

**IN THE MATTER OF A HEARING OF THE HEARING TRIBUNAL OF THE COLLEGE OF
PHYSIOTHERAPISTS OF ALBERTA**

**Pursuant to THE *HEALTH PROFESSIONS ACT*, being Chapter H-7 of the Revised Statutes of
Alberta**

Regarding the conduct of Harkawaljit Singh Randhawa, a Regulated Member

DECISION OF THE HEARING TRIBUNAL

1. The Hearing Tribunal of the College of Physiotherapists of Alberta (the “**College**”) met by Zoom on October 1, 2025 to receive submissions on sanction regarding Harkawaljit Singh Randhawa (“**Mr. Randhawa**”). The following individuals were present:

2. In attendance were:

Hearing Tribunal Members:

Simone Hunter, PT, Chair;
Joey Mo, PT, member;
Emeka Ezike-Dennis, public member; and
Kwaku Adu, public member

Also present were:

Jason Kully, Counsel for the Complaints Director
Vita Wensel, Counsel for the Complaints Director
Simon Cooke, Complaints Director
Harkawaljit Singh Randhawa, Investigated Member
Brian Beresh, Counsel for Mr. Randhawa
Julie Gagnon, Independent Legal Counsel for the Hearing Tribunal
Cheryl Blahut, Conduct Coordinator
Haylee O’Reilly, Hearings Administrator

Background

3. In its decision dated May 1, 2024, the Hearing Tribunal found the following allegation (the “**Allegation**”) proven:

1. On or about April 2, 2022, while providing physiotherapy treatment to AK, you did one or more of the following to patient AK:

- (a) Touched her left breast without her consent or a therapeutic purpose;

- (b) Massaged around and on her right breast without her consent or a therapeutic purpose;
 - (c) Told her she was beautiful, or words to that effect; and
 - (d) Attempted to kiss her.
4. The Hearing Tribunal found that Allegation 1 constituted sexual abuse (particulars (a) and (b)) and sexual misconduct (particulars (c) and (d)) as defined in sections 1(1)(nn.1) and (nn.2) of the *Health Professions Act* (“**HPA**”) and unprofessional conduct pursuant to sections 1(1)(pp)(i), (ii) and (xii) of the HPA.

Exhibits and Case Law

5. The following were entered as Exhibits during the sanction phase of the hearing:

Exhibit 13 – Complaints Director Exhibits

Tab 1 - Email from KM - Feb 17, 2025 – Redacted

Tab 2 - Statement of Anticipated Costs

Exhibit 14 – Investigated Person Exhibit

Affidavit of Harkawaljit Singh Randhawa

6. The following authorities were provided to the Hearing Tribunal:

Case Law of the Complaints Director

Tab 1 - *Health Professions Act*, RSA 200, C H-7

Tab 2 - *Charkhandeh v College of Dental Surgeons of Alberta*, 2025 ABCA 258

Tab 3 - The state of the Canadian legal fee landscape: an in-depth report

Case Law of the Investigated Person

Tab 1 - *Health Professions Act*, RSA 200, C H-7

Tab 2 - *Charkhandeh v College of Dental Surgeons of Alberta*, 2025 ABCA 258

Tab 3 - *Jaswal v. Medical Board (Nfld.)*, 1996 Canlii 11630

Tab 4 - *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336

Tab 5 - *K.C. v. College of Physical Therapists of Alberta*, 1999 ABCA 253

Tab 6 - *MA v Alberta College of Pharmacy*, 2023 ABKB 522

Tab 7 - *Ahmed v Alberta College of Pharmacy*, 2025 ABCA 265

Tab 8 - *Denis v Sauvageau*, 2022 ABCA 166

Tab 9 – *RJR – MacDonald Inc. v Canada*, 1994 Canlii 117

Submissions on Sanction

7. The parties agreed they would make submissions on sanction first and then address the issue of the costs of the investigation and hearing, separately.

Submissions on behalf of the Complaints Director on Sanction

8. Ms. Wensel noted that there was an email from the patient at Exhibit 13 (Tab 1), noting that she did not wish to make an impact statement in accordance with section 81.1(2) of the HPA. Ms. Wensel stated that, while there was no impact statement, the complainant was inherently vulnerable as a patient.
9. Ms. Wensel pointed to section 82 of the HPA as the authority for the Hearing Tribunal to impose a sanction. She noted that the Complaints Director was seeking the cancellation of Mr. Randhawa's practice permit and registration, which is required pursuant to section 82(1.1) of the HPA where a finding of sexual abuse is made, as in this case. No further sanction was being proposed by the Complaints Director.

Submissions on behalf of Mr. Randhawa

10. Mr. Beresh stated that had submissions been made on sanction prior to the decision of the Court of Appeal in *Charkhandeh v College of Dental Surgeons of Alberta*, 2025 ABCA 258 ("**Charkhandeh**"), his submissions might be different. Mr. Beresh noted that cancellation was by far the most serious sanction that a person can face and it involves not only a prohibition for a skilled person from practice, but a loss of reputation for the individual in both the professional and personal communities.
11. Mr. Beresh reviewed Mr. Randhawa's background and experience, including his experience in coming to Canada. He stated this was Mr. Randhawa's only complaint in 23 years of practice.
12. Mr. Beresh relied on the *Charkhandeh* for the proposition that there must be proportionality in considering sanction. He submitted that the allegations in *Charkhandeh* were much more serious than those in this case.
13. Mr. Beresh submitted that a proportional sanction would be to impose a two-year suspension, with 17 months being considered to have been served and a 7-month suspension remaining. He stated that the heavy hand of cancellation was not required.

14. Mr. Beresh submitted that the Government of Alberta has used a hammer to kill a fly and that in a case such as this one, the mandatory provisions of the HPA overlook the need for proportionality.
15. With respect to the impact on the patient, Mr. Beresh noted this was difficult to assess without an impact statement.

Reply Submissions on Behalf of the Complaints Director

16. Ms. Wensel submitted that the Hearing Tribunal was being asked by Mr. Beresh to order a sanction that was not legally permitted. Ms. Wensel noted the mandatory language of section 82(1.1)(a) of the HPA.
17. Ms. Wensel also noted that in *Charkhandeh*, the allegations related to conduct in 2012 and 2013, prior to the changes to the HPA brought on by Bill 21, an *Act to Protect Patients*. The Court of Appeal stated, at para. 15, that Bill 21 did not apply to this case. Ms. Wensel pointed to another case of this College where the Hearing Tribunal confirmed that the Bill 21 amendments to the HPA do not apply to conduct prior to April 1, 2019.
18. Ms. Wensel submitted that *Charkhandeh* does not overturn the mandatory sections of the HPA regarding cancellation of practice permit and registration for findings of sexual abuse. She noted that the Hearing Tribunal could order both cancellation (arising from the sexual abuse findings) and a suspension (arising from the sexual misconduct finding), but that the suspension would serve no purpose here.
19. In terms of the impact statement, Ms. Wensel stated that the Hearing Tribunal was being asked to rely on the testimony of the complainant, given in the hearing and as referenced in the Hearing Tribunal's decision on the Allegation.

Evidence and Submissions on Costs

Evidence of Mr. Randhawa

20. Mr. Randhawa provided an Affidavit regarding the issue of costs (Exhibit 14). The Affidavit sets out the annual income for himself and his wife, as well as information regarding their assets and debts. Mr. Randhawa's Affidavit states that his professional insurance initially provided legal counsel for the matter. However, the insurance coverage was used up paying for legal fees for the initial hearing and the appeal to Council and, as a result, he is responsible for paying for legal representation for the sanction hearing.
21. Mr. Randhawa was questioned on his Affidavit by counsel for the Complaints Director. He confirmed that he is a part owner in five physical therapy clinics, but that he is not in a position to take money from the clinic, as there are loans and outstanding lines of credit. His salary from the clinics is approximately \$3,000 per month.

Submissions on behalf of the Complaints Director on Costs

22. Ms. Wensel noted the Statement of Anticipated Costs (Exhibit 13, Tab 2). The total costs of the investigation and hearing to date are approximately \$145,000. Ms. Wensel submitted that a range of \$48,000 to \$50,000 would be an appropriate order of costs.
23. Ms. Wensel referenced the decision in *Charkhandeh*, noting its significance in assessing costs in professional disciplinary hearings in Alberta. Under *Charkhandeh*, the Hearing Tribunal should first ask if there should be a costs order, and if so, how much. There is no presumption or starting point that either the regulator or the member is responsible for costs.
24. Ms. Wensel referenced certain factors in *Charkhandeh*, including the number of proven allegations, the length and extent of the hearing, the reasonableness of the expenses, whether a party engaged in unreasonable or inefficient conduct. In addition, the Hearing Tribunal should consider the regulated member's circumstances and that the costs order should not be disproportionate or crushing and should not discourage others from proceeding by way of a contested hearing.
25. Ms. Wensel noted that no costs were being sought for independent legal counsel or the hearing infrastructure, noting the Court's comments in *Charkhandeh* that such costs should generally be borne by the regulator.
26. Ms. Wensel submitted there was full success on the Allegation, which had four particulars. This weighs in favour of a larger costs award. In terms of the hearing length, each party called two witnesses, for a total of four witnesses. The hearing time was used appropriately by both parties and neither party raised unnecessary issues. Mr. Randhawa was cooperative and the parties reached a short Agreed Statement of Facts. However, it was noted that the evidence of the expert witness called by Mr. Randhawa was given little weight, which could be considered in the costs ordered.
27. There was hearing time and costs incurred for an issue that arose from the Hearing Tribunal's questions regarding the Jane software used by Mr. Randhawa, which the Complaints Director has removed from the costs award being sought.
28. In terms of the reasonableness of the costs (Exhibit 13, Tab 2), Ms. Wensel noted that although there were two lawyers at the hearing, there are costs claimed for only one lawyer's time in attending the hearing. Ms. Wensel referenced the Canadian Lawyer article, "The state of the Canadian legal fee landscape: an in-depth report", in the Complaints Director's Case Law materials, noting that for the West Region, a lawyer of 10 years in 2013 had an average hourly rate of \$441/hour.

29. Ms. Wensel noted the Complaints Director's position that a range of \$48,000 to \$50,000 for costs is reasonable, having consideration to the circumstances as set out in *Charkhandeh*. This represents approximately 50% of the costs of the investigation and legal fees for counsel for the Complaints Director, which is fair and principled considering the following factors: full success by the Complaints Director, the conduct of the parties, the length of the hearing, the cooperation of Mr. Randhawa and the evidence of the expert witness.
30. Ms. Wensel submitted that such a cost order does not discourage others from pursuing a contested hearing. She submitted that limited weight should be given to Mr. Randhawa's financial circumstances. Mr. Randhawa is the owner of several clinics. There is earning potential in the clinics. She further noted that Mr. Randhawa did not pay any legal costs for running the hearing or appeal, but that he is only now starting to pay legal fees. Considering the overall financial circumstances, the proposal is reasonable. Ms. Wensel also submitted it was reasonable to give Mr. Randhawa an appropriate time to pay.
31. Ms. Wensel concluded her submissions by noting that the Court in *Charkhandeh* was concerned that costs had become disconnected from first principles and that the Court had provided regulators and members a road map for costs. The current proposal for costs is not disconnected from costs principles, looking at the overall costs involved in the investigation and hearing.

Submissions on behalf of Mr. Randhawa

32. Mr. Beresh took the position that the costs proposed by the Complaints Director were not in keeping with the principles in *Charkhandeh*. He noted that the Court of Appeal's order in *Charkhandeh* resulted in approximately 1/7th of the costs to be paid.
33. Mr. Beresh submitted that *Charkhandeh* was a warning to regulators. He took the position that the current case was a simple case to investigate and prosecute. It involved only two individuals, the patient and Mr. Randhawa. It involved a 40-minute consultation with a professional on one day. Mr. Randhawa's cooperation also made it easier to investigate and prosecute. He noted there was 13.5 hours of hearing time. He stated that the proposed costs were not reflective of the nature of the investigation and hearing.
34. Mr. Beresh also noted that Mr. Randhawa has not had a professional income since May 2024. Mr. Beresh also suggested that Ms. Wensel was suggesting there was one Allegation with sub-allegations. This was not complicated, and nothing can be gleaned from full success in terms of costs. In terms of the length of the hearing, Mr. Beresh took the position that the hearing could have been concluded in one day. This case did not require two lawyers.
35. In terms of Mr. Randhawa's personal circumstances, Mr. Beresh stated that there is no equity in the clinics. While there may be a profit in the future, at the current time, Mr.

Randhawa earns \$3,000 per month to sustain himself and his family. A costs order of \$50,000 would be a crushing financial blow.

36. Mr. Beresh suggested applying the formula in *Charkhandeh* of 1/7th of the total costs, which would lead to \$7,100. He stated that a costs order should not exceed \$10,000, with a reasonable period of time to pay.

Reply Submissions on Behalf of the Complaints Director

37. Ms. Wensel noted that the calculation in *Charkhandeh* would actually be 12 to 13% of total costs ordered to be paid, but regardless, the Court specifically stated that there should not be a mathematical calculation. Mr. Beresh's suggestion goes against the principled approach.
38. Ms. Wensel noted that it is not accurate to say that this was a straightforward matter that was not complex. There were significant and extensive written submissions by the parties. She further submitted that success is not something that the Hearing Tribunal can disregard. The Complaints Director was 100% successful on the Allegation. Finally, she reiterated that the second lawyer's fees were not charged for the hearing attendance and that a notable discount was applied to legal fees.

Submissions regarding Section 80(2) of the HPA

39. Ms. Wensel noted that the Hearing Tribunal's written decision on the Allegation asked for submissions on section 80(2) of the HPA. Ms. Wensel observed that section 80(2) is mandatory but that the Complaints Director took no position on timing of when the notice should be provided, and that such notice could be stayed pending the appeal.
40. Mr. Beresh stated that there were no reasonable grounds to conclude that there should be a referral to the Minister of Justice. In the alternative, nothing should be done until all appeal steps are taken.

Decision of the Hearing Tribunal

Sanction

41. The Hearing Tribunal considered the Exhibits entered, the case law provided and the submissions of the parties.
42. The Hearing Tribunal orders the cancellation of Mr. Randhawa's practice permit and registration, as required by section 82(1.1)(a) of the HPA.
43. The Hearing Tribunal found that no other sanction was required. Cancellation is the ultimate sanction that can be ordered against a regulated member. In the circumstances of this case, no other sanction was necessary to achieve the purpose of deterrence, both

general and specific. In addition, the sanction protects the public and maintains the public's confidence in the integrity of the profession.

44. While Mr. Beresh's submissions regarding the comments in *Charkhandeh* around proportionality were noted by the Hearing Tribunal, the Hearing Tribunal is bound by the HPA, which is the legislation that governs the hearings of this College. Cancellation is mandatory in accordance with section 82(1.1)(a) of the HPA.

Costs

45. The Hearing Tribunal next considered the issue of costs. The Hearing Tribunal noted that in accordance with *Charkhandeh*, there is no presumption regarding costs and the Hearing Tribunal must first consider if costs are warranted. The Hearing Tribunal found that costs should be ordered in this case. The Hearing Tribunal then considered the quantum of costs.
46. The Hearing Tribunal reviewed the Statement of Anticipated costs and considered Mr. Randhawa's financial circumstances, including that he currently earns approximately \$3,000 per month.
47. The Hearing Tribunal considered the factors in *Charkhandeh*, including that the Complaints Director was fully successful on the Allegation, including all four particulars. The hearing took three days, and the Hearing Tribunal found the parties' use of hearing time to be appropriate, considering the nature of the issues and the evidence and arguments advanced by both parties. There was nothing irresponsible in how Mr. Randhawa's defence was presented or in how the hearing was prosecuted.
48. The Hearing Tribunal concluded that it was appropriate for the College to bear the costs of the infrastructure of the hearing and for independent legal counsel in accordance with the Court's comments in *Charkhandeh*.
49. The Hearing Tribunal considered the quantum of the investigation and legal fees of counsel for the Complaints Director. The total of these costs is approximately \$95,879 after certain discounts, including fees for only one legal counsel at the hearing.
50. The Hearing Tribunal rejected the mathematical approach proposed by Mr. Beresh as being contrary to the principled approach articulated by the Court in *Charkhandeh*. However, the Hearing Tribunal found that the range proposed by the Complaints Director of \$48,000 to \$50,000 to be too high in this case, having regard to Mr. Randhawa's financial circumstances.
51. The Hearing Tribunal considered that even without the mathematical calculation, Mr. Beresh acknowledged a range of costs, noting that they should be no more than \$10,000.
52. Having considered all the circumstances of this case, the Hearing Tribunal found that \$10,000 in costs was reasonable, with time to pay. Mr. Randhawa shall have two years to

pay, on a schedule of payment to be determined between Mr. Randhawa and the Complaints Director.

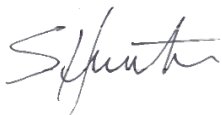
Notice to the Minister of Justice (HPA section 80(2))

53. The Hearing Tribunal considered section 80(2) of the HPA, which requires the Hearing Tribunal to direct the Hearings Director to send a copy of the written decision of the Hearing Tribunal to the Minister of Justice, if the Hearing Tribunal is of the opinion that there are reasonable and probable grounds to believe that the investigated person has committed a criminal offence.
54. The Hearing Tribunal found that Mr. Randhawa engaged in non-consensual touching of a sexual nature and as such, there are reasonable and probable grounds to direct the Hearings Director to provide a copy of the Hearing Tribunal's decision to the Minister of Justice under section 80(2) of the HPA.
55. However, the Hearing Tribunal noted that this matter is under appeal and determined that it was appropriate in this case to stay the direction to the Hearings Director, until all appeal rights are extinguished and all rights of appeal have been exercised. Notice to the Minister of Justice will be provided only at that time, should the decision of the Hearing Tribunal on the Allegation be upheld.

Orders of the Hearing Tribunal

56. For the reasons set out above, the Hearing Tribunal orders the following:
 1. Cancellation of Mr. Randhawa's practice permit and registration, pursuant to section 82(1.1)(a) of the HPA.
 2. Mr. Randhawa shall pay \$10,000 in costs, to be paid over a period of two years, on a schedule to be determined between Mr. Randhawa and the Complaints Director.
 3. The Hearings Director will provide a copy of the Hearing Tribunal's decision to the Minister of Justice pursuant to section 80(2) of the HPA once all appeal periods expire or all rights of appeal have been exercised, if the decision of the Hearing Tribunal on the Allegation is upheld.

Signed on behalf of the Hearing Tribunal this 10th day of November, 2025.



Simone Hunter, PT, Chair