

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

A Caucus Meeting of the Hearing Tribunal was held virtually on March 7, 2022, at which time the panel deliberated upon the presentations made by both counsel on February 25, 2022. Members of the Hearing Tribunal included:

██████████, Public Member, Chair

Dr. ██████████, Regulated Member

Dr. ██████████, Regulated Member

██████████, Public Member

Mr. ██████████ also attended solely to provide legal advice in his role as Independent Legal Counsel.

At the outset, counsel for both parties confirmed that jurisdiction is not an issue regarding this application.

A summary of the decisions and rationale of the Hearing Tribunal follows:

This is an Interim Application filed by the College to prevent the publication of the transcripts of the evidence of the expert witnesses from earlier testimony prior to the panel providing their final decision on the allegations concerning Dr. Curtis Wall. The College states that there are three issues to consider:

1. Whether to allow publication
2. How much publication should be allowed (and conversely how much should be redacted)
3. The timing of when any information ought to be published

In support of the Application to disallow publication, the College references Section 78(1)(a)(ii) and, 78(1)(a)(v) of the Health Professions Act (the "Act").

These sections provide as follows:

78(1) "A hearing is open to the public unless:

(a) the hearing tribunal holds the hearing or part of the hearing in private on its own motion or on an application of any person that the hearing or part of the hearing should be in private

(i) because of probable prejudice to a civil action or a prosecution of an offence,

(ii) to protect the safety of the person or of the public,

(iii) because not disclosing a person's confidential personal, health, property or financial information outweighs the desirability of having the hearing open to the public,

(iv) because the presence of the public or complainant could compromise the ability of a witness to testify, or

(v) because of other reasons satisfactory to the hearing tribunal”

The College further references paragraph 85(3) and 85(4) of the Act, which state:

“Examination of Record

- 85 (1) The investigated person may examine the record of the hearing and, on paying the reasonable costs of transcribing, copying and delivering the record, receive a copy of it.
- (2) The complainant may examine the record of the hearing, except for the part of the record that relates to a part of the hearing that the complainant was directed by the hearing tribunal, under section 78(3)(b), not to attend and on paying the reasonable costs of transcribing, copying and delivering that record may receive a copy of it.
- (3) A member of the public may examine the decision and the testimony given before the hearing tribunal, however recorded, except the part of the testimony that was given while the hearing was held in private.
- (4) A member of the public, on paying the reasonable costs of transcribing, copying and delivering it, may receive a copy of the decision and the testimony, however recorded, except the part of the testimony that was given while the hearing was held in private.”

Counsel for the College stated that this Application is based on the understanding that the member intends to release the transcripts of the expert witnesses on the Liberty Coalition website. The College further indicated that it is their understanding that the member will redact the names of the tribunal members, as well as the names quoted in the transcripts of Dr. Wall’s witness statements, but will not redact the transcripts of Dr. [REDACTED].

It is the position of the College that to release the transcripts prior to a final decision being made is premature, and is inappropriate for the following reasons:

1. The panel did not sign up for a public debate, and it will be concerning if they begin to receive emails or other communications from outside parties, particularly should this occur before the merits of the allegations against Dr. Wall are decided.
2. There is no prejudice to the ability of Dr. Wall to defend himself if the transcripts remain private.
3. The tribunal will potentially be required to make decisions regarding any applicable discipline, and that ought not to be impacted by public response arising from release of the transcripts
4. The hearing has been open to the public from the onset, and there has been no prejudice to the member
5. The release of the transcripts is premature, as Section 85 of the Act suggests that the decision and testimony may be examined following a decision, and the conclusion of any appeals. Any release of this information should not be done on a ‘piece-meal’ basis.

6. The College maintains that this issue should not be dealt with in the court of public opinion.

The member seeks publication of the transcripts. At the Application, the member indicated that any information to be released would be fully redacted. In particular, the names of the people on the hearing panel would not be included in any information released prior to the conclusion of the hearing. The authors of the evidence would also not be included. As a result, the member states that there is no risk whatsoever if the names of the parties are redacted.

The member further states that the prevention of the release of the information is in effect a Publication Ban, and contrary to the common law principle of an open court, as well as Section 2(b) and 11(d) of the Canadian Charter of Rights and Freedoms. The Member also referenced a number of decisions authored by the Supreme Court of Canada, these being:

1. *Sierra Club of Canada v. Canada (Minister of Finance)*
2. *R. v. Mentuck*
3. *Dagenais v. Canadian Broadcasting Corp.*

We have heard submissions from counsel for both Parties on these cases, and have reviewed the case law. These cases identify the importance of an open court, the necessity of the identification of any alleged risk to publication that is well-grounded in the evidence, and the public interest element in having the materials published.

In response to the member's submissions, the College indicated that the panel ought to consider the balance that must be struck when considering such Applications, and noted that the College is not looking for absolute secrecy. The College indicated that timing is an issue, as a piece-meal release of the transcripts risk the evidence being taken out of context, and that the Act suggests that the materials should only be reviewed following the conclusion of the hearing.

We have carefully considered the arguments of both parties, and have reviewed the applicable legislation and case law provided.

Section 78(1) of the Act specifically states that a hearing is open to the public unless an Application is made to have it held in private. There was no Application made by either party to have the proceedings held in private and there was nothing to prevent any person from attending at any of the proceedings.

The exceptions to a public hearing set out in Section 78(1) of the Act are limited. The applicable provisions identified by the College relate to the safety of the person and/or the public, and other reasons satisfactory to the hearing tribunal.

With respect to the safety of the person and/or the public, we have not been provided with any evidence that establishes the publication of fully redacted transcripts of the evidence in any way poses a risk to safety.

The additional exemption, being other reasons satisfactory to the hearing tribunal, has also not been met. There has been no evidence presented that suggests there will be any prejudice to either party, any untoward proceedings, or any detriment arising from the publication of fully redacted transcripts.

We also find that the College cannot rely upon Section 85 of the Act to preclude the production of the redacted transcripts. Section 85 makes reference to "examination of the decision of the testimony given". The suggestion by the College's counsel is that "given" means that the testimony may only be reviewed after a decision is made. We disagree with this interpretation. In doing so, we note that Section 78 presumes an open hearing, and that Section 78 is in no way inconsistent with the principles set out in Section 85.


Central to our conclusion is the concept of the necessity for there to be open court, and the fact that the member has made it clear that it is their intention to only release the transcripts of the expert witnesses, with those transcripts being fully redacted, with the exception of Dr. [REDACTED] expert testimony. There will be no identification of the parties testifying, and no identification of the panel members. In those circumstances we see no reason why the member should be prevented from publishing the information.

We find that the transcripts of the expert witnesses who testified in this proceeding may be published on the condition that all identification of the witnesses, the tribunal, and the counsel be redacted from those transcripts. We appreciate that this will require a line-by-line review of the document proposed to be published. That will be necessary to ensure that there is no reference to any of the names of the parties that testified, nor the names of the counsel involved or the tribunal members.

We also direct that any publication does not contain any ancillary content or explanatory comments that could in any way bypass our decision and identify the witnesses, tribunal members or counsel. If the parties seek further direction or have questions arising, the panel is prepared to reconvene.

DATED THIS 16th DAY OF MARCH, 2022, IN THE CITY OF EDMONTON

College of Chiropractors of Alberta


On behalf of the Hearing Tribunal