

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

DISCIPLINARY HEARING

VOLUME 1

VIA VIDEOCONFERENCE

Edmonton, Alberta

September 1, 2021

1 Proceedings taken via Videoconference for The Alberta
2 College and Association of Chiropractors, Edmonton,
3 Alberta

4

5 September 1, 2021

Morning Session

6

7 HEARING TRIBUNAL

8

[REDACTED]

Tribunal Chair

9

[REDACTED]

Internal Legal Counsel

10

Dr. [REDACTED]

ACAC Registered Member

11

Dr. [REDACTED]

ACAC Registered Member

12

[REDACTED]

Public Member

13

[REDACTED]

ACAC Hearings Director

14

15 ALBERTA COLLEGE AND ASSOCIATION OF CHIROPRACTORS

16

[REDACTED]

ACAC Legal Counsel

17

18 FOR DR. CURTIS WALL

19

J.S.M. Kitchen

Legal Counsel

20

21

[REDACTED]

CSR (A)

Official Court Reporter

22

23 (PROCEEDINGS COMMENCED AT 9:10 AM)

24

THE CHAIR:

Good to see everyone here.

25

We're just checking that we've got all the parties.

26

Dr. Wall and counsel are here?

1 Opening by Mr. [REDACTED]

2 MR. [REDACTED] So I will then just continue
3 with where we were at about maybe two hours or so ago.
4 I'd begun my submissions by telling you that we were in
5 what is called the liability phase of the hearing, the
6 contested phase, where both sides present their
7 evidence, and I'll just carry on then in terms of my
8 opening submissions.

9 To give you a road map, I have a couple of very
10 quick -- I have I think five or six areas -- seven
11 areas I'm going to chat about. The first thing is I've
12 got a couple of very quick questions for Mr. Kitchen
13 that I want to just do some housekeeping with.

14 The second thing I want to do is speak to the
15 exhibits and the exhibit list that is before you, those
16 are the agreed on exhibits.

17 The third thing I want to do is take you through
18 what I anticipate will be an order of proceedings for
19 the next four days. I've chatted a little bit with
20 Mr. Kitchen about this, and I'll welcome his comments.

21 The fourth thing I want to do is talk about some
22 of the legal and evidentiary principles that apply to
23 this hearing.

24 The fifth thing I want to do is to comment about
25 the difference between expert witnesses and lay
26 witnesses.

1 The sixth thing I want to do is very, very briefly
2 give you a sense of what each of the Complaints
3 Director's witnesses will testify to.

4 And the final thing, the seventh thing I want to
5 do is to comment on what the Complaints Director
6 believes are the critical issues before you and what
7 your role is in these proceedings.

8 So, again, the first thing I'll deal with is a
9 couple of housekeeping matters for Mr. Kitchen.
10 Mr. Chair, you helpfully dealt with the jurisdiction
11 and composition of the Hearing Tribunal and consent to
12 a virtual hearing. I'll just get Mr. Kitchen to
13 confirm that all of the agreed-upon exhibits have been
14 provided to him and his client.

15 MR. KITCHEN: Yes, they have.

16 MR. [REDACTED] So I'll turn now to the second
17 area I wanted to speak to, and that is the agreed on
18 exhibits, and I think, frankly, now the additional
19 exhibits, which are before you, with the consent of
20 Dr. Wall, the agreed on exhibits were provided to you
21 in advance of the hearing to allow you to review them
22 for information and, of course, to not deliberate
23 amongst yourselves.

24 As you know, the exhibits are listed in blocks of
25 documents, Files A, B, C, D, E, and F, and we now have
26 an additional File H, which has a few straggler

1 documents.

2 I'm going to ask that the court reporter, either
3 during a break in the hearing or perhaps after the
4 hearing, formally mark those exhibits; they will need
5 to be formally marked.

6 And I'll just, again, get Mr. Kitchen to confirm
7 that those exhibits are entered with his client's
8 consent, and he has no problem with the court reporter
9 marking them during a break or after, in fact.

10 THE CHAIR: And, Mr. [REDACTED] how do you
11 propose we mark these: A-1, A-2, A-3, et cetera?

12 MR. [REDACTED] I think we use the exhibit
13 list that was provided to you as a PDF with each of
14 them, and we use the numbering. I think that's how
15 I've been preparing for the hearing. If we change
16 that, I'm going to have some problems in referring you
17 to documents, so I'm assuming that's all right, and
18 Mr. Kitchen, again, will agree to having those exhibits
19 marked.

20 THE CHAIR: Any issues with that,
21 Mr. Kitchen?

22 MR. KITCHEN: No.

23 THE CHAIR: No, okay. It would just be
24 good to make sure we're all on the same numbering
25 system here because there are a lot of them.

26 MR. [REDACTED] So, Mr. Chair, then we'll use

1 the numbering system that is there and the list of
2 exhibits that has been provided to you as a PDF.

3 EXHIBIT A-1 - Amended Notice of Hearing,
4 Notice to Attend as Witness, and Notice to
5 Produce, July 22, 2021

6 EXHIBIT A-2 - Email from AHS to Member re
7 Complaint, dated December 1, 2020

8 EXHIBIT A-3 - Letter of Complaint Referral
9 from Registrar, dated December 2, 2020

10 EXHIBIT A-4 - ACAC Statement on Alberta
11 Health Notice of Closure for a Calgary
12 Chiropractic Clinic, December 15, 2020

13 EXHIBIT A-5 - Letter to Member re s.56
14 Complaint, dated December 21, 2020

15 EXHIBIT A-6 - Letter from Member in Response
16 to Complaint, January 11, 2021

17 EXHIBIT A-7 - ACAC Complaint Investigation
18 Report

19 EXHIBIT A-8 - Letter from Dr. [REDACTED], dated
20 December 12, 2020

21 EXHIBIT A-9 - Letter from Dr. [REDACTED], dated
22 January 11, 2021

23 EXHIBIT A-10 - ACAC Code of Ethics

24 EXHIBIT A-11 - ACAC Standards of Practice

25 EXHIBIT B-1 - Letter Requesting s.65 Review,
26 dated December 3, 2020

1 EXHIBIT B-2 - Letter Requesting Extension,
2 dated December 9, 2020
3 EXHIBIT B-3 - Response of Dr. Wall s.65
4 Request, dated December 10, 2020
5 EXHIBIT B-4 - Response of Dr. Wall s.65
6 Request and Enclosures, dated December 16,
7 2020
8 EXHIBIT B-5 - Letter of Decision re s.65
9 Review, dated December 18, 2020
10 EXHIBIT C-1 - ACAC Notice to Members re
11 Telehealth Billing, dated March 26, 2020
12 EXHIBIT C-2 - ACAC Notice to Members re
13 Consultation, dated April 21, 2020
14 EXHIBIT C-3 - ACAC Notice to Members re
15 Consultation, April 22, 2020
16 EXHIBIT C-4 - ACAC Website Update on COVID
17 Practices, April 29, 2020
18 EXHIBIT C-5 - ACAC Notice to Members re
19 Return to Practice, dated April 30, 2020
20 EXHIBIT C-6 - ACAC Notice to Members re
21 Return to Practice, dated May 1, 2020
22 EXHIBIT C-7 - ACAC Notice to Members re
23 Approval of Plan, dated May 3, 2020
24 EXHIBIT C-8 - ACAC Notice to Members about
25 Masking, May 25, 2020
26 EXHIBIT C-9 - ACAC Notice to Members about

- 1 Masking, dated July 24, 2020
- 2 EXHIBIT C-10 - ACAC Council Updates re
- 3 Telehealth, July 31, 2020
- 4 EXHIBIT C-11 - ACAC Registrar's Report,
- 5 August 4, 2020
- 6 EXHIBIT C-12 - ACAC Notice to Members re
- 7 COVID Practices, dated August 11, 2020
- 8 EXHIBIT C-13 - ACAC Website re Telehealth,
- 9 October 20, 2020
- 10 EXHIBIT C-14 - ACAC Notice to Members re
- 11 Directive, dated November 23, 2020
- 12 EXHIBIT C-15 - ACAC Notice to Members re
- 13 Restrictions, dated November 25, 2020
- 14 EXHIBIT C-16 - ACAC Website COVID FAQs, dated
- 15 November 25, 2020
- 16 EXHIBIT C-17 - ACAC Website Update on COVID
- 17 Practices, December 1, 2020
- 18 EXHIBIT C-18 - Notice to Members about
- 19 Masking, dated December 9, 2020
- 20 EXHIBIT C-19 - ACAC Notice to Members re PPE,
- 21 date December 10, 2020
- 22 EXHIBIT C-20 - ACAC COVID-19 Pandemic
- 23 Practice Directive, May 5, 2020
- 24 EXHIBIT C-21 - ACAC COVID-19 Pandemic
- 25 Practice Directive, May 25, 2020
- 26 EXHIBIT C-22 - ACAC COVID-19 Pandemic

1 Practice Directive, January 6, 2021
2 EXHIBIT D-1 - COVID-19 Business Closure Order
3 CMOH 25-2020, dated December 8, 2020
4 EXHIBIT D-2 - AHS Order to Rescind Closure
5 Notice, January 5, 2021
6 EXHIBIT D-3 - CMOH Order 19-2021, dated May
7 6, 2021
8 EXHIBIT D-4 - CMOH Order 20-2021, dated May
9 6, 2021
10 EXHIBIT D-5 - CMOH Order 22-2021, dated May
11 13, 2021
12 EXHIBIT D-6 - CMOH Order 26-2020, dated June
13 6, 2020
14 EXHIBIT D-7 - CMOH Order 34-2021, dated June
15 30, 2021
16 EXHIBIT D-8 - CMOH Order 38-2020, dated
17 November 24, 2020
18 EXHIBIT D-9 - CMOH Order 42-2020, dated
19 December 11, 2020
20 EXHIBIT D-10 - City of Calgary - Temporary
21 COVID-19 Face Covering Bylaw, March 11, 2020
22 EXHIBIT D-11 - City of Calgary - Bylaw that
23 repeals Mask Bylaw, dated July 5, 2021
24 EXHIBIT E-1 - 9-page curriculum vitae for
25 Dr. [REDACTED]
26 EXHIBIT E-2 - Dr. [REDACTED] - Expert Report

1 Masking
2 EXHIBIT E-3 - 9-page curriculum vitae for
3 Dr. Bao Dang
4 EXHIBIT E-4 - Dr. Bao Dang - Expert Report
5 Masking
6 EXHIBIT E-5 - 95-page curriculum vitae for
7 Dr. Byram Bridle
8 EXHIBIT E-6 - Dr. Byram Bridle - Expert
9 Report Masking
10 EXHIBIT E-7 - 5-page curriculum vitae for
11 Dr. [REDACTED]
12 EXHIBIT E-8 - Dr. [REDACTED] - Expert
13 Report Masking
14 EXHIBIT F-1 - GOA Albert's safely staged
15 COVID-19 relaunch, dated April 30, 2020
16 EXHIBIT F-2 - CMOH Order 16-2020, dated May
17 3, 2020
18 EXHIBIT F-3 - ACAC Registrar's Report, dated
19 July 5, 2021
20 EXHIBIT F-4 - ACAC Frequently Asked
21 Questions, dated July 7, 2021
22 MR. [REDACTED] I do want to comment a little
23 bit about some other aspects of the exhibits.
24 Typically, only evidentiary documents are entered
25 as exhibits, those would be patient charts, CMOH
26 orders, those types of things. Things like the Health

1 Professions Act or the Chiropractors' Profession
2 Regulation don't have to be entered as exhibits.
3 Mr. [REDACTED] can tell you, as a courtesy, we've added the
4 Standards of Practice and the Code of Ethics as
5 exhibits, but they really don't have to be marked as
6 exhibits, but we've done that for ease of reference.

7 From time to time, I think during the hearing
8 we're going to be taking you, at least I'm going to be
9 taking you to a couple of sections in the HPA, and to
10 the extent that you're able to do this, I'd encourage
11 you to have a copy of the HPA handy or maybe be able to
12 access it on the Queen's Printer. I'm not going to
13 take you through a lot of things, but having some of
14 those sections in front of you might be helpful.

15 The third thing I want to do is talk about the
16 order of proceedings over the next four days, and again
17 I've talked with Mr. Kitchen about this, we're each
18 going to be providing opening statements. I will then
19 present my case on behalf of the Complaints Director,
20 which involves calling three witnesses, Dr. [REDACTED]
21 [REDACTED] the College's Registrar, Dr. [REDACTED] who is an
22 expert, and then Mr. [REDACTED] who is the
23 College's Complaints Director. I'll talk about the
24 order of witnesses when we get a little bit closer to
25 our lunch break, the actual order.

26 Each of the Complaints Director's witnesses would

1 be questioned by me, Mr. Kitchen would carry out a
2 cross-examination, I might have a couple of follow-up
3 questions, and then the Hearing Tribunal would be able
4 to ask questions of those witnesses, and then they
5 would be excused. The process for Dr. Wall's witnesses
6 would repeat, and I would, of course, be in the
7 position of cross-examining, and we would go from
8 there.

9 After all of the witnesses for both sides have
10 completed their testimony, I would make a closing
11 statement, and Mr. Kitchen would make a closing
12 statement on behalf of his client.

13 Mr. Kitchen, are you comfortable with that order
14 for the proceedings?

15 MR. KITCHEN: Yes. Just to clarify, when it
16 comes to closing statements, are we, at that point,
17 just simply reviewing the evidence, or are we also
18 going to be making legal submissions and supplying
19 cases, et cetera?

20 MR. [REDACTED] I thought we would be
21 reviewing the evidence, and we'd be providing cases in
22 making our legal argument. If you and I need to
23 fine-tune that, I'm happy to discuss that with you.

24 It's occurred to me that, for example, if we were
25 to finish on day 4 at 3:00, probably neither of us is
26 in a position to get all our thoughts together after

1 three days of evidence in the very brief period of
2 time, so I think we can probably accommodate some other
3 arrangement as necessary for that, but, yes, that was
4 my thought.

5 MR. KITCHEN: In that sense, closing
6 statements would probably be significantly larger than
7 opening statements, so --

8 MR. [REDACTED] I think they would --

9 MR. KITCHEN: -- I want the Tribunal to know
10 that.

11 THE CHAIR: And I just didn't hear in
12 Mr. [REDACTED] description an opening statement from
13 you, should you choose to make one, Mr. Kitchen. I'm
14 assuming that would be the case before your witnesses
15 are called.

16 MR. [REDACTED] And I intended that,
17 Mr. Chair. I'm sorry, if I omitted that.

18 MR. KITCHEN: No, I recalled you saying
19 that, but, yes, I will be giving an opening statement,
20 very brief.

21 THE CHAIR: Okay.

22 MR. [REDACTED] So, Mr. Chair, then once the
23 liability phase of the hearing is completed, you would
24 go away as a tribunal, and you would deliberate, and
25 then you'll issue your written decision, and if you
26 make any findings of unprofessional conduct, we would

1 reconvene to deal with the matter of penalty orders.

2 The fourth area I want to speak to you about is to
3 very briefly review some of the legal principles that
4 are in play in a discipline hearing like this and more
5 specifically to responsibilities that the Complaints
6 Director has, and Mr. [REDACTED] certainly can canvass this
7 with you.

8 The first is that a Complaints Director has to
9 prove the facts that underlie or give rise to the
10 alleged unprofessional conduct, and I think, frankly,
11 the facts in this matter are not in dispute or are
12 almost in -- largely not in dispute, but it's important
13 to remember that these are civil proceedings not
14 criminal proceedings, and the burden of proof on the
15 Complaints Director is what's called the balance of
16 probabilities, not the beyond a reasonable doubt
17 standard that applies in criminal proceedings, which is
18 much, much higher. The burden of proof on the
19 Complaints Director here is again on the balance of
20 probabilities, and that's really 50.1 percent it's more
21 probably than not. So that's the first onus on the
22 Complaints Director: Proving the facts on a balance of
23 probabilities.

24 The next onus or responsibility on the Complaints
25 Director is to prove that those facts rise to the level
26 of unprofessional conduct. And you have, Mr. Chair and

1 Tribunal Members, several tools available to you to
2 assess the conduct and determine whether unprofessional
3 conduct has occurred.

4 So what are those tools; what can you look to?
5 The first tool is the Health Professions Act and the
6 definition of unprofessional conduct that appears in
7 Section 1(1)(pp) of the HPA. You don't have to have
8 this handy in front of you; I'm just going to read it
9 to you. Section 1(1)(pp) says: (as read)

10 Unprofessional conduct means one or more of
11 the following, whether or not it is
12 disgraceful or dishonourable.

13 And then it has a bunch of subheadings, and from the
14 Complaints Director's perspective, there are four of
15 those subheadings that are triggered and that apply in
16 this hearing.

17 The first one is item (i): (as read)
18 Displaying a lack of knowledge of or lack of
19 skill or judgment in the provision of
20 professional services.

21 So that's subsection (i). Then subsection (ii): (as
22 read)

23 Contravention of this Act, a Code of Ethics
24 or Standards of Practice.

25 And then subsection (iii): (as read)

26 Contravention of another enactment that

1 applies to this profession.

2 And then the final sub definition in section 1(1)(pp)
3 that applies is item 12, (xii): (as read)

4 Conduct that harms the integrity of the
5 regulated professional.

6 So those are in the Complaints Director's submissions
7 the four parts of the definition of unprofessional
8 conduct that apply today.

9 I did want to mention that in prior discipline
10 legislation, there were often terms like "unskilled
11 practice" and "professional conduct". "Unskilled
12 practice" meaning some sort of a technical lapse in
13 what you're doing, a competence lapse; and then
14 "professional conduct" meaning some type of ethical or
15 moral turpitude that is occurring. Well, under the
16 HPA, we have one term "unprofessional conduct" that
17 covers both of those. And as I mentioned at the
18 beginning of the definition of section 1(1)(pp), it
19 says: (as read)

20 Regardless of whether the conduct is
21 disgraceful or dishonourable.

22 We're not talking about that; we're talking -- in the
23 HPA world, we're talking about whether these actions
24 constitute unprofessional conduct.

25 Very briefly, I'll also mention to you that
26 Section 1(1)(j) of the HPA says that: (as read)

1 Conduct is defined as meaning an act or an
2 omission.

3 So when we're talking about unprofessional conduct,
4 it's doing something and/or failing to do so.

5 So that's the first tool that's available to you:
6 What's in the HPA, what it says about what constitutes
7 unprofessional conduct.

8 The second tool available to you are the sections
9 of the College's Standards of Practice and Code of
10 Ethics, and of course as you know from the preliminary
11 application, we've referenced a number of those
12 sections in the Notice of Hearing and the closing
13 paragraph. Those are things that I'll take you through
14 in my closing submissions, and those, again, are ways
15 you measure and assess Dr. Wall's conduct.

16 The third tool available to you in these
17 proceedings is the Pandemic Directive the College
18 issued, and we haven't talked about that yet, we're not
19 there yet, but you have seen it as the result of your
20 review of the exhibits. There are three versions of
21 the Pandemic Directive. They don't change very much.
22 We're going to really rely on the final one, the most
23 recent one, from January of this year; I'll be using
24 that document. But that Pandemic Directive is another
25 way that you can assess Dr. Wall's conduct.

26 The fourth tool that's available to you, and this

1 is for the chiropractors on the Tribunal or if any of
2 the public members have health care experience is to
3 use your knowledge and training and experience as a
4 health care provider to assess Dr. Wall's conduct and
5 whether it is a departure from the profession that
6 falls within the category of unprofessional conduct.

7 The final tool that's available to you, and it's
8 available to all of you, is to use your common sense
9 and to carefully consider whether what Dr. Wall did is
10 something that chiropractors shouldn't do and whether
11 it, again, rises to the level of unprofessional
12 conduct.

13 I want to turn now to the fifth area that I want
14 to speak to, and that's the difference between
15 testimony from lay witnesses, regular people for lack
16 of a better phrase, and expert witnesses.

17 So we talked about Section 79(5) of the HPA, and
18 it's saying to you that you're not bound by the formal
19 Rules of Evidence, and that's to allow more flexibility
20 and to have an easier process than what would occur in
21 the courts, but I also mention to you that Section
22 79(5) doesn't say you must ignore the Rules of
23 Evidence, and, in fact, there are certainly situations
24 where the Rules of Evidence are going to apply, and
25 they're going to not only give you guidance, they're
26 going to require you, in my submission, to take certain

1 steps when it comes to evidence.

2 So I want to reinforce here the very important
3 distinction at law between expert witnesses and lay
4 witnesses and, more specifically, what the courts have
5 established those kinds of witnesses can and cannot say
6 when they're testifying. And in my (INDISCERNIBLE) to
7 you, those principles apply to this hearing, and they
8 should be adhered to.

9 You'll know we've got a number of expert
10 witnesses: Dr. [REDACTED] Dr. Dang, Dr. Bridle, Dr. [REDACTED]
11 And then we have a series of lay witnesses, everyone
12 from the Registrar of the College to Dr. Wall himself,
13 Dr. [REDACTED] a chiropractor who Dr. Wall is calling,
14 and I think four of his patients are being called as
15 well.

16 So as your independent legal counsel can review
17 with you, and I'm sure Mr. Kitchen would agree, the
18 general rule is that lay witnesses can only provide a
19 decision-maker with their observation of facts, things
20 that are within their direct knowledge that are factual
21 in nature. And the Rules of Evidence I would suggest
22 to you, submit to you, is that lay witnesses are
23 prohibited from providing opinion evidence to you, and
24 that's why we have a separate category of witnesses
25 known as expert witnesses, and those witnesses, after
26 being qualified, that is, after hearing about their

1 background, their knowledge and training, are able to
2 provide you with opinion evidence, and you're going to
3 hear some opinion evidence, of course, in this hearing.

4 Based on the information Mr. Kitchen has given to
5 me, among the lay witnesses that Dr. Wall is calling,
6 he's calling another chiropractor, he's calling
7 patients of his, I understand that they're going to be
8 providing you with opinions about masking and maybe
9 COVID, their opinion of Dr. Wall as a chiropractor,
10 their opinion of the College.

11 Based on the strict Rules of Evidence, the College
12 could object to that and say, no, we don't think these
13 people should be heard, they can't be heard, they are
14 lay witnesses that they could talk about if they were a
15 patient making a complaint, what happened when an
16 adjustment was done. But they can't just be called to
17 give opinion evidence: Here's what I think, as a lay
18 witness, a man on the street or a woman on the street,
19 about the College or COVID or something like that.

20 So the College -- the Complaints Director, as I
21 said, could have objected to those people testifying,
22 but, with a measure of reluctance, I will say to you
23 we're not going to do that, but we're going to submit
24 to you later on that the lay witness evidence should be
25 given very, very little effect, very, very little
26 weight, because it is just that, it's lay witness

1 evidence. And this hearing isn't about what patients
2 think about Dr. Wall, what Dr. [REDACTED] his
3 chiropractor witness, thinks about him; this is about
4 the issue of unprofessional conduct as described in the
5 charges.

6 So that's a very, very important I think qualifier
7 to the lay witness testimony you're going to hear, and
8 I'll speak more about that in my closing submissions.

9 The sixth thing I want to talk about is the three
10 witnesses that the College is going to call and what I
11 anticipate they will be saying, and I'm going to be
12 very brief on this, because you'll hear from the
13 witnesses, but just to let you know where we're coming
14 from.

15 I intended to call Dr. [REDACTED] first today,
16 but that won't happen I don't think. Dr. [REDACTED] will
17 testify sometime tomorrow I believe. Dr. [REDACTED] is
18 the College's Registrar, as the chiropractors on
19 (INDISCERNIBLE), and he'll give some evidence about the
20 function of the College and the development of the
21 Pandemic Directive, and he'll talk about his
22 involvement in the complaint that gives rise to these
23 proceedings.

24 Dr. [REDACTED] is a College's -- Complaints Director
25 expert witness, and you'll see that he has extensive
26 background in public health. He was involved or

1 testified that he was involved in the CMOH orders
2 themselves, and he'll speak to the validity of the
3 science supporting masking and supporting other
4 COVID-19 measures that are in the Pandemic Directive.

5 The final witness that the College will be calling
6 is Mr. [REDACTED] who is the College's Complaints
7 Director. He's going to comment, to some degree, about
8 the CMOH orders and Pandemic Directive as they relate
9 to discipline matters, and he's also going to speak to
10 the complaint, investigation, and referral to hearing.

11 So that's just to give you a favour of the
12 College's witnesses, and I anticipate Mr. Kitchen will
13 be speaking to you about what he anticipates his
14 client's witnesses will be testifying on.

15 So I want to turn to the seventh and final area
16 that I want to speak to you about, and that is some
17 comments about what the Complaints Director believes
18 this hearing is about and, just as importantly, what
19 it's not about, and what your role is in the hearing.

20 So, Mr. Chair and Hearing Tribunal Members, it's
21 very obvious to say that this hearing is not, of
22 course, occurring in a vacuum. Among other things, the
23 charges relate to Dr. Wall not masking, not observing
24 social distancing, not having plexiglass barriers in
25 place, and there is a debate, at times a vigorous one
26 in our society, about masking restrictions and other

1 COVID-19 restrictions. Some people support them,
2 others do not, and some people challenge the scientific
3 efficacy of those provisions or those measures, and
4 other's take a very different view.

5 So Dr. Wall and his expert witnesses, we suspect,
6 will want to make this hearing about that very issue,
7 that very question, the science or lack thereof
8 supporting masking, supporting social distancing, those
9 types of things. That's where they're going to want to
10 take you in this hearing. I anticipate they're going
11 to argue that the science supports Dr. Wall's
12 independent choice to not comply with the College's
13 Pandemic Directive, and that he had some type of a
14 reasonable basis for doing that, and that the science
15 does not support masking and, therefore, excuses and
16 other COVID measures, and that that somehow excuses his
17 conduct, and that it means that he's not guilty of
18 unprofessional conduct.

19 On behalf of the Complaints Director, I'm going to
20 urge you to not be distracted by that, even though
21 you're going to hear a great deal of information about
22 that. That's because that's not what this hearing is
23 about, and you do not, let me be clear, you do not have
24 to make the finding or decision about whether masking
25 is or isn't warranted, whether social distancing is or
26 isn't warranted, whether the CMOH orders are the right

1 thing or the wrong thing. You don't have to make any
2 decisions about science. That's not your role here.
3 This hearing is not about masking, it's not about
4 social distancing, it's not about Dr. Wall's personal
5 beliefs or conclusions.

6 This hearing is about the public. It's about
7 patients and their well-being, and it's really about
8 being a member of a regulated profession, a regulated
9 profession. It's all about government through the HPA
10 creating the profession of chiropractic in Alberta,
11 and, at the same time, doing that for about 30 other
12 health care professions in Alberta. It's about
13 Section 3 of the Health Professions Act that says: (as
14 read)

15 A College must discharge its duties in the
16 public interest and must maintain and enforce
17 standards for the profession.

18 Must maintain, must enforce standards for the
19 profession.

20 This hearing is about mandatory obligations and
21 responsibilities that all professionals have:
22 Chiropractors, dentists, doctors, lawyers, nurses.
23 Practicing in a profession is a privilege, it is not a
24 right; it is a privilege, not a right.

25 And with that privilege come a host of
26 responsibilities that a professional is required to

1 discharge. Those are things like getting the right
2 education to get into a profession. Things like paying
3 for a practice permit each year and satisfying CPR and
4 emergency training requirements each year. Things like
5 abiding by Standards of Practice and Codes of Ethics.
6 Things like required life-long learning as a
7 professional through continuing competence, and this
8 College has a continuing competence program. It's
9 through things, a myriad of things, standards and
10 directives relating to charting and patient consent and
11 sexual relationships with patients, all those things
12 that govern how professionals must conduct themselves.
13 That's what this hearing is about, because practicing,
14 again, is a privilege not a right.

15 I told you earlier that the -- this hearing, I
16 don't believe, is really about factual issues, because
17 the facts aren't really in dispute. I'm almost certain
18 you're going to hear direct evidence from Dr. Wall that
19 he made a decision in June of 2020 to deliberately not
20 follow the College's Pandemic Directive and the masking
21 and social distancing and that plexiglass barrier
22 requirements that it had.

23 And I want to make it very clear from the
24 Complaints Director's perspective that the Pandemic
25 Directive is mandatory. It's a mandatory requirement
26 for members of the profession. And as you'll hear from

1 the Complaints Director's witnesses, that mandatory
2 Pandemic Directive was a requirement from Government
3 for chiropractors to re-enter practice after COVID-19
4 first hit this province. It wasn't a choice for the
5 College. It wasn't something they decided to do or had
6 any discretion about. This was the law for
7 chiropractors to re-enter practice. And you'll see
8 that through a series of exhibits coming from the
9 Alberta Government and the CMOH orders. It was a
10 requirement the Pandemic Directive be created in order
11 for chiropractors to practice, and it was a requirement
12 for chiropractors to follow it.

13 So again this hearing is about Dr. Wall, on his
14 own and, as you'll see from the evidence, without ever
15 contacting the College, deciding that he knew best and
16 deciding that he would opt out of the Pandemic
17 Directive, that he could decide whether it was
18 applicable to him or not. And I can't emphasize enough
19 that there is going to be evidence and, I think this
20 will be admitted by Dr. Wall, that there was no contact
21 with the College by him from June to December of 2020
22 on the charges -- or the related charges.

23 I'm going to say something that to the Complaints
24 Director is very obvious and yet it's very important,
25 and that is that members of the chiropractic profession
26 and, indeed, any profession can't on their own on any

1 given day decide what professional obligations they
2 will or won't follow.

3 What if Dr. Wall said, for example, Today's a day
4 where I don't think the College's charting requirements
5 are important, I'm going to chart my own way; or what
6 the College says about patient consent, You know, I
7 don't think they've got it right, I'm going to get
8 patient consent my own way or I'm not going to get it
9 at all, I'm going to decide what happens. What about a
10 physician who says, You know what, there are
11 requirements from my college to not date a patient or
12 have a sexual relationships; well, I'm a physician, I'm
13 a bright guy or lady, I'm going to decide whether that
14 applies to me or not, and a lawyer deciding,
15 Mr. Kitchen and I, how we want to treat our trust
16 monies that are in our accounts on behalf of clients
17 and opt out of Law Society requirements. Well, of
18 course, members of a profession can't do that; they
19 can't on their own on a daily, weekly, monthly basis
20 decide what does or doesn't apply to them in terms of
21 their regular Code of Ethics.

22 And there's some very good reasons for that.
23 There's obvious ones, that it's illegal to do that.
24 There's a regime in place for public protection and for
25 the regulation of professionals. This is really about
26 public trust in professionals and the integrity of the

1 profession in the eyes of the public, and that
2 absolutely depends on members of the public knowing
3 that professionals will meet their obligations, knowing
4 that, when they walk into a chiropractor's office, he
5 or she has the right training, that he or she has a
6 valid practice permit, that he or she is following up
7 with their continuing competence requirements, that he
8 or she is complying with the College's Pandemic
9 Directive.

10 So let me be clear also, on behalf of the
11 Complaints Director, that there can be a vigorous
12 wholesome discussion in the chiropractic profession
13 about any particular issue in front of it, whether it's
14 masking and social distancing or anything else.

15 And, in fact, you'll see from the documents and
16 witnesses in front of you that the College invited
17 discussion about the Pandemic Directive and was
18 available to discuss the Pandemic Directive with its
19 members. Of course, Dr. Wall chose to not do that. He
20 declined; he chose to not contact the College.

21 If Dr. Wall had concerns about the Pandemic
22 Directive, really significant concerns, his recourse
23 should be to the courts or the legislature. It should
24 not be to decide, while he's practicing, to opt out of
25 these requirements.

26 If this hearing isn't about masking, and I've made

1 that comment to you a number of times, and it's not
2 about social distancing or plexiglass barriers, and
3 it's not about science that supports those or doesn't
4 support them, well, why is the Complaints Director
5 calling an expert witness in that field. I touched on
6 this a little bit on this with you before, but Dr. Wall
7 is going to be making arguments about those issues, and
8 that, frankly, couldn't occur in this hearing without
9 some type of response from the Complaints Director,
10 even though the Complaints Director strongly believes
11 this isn't about masking and that expert witnesses
12 aren't necessary. Dr. Wall has, as is his right, put
13 that before you as an issue, and it was necessary for
14 the Complaints Director to respond by providing an
15 expert report.

16 The Complaints Director is very confident that
17 after hearing from Dr. [REDACTED] the College's expert on this
18 issue, after reading his report and looking at the CMOH
19 orders, looking at those AHS documents, looking at the
20 Canada Health [sic] documents and references that are
21 in some of the exhibits before you, the Complaints
22 Director is very confident that you will ultimately
23 determine that there is overwhelming clinical evidence
24 in support of the Pandemic Directive. And, again,
25 that's not -- in -- from a Complaints Director's
26 perspective, that's not really what's in front of you,

1 that's not really what's before you, but there is
2 overwhelming evidence to support the Pandemic
3 Directive, and, again, it was a legal obligation of the
4 College to create that Pandemic Directive.

5 So in closing, again, I would urge you to not be
6 distracted from your role. The pandemic directive is
7 one of many professional obligations that chiropractors
8 have, and this applies to all professions and, as I
9 said to you, practicing in a profession is a privilege
10 not a right. You're not here to pass judgment on the
11 Pandemic Directive; you're here to assess Dr. Wall's
12 actions, his conduct, his choices to independently opt
13 out of the Pandemic Directive.

14 So in closing, while the Complaints Director urges
15 you to accept the scientific foundation for the CMOH
16 orders and masking and other COVID-19 measures and to
17 find that there is overwhelming support for the
18 Pandemic Directive, this case is about whether a
19 regulated professional can independently and
20 selectively decide what does and doesn't apply to him
21 in his profession. That's what this hearing is about.

22 I'm happy to answer any questions you have about
23 my opening comments, Mr. Chair. Otherwise, my friend,
24 Mr. Kitchen, I'm sure has an opening statement.

25 Discussion

26 THE CHAIR:

Thank you, Mr. [REDACTED] Do

1 any of the Tribunal Members have a question for
2 Mr. [REDACTED] at this point? Okay, Mr. Kitchen, just for
3 housekeeping, how long do you expect your statement
4 will be? Can you give us an idea?

5 MR. KITCHEN: I'll say 10 minutes.

6 THE CHAIR: 10 minutes.

7 MR. KITCHEN: Now, while we're on that
8 point, Mr. [REDACTED] you can clarify if this has
9 changed, but my understanding is that you really wanted
10 to have Dr. [REDACTED] go around 1 PM, and that that was quite
11 important we stick to that. We're already --

12 MR. [REDACTED] Yeah.

13 MR. KITCHEN: -- a few minutes to 12 here.

14 MR. [REDACTED] Very quickly -- thank you,
15 Mr. Kitchen, for reminding me of that -- I had
16 intended, as I said, to call Dr. [REDACTED] first, but we
17 had preliminary applications, which were no one's
18 fault, we've had taken up the morning.

19 So my -- I've arranged with Dr. [REDACTED] to be here at
20 1:00, and that really is a target that can't be
21 changed. Of course, just like everyone, he's very
22 busy, and I would anticipate having him start
23 testifying at 1:00. He's available to continue
24 tomorrow morning if we don't finish with him today. If
25 my friend is going to be about 10 minutes or so, I
26 don't think I'll have anything in response. I'm going

1 to suggest that maybe by whatever it is, five after,
2 ten after, quarter after 12, we just break for lunch
3 and come back at 1:00.

4 Thank you again Mr. Kitchen, for reminding me of
5 that.

6 MR. KITCHEN: And that's fine with me.

7 Chair, is that how you want to proceed?

8 THE CHAIR: Yes, that's what I wanted to
9 clear up, where we fit in a lunch break and what our
10 commitments were with respect to witnesses, because I
11 know they're taking time out of their valuable days.

12 So, thanks, Mr. Kitchen, the floor is yours.

13 Opening by Mr. Kitchen

14 MR. KITCHEN: All right, thank you.

15 Well, Tribunal Members, you've heard a lot about
16 what this case is and isn't about; I guess there's
17 going to be some serious disagreement on that.

18 I'll tell you what I do think this case is about.
19 This case is about the very principles that underlie
20 the chiropractic profession or at least used to. This
21 case is about science, truth, and ethics.

22 The key issues that must be determined in this
23 case is whether the Alberta chiropractic regulatory
24 body, in its zeal to please the Chief Medical Officer
25 of Health, violated the statutory human rights and
26 constitutional Charter rights of one of its members.

1 That's the issue.

2 This is not a simple case, as the Complaints
3 Director would have you believe, of determining
4 whether, in fact, the impugned member contravened the
5 directive of the College. No. This case is about
6 whether that directive itself is lawful, whether it is
7 reasonable, whether it is scientific, whether it is
8 harmful to members and chiropractic patients.

9 If mandated mask wearing confers no benefits and
10 yet imposes harm, as Dr. Wall submits the evidence he
11 will provide shows, then not adhering to such a mandate
12 is not unprofessional conduct. It cannot possibly be
13 unprofessional to not comply with directives that are
14 unbeneficial and harmful.

15 Dr. Wall will herein challenge the lawfulness of
16 the College's no exception mask mandate. He asks this
17 Tribunal to exercise its discretion to declare the
18 College's mask mandate of no force and effect, because
19 it unjustifiably limits Dr. Wall's Charter rights and
20 breaches the Alberta Human Rights Act.

21 Dr. Wall denies that anything he has done since
22 the spring of 2020 has placed any increased risk of
23 negative health outcomes on his patients or constitutes
24 unprofessional conduct. In fact, he submits that he
25 sought to protect his patients from the increased risk
26 of harm that comes through masking and has thereby

1 maintained his integrity in the face of persecution
2 from his regulatory body.

3 The College wants to make this all about Dr. Wall,
4 and that's fine, Dr. Wall has no problem with that.
5 But that's -- part of that is to distract from making
6 this about them, from making this about the
7 unlawfulness of portions of the Pandemic Directive. Of
8 course, Dr. Wall is not challenging the whole
9 directive; he's only challenging the narrow bit that
10 mandates masking and penalizes members who are unable
11 to wear a mask but still treat their patients, and that
12 penalization being, well, now you've broken the
13 distancing rule because you treated somebody without a
14 mask.

15 Again, I know that the Complaints Director is
16 speaking out of both sides of his mouth. He says it's
17 all about the public interest, it's all about
18 protecting the public, it's all about public perception
19 of the profession. And yet even before hearing from
20 four members of the public, which you will hear from,
21 the Complaints Director is trying to downplay what they
22 have to say, he's trying to say it's not important,
23 it's not valuable, you shouldn't really listen to them.

24 Well, in fact, you still should listen very
25 carefully to what they have to say. And not their
26 opinions on expert things, not their opinions on COVID,

1 not their opinions on whether Dr. Wall is a good
2 chiropractor, but if they have something to say about
3 their own interests in the face of the ACAC actions
4 over the last year-and-a-half, and that's not opinion,
5 that's information and belief, and it's very valuable,
6 and it's exactly what this Tribunal needs to hear,
7 because if it is about the public interest and if it is
8 about the perception of the profession, which it must
9 be to some degree, then that is very valuable evidence.

10 Dr. Wall finds it offensive that there would be
11 this comparison to sexual misconduct. It's just
12 egregious and uncalled for. That is the kind of
13 conduct that professionals have their licences or
14 permits to practice suspended on an interim basis. And
15 as you will hear about, there was an application by the
16 Complaints Director to suspend Dr. Wall's licence on an
17 interim emergency basis. That application was denied.
18 One of the reasons for that is because those
19 applications are only granted in serious situations,
20 when actual, demonstrable harm is being done or is very
21 likely to be done to the public, such as sexual
22 misconduct or such as stealing from clients, which was
23 also alluded to. That's not what's going on here.
24 We're not dealing with that type of stuff, and
25 comparisons to that are uncalled for and unhelpful.

26 I note the word "overwhelming" was used to

1 describe the evidence in support of the science, even
2 though this supposedly isn't about masking. On the
3 other side, the Complaints Director is saying the
4 evidence is overwhelming. In fact, his expert used
5 that word six times in his report.

6 Well, I think that's overstating it. I think if
7 it was so overwhelming we wouldn't be here, and
8 Dr. Wall wouldn't have four experts talking about how
9 underwhelming the evidence is, scientific evidence is
10 in support of this directive.

11 Lastly, I would agree that you are here to judge
12 the actions of Dr. Wall and whether or not he acted
13 professionally, ethically, with integrity. You are
14 here to judge that. Part of the way you need to do
15 that is to look at whether or not the requirement that
16 he didn't follow was unlawful, because if it is
17 unlawful, then he didn't do anything unprofessional in
18 not following it. It's not unprofessional to refuse to
19 follow unlawful orders or unlawful directives. It's
20 not unprofessional to say, No, I'm not going to suffer
21 the violation of my own rights or suffer the violation
22 of the rights of my patients.

23 If human rights, the constitutional rights are
24 engaged, they're being violated, and there's no
25 justification for them, then it's my ethical and
26 professional obligation to not be explicit in that.

1 That's the approach Dr. Wall has had. And you will
2 ultimately have to determine the lawfulness of the
3 policies that he's challenging.

4 If you determine they're lawful, then perhaps
5 there's a basis for finding unprofessional conduct, but
6 if you, as Dr. Wall submits, should find, if you find
7 that these mandates, these no-exception mandates are
8 unlawful because they violate rights, then there's no
9 unprofessional conduct.

10 That's my opening comments.

11 THE CHAIR: Thank you, Mr. Kitchen.

12 Any -- Mr. [REDACTED] you looked like you were about
13 to speak?

14 Discussion

15 MR. [REDACTED] I may be looking like that
16 throughout this hearing, and Mr. Kitchen may have that
17 look on his face from time to time, but I actually, I
18 don't want to add anything. I think both parties, at
19 the opening stage, I -- we'll both have comments in
20 closing about a number of issues, so I don't have
21 anything further.

22 The College's first witness, its next witness will
23 be Dr. [REDACTED] at 1:00.

24 I don't have anything else that we can do over the
25 lunch break. I think we've done the preliminary
26 application. Unless Mr. Kitchen needs to stay on here,

1 I think we can simply break till 1:00.

2 MR. KITCHEN: Yes, that's fine with me.

3 THE CHAIR: Yeah, that's fine with me.

4 It's just a couple of minutes after 12, so we'll
5 reconvene at 1:00 with the College's first witness.

6 The hearing will go into recess until then.

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8 PROCEEDINGS ADJOURNED UNTIL 1:00 PM

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