CVBC File No. 21-104

IN THE MATTER OF THE *VETERINARIANS ACT*, S.B.C. 2010, c. 15

AND

IN THE MATTER OF
THE COLLEGE OF VETERINARIANS OF BRITISH COLUMBIA and a hearing before a DISCIPLINE PANEL of the COLLEGE DISCIPLINE COMMITTEE

AND

DR. PAVITAR BAJWA

Counsel for the Respondent	**C. Parfitt**
Counsel for the College	**J. Lithwick & E. Janzen**
Panel Members	**C. Baird Ellan, KC, Chair** **Dr. A. Cheung** **Dr. R. Gunvaldsen**
Date of Decision	**April 8, 2025**

RULING ON SCOPE OF EXPERT OPINION AND CONDUCT OF HEARING

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[1] The Citation in this matter contains allegations of professional misconduct and breaches of the *Act*, Bylaws and Standards of the College of Veterinarians of British Columbia (the "College" or "CVBC") in connection with the care of a 10-year-old Papillon Chihuahua cross in early 2021. The Citation was issued on May 11, 2023, and amended three times, the last on January 16, 2025. A five-day discipline hearing commenced February 3, 2025, but was not completed, in part due to the absence of the Respondent on the final day, February 7. It is set to continue on June 3 and 4, 2025.

[2] The Respondent filed this application on February 19, 2025, seeking to limit the scope of an expert witness's opinion and report. The Panel has determined that the application should be dismissed. The reasons for that decision and directions from the Panel are set out below.

1. Background

[3] On September 8, 2024, after receiving disclosure of a copy of the expert opinion that the College proposed to tender at the hearing, Counsel for the Respondent, Ms. Parfitt, sent a letter to College Counsel, who was then Ms. Elizabeth Allan, to the effect that "comments in the opinion that did not relate to actual issues in the citation should be deleted."

[4] The Panel held four pre-hearing conferences in relation to the hearing. Those conferences spanned four months from May to September 2024 and included an adjournment of an earlier hearing date necessitated by a change in a panel member. At the fourth pre-hearing conference, on September 16, 2024, the Panel directed that the "last day for the Respondent to bring any pre-hearing applications shall be October 11, 2024."

[5] The Respondent brought an application on October 15, 2024, seeking partial or full dismissal of the Citation, particulars, and disclosure of certain documents. The dismissal was refused, and particulars and partial disclosure were ordered in a ruling dated December 6, 2024[1]. In her cover email to the Respondent's application, his Counsel had addressed the issue of the October 11 deadline as follows:

> I note that this application was due October 11, 2024. As this was my fourth deadline between October 10 and 15, including a deadline which was not set until October 7, I was unable to provide this application until now. I request the Panel to accept the application despite its late delivery given that the hearing is not imminent and the application will further the efficient processing of the Complaint.

[6] Respondent's Counsel had not sought an extension of the date for filing the application. In the Panel's December 6, 2024 ruling, in relation to the timing of the application, the Panel stated as follows:

> [13] …In situations where it appears a lawyer may have taken on a workload that makes it difficult or impossible for her to comply with what a panel considers to be reasonable deadlines for a particular matter…, that becomes a matter between counsel and her client, and ultimately, perhaps, between counsel and the Law Society; particularly if, as in this matter, directed deadlines are permitted to pass completely unheeded.
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> [14] Counsel's decision as to how much work to undertake cannot thwart the requirement that disciplinary proceedings be completed in a timely fashion. Nor does the fact that

[1] 2024-12-06 Bajwa No. 21-104 Panel Ruling on Application

> counsel has accepted an unworkable number of cases provide her with impunity to ignore deadlines set out in panel orders.

[7] The Citation was amended on January 16, 2025 ("the Third Amended Citation") to align with the Order for particulars.

[8] The College in its submissions on this application describes the sequence of events around the expert's testimony as follows:

> 21. The hearing commenced on February 3, 2025, and Dr. Doyle was called and qualified as an expert in small animal medicine on February 4, 2025. Her expertise and experience in relation to the interpretation of radiographs in that context were canvased during her qualification. The Panel qualified Dr. Doyle as an expert in small animal veterinary medicine and declined to restrict her ability to testify in relation to the radiographs, provided her evidence remained in the realm of small animal veterinary medicine and was not an opinion on what a specialist radiologist ought to have done.
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> 22. After Dr. Doyle was qualified, Ms. Parfitt expressed concerns with aspects of the Report and sought to deal with the scope of Dr. Doyle's opinion before her direct examination began. The Panel disagreed and ruled, as it did in *Bajwa 091*[2], that it was necessary to hear her opinion in context before deciding whether or not to accept it in making their findings. The Report was then entered into evidence as Exhibit 16 in the hearing. (Footnote added.)

[9] After Dr. Doyle testified, Respondent's Counsel noted additional concerns beyond her initial challenges to the scope of the opinion, arising from a "lack of concordance" between the expert's report and testimony with the Third Amended Citation. At that time Respondent's Counsel urged a "careful reading of the report in due course."

[10] The College called its final witness, the investigator, Dr. Christine Schmetska, on February 5, 2025. Her evidence and cross-examination continued through February 6. She was set to be re-examined on February 7, but the Respondent was not in attendance. Ms. Parfitt advised he had gone to the Emergency Department due to a complication arising from a chronic condition which has been documented in written rulings by other CVBC panels pertaining to his absences[3].

[11] The College provided its "conditional" consent to an adjournment, provided that: a) the College was permitted to finish its evidence and close its case and Respondent's Counsel would

[2] CVBC v. Bajwa No. 20-091, Ruling on Application, September 18, 2024
[3] e.g. CVBC v. Bajwa No. File No. 19-045, Ruling February 15, 2024

proceed with her opening; b) the Respondent provided documentary proof confirming his hospital attendance and “inability to participate in a disciplinary hearing;” c) the next date be peremptory on the Respondent; and d) apart from correspondence addressing hearing dates, there be no further applications by the Respondent.

[12] Respondent’s Counsel agreed that the College could finish with Dr. Schmetska and close its case in her client’s absence, but she preferred not to do her opening without him present. She indicated that she would be unlikely to be able to provide evidence addressing the Respondent’s capacity to attend, but anticipated she would be able to produce a copy of the report to his physician that would be provided by the Emergency Department. She also raised an issue pertaining to the validity of the Citation based on the content of the minutes of the pertinent Investigative Committee meeting, but the Panel ruled that the issue had already been determined in its December 6, 2024 ruling in this matter.

[13] The Panel permitted the College’s re-examination of Dr. Schmetska to proceed, following which the discussion about adjournment was resumed. At that time, Respondent’s Counsel indicated that she was requesting a ruling on the scope of the expert evidence before proceeding with the Respondent’s case on the continuation date.

[14] The Panel set a schedule for submissions starting with the Respondent’s by February 19, 2025, the College’s Response by March 7, and the Respondent’s Reply by March 20. The Panel also directed that the Respondent provide medical documentation of his hospital admission and evidence of his follow up with his physician by February 28, 2025, failing which the continuation date would be “peremptory” on him.

[15] The Respondent’s application and submissions were provided on February 19, 2025. On February 26, Ms. Allan sent an email seeking an extension of the deadline for the College’s Response to March 14, which the Panel granted after receiving Ms. Parfitt’s same-day response:

> Please advise the Panel that we do not oppose the extension request because I am in hearing from March 3 until March 14 in any case and will require the week of March 17 to prepare our Reply.”

[16] The week of March 17, 2025, passed without a Reply from the Respondent or any communication from Ms. Parfitt, despite an email inquiry sent to her on March 21 by the College Executive Assistant, Rosalee Magcalas, and copied to College Counsel, at the Panel’s request.

The College responded to that email on March 23 with a reminder of the February 28 deadline for the medical documentation. As of ***March 28, 2025***, the Panel had received no further communication or documentation from Ms. Parfitt.

[17] The Panel asked Ms. Magcalas to advise counsel on March 31, 2025, that it would accept no further correspondence on the matter before completing this ruling. **We are advised that no further communication has been received or offered by Ms. Parfitt.**

2. Legal Principles

[18] The Respondent cites the following legal principles and authorities:

1. Given the significance of professional licensure to members of regulated professions, and the potentially grave impact of professional disciplinary proceedings on that licensure and the financial security of a professional, professional regulatory bodies such as the College have an obligation to provide very significant standards of procedural fairness in their proceedings in relation to disciplinary complaints: *Kane v. Bd. of Governors of U.B.C.*, 1980 CanLII 10 (SCC), (cited with approval in *Kuny v. College of Registered Nurses of Manitoba*, 2017 MBCA 111, para. 17.)
2. To be admissible, expert opinion evidence must be: (1) relevant to some issue in the case; (2) necessary to assist the trier of fact; (3) not in contravention of an exclusionary rule; and (4) from a properly qualified expert (Sopinka[4], para. 12.46 citing *R. v. Mohan*, [1994] 2 S.C.R. 9).
3. Pursuant to Section 3(2)(f) of the *Veterinarians Act*, the College, including its Discipline Committee and Discipline Panels, has a statutory obligation to operate in a manner that is transparent, objective, impartial and fair.
4. A cautious delineation of the scope of proposed expert evidence and strict adherence to those boundaries is essential (Sopinka, para. 12.104 citing *R. v. Abbey*, Ontario Court of Appeal). Adjudicators have the obligation to monitor and enforce the proper scope of expert evidence (Sopinka, para. 12.105). (Footnote added.)

[19] The College relies upon the following principles and legal authorities, among others:

1. *British Columbia Lottery Corp. v. Skelton*, 2013 BCSC 12, referring to the decision in *Fraser Health Authority (Re)*, 2006 B.C.I.P.C.D. No. 26, which held that the *Mohan* principles do not strictly apply to administrative tribunals:

   > [61] Commissioner Loukidelis found in *Fraser Health* that that the admissibility criteria in *Mohan*, which are quite limiting, do not apply in administrative law

[4] Sopinka, *The Law of Evidence in Canada*, Sixth Edition, 2022

proceedings because the strict rules of evidence that govern judicial proceedings cannot be relied on to limit the use of expert evidence in administrative hearings.

2. *CVBC v. Bajwa No. 20-091*, Ruling re Admissibility of Expert dated September 18, 2024:[5]

> [24]…the bar for establishing relevance, necessity, and qualification is not set too high – particularly in the context of an administrative proceeding in which the Panel is expressly provided with the power to admit evidence that would not be admissible in a court of law.
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> …
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> [27] In relation to the Respondent's arguments that the opinion strays into areas that are outside the citation, the Panel is of the view that the full extent of the expert's comments on the state of the medical records is relevant and admissible, whether directed to specific issues addressed in the citation or to other, related, matters raised by the records or the evidence. While the Panel's jurisdiction is confined to the allegations set out in the citation, issues raised in the records may provide context and assist the panel to understand what one would expect to see in the records and how the records should be interpreted in relation to the issues raised in the citation. As pointed out by the College, the expert's views as to the state of the records may also be reflective of the degree to which the Respondent's conduct departed from industry standards, if the Panel ultimately finds that it did.

3. *Mazur v. Lucas*[6], which in the words of Respondent's Counsel, held that "where a report contains unproven evidence, it is not appropriate to withdraw the evidence unless it can be shown that there are some other factors at play that render the evidence more prejudicial than probative. Instead, the decision-maker should address this in assessing the weight given to the opinion. The Court in that case held that the trial judge had erred in ruling that excerpts from the expert report that relied on evidence that was not before the court should be redacted."

4. *Paur v. Providence Health Care*, 2015 BCSC 1008 at para. 68: "…it is inappropriate to consider the admissibility of discrete sentences of an expert report outside of the context of the report as a whole."

3. Submissions

[20] In this Application the Respondent reiterates the challenges he raised in the September 8, 2024 letter to College Counsel, and amplifies them to include the complaint that the expert opinion was not revised "in concordance with" the Third Amended Citation. As she did in *Bajwa*

[5] CVBC v. Bajwa No. 20-091, supra, footnote 2.
[6] *Mazur v. Lucas*, 2010 BCCA 473 at paras. 18, 40, 43-44.

No. 20-091, Ms. Parfitt seeks to restrict the expert opinion to matters that specifically address the facts alleged in the Citation, or, indeed, to require the opinion to address *only* the allegations and nothing else. Ms. Parfitt thereafter provides a detailed list of challenges to the various paragraphs of the expert report, which, she says, "do not exactly map onto the allegations in the Third Amended Citation."

[21] Prior to detailing these specific challenges, Respondent's Counsel takes issue with the process that the Panel followed in electing to hear the expert's testimony before deciding whether to narrow the scope of the report:

> 39. We further note our very significant concern that despite the significant over-breadth of the opinion which is evident on its face, we were required to question at length on it, including parts of it which we say should not be before the Panel. This manner of proceeding has involved a comprehensive review of Dr. Bajwa's work on the file that significantly exceeds the allegations in the citation. This is prejudicial to Dr. Bajwa and improper. It remains *our view* that the Panel should have and could have addressed the scope of the opinion before requiring and hearing cross-examination on it, and that not having done so has fundamentally impaired Dr. Bajwa's interest in a fair hearing. [Emphasis added.]

[22] The Panel observes that the emphasized language does nothing more than suggest that counsel's view should supersede a ruling that has already been made by the Panel. In terms of impairment of the Respondent's interest in a fair hearing, that kind of submission by his counsel is singularly unhelpful to the Respondent's cause. We will say more about the merits of Ms. Parfitt's submission in part b. of the Analysis section below under the heading, "Conduct of Hearing."

[23] The College submits that the Respondent's application is: 1) outside the parameters of the submissions the Panel indicated it would accept; 2) without legal authority; 3) properly the subject of closing submissions and not admissibility issues to be addressed mid-hearing; 4) prejudicial to the orderly completion of the hearing; and 5) overly narrow in its submission that the expert report must align with the allegations contained in the Citation. The College further submits that the arguments made by the Respondent require interim findings of fact; contain inappropriate attacks on the reasoning in the report; and, in any event, do not raise any meritorious issues in relation to the various sections of the report.

4. Analysis

a. Expert Opinion

[24] The Panel notes, firstly, that it ruled during the case for the College that it could not decide the relevance of the expert opinion without hearing it; particularly given the fact that a panel generally does not receive a copy of the report before the hearing begins. To sidetrack the hearing at that point to decide, before the expert testifies, what portions of the report might be pertinent to the evidence or the citation would not be an efficient use of scheduled hearing time, and the Panel ruled accordingly.

[25] We observe here that if Ms. Parfitt genuinely intended to make a substantive challenge to the report as a whole based on its lack of concordance with the Citation, that application should have been made during the pre-hearing process in compliance with the Panel's directions and deadlines for such applications, rather than as an interruption as the expert was called to testify.

[26] However, we also observe that it is unlikely that such a preliminary challenge would have been successful, in any event. In our view, *Bajwa No. 20-091* is a full answer to the arguments, and the type of challenges to the expert opinion, that Ms. Parfitt now seeks to raise here. Perhaps that ruling informed the approach taken in this case; however, the fact that the challenge is raised within the hearing adds nothing to its validity. It merely highlights its incongruity. As we explain below, the nature of the challenges and the detailed analysis that Ms. Parfitt seeks to make now, mid-hearing, are properly raised in closing arguments, and not before.

[27] Moreover, in the Panel's view, it is highly improper, and counterproductive, for Ms. Parfitt to suggest, as she did in the above quoted paragraph 39 of her submissions, that "in her view" the Panel "should have and could have addressed the scope of the opinion before requiring and hearing cross-examination on it." To paraphrase the memorable words of a late eminent BC jurist[7], the Panel's ruling may be appealable, but it is not debatable. These kinds of indecorous submissions do not assist in the advancement of a defence. In addition, it appears to be an attempt to cast blame on the Panel for declining to hear what should properly have been a closing argument.

[7] https://www.cbc.ca/news/canada/british-columbia/selwyn-romilly-bc-black-judge-obituary-1.6978159

[28] We are of the view, without delving into the nuances of it, that the misconceptions under which Ms. Parfitt appears to labour are that the argument she raises here, and has raised in the past, goes at all to admissibility of the expert report; or that parts of the expert's answers to some of the questions posed to her can or should be "excised" at some point prior to the close of the case. The authorities dealing with the admissibility, and particularly the necessity, of expert evidence in administrative disciplinary proceedings, cited by the College, militate against a panel's duty, or authority, to spend time assessing the minutiae of an expert report before the close of the evidence. Moreover, it is not an effective use of the Panel's or counsel's time to make these arguments either in a vacuum before the evidence is led, or during the hearing, before the evidence is complete. We hasten to distinguish the situation where the report is in some aspect obviously off topic or without authority, which may be easily recognized and dealt with, as would have been the case here, had the expert travelled too far into the realm of radiography.

[29] The Panel has reached the conclusion, firstly, therefore, that to the extent the Respondent's application deals with admissibility of the expert opinion, it is without merit. We adopt the authorities cited by the College in support of the view that the relaxed rules of evidence in the administrative sphere not only permit admission of the report, but preclude a piecemeal approach to the opinions contained in it. To the extent that it may stray outside the parameters of the facts in issue, there is latitude to admit it and it would be error not to consider the report for that reason, or to parse statements from it. The Panel has the capability of disregarding portions of the report that ultimately prove to be irrelevant, or more prejudicial than probative.

[30] The Panel finds, secondly, that the objections raised in the application go entirely to weight and are therefore premature. We therefore decline to consider here the specific challenges to relevance of the various parts of the opinion, and will leave it to Respondent's Counsel to decide how much of the argument she sees fit to resurrect in closing submissions.

b. Conduct of the Hearing

[31] Considering firstly the directions the Panel provided in response to the Respondent's adjournment request on February 7, 2025, we note that no medical documentation to support the Respondent's absence was provided by the assigned deadline. Secondly, the date directed for the Respondent's Reply passed on March 20, or at the latest, March 21. Once again, both dates passed with no communication from Respondent's Counsel.

[32] In the December 6, 2024 ruling in this matter, we made observations about Ms. Parfitt's apparent disregard for the directions of the Panel. Now, however, not only has Ms. Parfitt ignored the deadlines for both the medical documentation and the Reply, without any communication prior to their expiry; she has also been wholly unresponsive to communications from the Executive Assistant on behalf of the Panel.

[33] The peril of being unresponsive to a tribunal's correspondence should not be lost on Respondent's Counsel[8].

[34] Section 59(4) of the *Act* provides as follows:

> (4) If the respondent does not attend the discipline hearing as specified in the citation, the discipline committee may
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> (a) adjourn the hearing, or
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> (b) on proof of the respondent's receipt of the citation,
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> (i) proceed with the hearing in the respondent's absence, and
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> *(ii) without further notice to the respondent, take any action that the discipline committee is authorized to take under this Act.* (Emphasis added.)

[35] Beyond the powers set out in Section 59(4)(a)(ii), a Panel has the power under Section 284 of the Bylaws to govern its process and "subject to the Act and the bylaws, adopt such other policies and procedures as it considers necessary for the expeditious and fair conduct of a hearing."

[36] Finally, Section 292 of the Bylaws provides as follows:

> (1) All persons attending a discipline hearing must act with respect and reasonable decorum, and accept the rulings of the discipline panel.

[37] With this latest disregard for the decorum and process of the discipline hearing, and for directions of the Panel, the Panel finds itself in the position of having to seriously consider whether to further indulge the Respondent or his Counsel by reconvening the hearing in June, at the Respondent's request, to hear any further evidence.

[8] Pooyan and others v. BC Ministry of Health and others, https://canlii.ca/t/k8gnz

[38] The sanction suggested by the College on the last occasion, that the next appearance be peremptory on the Respondent, did not adequately address the situation in which the Panel now finds itself. To make it peremptory on the Respondent, when it is only his case that remains, would be a hollow solution to what the Panel sees as blatant disrespect for the process.

[39] The matter may have reached the point that, for the Panel to properly govern its process, the only reasonable thing to do is proceed to closing arguments. However, out of an abundance of fairness to both parties we invite submissions as to the appropriate directions for the Panel to make at this point. The College may provide its submissions by April 17, 2025, and the Respondent may respond by no later than April 25, 2025, at 5:00 p.m. The College may apply to file a Reply, if it deems that step necessary.

Carol Baird Ellan

Carol Baird Ellan K.C., Chair

Amy Cheung

Dr. Amy Cheung