

COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

IN THE MATTER OF
A HEARING UNDER THE *HEALTH PROFESSIONS ACT*,
RSA 2000, c. H-7

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF DR. ALBERT DE VILLIERS

**DECISION OF THE HEARING TRIBUNAL OF
THE COLLEGE OF PHYSICIANS
& SURGEONS OF ALBERTA
July 28, 2024**

I. INTRODUCTION

1. The Hearing Tribunal held a hearing into the conduct of Dr. Albert de Villiers on June 6, 2024. The members of the Hearing Tribunal were:

Mr. Terry Engen as Chair (public member);
Dr. Melanie Stapleton;
Dr. Timothy Chan;
Ms. Dianna Jossa (public member).

2. Appearances:

Mr. Craig Boyer, legal counsel for the Complaints Director;
Dr. Albert de Villiers (the "**Investigated Person**");
Mr. Brian Beresh, legal counsel for Dr. de Villiers;
Ms. Julie Gagnon acted as independent legal counsel for the Hearing Tribunal.

II. PRELIMINARY MATTERS

3. There were no objections to the composition of the Hearing Tribunal or its jurisdiction to proceed with the hearing.
4. The hearing was open to the public pursuant to section 78 of the *Health Professions Act, RSA 2000, c. H-7* (the "**HPA**").
5. There were no preliminary or jurisdictional issues raised.
6. Counsel for the Complaints Director noted that there was a publication ban in place from the criminal proceeding, regarding the identity of the victim and the victim's family. The parties did not refer to the victim by name nor does this decision identify the victim or the victim's family.

III. ALLEGATION

7. The Notice of Hearing lists the following allegation (the "**Allegation**"):

On or about June 13, 2023, you were convicted of an offence under Section 151 of the Criminal Code of Canada relating to events between June 15, 2018 and July 31, 2020 when you did on one or more occasions unlawfully touch a part of the body of a person under the age of 16.

8. Counsel for the Investigated Person confirmed that the Investigated Person agreed that the allegation is proven on the basis of the criminal conviction which was not appealed and that the conduct constitutes unprofessional conduct. At issue in this hearing was the sanction to be imposed.

IV. EVIDENCE

9. The following Exhibits were entered into evidence during the hearing:

Exhibit 1 – Agreed Exhibit Book

- Tab 1- Notice of Hearing dated January 26, 2024
- Tab 2- Section 56 memorandum by Dr. Dawn Hartfield, Complaints Director dated June 9, 2021
- Tab 3- Letter from CPSA to Dr. De Villiers dated July 7, 2021 re complaint opened
- Tab 4- August 1, 2021 email from Dr. De Villiers confirming receipt of the July 7, 2021 letter from CPSA
- Tab 5- Letter of response from Dr. De Villiers to the CPSA dated August 3, 2021
- Tab 6- CPSA letter to Dr. De Villiers dated August 25, 2021 confirming that investigation will be finalized after conclusion of criminal proceeding
- Tab 7- Transcript of King's Bench Sentencing of Dr. De Villiers dated June 13, 2023
- Tab 8- Certificate of Conviction dated June 13, 2023
- Tab 9- CPSA letter to Dr. De Villiers dated June 29, 2023 re conviction entered and response to complaint requested
- Tab 10- Letter of response from Dr. De Villiers to CPSA dated July 23, 2023

Exhibit 2 – Sanction Material – Combined

- Tab 1- Curriculum Vitae of [REDACTED]
- Tab 2- Letters of Reference and Support
- Tab 3- Filed Originating Notice (Constitutional Challenge re: Dr. [REDACTED])
- Tab 4- Filed Notice of Intention to Raise Constitutional Argument re: Dr. [REDACTED]
- Tab 5- Supporting Affidavit of [REDACTED] re: Dr. [REDACTED]
- Tab 6- Hansard Transcript
- Tab 7- Constitutional Challenge Reference

Exhibit 3 - [REDACTED] Curriculum Vitae

10. The Hearing Tribunal was also provided with a Book of Authorities by counsel for the Complaints Director.

V. SUBMISSIONS

Submissions on behalf of the Complaints Director

11. Counsel for the Complaints Director reviewed Exhibit 1 and noted that the criminal charge was not in dispute. [REDACTED]

█. Counsel for the Complaints Director noted this was significant because, had the victim been a patient, then the revisions to the HPA arising from *Bill 21: An Act to Protect Patients* would have been applicable as the conduct would have met the definition of sexual abuse under the HPA.

12. Counsel for the Complaints Director noted that the transcript from the criminal proceeding provides a summary of the evidence and findings by the Court. The Court found the Investigated Person to be engaging in grooming behaviour. Further, the Court found that it was an aggravating factor that the Investigated Person showed the victim pornography before the sexual touching. There were five to eight occasions of sexual touching and ejaculation by the Investigated Person occurred on each occasion.
13. Counsel for the Complaints Director noted that a voice message from the Investigated Person after June 2021 was found by the Court to constitute an apology for the sexual touching.
14. Counsel for the Complaints Director noted that, under section 70 of the HPA, if there is an admission of unprofessional conduct, a Hearing Tribunal must still satisfy itself that there is enough evidence to support that admission.
15. Counsel for the Complaints Director submitted that there is more than enough evidence to support the finding that the charge is proven and that such conduct amounts to unprofessional conduct. The conduct met the definition of unprofessional conduct under HPA section 1(1)(pp)(iii) a contravention of another enactment (here the *Criminal Code*) and (xii) conduct that harms the integrity of the profession.

Submissions on behalf of the Investigated Person

16. Counsel for the Investigated Person noted that he had no submissions on the merit phase and was not calling any evidence for this portion of the hearing.

VI. FINDINGS ON THE ALLEGATION

17. The Hearing Tribunal carefully considered the evidence in the Exhibits and the submissions of the parties.
18. The Hearing Tribunal found that the Allegation has been proven on a balance of probabilities and that the conduct constitutes unprofessional conduct under section 1(1)(pp) of the HPA as follows:

- (iii) contravention of another enactment that applies to the profession;
- (xii) conduct that harms the integrity of the regulated profession.

VII. DECISION WITH REASONS

19. The Investigated Person has been convicted of a criminal charge under section 151 of the *Criminal Code* that he, on one or more occasions, unlawfully touched a part of the body of a person under the age of 16. The Investigated Person has not appealed the criminal conviction. The Investigated Person admitted the Allegation and acknowledged that the conduct constitutes unprofessional conduct.
20. The Hearing Tribunal found that the conduct is unprofessional conduct on the basis of HPA section 1(1)(pp)(iii). The contravention of the *Criminal Code* in this case is extremely serious. The Investigated Person was found to have sexually touched a child on several occasions. This was aggravated by grooming behaviour and involved showing the child pornography. [REDACTED]
[REDACTED]
[REDACTED]
21. The conduct by the Investigated Person will undoubtedly have long term and significant impacts on the victim and the victim's family. The Hearing Tribunal found that although the child was not a patient, the conduct was extremely serious.
22. The Hearing Tribunal emphasized the gravity of the conduct because the victim was from a vulnerable population (a minor). In addition, there was a power dynamic in place which included being in a position of power [REDACTED]
[REDACTED]
[REDACTED]
23. The Hearing Tribunal also found that the conduct was unprofessional conduct on the basis of HPA section 1(1)(pp)(xii) as conduct that harms the integrity of the medical profession. The public places its trust in physicians even when they are acting in their private life, not simply in the provision of professional services. This conduct damaged the public confidence in the profession, violated the public trust, and offended the expectations for physician behaviour.

VIII. SUBMISSIONS ON SANCTION

Preliminary Application on Sanction

Submissions on behalf of the Investigated Person

24. Counsel for the Investigated Person advised that he was requesting an adjournment of the sanction phase of the hearing.
25. Counsel for the Investigated Person advised that he is bringing a constitutional challenge in a similar case (the "[REDACTED] matter"), claiming that s 82(1.1)

and s 45(3) of the HPA are violations of s 7 and s 12 of the *Charter of Rights* and also s 1(a) of the *Alberta Bill of Rights*. He noted he expected the Court may hear the matter in the fall of 2024.

26. Counsel for the Investigated Person submitted that this hearing should be adjourned until a decision is made on this constitutional challenge because otherwise the Hearing Tribunal may have to come back to reconsider any decision made during the sanction phase of the hearing.
27. Counsel for the Investigated Person noted that if the challenge in the ██████████ matter is successful, it would have a direct impact in this case. He referred the Hearing Tribunal to Hansard discussions regarding *Bill 21: An Act to Protect Patients* to support the notion of unconstitutionality.
28. Counsel for the Investigated Person submitted that an adjournment of the sanction phase would not affect the public interest. He noted that the Investigated Person had not seen any patients in Canada as a doctor, since he worked in the public health sphere throughout his career in Canada. In addition, the Investigated Person is currently incarcerated. His release will be determined by a parole board, and his warrant expiry is scheduled for December 12, 2028.
29. Counsel for the Investigated Person submitted that any reasonable member of the public would feel assured that they are protected and so, an adjournment for the sanctions phase would not affect the public interest.

Submissions on behalf of the Complaints Director

30. Counsel for the Complaints Director submitted that due to court availability, the constitutional hearing would likely not be possible until 2026 and not in 2024 as suggested by counsel for the Investigated Person.
31. Counsel for the Complaints Director referenced caselaw that notes that Hansard is given little weight in judicial proceedings.
32. Counsel for the Complaints Director noted that s 82(1.1) of the HPA, which is one of the sections being challenged in the ██████████ matter, is not relevant here. In the present case, there is no finding of "sexual abuse" under the HPA since the victim was not a patient and thus s 82(1.1) does not apply. There is no automatic revocation of practice permit and registration under the HPA in the present case.
33. Counsel for the Complaints Director suggested that the Hearing Tribunal should proceed to determine sanctions at this time.
34. Counsel for the Complaints Director submitted that, even if the challenge in the ██████████ matter is successful, this Hearing Tribunal should still make a

decision, and the Investigated Person could later challenge his application for reinstatement once the ██████████ matter is heard, if that case is successful.

Reply submissions on behalf of the Investigated Person

35. Counsel for the Investigated Person submitted that while the ██████████ matter is different, the decision in that case will affect what sanctions are available to the Hearing Tribunal in this case.
36. Counsel for the Investigated Person stated that the 2026 timeline by counsel for the Complaints Director may not be accurate, and the matter may be heard expeditiously if directed by the Chief or Associate Chief Justice.
37. Counsel for the Investigated Person stated that Hansard is more important than suggested by counsel for the Complaints Director, and that the discussion on the ban from legislators is very relevant.
38. Counsel for the Investigated Person submitted that it would be unfair to judge the Investigated Person with the current rules because they may change once the challenge occurs.

Decision on the Preliminary Application

39. The Hearing Tribunal carefully considered the submissions of the parties in determining whether to grant the adjournment request and determined that it would deny the request for an adjournment and proceed with determining sanction at this stage.
40. Section 82(1.1) of the HPA states:

82(1.1) If the subject-matter of a hearing relates to a complaint alleging sexual abuse or sexual misconduct, and the hearing tribunal decides that the conduct of an investigated person constitutes unprofessional conduct based in whole or in part on sexual abuse or sexual misconduct, in addition to any order that the hearing tribunal may make under subsection (1),

 - (a) in respect of a decision of unprofessional conduct based in whole or in part on sexual abuse, the hearing tribunal must order the cancellation of the investigated person's practice permit and registration, and
 - (b) in respect of a decision of unprofessional conduct based in whole or in part on sexual misconduct, the hearing tribunal must order the suspension of the investigated person's practice permit for a specified period of time.
41. Section 45(3) of the HPA states:

45(3) A person whose practice permit and registration are cancelled as a result of a decision of unprofessional conduct based in whole or in part

(a) on sexual abuse,

(a.1) on a conviction of the person under section 268 of the *Criminal Code* (Canada) in respect of wounding or maiming within the meaning of subsection 268(3) of the *Criminal Code* (Canada), or

(b) on a conviction of the person under section 151, 152, 153, 153.1, 155, 162, 162.1, 163.1, 171.1, 172.1, 172.2, 173, 271, 272, 273, 286.1, 286.2 or 286.3 of the *Criminal Code* (Canada),

may not apply for the practice permit to be reissued and the registration reinstated.

42. The Hearing Tribunal noted that there were significant differences with the [REDACTED] matter. In particular, section 82(1.1) of the HPA is not at issue. Further, the nature of the conduct is vastly different. There were repeated instances in this case of sexual touching of a young child. This is not a case of a relationship between two adults which, but for the fact of being between a physician and patient, would otherwise be consensual and which, given the changes to the HPA, invokes the issue of mandatory revocation of the physician's practice permit and registration.
43. The determination in this case does not hinge on the outcome in the [REDACTED] matter.
44. The Hearing Tribunal acknowledged that HPA s 45(3) may apply to the Investigated Person since the issue in this case is a conviction under s 151 of the *Criminal Code*. However, the issue of reinstatement under s 45(3) of the HPA is not at issue before this Hearing Tribunal. The Hearing Tribunal in deciding the adjournment request has made no decision on the orders to be made under s 82 of the HPA. Should the Investigated Person's registration and practice permit be cancelled, then an application for reinstatement at a future date would be subject to s 45(3) of the HPA, and potentially any amendments made to s 45(3) or common law interpretation should there be a successful court challenge. However, while s 45(3) and its interpretation may be at issue for the Investigated Person at a later stage, it is not directly applicable in this hearing.
45. Should the Investigated Person's practice permit and registration be cancelled as a result of this hearing and the legislation or its interpretation change in relation to s 45(3) of the HPA, then the Investigated Person would be entitled to make arguments relating to s 45(3) of the HPA at a later time.

46. The Hearing Tribunal also considered that it had to apply the HPA as it exists at the time of the hearing and not in relation to possible changes that may be made to the HPA at a later date. The responsibility of the Hearing Tribunal to complainants, investigated persons, the public and the profession includes having hearings heard and determined in a timely fashion.
47. For these reasons, the Hearing Tribunal denied the request for an adjournment. The Hearing Tribunal advised the parties of its decision and received submissions from the parties on sanction.

Submissions on behalf of the Complaints Director

48. Counsel for the Complaints Director submitted that similar to the criminal proceeding, the Investigated Person's letters of support are of limited weight in this disciplinary hearing.
49. Counsel for the Complaints Director submitted that the factors from *Jaswal v. Medical Board (Nfld.)*, 1996 CanLII 11630 (NL SC), are important for the Hearing Tribunal to consider in determining the appropriate sanction.
50. Counsel for the Complaints Director reviewed decisions in other similar disciplinary hearings.
51. Counsel for the Complaints Director submitted that the Hearing Tribunal should cancel the Investigated Person's registration and order him responsible for 100% of the costs of the investigation and the hearing.
52. Counsel for the Complaints Director submitted that *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336, notes that a regulated professional like the Investigated Person can be held responsible for all costs.

Submissions on behalf of the Investigated Person

53. Counsel for the Investigated Person submitted that the proposed sanction by the Complaints Director would be excessively punitive and urged the Hearing Tribunal to consider a lengthy suspension rather than cancellation.
54. Counsel for the Investigated Person submitted that counsel for the Complaints Director erred in his analysis of the *Jaswal* factors, specifically the age of the complainant, the relationship, and the act which counsel for the Investigated Person submitted should be dealt with as one factor, and not individually.
55. Counsel for the Investigated Person submitted that prior character, exemplified through the letters of support, should be considered a major factor which tips the scale away from the suggestion of cancellation.
56. Counsel for the Investigated Person submitted that public confidence is not at issue in this case because jail time is being served.

57. Counsel for the Investigated Person submitted that the Investigated Person is a very active, respected member of the community, and his family and friends are as well. Counsel for the Investigated Person submitted that the Hearing Tribunal should seriously consider the letters of support when making a decision.
58. Counsel for the Investigated Person noted that the legislature kept the option of suspension instead of cancellation open and this would still satisfy the public confidence issue. The Investigated Person still has 10 to 15 productive years as a physician and society should not be robbed of his expertise.
59. Counsel for the Investigated Person submitted that, to the issue of costs, the Investigated Person has not contested the matter, there was no in-depth investigation, and because of the streamlined nature of the hearing, the Investigated Person should be ordered to pay no more than 50% of the costs.

Response to Questions from the Hearing Tribunal

60. In response to questions from the Hearing Tribunal, counsel for the Investigated Person initially indicated that a suspension of 4.5 years would be appropriate.
61. Counsel for the Complaints Director noted that he was not aware of any cases that supported a suspension of 4.5 years. He noted that three years is the absolute high end.
62. Counsel for the Investigated Person noted that his initial position was on the top end and that the Hearing Tribunal should consider a suspension of three years subject to certain courses being taken. Counsel for the Investigated Person did not propose any specific courses.

IX. SANCTION DECISION WITH REASONS

63. The Hearing Tribunal carefully considered the Exhibits and the submissions of the parties on sanction.
64. The Hearing Tribunal found the conduct to be egregious. This was due to the harm to a young child, the manner in which the conduct damaged the public confidence in the profession, violated public trust, and offended the expectations for physicians' behaviour.
65. The Hearing Tribunal decided that cancellation of practice permit and registration was appropriate in this case. In reaching this decision, the Hearing Tribunal considered the following *Jaswal* factors:
 - a. Nature and gravity of the proven allegation: The conduct in this case is egregious. The Investigated Person abused his position of trust as a

physician and [REDACTED] to sexually exploit a vulnerable child. There were also aggravating factors as found by the Court, including grooming behaviour and showing the child pornography prior to the sexual touching.

- b. The age and mental condition of the victim: [REDACTED]
[REDACTED] As a young child, the victim was particularly vulnerable.
 - c. The role of the physician in acknowledging what occurred: While the Investigated Person did not contest the allegation in the hearing, he did contest the sanction to be imposed. Further, although he had not appealed the criminal conviction, he continued to deny the misconduct occurred (Exhibit 1, Tab 10).
 - d. The number of times the offence was proven to have occurred: The conduct occurred on several occasions (between five and eight). This is an aggravating factor.
 - e. The impact of the incident on the offended patient: While there was no direct evidence on this point presented to the Hearing Tribunal, the Hearing Tribunal found that there would be a long-lasting impact from these traumatic events on the child and the child's family.
 - f. The need to promote specific and general deterrence: In terms of specific deterrence, the Hearing Tribunal found that cancellation was required. The Hearing Tribunal did not find that any other penalty would serve to adequately protect the public. A long period of suspension and courses was not appropriate in this case. The Investigated Person continued to deny he engaged in the misconduct and had not shown any efforts towards rehabilitation. In terms of general deterrence, the Hearing Tribunal found that the College must send the strongest of messages to its members regarding this type of conduct.
 - g. The need to maintain the public's confidence in the integrity of the medical profession: Although the Investigated Person is currently in jail, the Hearing Tribunal found that the public's confidence in the integrity of the profession would be seriously undermined by any order other than cancellation.
 - h. The degree to which the offensive conduct was found to be outside the range of permitted conduct: There is no question this conduct is completely outside of the range of permitted conduct. It is on the most severe end of the spectrum of unprofessional conduct.
66. The Hearing Tribunal considered the argument that the Investigated Person has never seen patients in his role as a physician in Canada. The Hearing Tribunal placed little weight on this fact. Regardless of his specific role to date, if he remains a physician, he could see patients in the future. Further, he is

held to the standards expected of all physicians, regardless of whether or not he saw patients as part of his duties.

67. The Hearing Tribunal considered the character letters presented. Because the conduct occurred in private, the letters were of limited use. Sexual abusers will rarely make their conduct publicly known. The character letters did not persuade the Hearing Tribunal that a lengthy suspension would adequately protect the public or the integrity of the profession.
68. The Hearing Tribunal determined that full costs of the investigation and hearing should be paid by the Investigated Person in this case. The Hearing Tribunal considered the decision in Jinnah. The conduct in this case falls within the type of conduct that can attract significant costs. It is extremely serious unprofessional conduct involving the sexual touching of a minor child on several occasions and a criminal conviction under section 151 of the *Criminal Code*.
69. Such conduct is clearly outside of what is acceptable conduct and the Investigated Person would have known this. This is not a case where members of the profession should bear the costs for the Investigated Person's behaviour.

X. ORDERS

70. The Hearing Tribunal orders the following:
 1. Dr. de Villiers' practice permit and registration are cancelled.
 2. Dr. de Villiers shall pay 100% of the costs for the investigation and the hearing.

Signed on behalf of the Hearing Tribunal by the Chair:



Mr. Terry Engen

Dated this 28 day of July, 2024.