upheld.
60. Therefore, the Complaints Director asked the Appeal Committee to vary the findings of the Hearing Tribunal by removing the added penalties and restoring the original JSRP that was originally proposed by all parties.

Mr. Hingley and Mr. Pals' Submissions

61. As noted, neither Mr. Hingley nor Mr. Pals attended the appeal hearing.
62. However, prior to the hearing, Mr. Pals provided written submissions which were included in the Exhibit Binder.¹⁸ Mr. Hingley did not provide any written or oral submissions.
63. Mr. Pals' submissions were reviewed by the Appeal Committee. However, they did not relate to the sanctions imposed by the Hearing Tribunal, which were the aspect of the Decision under appeal. They were essentially concerns raised about the complainant's conduct since the incident, including the complainant making online postings.
64. Mr. Pals did note that both himself and Mr. Hingley had admitted and accepted that their actions were "unacceptable and unprofessional."¹⁹ He noted that they had both "cooperated with every aspect of the investigation and entered into an uncontested hearing."²⁰

Powers of the Appeal Committee

65. The Appeal Committee has reviewed all the material and considered the submissions of the parties.
66. The Appeal Committee has the jurisdiction under section 89(5) of the HPA to:
- a. Make any finding that, in its opinion, should have been made by the Hearing Tribunal;
 - b. Quash, confirm, or vary any finding or order or substitute or make a finding or order of its own;
 - c. Refer the matter back to the Hearing Tribunal to receive additional evidence for further consideration in accordance with any direction that the Council may make.

¹⁸ Exhibit Binder, pp. 204 – 219.

¹⁹ Exhibit Binder, p. 204.

²⁰ Exhibit Binder, p. 204.

Standard of Review

67. The Appeal Committee has reviewed all the material and considered the submissions of the Complaints Director and Mr. Pals.
68. This was an appeal on the record. It was based on the record of the Hearing Tribunal proceedings, provided by the Hearings Director, the Decision, and the submissions of the Complaints Director and Mr. Pals.
69. The Appeal Committee considered the submissions of Mr. Maxston that the appropriate standard of review in a matter such as this was the “correctness” standard, as he submitted that the errors identified in his submissions were errors of law.
70. The Appeal Committee agrees with the Complaints Director that the Hearing Tribunal erred by failing to address the relevant case law surrounding the JSRP. Specifically, the Hearing Committee agrees that the Hearing Tribunal erred in the application of the principles to be applied when a Hearing Tribunal chooses to reject a JSRP.

Analysis

71. As a starting point, the Appeal Committee notes the lack in the Hearing Tribunal’s decision of the case of *Anthony-Cook*, which is the governing authority from the Supreme Court of Canada when a JSRP is being considered.
72. The case of *Anthony-Cook*, provided by Mr. Maxston in his written submissions, is the leading case in Canada on joint submissions. While it was decided in the criminal law context, the case has been used many times by disciplinary bodies across Canada.
73. In the case of *Anthony-Cook*, the Supreme Court gave context as to why it created a high standard of deference when it came to joint submissions, writing:

[25] It is an accepted and entirely desirable practice for Crown and defence counsel to agree to a joint submission on sentence in exchange for a plea of guilty. Agreements of this nature are commonplace and vitally important to the well-being of our criminal justice system, as well as our justice system at large. Generally, such agreements are unexceptional and they are readily approved by trial judges without any difficulty. Occasionally, however, a joint submission may appear to be unduly lenient, or perhaps unduly harsh, and trial judges are not obliged to go along with them (Criminal Code, R.S.C. 1985, c. C-46, s. 606(1.1)(b)(iii)).²¹
74. The correct test, which is noted in the Hearing Tribunal’s decision is the “public interest” test.²² What is missing from the Decision is an enunciation of what exactly the Supreme Court of Canada has said about that test, and why the high standard of deference is so critical.
75. The Supreme Court expressed the stringent nature of the test clearly, writing:

²¹ *R. v. Anthony-Cook*, *supra*, para. 25; Exhibit Binder, p. 188.

²² Decision, paras. 77 and 93; Exhibit Binder pp. 18 and 21.

[34] ... [A] joint submission should not be rejected lightly, a conclusion with which I agree. Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold — and for good reason, as I shall explain.²³

Emphasis added

76. This explanation was not expressed in the Decision. Nor was there any reference to the high threshold required by the Supreme Court of Canada for these types of submissions.
77. The high threshold is in place to protect a number of benefits, which were outlined by the Supreme Court at paras. 34-45 of the *Anthony-Cook* decision, and are summarized here but within the disciplinary context:
- a. Joint submissions benefit represented members in the disciplinary process as they provide certainty and a streamlined procedure and reduce the stress and legal costs associated with a full hearing.²⁴
 - b. They benefit the regulatory organization because they come with an admission as to unprofessional conduct which adds certainty and lowers risk to the regulator, especially since running an actual hearing can bring numerous evidentiary challenges or witness issues.²⁵
 - c. They also benefit victims, witnesses and their families, as the Supreme Court noted that in exchange for a joint submission, victims and witnesses are “spared the ‘emotional cost of a trial’”.²⁶ Victims may obtain some comfort from a guilty plea, as it “indicates the accused’s acknowledgment of responsibility and may amount to an expression of remorse”.²⁷
 - d. Finally, society at large benefits from joint submissions. The high likelihood of acceptance encourages members to waive their rights to a full hearing and all possible defenses, and enter an admission of unprofessional conduct. Guilty pleas, the Supreme Court notes, “save the justice system precious time, resources, expenses, which can be channeled into other matters.”²⁸ To the extent that they avoid full hearings, a joint submission permits the more efficient function of the regulatory organization, something the Supreme Court noted was so important in the criminal context that without them, “our justice system would be brought to its knees, and eventually collapse under its own weight.”²⁹

²³ *Anthony-Cook, supra*, at paras. 32-34; Exhibit Binder, pp. 191-192.

²⁴ *Anthony-Cook, supra*, at paras. 36-37; Exhibit Binder, pp. 193-194.

²⁵ *Anthony-Cook, supra*, at paras. 38-39; Exhibit Binder, pp. 193-194.

²⁶ *Anthony-Cook, supra*, at para. 39; Exhibit Binder, pp. 193-194.

²⁷ *Anthony-Cook, supra*, at para. 39; Exhibit Binder, pp. 193-194.

²⁸ *Anthony-Cook, supra*, at para. 40; Exhibit Binder, p. 194.

²⁹ *Anthony-Cook, supra*, at para. 40; Exhibit Binder, p. 194.

78. All of these benefits rest on the belief, on the part of the regulated member, that a JSRP will be accepted by the Hearing Tribunal, in all but the clearest of cases. As the Supreme Court concluded in *Anthony-Cook*:

[42] Hence, the importance of trial judges exhibiting restraint, rejecting joint submissions only where the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system. A lower threshold than this would cast the efficacy of resolution agreements into too great a degree of uncertainty. The public interest test ensures that these resolution agreements are afforded a high degree of certainty.³⁰

79. In his closing submissions, Mr. Maxston noted the Complaints Director’s concern that the College may encounter issues in the future in negotiating with regulated members to waive their right to a full hearing and admit to unprofessional conduct if the members are aware that a carefully constructed JSRP, such as the one at issue here, may not be reviewed by a Hearing Tribunal with the sufficient degree of deference required by law.
80. In this case, the Hearing Tribunal did not cite or mention *Anthony-Cook*. It did cite a “public interest” test but did not elucidate what that test entailed, or the high threshold noted by the Supreme Court. It did not identify the important public policy considerations that must be kept in mind by a tribunal when a JSRP is being considered.
81. In particular, the Hearing Tribunal failed to find that the JSRP proposed by both the College and Mr. Hingley and Mr. Pals was “so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down.”³¹
82. This is clear when you review the Decision, with the following issues standing out to the Appeal Committee:
- a. The Hearing Tribunal gave little to no mention of the fact that neither Mr. Hingley nor Mr. Pals had a single complaint in the past, nor the number of times the offence occurred (once). Considering the test from *Anthony-Cook*, the Appeal Committee feels that a reasonable and informed person would consider these both to be very significant factors in considering whether the JSRP is appropriate or not, as this was a one-time event, and did not demonstrate a pattern of misconduct;
 - b. The Hearing Tribunal erroneously suggested that if there had been a hearing into this matter, “the facts would have been relatively easy to prove and the hearing relatively straightforward”³². The Hearing Tribunal did not have any evidence before it as to how that hearing would have proceeded, had it been contested. In fact, the Complaints Director is often the best judge of how complex a hearing may be, and in this case counsel for the Complaints Director called this suggestion “absolutely astonishing and

³⁰ *Anthony-Cook, supra*, at para. 42; Exhibit Binder, p. 195.

³¹ *Anthony-Cook, supra*, at para. 42; Exhibit Binder, p. 195.

³² Decision, para. 96; Exhibit Binder, p. 23.

inappropriate,”³³ noting a number of reasons why this would not have been a *fait accompli*, as suggested by the Hearing Tribunal in the Decision;

- c. The Hearing Tribunal significantly underestimated the severity of publication with the member’s names, writing that this was not a harsh sanction because this should be the practice of a “modern professional regulator”³⁴. Mr. Maxston noted that publication of a decision of this nature by name is “one of the most serious sanctions that a professional can be exposed to in a hearing”.³⁵ It was improper for the Hearing Tribunal to take judicial notice of the practices of other Colleges and suggest that because other Colleges require publication in some cases, this aspect of the penalty was not a serious sanction for these particular members, in this particular College;
 - d. The Hearing Tribunal accepted the majority of the JSRP, suggesting it was in essence acceptable, but then engaged in impermissible “tinkering” by adding a short (8 day) suspension to each member’s penalty. The Supreme Court in *Anthony-Cook* noted that changing the sentence by “six months” was “little more than tinkering”³⁶ in that criminal context, and the Appeal Committee notes that this is equally improper here;
 - e. The Hearing Tribunal added an additional order to Mr. Hingley’s penalty – that a condition be added to Mr. Hingley’s member file that for one year from the date of issuance of the Decision, that he shall not be “permitted to supervise a student enrolled in a program, pursuant to section 18 of the *Paramedics Profession Regulation*”³⁷. Along with being impermissible “tinkering”, this sanction is divorced from the circumstances of the incident itself – Mr. Hingley was not supervising a student at the time of the allegations – Mr. Pals was a full regulated member and had been for 9 years at the relevant time. These were not allegations that involved improper supervision, mentorship or guidance and there was no reason or evidence supporting the imposition of this order on Mr. Hingley; and
 - f. The Hearing Tribunal had no regard to the benefits of joint submissions - to the members, to the College, to the complainant and witnesses, and to society more broadly. It had no regard to the impact of the decision on the College and its future negotiations, nor to those benefits expressed by the Supreme Court in *Anthony-Cook*.
83. In sum, the Appeal Committee could not find how the additional penalties added by the Hearing Tribunal met the high threshold required to tinker with the original JSRP. The Appeal Committee was not persuaded that by adding these additional penalties to what was a carefully crafted and agreed-upon set of remedial orders, any additional justice would be served.
84. That being said, the Appeal Committee wished to make it clear that a while it felt the JSRP met the stringent public interest test, all members of the Committee were gravely concerned about the conduct of the two members in this case. The conduct was profoundly inappropriate, and

³³ Transcript, p. 32.

³⁴ Decision, para. 95; Exhibit Binder, p. 23.

³⁵ Transcript, p. 31.

³⁶ *Anthony-Cook, supra*, at para. 63; Exhibit Binder, p. 202.

³⁷ Decision, para. 106; Exhibit Binder, p. 46.

caused the regulated members on the Appeal Committee in particular significant concern.

85. That being said, the question before the Hearing Tribunal was not how concerning the conduct was, but rather whether the JSRP met the public interest test as set out in *Anthony-Cook*. By failing to properly consider the test and by failing to demonstrate why the JSRP was so “unhinged” from the circumstances of the case that it must be rejected, the Hearing Tribunal committed an error of law which must be addressed by this appeal.

Decision

86. For the reasons set out above, the Appeal Committee varies the decision of the Hearing Tribunal in the following manner:
- a. The Decision of the Hearing Tribunal shall be amended such that the original JSRP, agreed to by all parties, shall replace the orders of the Hearing Tribunal as they are set out in the Decision.
87. With respect to the application to admit additional evidence, the Appeal Committee agreed to accept the submissions of Mr. Pals. However, as the evidence was unsworn and not largely relevant to the question of the errors made by the Hearing Tribunal, and therefore it was not given significant weight.

Conclusion

88. For all the above reasons, the Appeal Committee grants the Appeal of the Complaints Director.

Signed on behalf of the Appeal Committee by the Chair:



Tim Dyck, Chair