

**IN THE MATTER OF A HEARING BEFORE THE HEARING TRIBUNAL OF THE ALBERTA COLLEGE AND ASSOCIATION OF CHIROPRACTORS (“THE COLLEGE”) into the conduct of Dr. Curtis Wall, a Regulated Member of THE COLLEGE, pursuant to the Health Professions Act, R.S.A.2000, c. P-14**

A Caucus Meeting of the Hearing Tribunal was held virtually on April 12, 2022, at which time the panel deliberated upon the presentations made by both counsel on April 12, 2022. Members of the Hearing Tribunal included:

James Lees, Public Member, Chair

Dr. Leslie Aldcorn, Regulated Member

Dr. Dianna Martens, Registered Member

Douglas Dawson, Public Member

Mr. Walter Pavlic Q.C. also attended solely to provide legal advice in his role as Independent Legal Counsel.

Introduction

This is an Interim Application brought by the College by way of an email from the College’s counsel dated March 28, 2022. In that email, the College alleges that Mr. Wall has breached the Order of the Tribunal, dated March 16, 2022, by inappropriately publishing the Hearing transcripts, as well as by making ancillary commentary. The March 16,2022 Order stated, in part, that the transcripts of the expert witness who testified could be published on the condition that all identification of the witnesses, the tribunal and the counsel be redacted from the transcripts.

College Argument

The College alleges that the PDF transcripts of the hearings have been published on the Liberty Coalition of Canada (“LCC”) website, and that the unredacted names of the witnesses appear numerous times within that transcript. The College also alleges that a statement entitled “Case Update”, which appears on the LCC website also clearly breaches the Tribunal’s Order with respect to publication of ancillary comments or explanatory comments. The College seeks immediate removal of the PDF Transcripts from the LCC website, immediate removal of the ancillary comments from the LCC website and an Order requiring review by the Tribunal of any further redacted version of the transcripts prior to them being published.

The College further states that it is inappropriate for Dr. Wall to refuse to follow March 16.2022 Order of the Tribunal and, as a result, the College has an obligation to pursue the matter. The College seeks clarity on the Order. The College further stated that this Interim Application should have proceeded by written submissions, but Dr. Wall insisted an oral Hearing. The College further stated that if a breach of the March 16,2022 Order is found, Dr. Wall ought to be responsible for all the costs associated with this Interim Application.

Dr. Wall’s Argument

Dr. Wall responded by stating that the parties were in agreement that the redaction of any identifying portions of the evidence were to operate to ensure that only the Tribunal members, counsel, the Complaints Director and any staff, as well as the College's expert witness would not be identified. Dr. Wall maintains that there was no suggestion that Dr. Wall or any of his witnesses would be required to have any of their evidence redacted, and that the College's interpretation of the March 16, 2022 Order results in the Tribunal granting a remedy that was not requested. Dr. Wall further states that if there was any breach of the Order, it arose as a result of the ambiguity of the Order and that he at no time intentionally breached the Order. Dr. Wall maintains that he reasonably operated under the presumption of publication, and that any breach was inadvertent, and that there has been no evidence of any harm arising from that breach. He asks that the College not be granted costs, and that the costs of this Application ought to be deducted from any costs that may ultimately be awarded against him at the conclusion of this matter

### Decision

We have now had an opportunity to review the transcripts of February 25, 2022, the email from the College dated March 28, 2022, the reply submissions of Dr. Wall dated March 29, 2022, our Order of March 16, 2022, as well as the oral submissions of counsel.

In reviewing these materials, we note that the submissions made by the College on February 25, 2022 included a request for a complete ban on publication. While it is true that counsel for the College, as well as Dr. Wall, discussed potential lesser remedies, the initial request of the College, which was never withdrawn, was for a complete ban on publication.

When considering the submissions of the parties prior to issuing the March 16, 2022 Order, we reviewed the representations of Dr. Wall, where he expressly stated that any information that was to be released would be fully redacted, and that the authors of the evidence presented would also have their names redacted. We subsequently ordered that only the transcripts of the expert witnesses would be published, on the express condition that the identification of the expert witnesses, the tribunal members and counsel be redacted from those transcripts. Our intention at that time was that the term 'expert witnesses' was to include all expert witnesses, and that the term 'counsel' was to include all counsel.

While a literal reading of the March 16, 2022 Order makes it very clear that the panel intended to exclude the identification of all expert witnesses, we do appreciate Dr. Wall's position that he applied a liberal, if not literal, interpretation to that Order, and assumed that the Order only applied to the witnesses of the College.

We do find that Dr. Wall violated the spirit of the Order. We do note that we expressly indicated that if there was any question with respect to the Order, and if the parties required further direction, the panel was prepared to reconvene to provide that direction. Dr. Wall should have availed himself of the opportunity to reconvene the panel and obtain further direction. Had Dr. Wall done so, it is very likely that the need for this Hearing would have been avoided.

We have also reviewed the ancillary comments complained of by the College. We do not find that they violated the Order. The ancillary comments do not contain any information that identifies the name of any of the expert witnesses. The complaint made by the College on that point is dismissed.

The College has requested immediate removal of the PDFs of the transcripts from the LCC website. We understand that the PDFs contain transcripts of the testimony of Dr. Dang and Mr. Schafer, and that those transcripts have not been completely redacted. We order that those transcripts be immediately removed, reviewed and fully redacted to eliminate any reference to the expert witnesses the panel or counsel. Once that has been completed, they may then be published.

We encourage the parties to work together to insure that the names of the expert witnesses be fully redacted from any transcripts Dr. Wall intends to publish. We reiterate that the panel remains available to clarify any questions the parties may have as to what is or is not, capable of being published.

DATED THIS 1st DAY OF June, 2022, IN THE CITY OF EDMONTON

College of Chiropractors of Alberta

A handwritten signature in black ink, appearing to read "James Lees", written over the printed name.

James Lees, Chair Public Member

On behalf of the Hearing Tribunal