

IN THE MATTER OF THE DENTAL DISCIPLINES ACT, 1997 and a FORMAL COMPLAINT dated January 6, 2012 regarding Dr. Cameron Croll of Victoria, British Columbia,
RAISING PROFESSIONAL ISSUES

BETWEEN:

The College of Dental Surgeons of Saskatchewan

- and -

Dr. Cameron Croll

PENALTY

THE DISCIPLINE COMMITTEE HEARING PANEL:

Ms. Francine Chad Smith, Q.C., Chair of Hearing Panel
Dr. Hilary Stevens, Chair of Discipline Committee
Dr. Raj Bhargava, Member of College
Dr. Alan Heinrichs, Member of College
Ms. Margaret Wheaton, Appointee to the College Council

APPEARANCES:

For the Professional Conduct Committee:

Mr. Reynold Robertson, Q.C.
Dr. Bernie White, Registrar

For Dr. Cameron Croll:

Mr. Patrick McDougall, Counsel
Dr. Cameron Croll, by telephone

DATE OF HEARING: May 21, 2013

DATE OF DECISION: June 4, 2013

[1] In our March 25, 2013 decision we found Dr. Croll guilty of professional misconduct pursuant to sections 27(d) and 29(1)(b) of *The Dental Disciplines Act* arising from his failure to comply with the October 19, 2011 order of the Professional Conduct Committee to attend before it, on November 18, 2011, the adjourned date of the initially prescribed October 28 appearance.

[2] The relevant facts are contained in our decision of that date. We concluded Dr. Croll chose not to attend before the Professional Conduct Committee notwithstanding the fact he had been afforded reasonable opportunity to do so.

SUBMISSIONS BY COUNSEL:

Counsel for the Professional Conduct Committee:

[3] Mr. Robertson, Q.C. requested Dr. Croll be suspended from practising in Saskatchewan for one month; that he be fined \$5,000.00; that he be issued a formal reprimand; and that he be directed to pay costs of 50% to 65% of the actual and estimated costs of the hearing and sentencing proceedings.

[4] In support of his position Mr. Robertson relied upon the significance of the authority of the College of Dental Surgeons of Saskatchewan to compel members to attend before it and to co-operate into investigations necessary to fulfill its legislative duty to ensure the protection of the public. He also relied upon the conclusion of the Hearing Panel of the Disciplinary Committee that Dr. Croll repeatedly failed to attend before the Professional Conduct Committee.

[5] Authorities cited regarding penalty included: *College of Dental Surgeons of Saskatchewan v. Dr. Lawrence Ho*, August 3, 2007; *Regina v. Morrisette* (1970), 75 W.W.R. 644 (SKCA); *Barik v. College of Physicians & Surgeons* (1992), 100 Sask R. 26; 1992 CarswellSask 474 (SKCA); and *College of Dental Surgeons of Saskatchewan v. Dr. Raymond Abouabdoullah*, December 12, 2012.

Counsel for Dr. Croll:

[6] Mr. McDougall submitted an appropriate penalty would be a two week suspension, a fine of \$5,000.00, and that Dr. Croll be required to pay 33 1/3% of the costs over a period of six months. Regarding the publication of the conviction and penalty, Counsel requested it be limited to a summary of the formal complaint, decision and penalty on one occasion in the CDSS newsletter and that the same information appear on the CDSS website for not longer than 30 consecutive days. In the event the Hearing Panel of the

Discipline Committee accepted this proposal, Dr. Croll was willing to agree to an irrevocable waiver regarding his right to appeal the decisions of the Hearing Panel.

[7] Counsel relied upon Dr. Croll's previous good practising record in Saskatchewan, Manitoba and British Columbia. He also relied upon the service Dr. Croll has been providing in Saskatchewan of bringing dental care to rural points. Furthermore, he submitted that at no time had Dr. Croll compromised the safety of the public through his practice in Saskatchewan.

[8] Regarding the issue of costs, Counsel for Dr. Croll submitted they were excessive and it would be unjust to require Dr. Croll to bear an extensive portion of them. Appreciating the need to make the hearings available to the public, Counsel questioned the requirement to conduct them at first class facilities such as the Hilton Gardens, the Willows Golf Course and the Bessborough Hotel, and the reasonableness of a two and a half day hearing costing in excess of \$115,000.00. He submitted costs of that magnitude, or a portion thereof amount to a further penalty. Lastly, relying upon the *Barik* and *Brand* (1990 CarswellSask 433 ; 72 D.L.R. (4th) 449) cases from the Saskatchewan Court of Appeal, Counsel submitted the costs must be reasonable.

[9] Counsel suggested the costs could have been better contained had the Professional Conduct Committee agreed to a mediation process with the facilitation of the Hearing Panel Chair as suggested earlier in the process.

[10] Finally Counsel distinguished the nature of the conduct here from the serious conduct and impact on the public as in the cases of *Dr. Ho* and *Dr. Abouabdallah*. In those cases the dentists demonstrated a marked disregard for the welfare of their patients. In contrast, Dr. Croll is providing dental care in rural points where few members of the profession will provide services.

DECISION:

[11] The Panel has concluded the appropriate sentence under the circumstances is, and directs:

1. Dr. Croll be suspended from practicing for one month;

2. Dr. Croll pay the costs set out below within six months of the date of this decision; and that failure to pay the costs on or before that date will result in automatic immediate suspension until the costs have been paid in full.

For the scheduled hearing dates of September 17 and 18, 2012, that were not used because of Dr. Croll's failure to attend without a substantiated reason, 100% of the costs. We have assessed those costs at \$12,573.28 based upon the cost information and explanations provided to us by Counsel for the Professional Conduct Committee.

For the hearing dates of January 11 and 12, and February 11 (12 also being scheduled), 2013 and the hearing of the submissions on penalty, 50% of the costs. We have assessed 50% of those costs to be \$53,752.45 based upon the cost information delivered and discussed at the hearing.

3. That a summary of the charges against Dr. Croll, together with the penalties imposed, and such additional findings or comments in the decisions of the Hearing Panel the Registrar or the Professional Conduct Committee deem appropriate, be published in the newspaper of the College and appear for three months on the College's website.
4. That the Registrar of the College deliver forthwith to the governing body of dentists in the Province of British Columbia and the Province of Manitoba a copy of the March 25, 2013 Decision and a copy of this Sentencing Decision.

[12] While we appreciate the nature of the complaint and conviction does not involve established professional incompetence or patient neglect, the matter is nevertheless a serious one. The conduct in issue strikes at the ability of the College to fulfill its legislative responsibility to protect the public. All members of the College are required to co-operate and attend before the governing committees of the College when invited or ordered to do so. The College is not able to determine whether the public is, or may be at risk, without the benefit of receiving relevant information from its members regarding their respective practices.

[13] In this case, we were particularly concerned not about a mere technical failure to attend pursuant to an Order, but with a protracted failure to co-operate and an unprofessional rude and cavalier attitude to the Professional Conduct Committee over the course of several months.

[14] Regarding the 100% assessment of costs for Dr. Croll's failure to attend the hearing on September 17 and 18, 2012, we considered the fact everyone else – the Hearing Panel, the Court Reporter, Counsel and witnesses – attended on September 17th. Although we were told Dr. Croll was ill, in light of his history of failure to co-operate and attend before the Professional Conduct Committee, Counsel for that Committee requested full costs be assessed against him. Counsel for Dr. Croll undertook to provide medical reports justifying the non-appearance and the Hearing Panel determined it would consider that information and rule on the matter of costs in due course. Although some medical information was delivered, its disclosure was limited to the Hearing Panel and Counsel for the Professional Conduct Committee. Counsel for the Professional Conduct Committee sought disclosure for the full Committee. The Hearing Panel directed that unless disclosure could be made to the Chair of the Professional Conduct Committee, the medical information would not be considered. Counsel for Dr. Croll did not agree to that disclosure and accordingly, the information is not before us for consideration.

[15] The total costs included a significant component for interviewing witnesses in preparation for those hearing dates. We have reduced the costs by that amount and instead have included a one day legal fee for Mr. Robertson. While some of the witness related costs would likely be incurred again shortly before the new hearing dates, we are of the view that the work involved at that time was not without overall benefit to the hearing process.

[16] With respect to the balance of the costs being assessed at 50% of the actual and estimate, we have not been persuaded there are reasons to make a lower assessment under the circumstances. As mentioned previously, this is not just a technical matter. The issue of co-operation and attendance when required are significant to self-disciplining bodies so they are able to carry out their legislative mandate to protect the public. Furthermore, while the conviction of Dr. Croll is singular, the conduct giving rise to the conviction cannot be described as a singular act or incident. It reflects a persistent or continuing attitude of non-compliance with his professional duty.

[17] To assist Counsel in the matter of the cost assessment an Appendix has been attached, which should be read in conjunction with Schedule A to the material filed by Counsel for the Professional Conduct Committee.

[18] Bearing in mind the relevant factors from the Royal College of Dental Surgeons of Ontario in assessing penalty referenced in the cases of *Dr. Dufour* and *Dr. Ho*, and the principles discussed in *Morrisette*, we were particularly concerned with punishment, deterrence and protection of the public.

[19] We appreciate the costs of these hearings are indeed onerous. In light of the *Barik* decision and other cases discussing the prohibitively high costs incurred in professional discipline cases, and the impact of such costs on members of the professions, we use a 50% rule as a general principle. There was nothing presented to persuade us that a variation should be made in this case. No information was provided to us regarding Dr. Croll's financial circumstances or ability to pay.

[20] With respect to the suggestion that the costs could have been significantly reduced had the parties proceeded by way of mediation following the referral to the Disciplinary Committee, we cannot fault the Professional Conduct Committee in its refusal to proceed in that fashion given the history of its dealing with Dr. Croll. Furthermore, the mediation proposed by Dr. Croll's Counsel was to have included another then outstanding matter before the Professional Conduct Committee which may have clouded the issue in the present case.

[21] Given the one month suspension and the direction regarding costs, we do not view either a fine and/or a reprimand to be warranted.

DATED at Saskatoon, Saskatchewan this 4th day of June, 2013.

THE COLLEGE OF DENTAL SURGEONS OF SASKATCHEWAN DISCIPLINE COMMITTEE

per:

"Francine Chad Smith"
Francine Chad Smith, Q.C.
Chair of Discipline Hearing Panel

"Margaret Wheaton"
Ms. Margaret Wheaton
Member of Discipline Hearing Panel
and Lay Member of Council

"Hilary Stevens"
Dr. Hilary Stevens
Chair of the Discipline Committee

"Raj Bhargava"
Dr. Raj Bhargava
Member of Discipline Hearing Panel

"Alan Heinrichs"
Dr. Alan Heinrichs,
Member of the Discipline Hearing Panel

APPENDIX: Costs payable by Dr. Croll

Costs for Hearing September 17 and 18, 2012

Per Diems

Raj Bhargava (2 days)	\$ 1,499.00
Hilary Stevens (2 days)	1,499.00
Allan Heinrichs (1 day)	750.00
Margaret Wheaton (1 day)	200.00

Other

Royal Reporting	376.17
Hilton Gardens Hearing	2,429.11

Legal

F. Chad Smith, Q.C. (1 day)	3,000.00
R. Robertson, Q.C. (1 day)	<u>3,000.00</u>

\$12,573.28

Costs for Hearing January 11 and 12, and February 11 (12 also scheduled) and for sentencing May 21, 2013

Schedule A of Submission on behalf of PCC	\$115,761.18
less September costs of 12,753.28 less 1,499.00 for Dr. Stevens not previously included	<u>11,254.28</u>
	\$104,506.90
plus January and February per diem for Dr. Stevens	<u>2,998.00</u>
	107,504.90 x 50%

\$53,752.45

TOTAL COSTS PAYABLE BY DR. CROLL \$66,325.73