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IN THE MATTER OF THE *HUMAN RIGHTS CODE*
R.S.B.C. 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before
the British Columbia Human Rights Tribunal

B E T W E E N:

Drs. Arminder Brar, Hakam Bhullar, Bhupinder Johar, Paramjeet Sidhu, Omparkashrkash Parbhakar, Dalbir Benipal, Tejpal S. Bhatia, Jogpreet S. Jagpal, Manjinder Hans, Prvitar Bajwa, Rameez Sharma, Naresh Kumar Joshi and Sarjit S. Grewal

COMPLAINANTS

A N D:

British Columbia Veterinary Medical Association and Valerie Osborne

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:	Judy Parrack
Counsel for the Complainants:	Aleem Bharmal, Clea Parfitt
Counsel for the Respondents:	Peter A. Gall, Q.C., Robert W. Grant, Q.C. Andrea Zwack, Shaun Ramdin Nitya Iyer, Eileen E. Vanderburgh Megan L. Chorlton, Hollis A. Bromley
Dates of Hearing:	Listed in Appendix "A"
Location of Hearing:	Vancouver, BC
Final Written Submissions:	July 3, 2012

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I INTRODUCTION

[1] Drs. Arminder Brar, Hakam Bhullar, Bhupinder Johar, Paramjeeet Sidhu, Omparkash Parbhakar, Dalbir Benipal, Tejpal S. Bhatia, Jogpreet S. Jagpal, Manjinder Hans, Privtar Bajwa, Rameez Sharma, Naresh Kumar Joshi and Sarjit S. Grewal (the "Complainants") filed a complaint against the British Columbia Veterinary Medical Association (the "BCVMA") and Valerie Osborne (the "Respondents") alleging that they discriminated against them, under the *Human Rights Code*, in the provision of a service customarily available to the public contrary to s. 8, in the area of publication contrary to s. 7, and in their membership in an occupational association contrary to s. 14, based on their race, colour, ancestry and place of origin. Further, they allege that they were discriminated against based on their political belief contrary to s. 14 of the *Code*. The Complainants also allege that the Respondents retaliated against them contrary to s. 43 of the *Code*. These are collectively referred to as the "Complaint". The Respondents deny they discriminated.

[2] The Complainants are all Indo-Canadian veterinarians, born and trained in either India or the Punjab. They currently practise, or hope to practise, as veterinarians, at low-cost veterinary clinics in British Columbia.

[3] The BCVMA is a self-regulating professional association which licenses and regulates the practice of veterinary medicine in British Columbia. The BCVMA is established pursuant to the *Veterinary Act*, R.S.B.C. 1996 c. 476 (the "*Act*").

[4] In September 2010, the BCVMA was restructured and became the College of Veterinarians of British Columbia ("CVBC"). The BCVMA agreed that the Complaint would continue under the CVBC. However, given that the Complaint arose under the previous legislative structure, the references to the issues, legislative framework and committees will be those that existed under the BCVMA.

[5] Generally, oversight of the BCVMA is through an elected Council. Council is authorized to grant licensure to qualified applicants. Council has the authority to appoint members to other committees, including the Practice Accreditation Committee ("PAC"), Conduct Review Committee ("CRC") and the Inquiry Committee. PAC deals with

facility inspections and accreditation of new veterinary facilities. The CRC deals with disciplinary issues and determines if a disciplinary complaint should be referred to an inquiry; Council passes the motion requesting an inquiry upon request from the CRC. The Inquiry Committee hears and determines the factual issues in a disciplinary complaint, after which the matter is referred to Council, which determines if there has been unprofessional conduct and, if so, imposes sanctions. Further details of the BCVMA structure and its operations are discussed throughout this Decision.

[6] Ms. Osborne is the Registrar of the BCVMA, a position that she held since 2002.

II SUMMARY OF THE DECISION

[7] The Complaint against the BCVMA contrary to ss. 8 and 14 of the *Code* is justified, in part, on the grounds of race, colour, and place of origin. The Complaint on the grounds of ancestry and political belief is dismissed. The Complaint under s. 7 of the *Code* (publication) is dismissed. The Complaint that the BCVMA discriminated against Dr. Grewal on the ground of mental disability is justified. The Complaint that the BCVMA retaliated contrary to s. 43 of the *Code* (retaliation) is justified, in part. The Complaint against Valerie Osborne is dismissed. The application to dismiss the Complaint based on the conduct of the Complainants and, in particular, Dr. Bhullar's conduct, is dismissed.

[8] Race-based stereotypes played a role in BCVMA's dealings with the Complainants, including negative generalized views about the credibility and ethics of Indo-Canadians in relation to their veterinary practices. Persons of influence in the BCVMA held such views, and the BCVMA knew this or ought reasonably to have known this, but largely ignored and condoned the expression of such views. A poisoned relationship developed between the BCVMA and the Complainants, which the BCVMA blamed entirely on those individuals claiming they were "playing the race card".

[9] There was a substantial interrelationship of the events in the relevant time frame. This included negative commentary, including negative qualities attributed to the Complainants, circulating within the BCVMA. The BCVMA tolerated and facilitated the discussion of wide-ranging and race-based allegations about Indo-Canadian veterinarians.

While the BCVMA is obligated to consider allegations of substandard practice, there was little basis to conclude the allegations were based on direct knowledge and the BCVMA took no independent steps to determine if the allegations had any basis in fact. The rumours adversely affected the BCVMA's views of the Complainants.

[10] At the relevant times and, during the hearing of the Complaint, the BCVMA was focused on the conduct of some of the Complainants, including Drs. Bhullar and Johar. Some of that conduct was unacceptable and is not to be condoned. It was not aimed, however, at an attempt to remove the Complainants from the regulatory oversight of the BCVMA. Rather, it was largely in reaction to reasonably held views of discriminatory oversight that were not being addressed. The BCVMA was closed to the possibility that racial stereotyping (conscious or not) was at play. The inappropriate actions of Dr. Bhullar and others do not fully explain the BCVMA's views of him and the other Complainants.

[11] The BCVMA is entitled to ensure a reasonable level of English proficiency. However, in this case, the English Language Standard was discriminatory. The evidence did not demonstrate credible concerns about the English proficiency of Indo-Canadian veterinarians. The BCVMA selected a score largely unattainable by the target group. The score was higher than that selected by other professional associations, though the BCVMA incorrectly and repeatedly asserted otherwise, despite being advised of the error. The implementation of the Standard placed Indo-Canadian applicants at a disadvantage. The BCVMA ignored the Complainants' concerns about the Standard, based on its stereotypical views of the Complainants, further damaging the relationship between the Complainants and their governing body.

[12] Recordings were made of persons of influence in the BCVMA reflecting negative race-based views of Indo-Canadians. Of particular importance was the BCVMA's response, which was to assume that Dr. Bhullar and others had lied and/or manipulated the recording. In one instance, the BCVMA eventually responded in a limited way when compelled to do so by the Complainants when they pursued the matter in court. It had refused to accept the recording may be accurate or concerning and simply refused to

investigate, because of its negative views of the credibility of Indo-Canadian veterinarians and the minimization of their concerns as "playing the race card".

[13] The selection of Indo-Canadian facilities for unscheduled inspections, some of which were carried out, was done based on unsubstantiated rumours and anecdotal complaints about their practices. On the evidence, only one other facility, owned by a Caucasian veterinarian, was listed to be subject to an unscheduled inspection. The timing of the implementation of the Disclosure Policy and Rules had the effect of targeting Indo-Canadian veterinarians, who made up nine of the ten veterinarians identified on the website at the time. The CRC simply denied applications for anonymization without a full consideration, including the nature of the charges. The BCVMA also targeted the Complainants' advertising because of the unfounded, negative and generalized view of the low-cost services being provided by them.

[14] The BCVMA's processing of disciplinary complaints gave rise to patterns of race-based adverse treatment, including instances of the BCVMA failing to notify the Complainants of a complaint until the investigation was underway or finished; alleging in numerous cases that the Complainants falsified their medical records; assuming the Complainants' information was less credible than others; failing to follow-up with the Complainants; in many instances, expanding on the issues raised in the complaint; referring matters to Inquiry that did not engage a risk to the public; increasing the scrutiny of individuals close to Dr. Bhullar; and appointing investigators who had already formed the view that Dr. Bhullar and others were dishonest and possibly ungovernable.

[15] The BCVMA engaged in systemic discrimination and, within this context, I have concluded that there were specific instances of discrimination against individual Complainants. Those are identified and individual remedial orders are made. The BCVMA is ordered to cease the discrimination and to refrain from committing the same or a similar contravention, and to take specified steps to address the effects of the discriminatory practices.

III PLEADINGS

[16] The complaints were filed on various dates beginning in 2004 and through 2005. Although some of the named Complainants filed separate complaints, on April 8, 2005 and November 18, 2005, these complaints were joined on consent of the parties.

[17] During the course of the proceeding, a number of Complainants withdrew at various times. Although these individuals filed Notices of Withdrawal on various dates, I was not advised of the reasons for their withdrawal. Although the Respondents have made certain submissions about why certain of these individuals withdrew, I have no evidence from these individuals to support these assertions. This is addressed further below. Those Complainants remaining are identified in paragraph one above.

[18] On April 3, 2006, the Complainants amended their complaints and provided a consolidated Amended Complaint. This amendment updated and added to the original complaints. The original complaints were attached and formed part of the Amended Complaint. The Respondents responded to the original complaints and filed an Amended Response. Further amendments to the complaints and responses were provided by the parties.

[19] The complaint against Ms. Osborne that she discriminated against the Complainants, in her personal capacity, contrary to s. 14 of the *Code*, was withdrawn on September 30, 2007.

[20] The Complainants allege both individual and systemic discrimination and seek both individual and systemic remedies. The Respondents say that even if the Complainants are able to establish discrimination, no individual remedies are available to them.

[21] Dr. Sarjit Grewal filed a separate complaint, which was joined with the Complaint on November 30, 2006. The details of his complaint are set out elsewhere in this Decision.

[22] Generally, the allegations made in the Complaint break into two categories and the evidence related to these two categories was heard during two separate periods. First, the Complainants alleged that the BCVMA discriminated against them based on the

enumerated grounds listed above when it imposed an English language proficiency requirement, which was unreasonably high, in order to be licensed. The Complainants alleged that this requirement was imposed to limit the number of foreign-trained veterinarians that could be registered with the BCVMA (the "English Language Standard"). Second, the Complainants alleged they were treated differently in how their disciplinary complaints were processed and the penalties imposed. Within this broad category, they alleged that the BCVMA discriminated against them in the manner in which they made statements and published information about them. The specifics of the allegations are set out in the relevant sections of this Decision.

IV SCOPE OF THE COMPLAINT

[23] No issues arose regarding the scope of the Complaint with respect to the English Language Standard. The parties agreed that no decision would be made with respect to the English Language Standard until all of the evidence related to the Complaint was completed.

[24] However, there were ongoing issues with respect to the scope of the Complaint involving the processing of disciplinary complaints and my jurisdiction to review the findings of fact, and other decisions made by the BCVMA's Inquiry Committees.

Tribunal Decisions

[25] I addressed this issue in *Brar and others v. B.C. Veterinary Medical Association and Osborne,* 2007 BCHRT 363 *("Brar (No. 1)")*, in *Brar and others v. B.C. Veterinary Medical Association and Osborne (No. 9)*, 2008 BCHRT 430 ("*Brar (No. 9)*") and again in *Brar and others v. B.C. Veterinary Medical Association and Osborne (No. 10)*, 2009 BCHRT 62 ("*Brar (No. 10)*"). At times during the hearing, I again reiterated my ruling on the scope of the Complaint before me. These decisions were not judicially reviewed.

[26] Given the scope of the Complaint was an ongoing issue before me, I set out the relevant portions of these decisions here. In *Brar (No. 1)*, I concluded:

> …

> Based on the materials before me, I find that the Tribunal has jurisdiction to review the processes of the BCVMA, including up to the imposition of penalties, to determine if discrimination has occurred... (para. 74)

[27] In *Brar (No. 9)*, I concluded:

> In my decision [in *Brar (No. 1)*], I made it clear that I would consider evidence with respect to the BCVMA's processing of disciplinary complaints against the Complainants up to and including the appointment of the Inquiry Committee. This would include such issues as: the process for appointing Inquiry Committee members, and the role of Council and the Conduct Review Committee in that process; the communications between the Registrar, the Inquiry Committee and the parties; the steps taken by the Conduct Review Committee and/or the Registrar to stay or discontinue the Inquiry Committee process once it has started; and the nature of the role played by the Registrar during the course of the Inquiry Committee process, outside her role as a witness or as instructing client to the Prosecutor.
>
> I also said that I would consider evidence regarding the penalties imposed by Council, once the Inquiry Committee had made its findings of fact. (paras. 67 and 68) For example, I will consider evidence regarding the process of the Council in coming to its determination on whether the report of the Inquiry Committee should be acted on or rejected.
>
> However, I made it clear that I would not review the findings of fact made by an Inquiry Committee (para. 70); that is the role of the Court on judicial review...
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> ...
>
> The Complainants say that they are "aware of the Court's significant unwillingness to critically review the decisions of the BCVMA given the inherent jurisdiction over its own processes the BCVMA enjoys, the limited scope of evidence that is often in place of appeals, and the fundamental and inherent unfeasibility to properly address broad underlying discrimination issues regarding the BCVMA on individual appeals". Even accepting that the Complainants' assertions are true, that does not provide me with the authority to hear and determine the factual issues that have already been determined by the Inquiry Committee.
>
> The Complainants also suggest that they have not raised issues of discrimination in the hearing processes before the Courts as they expected those issues to be dealt with by the Tribunal. Accepting that to be the case, this does not provide me with the jurisdiction to reconsider evidence, led before another adjudicative body, and then to reassess that evidence. This might lead to inconsistent findings, which may have nothing to do with

whether discrimination was at play in the earlier proceeding. Finally, in my view, having those hearings re-litigated before me would be a significant waste of the resources.

As I said in *Brar (No. 1)*:

> I would caution the Complainants that the Tribunal is not the forum to have all of their issues with the BCVMA raised and determined. It does not have jurisdiction to consider natural justice or procedural fairness issues arising in the Inquiry panel hearing. The Tribunal will not reverse or otherwise make a finding that those decisions were correct or change any penalties with respect to individual complaints made against them in that forum. That is the role of the Court. The Tribunal's jurisdiction is restricted to issues of systemic discrimination in those processes. (para. 75)

As I have said, the Tribunal's jurisdiction is related to issues of systemic discrimination in the BCVMA's processes. For example, the Complainants can lead evidence that the same Inquiry Committee members are appointed to hearings to determine disciplinary complaints against them but not against others. This might suggest that repeated appointments of the same members to the Inquiry Committees by Council, and the repeated findings against the Complainants made by that member, gives rise to an allegation of systemic discrimination that the Respondents will then have to answer. However, this is significantly different from having the findings of fact revisited in this forum. Further, if I find that the appointments to the Inquiry Committees were tainted by discrimination it will be that, at that time, the Complainants may make submissions on the appropriate remedy.

The Complainants will also be allowed to lead evidence about how their disciplinary complaints were handled by the Inquiry Committees. For example, were there long delays in the hearing processes as compared to delays experienced by non Indo-Canadian Veterinarians? They can also lead evidence about whether the scheduling of hearings, for example with respect to Drs. Jagpal and Bhullar as set out in paragraph 29 of the Complainants' Further Amended Complaint, differed from the scheduling of hearings involving non Indo-Canadian Veterinarians.

These issues fall within the ambit of the BCVMA's "processes" and might suggest that the Complainants were adversely treated based on a prohibited ground of discrimination. This type of evidence does not require that the findings of fact made by the Inquiry Committees be reviewed by me.

The Complainants will also be entitled to lead evidence regarding their assertions that the Inquiry Committees should not proceed to hear their disciplinary complaints as the Committees were biased or would act in a discriminatory manner. The Complainants suggest that the Inquiry

Committees' refusal to hear these types of applications might suggest a discriminatory *animus* against them and I will consider this evidence in this context.

The Complainants have raised issues with respect to the Registrar's role in the Inquiry Committee process. I will hear evidence about this role and the interactions of the Registrar and the Committee occurring outside the hearing process. (paras. 48-50, 53-60)

[28] In *Brar (No. 10)*, I concluded:

... that I did not have the jurisdiction to revisit the factual findings made by the Inquiry Committee. I also said that I would not review issues that might raise questions regarding the procedural fairness of the Inquiry Committee's processes. These are issues for the BC Supreme Court sitting in judicial review of those proceedings. I will not engage in a process that would suggest that I am usurping the Court's role in judicial review of the Inquiry Committee's decisions.

I have reviewed the materials before me, including the decision of Mr. Justice Slade in *Bajwa v. British Columbia Veterinary Medical Association*, 2008 BCSC 748, and I can find no basis upon which I should divert from my previous decisions.

I accept that it is the Council that determines whether a member has engaged in professional misconduct (see s. 17 of the *Veterinarians Act*). In *Brar No. 1*, I referred to the Council's authority in this respect. (para. 52). Council will review all of the materials before it, including the decision of the Inquiry Committee, in making this determination. If the Council determines that the Inquiry Committee has made a significant legal, factual or procedural error it can require the Inquiry Committee to reopen the hearing to address its concerns. It did so in the case of Dr. Bajwa.

The Complainants point to paragraph 70 of *Brar No. 1* to suggest that when I rendered that decision, I was acting under the misapprehension that the Inquiry Committee made determinations of professional misconduct and therefore my initial decision on my jurisdiction should be revisited. With respect, I disagree. I was clear in the earlier part of that decision that it was Council which made determinations of professional misconduct under the *Act*. I see nothing in any of the materials before me that would suggest otherwise, including the decisions of the BC Supreme Court. To the extent that paragraph 70 may be read to suggest such a misapprehension, I clarify that I understand that it is the Council which determines if a member is guilty of professional misconduct and I note that this clarification does not change my jurisdiction nor does it assist the Complainants in their attempt to revisit, in this proceeding, a decision of the Inquiry Committee with respect to evidence that was before it.

...

> Although the Complainants are bound by the determinations of the Inquiry Committee, and must challenge them directly to the BC Supreme Court, that does not preclude the Complainants from pursuing their allegations that the BCVMA has engaged in discrimination contrary to the *Code* and that the processes of the BCVMA, and the ultimate decisions of Council, are the product of systemic discrimination. Nor does it mean that the processes and decisions are shielded from review in this forum by the findings of the Inquiry Committee. What it does mean is that the Complainants may not seek to prove the allegations of discrimination by asking me to revisit the findings of the Inquiry Committee or to consider the fairness of the Inquiry Committee's processes.
>
> In summary, I emphasize that I will not revisit my earlier decisions on the limits of my jurisdiction set out in ***Brar No. 1*** and ***Brar No. 9***. Those decisions outline the evidence that I will consider. I would encourage the parties to read both those decisions carefully. It might be that systemic discrimination is at play in the BCVMA, but the Complainants will have to lead evidence to this effect that does not require me to act outside my jurisdiction, which would include reviewing the findings of fact of the Inquiry Committee and making determinations about procedural fairness issues in that forum. If the Complainants disagree with the limits of my jurisdiction, their remedy is to have the BC Supreme Court review my decisions. (paras. 6-9, 12-13)

[29] During the course of Dr. Johar's evidence, I again made it clear that I would not make determinations regarding the medical issues raised by the Schedule "P" complaint files (those files involving the Complainants) or the Schedule "Q" complaint files (those files involving other veterinarians and were introduced as "comparator" files). My jurisdiction is limited to finding whether there was discriminatory differential treatment in the processing of those complaints, and other similar complaints, that were referred to by the parties during the course of their evidence.

Court Decisions on Institutional Bias and the Scope of the Tribunal's Jurisdiction

[30] As noted, the BCVMA processed, and continued to process, disciplinary complaints against the Complainants during the human rights process. During the disciplinary hearing process some of the Complainants, including Drs. Bhullar and Bajwa, raised concerns that the BCVMA Inquiry Committee was biased, or that there was

institutional bias, such that the disciplinary hearing should not proceed either before the specific Inquiry Committee members or the Inquiry Committee generally.

[31] Before the Inquiry Committee, Dr. Bajwa alleged that the BCVMA was institutionally biased. The Inquiry Committee determined that it did not have jurisdiction to decide the issue of institutional bias and refused to allow Dr. Bajwa to introduce evidence of institutional bias. Dr. Bajwa filed an appeal of this decision, among other decisions, of the Inquiry Committee. At the hearing of the appeal before the BC Supreme Court, the BCVMA continued to take the position that it did not have the legislative authority to consider the issue of institutional bias and reiterated its position that the record before the Inquiry Committee was inadequate to determine the issue.

[32] In *Bajwa v. British Columbia Veterinary Medical Association*, 2010 BCSC 848 ("*Bajwa, BCSC 2010"*), the Court quashed the decision of the Inquiry Committee and remitted it back to the BCVMA, directing that it consider the issue of institutional bias. (para. 21) I note here that, during the Court's discussion of the issues involving Dr. Bajwa, it said that the part of the Complaint dealing with the English Language Standard was no longer at issue before me in these human rights proceedings. However, this was inaccurate as this issue remains outstanding and my decision on this issue is provided for here. It is unclear from the Court's decision how it came to this conclusion.

[33] The BCVMA appealed Madam Justice Allen's decision: *Bajwa v. British Columbia Veterinary Medical Association,* 2011 BCCA 265 ("*Bajwa BCCA 2011")* (leave to appeal refused, [2011] S.C.C.A. No. 386). The BCVMA argued the Inquiry Committee had no jurisdiction to consider the issue of institutional bias or, in the alternative, even if it was open to the Inquiry Committee to consider this issue, it would have been an abuse of process for the Inquiry Committee to have considered this issue, given "that this very issue is being explored in a comprehensive manner in the ongoing proceedings before the Human Rights Tribunal", thereby invoking the doctrine of abuse of process. (para. 22) In allowing the appeal, the Court found that the Inquiry Committee and the Council had the capacity to rule on issues of bias raised at a hearing even in the absence of express authority in the legislation to do so (para. 27).

[34] However, Mr. Justice Hall, speaking for the Court said:

Dr. Bajwa and his co-complainants are asserting in the Human Rights proceeding that they are being unfairly targeted and unfairly treated via the operation of the discipline process of the Association. The veterinarians, including Dr. Bajwa, complain in those proceedings of discriminatory conduct including differential treatment of complaints against them as compared to other practitioners, biased hearings, a lack of opportunity to informally resolve complaints and disproportionate penalties. That seems to me to be entirely congruent with the complaints of "institutional bias" that Dr. Bajwa sought to advance and have adjudicated before the Committee and the Council during the discipline process in which he was involved. The complaint about the disciplinary process articulated on behalf of Dr. Bajwa is essentially a complaint of systemic discrimination by the Association against him and certain of his colleagues. While sometimes the complaint is denoted as "institutional bias" I think it more accurate to characterize the complaint as one manifesting a discriminatory attitude to Dr. Bajwa and others because of racial origin and practice of alleged low cost veterinary service to the public. As well, Dr. Bajwa asserts that he and his colleagues face an overly rigorous review and prosecution policy on the part of the Association.

The appellant Association submits that having regard to the factual background that there is in progress before an appropriate tribunal a wide ranging inquiry into the practices and procedures of the Association, to allow the same subject matter to be raised and adjudicated upon by the Committee and the Council dealing with the charges against Dr. Bajwa would amount to an abuse of process. What, says the appellant, would be the utility of having the Committee or the Council traverse the same factual and legal landscape being fully investigated and adjudicated upon by the Human Rights Tribunal?

The doctrine of abuse of process looks to the preservation of the integrity of legal processes. The law should discourage the waste of adjudicative resources by unnecessary proceedings…

…

The present case presents a different factual matrix for consideration of the applicability of the doctrine. The proceedings extant before the Human Rights Tribunal involve an examination in a very broad context of the conduct of the Association in discipline and licencing procedures. In the present disciplinary proceeding, Dr. Bajwa sought to have adjudicators in his case address and make a ruling upon the very matters that form the core of the ongoing proceedings before the Human Rights Tribunal. It is difficult to discern any practical utility in the process here sought to be invoked by Dr. Bajwa. Such process would cause a duplication, indeed I would say a waste of adjudicative resources because it seems quite unrealistic to think that any decision on "bias" issues that might be reached

> by an inquiry committee or the Council could have any measure of finality having regard to the scope of the proceedings before the Human Rights Tribunal.
>
> The central concerns that underpin the doctrine of abuse of process exist here, namely a duplication and waste of resources and the possibility of inconsistent findings by different adjudicative bodies passing upon similar facts and issues…. In the recent case of *British Columbia (Attorney General) v. Malik*, 2011 SCC 18, Binnie J. noted at para. 40, "[i]n a number of decisions our Court had emphasized a public interest in the avoidance of "[d]uplicative litigation, potential inconsistent results, undue costs, and inconclusive proceedings" (*Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 S.C.R. 460, at para. 18)".
>
> That recent observation of Binnie J. appears to me to be particularly apposite on the facts of the present case. What I consider to be the key factual circumstance in the present case is the existence of the broadly framed inquiry before the Human Rights Tribunal. It is, as I observed, presently addressing the very issues that were sought to be raised by Dr. Bajwa in the discipline proceedings.
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> …
>
> Unfortunately, it does not appear that counsel in the proceedings at first instance took the opportunity to respond to this valid question by advancing the comprehensive submissions that were enunciated in this Court about parallel proceedings and abuse of process. I venture to observe that the answer to the query *supra* is "in the Human Rights proceedings". The chambers judge does not appear to have been effectively alerted to the scope of the parallel proceedings. I consider that if the submissions made before us on this appeal had been made to her, her decision would have been different. (paras. 30-32, 35-37 and 39)

[35] In considering the pleadings filed in the human rights proceeding, Dr. Bajwa's submissions and my decision in *Brar (No. 1)*, it appears from the Court of Appeal's reasoning that its decision was premised on the view that the allegations of institutional bias were encompassed within, or essentially the same as, the allegations of discrimination being advanced before me.

[36] In a separate proceeding, Dr. Bhullar filed an appeal of the Inquiry Committee's decision dated September 2008 and Council's decision of December 2, 2009 involving disciplinary complaints against him. As in *Bajwa*, Dr. Bhullar sought appeal of the Inquiry Committee's decision that it would not consider the question of institutional bias,

as it was not specifically provided for in its enabling legislation; a similar conclusion was reached by the Council.

[37] The BC Supreme Court found that the Inquiry Committee and Council should have considered the question of institutional bias, and that there was no reason to depart from the BC Supreme Court's decision in *Bajwa*: ***Bhullar v. B.C. Veterinary Medical Association***, 2011 BCSC 182, para. 57.

[38] The BCVMA appealed. The BC Court of Appeal overturned this decision and noted that its earlier decision in *Bajwa BCCA 2011* had yet to be released when Mr. Justice Saunders had released his decision: ***Bhullar v. British Columbia Veterinary Medical Association***, 2012 BCCA 443. The Court in *Bhullar* affirmed its view that, although the Inquiry Committee and Council had jurisdiction to consider issues of institutional bias, the question was "essentially moot". (paras. 45 and 46) The Court of Appeal followed its earlier decision in *Bajwa BCCA 2011* finding that it would be an abuse of process to have both the Tribunal and the Inquiry Committee/Council answer the questions of whether the BCVMA was institutionally biased against Dr. Bhullar. (para. 69; see also ***Bajwa v. British Columbia Veterinary Medical Association***, 2012 BCSC 878 paras. 76-84; 157)

[39] The Court of Appeal rejected Dr. Bhullar's arguments that discrimination is only one element of the concept of institutional bias and that the Tribunal did not have the jurisdiction to address the issues of fairness and bias in the disciplinary process. Although there was some issue as to the remedy that might be available to Dr. Bhullar if discrimination was found, the Court said:

> ... a hearing before the BCVMA's disciplinary panel on institutional bias would amount to an abuse of process. If the Tribunal decision is in Dr. Bhullar's favour, he will have a remedy as counsel for the BCVMA conceded that the Tribunal has the ability to set aside the disciplinary process that struck him from the register. Alternatively, the matter is returning to the Supreme Court in any event, which has the jurisdiction to consider reinstatement if the Tribunal concluded there was institutional bias or discrimination, but that it cannot reinstate Dr. Bhullar... (para. 75)

[40] The Court of Appeal remitted that matter back to the BC Supreme Court to await the decision of this Tribunal. Dr. Bhullar sought leave to appeal this decision to the Supreme Court of Canada, which was denied: [2013] S.C.C.A. No. 3.

[41] The Tribunal did not appear before the BC Supreme Court or the BC Court of Appeal in the proceedings involving Drs. Bhullar and Bajwa. Despite the parties making submissions on the scope of the Tribunal's jurisdiction and the scope of the human rights complaint before it, the Tribunal was not given notice that these issues would be raised with the Court.

[42] It is clear that the Tribunal has no jurisdiction to determine if another adjudicative body has acted in a manner that is biased or may be perceived to be biased. Discrimination is one element of administrative bias and might serve to illustrate if an institution, or individual, has acted in a manner that could be consider biased. However, a finding that an individual or institution has not acted in a discriminatory manner does not fully address the question as to whether bias was present in the particular circumstance. For instance, a finding of adverse differential treatment against a group may result in a reasonable apprehension that the BCVMA would not fairly process disciplinary complaints involving members of that group, requiring a remedy under administrative law principles. However, this finding would only amount to discrimination if a ground of discrimination was a factor in the adverse treatment.

[43] It appears to me that the Court of Appeal understood that I will look at the question of institutional bias, even though the full scope of that question is not squarely before me. I agree that the evidence in this Complaint, giving rise to both the claim of discrimination and institutional bias are similar and, in many areas, might be the same; however, I am limited by the *Code* to making findings of discrimination. I do not interpret the *Code* as giving me broad authority to rule on questions of institutional bias arising in another forum or to go beyond the determination of whether discrimination has occurred under the *Code*.

[44] If I find that the BCVMA's processes and/or decisions with respect to the Complainants were discriminatory, individually or generally, this might illustrate bias as it is understood in the administrative law context. In reviewing the evidence, I have made

findings of fact regarding whether the Respondents' conduct had an adverse impact on one or more of the Complainants and whether or not the adverse impact is related to a protected ground of discrimination, which is within my jurisdiction under the *Code*. In context of assessing adverse impact, I will consider issues of procedural fairness. For example, some of the actions of the BCVMA might have had an adverse impact on one or more of the Complainants, such as the denial of due process. I will consider, separately, whether any such adverse treatment was related to a protected ground of discrimination set out in the *Code*. I have concluded that the Court of Appeal decisions are premised on my taking such an approach. Further, the BCVMA argued that I take this approach in its submissions before the Courts regarding duplicative proceedings and the application of the abuse of process doctrine.

Stay of Proceedings

[45] In *Bajwa et al v. B.C. Veterinary Medical Association et al*, 2006 BCSC 137, the Complainants sought an order from the BC Supreme Court to stay the processing of their disciplinary complaints pending the determinations of their actions before the BC Supreme Court, including those actions raising institutional bias on the part of the BCVMA. The BC Supreme Court dismissed the motion, noting that the BCVMA has a statutory obligation to regulate the profession in order to protect the public. (paras. 6-8)

V HEARING DAYS AND WITNESSES

[46] The hearing of this complaint commenced on September 27, 2007 and continued on non-consecutive days until December 22, 2011. There were a total of 356 hearing days.

[47] As noted elsewhere in this Decision, the parties agreed that the evidentiary part of the Complaint hearing would be divided into two discrete sections. The first part of the Complaint evidence dealt with the English Language Standard and commenced on September 27, 2007 and continued to July 10, 2008, comprising a total of 63 hearing days.

[48] The second part of the Complaint hearing, dealing with the processing of disciplinary complaints, among other issues, commenced November 3, 2008 and concluded on December 22, 2011. This part of the hearing also included evidence regarding Dr. Grewal's allegations that he was denied a licence based on his mental disability and/or criminal conviction unrelated to his employment.

[49] The specific hearing days are listed in **Appendix "A"**.

[50] The witnesses called by the Complainants were:

- Drs. Hakam Bhullar, Paramjit Sidhu, Paramjeet Sidhu, Bhupinder Johar, Arminder Brar, Dalbir Benipal, Jogpreet S. Jagpal, Manjinder Hans, Pavitar Bajwa, Davinder Bath, Kulvinder S. Grewal, Tejpal Bhatia, OmParkash Parbhakar, Bhagwan Punia, Naresh Joshi, and Amarjit Brar (Complainants or previous Complainants);
- Ms. Sohal Gill, Dr. Bajwa's wife;
- Varinder Randhawa, Stephanie Toom, Rick Yelland, Linda Yelland, Jennifer Wright, Jaromy Waller and Lindsay Nelson, all of whom were pet owners ("POs");
- Baghail (Bill) Bhullar, Dr. Bhullar's nephew;
- Victor Bains, Notary Public;
- Gurdev Somal, business man;
- Heather Pendragon, the individual who made certain tape recordings;
- Dr. Michael Marshall, Expert – English Language Standard; and
- Dr. J. S. Sandhu and Dr. Jogi Harrad, Experts called on behalf of Dr. Grewal.

[51] The witnesses called by the Respondents were:

- Drs. Pawel Biernacki, Janette Craven, John Crickshank, Andrew Forsyth, Wayne Hollingshead, Patrick O'Grady, John Twidale, David Kirby and Rhonda Murray (Public Member) (Council Members);
- Drs. Wayne Hurdal, Sukhwinder Kahlon, Manjit Kaler, Paul Koit, Roger Kocheff, Linda Schild, Harpreet Sran, Ravi Mann, Zulfikar Virani, Sukhpinder Sidhu, Avtar Ubi and Dilbag Rana (Members of the English Language Task Force; Dr. Rana also gave evidence about other issues);

- Drs. Harjinder Sekhon and Robert Ashburner (Members of the Conduct Review Committee);
- Valerie Osborne, Registrar of the BCVMA and Dr. Brocklebank, Deputy Registrar;
- Dr. B. Sonnendrucker, Dr. Trudi Roberts and Dr. Adrian King-Harris, Complaint Officers ("CO(s)");
- Gwen Edwards and Lisa Hadju (Lisa McLeod), staff of the BCVMA;
- Helen Kline and Janet Zlotnik, consultants retained by the BCVMA regarding the English Language Standard;
- Norman Wexler, lawyer
- Andrew Scales, Expert – English Language Standard; and
- Mr. Ross Walker, Mrs. Karen Walker, Ms. Luz Dionella (POs).

VI THE RECORD OF PROCEEDINGS

Recordings

[52] At the commencement of the hearing, I advised the parties that I would record these proceedings, given its anticipated length and the number of witnesses to be called (the "Tribunal Tape Recordings"). The parties were further advised orally, and in writing, that the Tribunal Tape Recordings were not to be considered, or referred to, as the official recording of the proceedings before the Tribunal. My direction in this respect was contained in *Brar and others v. B.C. Veterinarian Medical Association and Osborne (No. 5)*, 2007 BCHRT 447, paras. 8 and 80. I provided copies of these recordings to the parties.

[53] This process was followed until the conclusion of the first part of the Complaint hearing that dealt with the English Language Standard.

[54] During the hearing, and in support of the parties' final submission, parts of the Tribunal Tape Recordings have been transcribed and referred to. In order to avoid unnecessary controversy, should this matter proceed to judicial review after this Decision is released, the parties are at liberty to have the Tribunal Tape Recordings transcribed by Charest Reporting. If this step is taken, then copies of those transcripts must be provided

to the Tribunal at the same time that they are made available to the parties. Such transcripts would form part of the Tribunal's record of proceedings.

[55] On November 3, 2008, the second part of the Complaint hearing commenced and the parties requested, and obtained, an order allowing them to have the hearing officially transcribed by Charest Reporting. I was provided with Official Transcripts as were the parties. These Official Transcripts form part of the Tribunal's record of proceedings.

Preliminary Decisions

[56] There were a number of preliminary decisions issued both before, and during, these proceedings. A list of those published decisions and a brief summary of the issues determined is contained in **Appendix "B".**

VII GENERAL EVIDENTIARY ISSUES

Privacy Issues

[57] The record in this case includes a vast amount of personal information, including personal information of persons who are not parties and did not appear as witnesses before me. In *Brar (No. 5)*, I ordered that certain personal information be redacted from any publicly available copies of specified exhibits, and made an order respecting access to Exhibit 88 and the recordings of the hearing. At different times during the hearing, I rendered oral decisions with respect to the non-disclosure of certain private information. Although I advised counsel that we would need to deal with the personal information in the documents as a whole, no orders were requested or made to protect the privacy of personal information, generally, once the hearing had concluded.

[58] In this Decision, I have made an effort not to identify persons, such as pet owners and other veterinarians, who were involved in disciplinary complaints and who were not parties or witnesses before me. With respect to the documents, I have decided that the practical way to protect privacy is to seal the record, for the following reasons, and subject to the following exceptions.

[59] A sealing order is the only practical way to protect the privacy of personal information. Thousands of documents were entered into evidence and redacting the

personal information would be an excessively time-consuming task. Further, this hearing was open to the public and there has been an opportunity for anyone interested to request access to exhibits both during the hearing and the drafting of this Decision. The "open court" principle has been served. The sealing order is subject to the following:

- First, an application may be made for access to specified exhibits, and the parties will have the opportunity to identify personal information they wish redacted if access is granted.

- Second, if this Decision is subject to judicial review, the record may be filed in Court. To the extent that exhibits containing personal information may be necessary for the determination of any judicial review application, it will be up to the parties to determine how to address the privacy issues, including the possibility of seeking an order from the Court.

[60] I also clarify that the order made in *Brar (No. 5)* applies to direct public access to the exhibits from the Tribunal. Again, if this Decision is subject to judicial review, it will be up to the parties to determine how to address the privacy issues raised in relation to the Court record.

Abandonment of Complaints

[61] The Respondents argued that the failure of the Complainants to make submissions with respect to all the allegations raised in their Complaint suggests that they have "abandoned" these allegations. However, with respect to many of these allegations, the Complainants testified before me. They did not withdraw from the Complaint. The failure to make submissions does not signal an abandonment of all, or part, of a complaint after the conclusion of a hearing.

[62] It is not feasible, given the number of Complainants and the complexity of the issues, for the parties to have addressed each general or specific allegation, and the facts in support of those allegations. Submissions are not evidence; nor do they define the scope of the Complaint. Submissions are provided to assist a decision-maker by summarizing the facts and the issues that each party says support their theory of the case. Because one party fails to make a submission regarding one or more of the issues, especially where there are multiple issues and complainants, or fails to respond to a

submission of the other party, does not automatically lead to the conclusion that that part of the Complaint must be dismissed without further consideration. This would be unfair to the Complainants. The Respondents are entitled to know the issues that they must address; in my view, this threshold has been met in this case.

[63] Dr. Arminder Brar did not withdraw from the Complaint. Dr. Brar testified during the English Language Standard portion of the hearing; he did not testify during the second part of the hearing about his involvement with the BCVMA, including his involvement with the disciplinary process. However, Ms. Osborne and Dr. King-Harris, witnesses for the Respondents, testified about Dr. Arminder Brar's involvement with the BCVMA processes and introduced documents, which were marked as Exhibits. They testified about disciplinary complaint 04-037. Dr. King-Harris also testified about this disciplinary complaint as well as disciplinary complaint 04-032. Both of these disciplinary complaints were subject to a stay. (*Brar (No. 9)*, para. 7)

[64] Similarly, Dr. Jogpreet Jagpal did not withdraw from the Complaint; he testified during the English Language Standard part of the hearing but not during the second part of the hearing. One or more of Ms. Osborne, Dr. King-Harris, Dr. Kirby and Dr. Hollingshead testified about Dr. Jagpal's involvement with the BCVMA and introduced documents, which were then marked as Exhibits.

[65] Dr. Rameez Sharma did not withdraw from the Complaint. He is the only Complainant who did not testify. Ms. Osborne, Dr. King-Harris, Dr. Roberts, Dr. Hollingshead and Dr. Kirby testified about Dr. Sharma's involvement with the BCVMA processes and introduced documents, which were marked as Exhibits. Two of these disciplinary complaints were also the subject of a stay of proceedings, but that stay was lifted. (*Brar (No. 9),* para. 10)

[66] Dr. Kamboj withdrew from the Complaint in March 2010 and did not testify. It was expected that Dr. Kamboj would testify and materials regarding his involvement with the BCVMA were marked as Exhibits, on consent of the parties. The parties did not apply to have those materials removed from the evidentiary record before me. Ms. Osborne and Dr. King-Harris gave evidence regarding these materials after Dr. Kamboj had withdrawn.

[67] Dr. Punia testified during the second part of the hearing and then withdrew from the Complaint once the hearing was completed. Ms. Osborne and Dr. Roberts testified about Dr. Punia's involvement with the BCVMA before his withdrawal.

[68] Both Drs. Kulvinder S. Grewal and Davinder Bath withdrew from the Complaint. They both testified during the first part of the Complaint hearing dealing with the English Language Standard. Ms. Osborne testified about their registration process with the BCVMA during the second part of the hearing.

[69] Drs. Pritam Dhalliwal, Rajwinder Kahlon, Harpal Mann, Baljit Mrar, Rajwinder Singh, and Parminder Mangat withdrew from the Complaint, at various times, and did not testify. Ms. Osborne testified about the registration process involving these individuals. Dr. Roberts testified about those disciplinary complaints involving Drs. Mangat, Singh, and Kahlon. Dr. Craven gave evidence about Dr. Mangat's interactions with the BCVMA. Dr. King-Harris testified about those disciplinary complaints involving Dr. Singh. All of the Respondents' witnesses gave evidence regarding these veterinarians during the second part of the hearing, including introducing documents, which were marked as Exhibits.

[70] I accept that some of the Complainants who withdrew, or who did not testify, had an unremarkable disciplinary history with the BCVMA; they were also registered without incident and some provided references from one or more of the Complainants. As an example, the Respondents refer to a serious complaint against Dr. Dhalliwal, based on hearsay, which they did not act on, and argue that this illustrates that they treated him, and others, fairly. The issues in this case go beyond fair or unfair treatment and require consideration of the entirety of the evidence to determine if the Respondents discriminated contrary to the *Code*.

[71] As noted above, the Respondents made wide ranging and speculative submissions about why these Complainants withdrew from the Complaint and/or did not testify. The Respondents suggested that the actions of these individuals are illustrative of the Complainants' abuse of the Tribunal's processes and that the Complaint was filed for improper purposes. I find that there is little evidence to support the Respondents'

assertions either generally, or with respect to the individual Complainants, who withdrew or did not testify.

[72] The Respondents suggested that those Complainants who withdrew from the Complaint now have an amicable and professional relationship with the BCVMA. While this may be the case, I have no evidence to support this assertion and can make no finding in this respect. Some of these Complainants entered into consent resolutions with the BCVMA and, in some cases, resolved very serious disciplinary complaints. In some cases, I am unaware of the terms of the consent resolutions and therefore am unable to comment or to draw any inferences. Some of the original Complainants withdrew for "personal reasons". Other than this general statement regarding why three of the Complainants withdrew, why the others withdrew is unknown to me.

[73] This has been a long and difficult process for those involved. The BCVMA continued to process disciplinary complaints involving the Complainants during the processing of the Complaint and the hearing; there is an ongoing and mandatory relationship between them as the BCVMA continued to be their governing body. It is not surprising that some of these disciplinary complaints were resolved. Again, the issues in this case require that I consider the entirety of the evidence to determine whether the Complaint is justified.

[74] The Respondents suggest that Rule 22 (now Rule 15) of the Tribunal's *Rules of Practice and Procedures* requires that, when a complaint is withdrawn, all allegations of discrimination must be dismissed by the Tribunal. I accept that, when a complainant withdraws, his or her complaint must be dismissed and the complainant is not entitled to an individual remedy pursuant to s. 37 of the *Code*. In such cases, generally that concludes that matter and no evidence is tendered regarding the issues raised in the complaint, or if the hearing has commenced, the matter comes to an end and the evidence is never considered. However, in this Complaint some of the Complainants testified and then withdrew but the hearing continued with the remaining Complainants on record. No application was made to have me disregard this evidence. Further, as noted, the Respondents not only testified about these Complainants, who had withdrawn, but introduced new evidence that had not been introduced by the Complainants during their

evidence. This suggests to me that it was their understanding that such evidence would be relevant to the issues of systemic discrimination.

[75] The Respondents submit that any evidence given by the Complainants who testified about those who did not is hearsay evidence and should be given no weight by me. Specifically, they refer to the evidence given about Dr. Mrar by the Complainants. However, I note that the Respondents also gave evidence about Dr. Mrar, and others. I will deal with these evidentiary issues when and if they arise and are necessary to the determinations I must make.

Credibility

[76] This case raises interesting and complicated issues of credibility. In many areas, the witnesses before me had very different recollections of the events that occurred. In some respects, this is not surprising, given the time period over which the issues have been outstanding and the significant animosity between the parties. Of the 68 witnesses who testified, only a handful could be considered "disinterested" in the issues giving rise to this Complaint. Further, some of the witnesses' unyielding commitment to their version of what occurred unnecessarily called into question their credibility.

[77] In assessing credibility, I am guided by the principles laid down in *Faryna v. Chorny* that "the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.": [1952] 2 D.L.R. 354 (B.C.C.A.).

[78] More recently, in *Bradshaw v. Stenner*, 2010 BCSC 1398, the Court said:

> Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable,

> impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Farnya v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) [*Farnya*]; *R. v. S.(R.D.),* [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Farnya* at para. 356).
>
> It has been suggested that a methodology to adopt is to first consider the testimony of a witness on a 'stand alone' basis, followed by an analysis of whether the witness' story is inherently believable. Then, if the witness' testimony has survived relatively intact, the testimony should be evaluated based upon the consistency with other witnesses and with documentary evidence. The testimony of non-party, disinterested witnesses may provide a reliable yardstick for comparison. Finally, the court should determine which version of events is the most consistent with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions" (*Overseas Investments (1986) Ltd. v. Cornwall Developments Ltd.* (1993), 12 Alta. L.R. (3d) 298 at para. 13 (Alta. Q.B.)). I have found this approach useful.
>
> Most helpful in this case has been the documents created at the time of events, particularly the statements of adjustments. These provide the most accurate reflection of what occurred, rather than memories that have aged with the passage of time, hardened through this litigation, or been reconstructed... The inability to produce relevant documents to support one's case is also a relevant factor that negatively affects credibility... (paras. 186-188)

[79] The Tribunal has applied a number of factors in assessing a witness' credibility including "their motives, their powers of observation, their relationship to the parties, the internal consistency of their evidence, and inconsistencies and contradictions in relation to other witnesses' evidence". (*Hadzic v. Pizza Hut Canada* (1999), 37 C.H.R.R. D/252 (B.C.H.R.T); see also *Agduma-Silongan v. University of British Columbia*, 2003 BCHRT 22, para 154). In addition, the fact that a party failed "to call or produce material evidence" might assist determining credibility. (*Bageya,* para. 156; *McKay v. Toronto Police Services Board*, 2011 HRTO 499 ("*McKay*") at para. 11)

[80] Generally, I found the witnesses to be credible in some areas but not others. For example, some witnesses had a clear recollection of the events while giving their direct evidence, but that recollection became more vague, evasive or self-serving in cross-examination. However, I note that the failure of a witness to be consistent in his or her

evidence does not necessarily indicate untruthfulness. Some witnesses became argumentative while giving their evidence or unnecessarily embellished and exaggerated their evidence to support their theory of the case. In some cases, when the documents differed from the witness' recollection or his or her theory of the case, the witness strained their evidence in order to make the written document reflect their view of the events. I will outline these concerns in more detail when I review the evidence before me and make my findings of fact.

[81] The documentary evidence in this case is extensive. I find that the documentary evidence was, in most cases, more reliable that the memories of the witnesses, given that the documents were created contemporaneously with the event. Where the documentary evidence differed from the witnesses' recollection of the events, I generally preferred the documents.

[82] During the course of the hearing, a number of tapes and related transcripts of those tapes were introduced as evidence. Initially, the transcripts were marked for identification only as, in some cases, the parties could not agree that the transcription was accurate. Throughout the hearing, I advised the parties that the accuracy of the transcripts needed to be resolved so that they could be marked as Exhibits. This issue was not resolved by the parties except for one transcript that was marked as Exhibit "A" for Identification and as then later marked as an Exhibit. On December 21, 2011, the second last day of the Hearing, the parties agreed that those remaining transcripts that had been marked for identification should be marked as Exhibits and any issues arising from the transcription should be resolved by me in this Decision. I have reviewed those transcripts and, where relevant, have resolved any discrepancies in them: Exhibits 1015-1039.

[83] There were also many notes made, especially by Ms. Osborne. To the extent possible, I relied on the notes, which were made contemporaneously with the event. However, some notes were not complete and were in point form. I accepted the explanation of the note, only in cases where I found the explanation to be consistent with the note and not an attempt to, after the fact, change the sense of that note.

[84] It is unfortunate that the parties were unable to resolve the issues between them without the necessity of having me write this decision. Many of the witnesses, who are

professionals, will be unhappy with the findings that I make regarding their credibility and their perception of the events. I have attempted to be restrained in my comments and was guided by the Supreme Court of Canada's statement in *R. v. R.E.M.*, 2008 SCC 51:

> While it is useful for a judge to attempt to articulate the reasons for believing a witness and disbelieving another in general or on a particular point, the fact remains that the exercise may not be purely intellectual and may involve factors that are difficult to verbalize. Furthermore, embellishing why a particular witness's evidence is rejected may involve the judge saying unflattering things about the witness; judges may wish to spare the accused who takes the stand to deny the crime, for example, the indignity of not only rejecting his evidence and convicting him, but adding negative comments about his demeanor. In short, assessing credibility is a difficult and delicate matter that does not always lend itself to precise and complete verbalization. (para. 49; see also *Mariano v. Campbell*, 2010 BCCA 410 para. 39)

[85] In assessing evidence, I am entitled to accept all, some or none of the evidence of the witness and have done so in this decision as necessary.

[86] I will address the credibility of each witness, except for Dr. Bhullar, at the time that his or her evidence is first introduced.

Hearsay

[87] The Tribunal is not bound by the rules of evidence. However, I agree with the Respondents' submissions that these rules provide a useful guide to assessing the reliability and the weight to be given to the evidence before me.

[88] Some of the evidence admitted before me was hearsay. As noted in s. 27.2 of the *Code*, I am entitled to accept evidence that may not be admissible in a court. Hearsay evidence may be unreliable; it is not given under oath nor is it subject to cross-examination. However, such evidence may be admissible if it is necessary and reliable. (see *Johal v. Lake Cowichan (Village)*, [1984] B.C.C.H.R.D. No. 3; *Clarke v. Frenchies Montreal Smoked Meats and Blais (No. 2)*, 2007 BCHRT 153 para. 113)

[89] During the course of hearing this Complaint, hearsay evidence was admitted either on consent or as a result of an order made by me. I must now, as the fact-finder, assess the reliability of that evidence and the weight to be given to it. In doing so, I have

applied the principles laid down by the Supreme Court of Canada in *R. v. Khelawon*, 2006 SCC 57.

[90] An adverse inference may be drawn if a party fails to call a witness, absent an explanation, who has information relevant to the issues to be determined a proceeding. Both parties asked me to draw an adverse inference as a result of the other failing to call a witness with relevant information.

[91] I did not rely on evidence that was based on speculation or conjecture as it is inherently unreliable and not based on personal knowledge or documents. Both parties provided such evidence.

Opinion/Expert Evidence

[92] In *R. v. Mohan*, [1994] 2 S.C.R. 9, the Supreme Court of Canada identified four criteria for determining the admissibility of expert evidence:

- The evidence must be relevant;
- The evidence must be necessary to assist the tier of fact;
- There must be no exclusionary rule otherwise prohibiting the receipt of the evidence; and
- The evidence must be given by a properly qualified witness.

[93] The parties introduced expert evidence in the English Language Standard part of the hearing. With respect to the issues involving Dr. Grewal, experts were called to speak to his suitability to be registered with the BCVMA. Although the experts related to Dr. Grewal were admitted on consent, the Respondents took issue with the objectivity of that evidence.

[94] In *McKay*, the Ontario Human Rights Tribunal set out the factors that should be considered when such concerns are raised:

> There is no question that an expert witness must be objective. See *R. v. D.D.*, *supra*. However, objectivity does not mean that an expert is devoid of community connections and/or derives opinions in abstraction absent any familiarity with the parties or their counsel. Experts are proffered precisely because they have expansive or deep knowledge of the field and respected reputations and affiliations, which sometimes may relate to, or

> overlap with, a party, particularly if the dispute comes out of a small or specialized industry. Further, in the human rights context, I am sensitive to the access to justice concerns for marginalized and equity seeking groups that may arise if rules of evidence are rigidly applied to exclude potential experts that have worked within or on behalf of such groups. A Tribunal's inquiry with respect to (im)partiality should focus on whether, considering the nature and degree of association, the expert is able and willing to provide independent, objective and authoritative evidence, not argument, to assist the decision-maker regardless of which side the information favours. (para. 99)

[95] I agree with the Respondents that opinion evidence must be assessed carefully within the context it was raised and with a view as to whether it assists me in the determinations I must make, which are those determinations under the *Code*.

[96] As noted in *Ericson v. Collagen Canada Ltd.*, [1999] B.C.H.R.T.D. No. 13, an expert should not be intent on supporting one party's case; an expert should assist the Tribunal by offering impartial evidence. Failure to provide impartial evidence will affect the weight to be given to such evidence. (para. 79)

[97] Many of the witnesses for both the Complainants and the Respondents testified about the medical issues raised by the disciplinary complaint files. This evidence was generally introduced by the Complainants to illustrate that those files involving them were treated differently from those files involving others, even when the same or similar medical issues were raised. For example, Dr. Bhullar gave evidence about disciplinary complaint files respecting which he was not a direct participant either in the events raised by the disciplinary complaint or the BCVMA's processing of it. The Respondents also introduced such evidence with respect to those Complainants, and previous Complainants who did not testify.

[98] I have attempted to refrain from making any finding in respect of the medical issues outside this narrow assessment of whether the files illustrate differential treatment. I had consistently advised the parties that it was not my role to make medical findings as I have no expertise to do so and it falls outside my jurisdiction under in the *Code*.

Credibility of Dr. Bhullar

[99] Generally, the Respondents assert that Dr. Bhullar was not a credible witness. They assert that Dr. Bhullar misrepresented the facts, created distortions and drew others into a "web of deceit". As a result, the Respondents suggest that Dr. Bhullar's conduct warrants the dismissal of this Complaint and an award of costs for improper conduct.

[100] As an example of how Dr. Bhullar's evidence should be rejected and found not credible, the Respondents point to the disciplinary complaint (04-052) involving the Walkers, who testified before me, discussed elsewhere in this Decision. Much evidence was led by both parties regarding the processing of this disciplinary complaint. This complaint was referred to Inquiry and findings were made against Dr. Bhullar by the Inquiry Committee.

[101] Dr. Bhullar led evidence to suggest that the findings of the Inquiry Committee were inaccurate. I agree with the Respondents that it is not my role to sit in review of that decision and I do not propose to do so. However, I reviewed the processes leading up to the Inquiry and assess Dr. Bhullar's credibility within that context. I note that, during their submissions, the Respondents point to the findings of the Inquiry to suggest that Dr. Bhullar lied before me. It is true that the Complainants and, Dr. Bhullar in particular, asked me to make findings inconsistent with the Inquiry Committee. I repeatedly said that I would not do so. But that does not mean that the Inquiry Committee's findings are binding on me. I am required to make my own assessment of the credibility of the witnesses in relation to the issues I am required to determine, which are not the same as those before the Inquiry Committee.

[102] The Respondents suggest that Dr. Bhullar has "perjured" himself and "suborned perjury" before this Tribunal and mislead the Tribunal throughout his evidence regarding the Walkers' complaint and in his submissions before me. Dr. Bhullar called other witnesses who the Respondents allege also provided false evidence. The Respondents submit that I am now required to determine if Dr. Bhullar perjured himself before me.

[103] It is my role to determine the credibility Dr. Bhullar's evidence and the credibility evidence of all those witnesses who testified, whether that evidence spoke to the Walkers' complaint or other issues.

[104] I discuss my assessment of Dr. Bhullar's credibility in the context in which it arose. The issues surrounding the Walkers' complaint were whether or not Dr. Bhullar, and others who testified, were truthful while giving evidence before me. I discuss my specific concerns when reviewing that disciplinary complaint. I do not find that any of the issues of credibility that arose in that disciplinary complaint are a sufficient basis upon which to dismiss the entirety of this Complaint, involving numerous issues and Complainants.

[105] Dr. Bhullar also made numerous inaccurate statements in various public forums. It is unfortunate that he did so and I do not condone his conduct. It only served to inflame the issues surrounding this Complaint and to polarize the parties. However, this alone does not suggest that the evidence that he gave in this proceeding was inaccurate or false. As noted above, I have relied on the extensive documentary evidence before me which, in many respects, was consistent with Dr. Bhullar's evidence.

[106] During the hearing of this Complaint, Dr. Bhullar failed to answer the questions put to him, spoke of files that were not directly responsive to the questions he was asked and inappropriately pointed to the actions of the BCVMA to suggest that he was subject to differential treatment. I advised Dr. Bhullar, several times, that he was required to answer the question put to him. Despite this warning, Dr. Bhullar often veered into discussing other files that were not relevant to the question put to him. This resulted in a lengthier proceeding and a level of frustration for the parties involved in this matter. However, this factor alone did not lead me to the conclusion that Dr. Bhullar was giving false testimony.

[107] Dr. Bhullar was only one Complainant. That he was the spokesperson for the Complainants does not lead to the conclusion that the issues raised by the different Complainants should be dismissed, even if I were to find that Dr. Bhullar's individual complaint should be dismissed, that he was not credible with respect to some evidence and/or that he is not entitled to a remedy.

VIII EVIDENCE

[108] The evidence in this case is extensive, covering numerous issues. To a large extent, I have set out my review of the evidence on the various topics in appendices to this Decision. After my review of the evidence on each topic, I set out my principal findings, which I have recited in this main body of the Decision. I note, however, that the identification of these findings does not mean I have limited my consideration of the evidence to only those matters identified.

Structure of the BCVMA

[109] The BCVMA is a self-regulating professional association which licenses and regulates the practice of veterinary medicine in BC.

[110] The BCVMA's regulatory powers are set out in the *Act*. Pursuant to the *Act*, the BCVMA has passed a set of Bylaws which describes, in more detail, its operations and Office Holders. The Bylaws may be amended by a two-thirds majority of the membership in attendance at an Annual General Meeting ("AGM") or a Special General Meeting ("SGM"). The BCVMA also has a Code of Ethics which governs the professional conduct of its membership and a set of Practice Standards that govern practice facilities. The BCVMA has the power to amend its Code of Ethics and Practice Standards and has done so from time to time.

[111] The objects of the BCVMA are set out in s. 3 of the *Act*:

> The general objects of the association are to promote and increase the knowledge, skill and proficiency of its members in all things relating to veterinary medicine and to the veterinary profession.

[112] The BCVMA's Code of Ethics sets out the following purpose:

> 1. The purpose of this Code of Ethics is to give a general statement of the principles of ethical conduct required and expected of the members in order to fulfill their duties to the public, their clients and patients, the profession and their colleagues.
>
> 2. The purpose of this Code of Ethics is further to maintain the honour, dignity and competence of the profession and to thereby protect and serve the public interest in the highest medical and ethical standards of the profession in BC.

[113] The Code of Ethics sets out the duties of BCVMA members to it, the public, the profession generally, to colleagues and to their patients and clients. In essence, members are required act with integrity and professionalism.

[114] Sections 14 to 19 of the *Act* set out the specific duties owed by a member to the BCVMA. Included in these duties is the obligation to respond promptly and appropriately to communications received from the BCVMA. A member "should report" to the Registrar a concern about unprofessional conduct or misconduct by another member, including if they believe that the member has contravened the *Act*, has been convicted of an offence in any jurisdiction that is "relevant to the practice of veterinary medicine", or suffers from a "physical ailment" or "emotional disturbance" that impairs the member's ability to practice.

[115] Sections 26 to 30 set out the duties of members to their colleagues. Sections 31 to 36 set out the duties of a member to his or her clients and/or patients. Generally, a member is required to "use and exceed the level of care, skill and knowledge expected of a competent practitioner". Sections 57 to 61 deal with issues of unauthorized practice.

[116] Throughout this Decision, and where relevant and necessary, I set out the relevant provisions of the *Act*, the Bylaws, revised and consolidated up to and including the March 8, 2003 SGM, the Code of Ethics attached as Appendix "A" to the Bylaws, which were revised and consolidated up to and including September 20, 2003, and Practice Standards, which are attached as Appendix "B" to the Bylaws. Where relevant and necessary, I will refer to earlier or later versions of these documents in this Decision.

Council

[117] The rights and powers conferred on the BCVMA and the duties imposed on the BCVMA are exercised through its Council or delegate. Council is required to govern the property and affairs of the BCVMA and may pass resolutions, as necessary, for these purposes. The Council may pass Bylaws to carry out the objects of the BCVMA: *Act*, s. 10. Council is made up of five to nine members elected from the BCVMA membership. The Lieutenant Governor in Council may appoint one member to Council who may, or may not, be a member of the BCVMA: *Act*, s. 6.

[118] Council appoints various committees to carry out the functions required by the *Act* and the Bylaws. The BCVMA has an administrative staff, who have various responsibilities. The Registrar is responsible for administering and overseeing the regulatory operations of the BCVMA and the staff report to her.

[119] Council members hold office for a period of two years (subsequently changed to three years) and may stand for re-election any number of times: Bylaw s. 3. The Council's President convenes a Nomination Committee and that Committee solicits nominations from the general membership. A nomination must be in writing and signed by two members, eligible to vote at AGMs, and the nominee is required to provide his or her consent to the nomination. Thirty days prior to an upcoming AGM, the Registrar advises the membership of those members standing for election; biographical information provided by the candidate is also sent to the membership. The elections are held by mail-in ballot and the results are announced at the AGM: Bylaw s. 17.

[120] Once the elections are completed, and at the first Council thereafter, Council elects a President, a Vice-President and a Secretary-Treasurer, and may appoint other officers as necessary. The Past-President shall be an ex-officio member of Council: Bylaw s. 3. Council may appoint committees from the membership: *Act*, ss. 7 and 8.

[121] Council is required to hold regular meetings and may call other meetings as required. Generally, Council meets seven to eight times per year. A majority of Council members constitute a quorum: Bylaw s. 18. Not all Council meetings were recorded. Initially, recordings were used to assist in the preparation of the Minutes. Once the Minutes had been approved, the tape was recorded over. Sometime in 2005, Council stopped recording its meetings, as the recording equipment was unreliable. Dr. Kirby testified that *in camera* Minutes are not recorded, except for any motions passed, which had to be recorded in the official Council Minutes. During Ms. Osborne's tenure as Registrar, Council's Minutes were not posted on the BCVMA's website.

[122] Council may hold meetings by teleconference. Ms. Osborne testified that teleconferences are held rarely held and, if so, only are for compelling and/or urgent business.

[123] Council is required to hold an AGM once every calendar year, generally in September, and may hold other SGMs as necessary, upon a 30-day notice to the membership: Bylaw s. 19. Council is required to "immediately" hold an SGM upon the written request of at least 20 members, in good standing, of the BCVMA: *Act*, s. 9. The President chairs the Council meetings, AGMs and SGMs. The President "shall not vote on any matter at Council or membership meetings unless the vote could change the outcome", such as when there is a tie: Bylaw, s. 5(2). As a matter of practice, AGMs are recorded.

[124] The BCVMA has developed and revised a Council Handbook, which provides information and guidance on the issues relevant to the role of a Council member. This Handbook contains some of the policies adopted by Council.

[125] The BCVMA publishes newsletters and a magazine. The newsletters are the membership's main source of information about Council's activities and its decisions. Ms. Osborne is the editor-in-chief of both publications.

[126] Applications for registration are made to the Registrar but are considered and approved by Council: *Act*, s. 11(2); Bylaw 10 (2002) and Bylaw 23(2) (2004).

[127] Council had the authority to set membership fees and categories of fees, which is further described in Bylaw 20.

[128] Council is required to appoint a Practice Accreditation Committee, which inspects and accredits practice facilities: Bylaw 39. The roles and responsibilities of PAC are discussed elsewhere in this Decision.

[129] The Council may investigate, in the manner it determines appropriate, whether a member is bringing to the practice of veterinary medicine adequate skill and knowledge. This includes the appointment of between seven and nine members to the Conduct Review Committee: Bylaw 47. It may cause an Inquiry to be held and must appoint an Inquiry Committee, of at least three persons, who may or may not be members of Council or the BCVMA: *Act*, s. 15. Council must require that an Inquiry be held on the request of three members in good standing: *Act*, s. 15(1).

[130] At the conclusion of the Inquiry, the Inquiry Committee files its report, with its findings of fact, with Council. Bylaw 56 sets out Council's process upon receipt of this report. The relevant subsections of Bylaw 56 are:

> (1) The registrar and the member may make submissions to the Council respecting the findings of the Inquiry Committee, sanctions, remedial actions and costs.
>
> (2) The Council shall make its decision under subsection 17(2) of the *Act* on the basis of the report of the Inquiry Committee and any submissions made to it respecting the matter.
>
> (3) The Council in making its decision under subsection 17(2), may
>
> (a) accept the findings of the Inquiry Committee,
>
> (b) if in its opinion the Inquiry Committee has committed a significant procedural, factual or legal error, direct a new inquiry or hearing; or
>
> (c) if in its opinion there is new evidence that was not reasonably available earlier and could reasonably be expected to affect the outcome of the case, require the Inquiry Committee to reopen the matter and hold a further hearing.
>
> (4) The Council may dismiss the case, or determine that the member:
>
> (a) has engaged in misconduct,
>
> (b) is incapable or unfit to practice veterinary medicine overall or in a particular area of veterinary medicine;
>
> (c) is otherwise in violation of the *Act* or rules; or
>
> (d) obtained membership by fraud or misrepresentation.

[131] Section 17 of the *Act* and Bylaw 57 set out the penalties available to Council on a finding of professional misconduct. Section 17 provides:

> ...
>
> (2) The Council may exercise the powers under subsection (3) if, after considering the report of the inquiry committee, it determines that a member
>
> (a) has been guilty of unprofessional conduct,

(b) is incapable or unfit to practice, or

(c) should have his or her practice restricted.

(3) On making a determination referred to in subsection (2), the council may, in addition to requiring a member to pay costs of the inquiry to the association,

(a) suspend the member from practice for a period of time the council considers appropriate,

(b) restrict the member's practice for a period of time and subject to conditions the council considers appropriate, to an aspect of veterinary medicine with respect to which council is satisfied the member has adequate skill or knowledge, or

(c) direct that the member's name be erased from the register.

...

[132] Council is required to provide notice of its decision to the members: Bylaw 57(2).

[133] As noted above, Council has the authority to "erase from the register" a person found to be in breach of the Bylaw and/or the Code of Ethics. The Council, on application, has the authority to refuse to restore a name so erased: *Act*, s. 14. Council may also restore a name to the register: *Act*, s. 16.

[134] Ms. Osborne agreed that Council must carry out its duties fairly, in an unbiased manner, impartially and objectively. When making its decisions, Council must be open-minded and not base its decisions on irrelevant considerations. Council members must be free of personal conflicts of interests or the perception of conflicts of interests. Council must regulate the profession in the public interest, which is its first priority. Ms. Osborne agreed that most members of Council are veterinarians and would have their own personal interests in how the profession is regulated; they have an obligation not to allow their personal interests to interfere with their decision making.

[135] A number of Council members testified before me:

- Dr. John Cruickshank;
- Dr. Wayne Hollingshead;
- Dr. John Twidale;

- Dr. James Andrew Forsyth;
- Dr. Patrick O'Grady;
- Dr. David Kirby; and
- Ms. Ronda Murray.

[136] The general evidence of these Council members, along with their general comments about this Complaint, is set out in **Appendix "C"**.

The Registrar's Office

[137] The Registrar, Ms. Osborne, oversees the office of the BCVMA. The Deputy Registrar, Dr. Brocklebank, and the office staff, Ms. Edwards and Ms. Hadju (McLeod) report to the Registrar. The Complaint Officers, Drs. Sonnendrucker, Roberts and King-Harris contract with the BCVMA and their work is generally directed by Ms. Osborne.

[138] The general evidence of the roles and responsibilities of those who work within the Registrar's office is set out in **Appendix "D"**.

Complainants Registration General

1. General Overview

[139] This part of the Decision sets out the general history and registration processes for each of the Complainants, and former Complainants, and their applications for facility name approvals, which must be obtained from Council before a new animal hospital is opened. The issues related to the registration of Drs. Joshi, Punia and Grewal are discussed elsewhere in this Decision. Facility inspections, which may be done when a new facility opens, or at other times, is also discussed elsewhere in this Decision.

[140] The evidence with respect to the following members is set out in **Appendix "E"**:

- Dr. Hakam Bhullar;
- Dr. Parminder Mangat;
- Dr. Manjinder Hans;
- Dr. Jogpreet Jagpal;

- Dr. Rameez Sharma;
- Dr. Pavitar Bajwa;
- Dr. Tejpal Singh Bhatia;
- Dr. Dalbir Singh Benipal;
- Dr. Varindra Singh Kamboj;
- Dr. Baljit Mrar;
- Dr. Arminder Singh Brar;
- Dr. OmParkash Parbhakar;
- Dr. Rajwinder Singh;
- Dr. Bhupinder Johar;
- Dr. Kulvinder Singh Grewal;
- Dr. Davinder Singh Bath;
- Dr. Pritam Singh Dhaliwal;
- Dr. Harpal Singh Mann; and
- Dr. Rajwinder Singh Kahlon.

[141] The Complainants raised concerns about the facility name approval for Mundy Austin Animal Hospital/Mundy Animal Hospital. The evidence with respect to this issue is also set out in **Appendix "E"**.

2. Findings

[142] I make the following findings with respect to the general issue involving the registration of the Complainants and/or former Complainants:

- The Complainants have alleged that the time, between the time applications for registration were filed and licensure, lengthened after Ms. Osborne became Registrar. I find that, although there was some minor increase in time overall, this is explained by the facts of each application. I find that Ms. Osborne did not delay the application process;

- I find that Council approved applications for registration by teleconference, both before and after Ms. Osborne became Registrar. The method of Council's meetings to consider applications, in-person or by teleconference, did not significantly lengthen the time between the filing of the application and the granting of licensure. I agree with the Respondents that this process applied to applicants, not just to the Complainants, or former Complainants;

- Early in Ms. Osborne's tenure, the Complainants, or former Complainants, were not adversely affected by the fact that they had Indo-Canadian veterinarians as a reference. However, as noted elsewhere in this Decision, these references became the subject of scrutiny;

- I am unable to conclude that the BCVMA's withdrawal of the name Mundy Austin Animal Hospital was done to target Dr. Bhullar and/or the Complainants generally;

- I find that the costs incurred by Dr. Bhullar, in having to change the name, would have been reimbursed, had he provided the necessary invoices, given that the BCVMA had accepted responsibility for its error. That Dr. Bhullar was not reimbursed for his costs was not as a result of inaction on the part of the BCVMA and/or Ms. Osborne;

- I find that Dr. Bajwa was not consulted when Dr. Bassi applied to use the facility name Animal Emergency Clinic of Surrey, in 2004, despite the BCVMA's policy to do so after the issues regarding Mundy Austin Animal Hospital arose in 2002. I find no credible basis for the BCVMA's failure to take this step;

- I find that Council instead approved the name Surrey Animal Emergency Clinic, Dr. Bassi's second choice, which was similar to the facility name, Surrey Animal Hospital, used by Dr. Bajwa, again without first consulting with Dr. Bajwa;

- I accept that "Surrey" is a common geographic area. However, the BCVMA's policy was to consult with members when names were similar and, on the basis of this policy, it should have done so in respect of the facility name Surrey Animal Emergency Clinic, which could be considered even more similar than the first facility name requested by Dr. Bassi.

- In 2008, the BCVMA again approved a facility name, Central Surrey Animal Hospital, which as similar to the facility name used by Dr. Bajwa, without first consulting with him, in accordance with the policy of the BCVMA;

- I find that, when Dr. Johar applied for a new facility name, in 2005, the other veterinarians in the area were consulted. As noted, Ms. Osborne testified that this was standard practice; this practice was not used when an applicant, who was not a Complainant, applied for a facility name similar to Dr. Bajwa's facility name;

- I find that the steps taken by the BCVMA regarding Dr. Johar's facility name application were appropriate, although different from those taken with respect to Dr. Bajwa;

- I accept Dr. Jagpal was understandably upset at the error that the BCVMA made in publishing his vision statement. I agree with Dr. Jagpal that this error might have led some BCVMA members to question Dr. Jagpal's English language abilities. Although I find that Ms. Osborne apologized for this error, rectifying the error required publication of a correction in its Newsletter regarding the error, despite Dr. Jagpal not requesting that this be done. The BCVMA did not do so. Given that the English Language Standard, discussed elsewhere in this Decision, was squarely before the membership and Dr. Jagpal was one of the Indo-Canadian veterinarians who opposed the imposition of the standard, some members may have drawn the inference that his English was less than accurate requiring a more rigorous testing process; and

- I find that the BCVMA accommodated Dr. Bhatia's request to immediately rewrite his Bylaw and Ethics examination so that he could be registered more quickly.

The Conduct Review Committee

[143] The Conduct Review Committee is part of the disciplinary process of the BCVMA. The CRC is created by Council to review those reports submitted to it after investigations into a disciplinary, or other types of complaints, have been completed by the Complaint Officer(s). The CRC has authority to take a number of steps in respect of a complaint, which is set out in the Bylaws.

[144] The evidence with respect to the Bylaws related to the CRC and the functions of the CRC are set in **Appendix "F"**.

[145] Two members of the CRC testified before me, Drs. Ashburner and Craven. Their evidence about the roles and responsibilities of the CRC and their general views of this Complaint are set out in **Appendix "F"**. Ms. Osborne also testified about the roles and responsibilities of the CRC and her evidence, in this respect, is set out in **Appendix "F"**.

Although Dr. Sekhon, also a member of the CRC testified, he did not speak to general issues regarding the CRC and his evidence is not included here.

Rumours/Hostility/ Conflict/Animosity towards Dr. Bhullar and other Complainants

[146] The Complainants assert that a number of rumours were circulating about them and their practices which served to inform the decisions of the BCVMA. Many witnesses testified about the rumours that were circulating at the time relevant to this Complaint, including whether they had heard such rumours and/or were influenced by them. I do not propose to repeat this evidence. Many of these alleged rumours are set out elsewhere in this Decision.

[147] The Respondents' witnesses, who testified about the rumours that were allegedly circulating, included:

- Dr. Twidale;
- Dr. Hollingshead;
- Dr. Cruickshank;
- Dr. Forsyth;
- Dr. Kirby;
- Ms. Murray;
- Dr. Ashburner;
- Dr. Craven;
- Ms. Osborne;
- Dr. King-Harris;
- Dr. Roberts;
- Dr. Brocklebank;
- Dr. Runnells;
- Dr. Rana; and

- Dr. Sekhon.

[148] I find that there were rumours, set out below, circulating about the Complainants, or some of them, at the time of the events giving rise to this complaint. I find that not all the Respondents' witnesses heard each of these rumours and not all the Respondents' witnesses were influenced in their investigative roles and/or decision making functions based on these rumours. This is discussed throughout this Decision.

[149] The rumours circulating, at that time, were:

- Dr. Bhullar was the "ringleader" of the group of Complainants and he had four "loyal lieutenants", including Drs. Bajwa and Johar and that Dr. Bhullar was the mastermind of the group and that he was "evil";
- The Complainants did not euthanize animals but instead used them for training purposes, including bringing animals from the interior for training purposes;
- The Complainants kept poor medical records, destroyed medical records and/or altered medical records;
- The Complainants used sub-standard surgical materials, did not sterilize surgical equipment, did not anesthetize animals before surgery and generally had poor surgery techniques;
- The Complainants administered expired drugs to patients and treated animals poorly;
- The Complainants treated their employees poorly, paid low wages, treated them like "slaves" and generally engaged in "sweat-shop" like working conditions;
- "A" clinics, which was a reference used by some to describe some Indo-Canadian low-cost clinics, shared equipment for purposes of inspection and/or used old equipment and had a lower standard of practice;
- The Complainants were poorly trained and cheated on their examinations in order to obtain their CQs and/or the CQ did not fully assess the ability of new Indo-Canadian veterinarians to practice small-animal medicine;
- Some individuals feared for their personal safety *vis-à-vis* Dr. Bhullar;
- Some veterinarians, who worked for the Complainants, communicated poorly in English;

- Unlicensed veterinarians were working in Dr. Bhullar's clinic;
- The Complainants exploited new immigrants and engaged in unfair business arrangements with newly licensed veterinarians; and
- The Complainants intimidated others, were dishonest, evil, and confrontational.

[150] I find that it was unfortunate that the BCVMA engaged in circulating and/or repeating these rumours that were, for the most, unsubstantiated. This served to further cast aspersions on the Complainants' practices. I did not accept that such rumours had no impact on the decisions and steps taken by the BCVMA. For example, Dr. King-Harris testified about the meetings he had with two members, who made numerous allegations about Dr. Bhullar's veterinary and business practices, which Dr. King-Harris said influenced the way he carried out his investigation involving Dr. Bhullar.

Valerie Osborne and Chronology of Attacks

[151] The Complainants argue that the Respondents allowed an "extraordinary" level of conflict to arise between them. The Respondents had an obligation to treat the Complainants appropriately, without animosity or discrimination. Generally, the Complainants argue that the BCVMA took no steps to reduce this conflict, including hiring others, outside the organization, to assist in resolving this conflict. For example, it could have hired different investigators, or outside lawyers, to deal with the disciplinary complaints involving the Complainants but did not do so. As noted, the Respondents took no steps to dispel the rumours that were circulating at the time, which might have served to address some of the conflict.

[152] Ms. Osborne testified at length about what she considered to be "attacks" against her and the BCVMA. To assist her in this evidence, Ms. Osborne, with assistance from the lawyers for the Respondents, prepared a document titled "Chronology of Attacks By the Complainants On the British Columbia Veterinary Medical Association & Valerie Osborne" (Exhibit 955). Ms. Osborne testified about each of the items listed in Exhibit 995. The documents referred to in Exhibit 955 were entered as Exhibits at different points during the hearing; if evidence was not provided about the item or if it was not marked previously, it was removed from Exhibit 955 and that Exhibit was amended accordingly.

I do not propose to set out all of Ms. Osborne's evidence as it continued over several days and is fully captured in the Transcripts. However, I set out a summary of that evidence in **Appendix "G"**.

[153] I note here that some of the allegations made by Ms. Osborne during the course of her evidence regarding the alleged "attacks" were not put to Dr. Bhullar or the other Complainants during their evidence.

[154] I accept that Ms. Osborne understood that she, and the BCVMA, was under "attack" by Dr. Bhullar and others in the Complainant group. The Complainants allege that Ms. Osborne's evidence confirmed their assertion that the BCVMA was in a conflict with them, from at least the spring of 2004, such that it could not deal with them fairly and without discrimination. This is discussed throughout this Decision. Whether this was in fact the case, is discussed elsewhere. However, I note that, given the level of animosity that was exhibited by Ms. Osborne, and some members of Council, towards Dr. Bhullar and others, it is questionable whether processes faced by the Complainants were administered fairly. I accept that the Complainants would perceive that they may not have been treated fairly. However, the question I must address is whether this alleged unfair treatment was discriminatory pursuant to the *Code*.

English Language Standard

1. General Overview

[155] There are a number of international English language proficiency tests that are administered to foreign-trained professionals for whom English is not their first language and who want to practice their profession in Canada.

[156] The tests adopted by the BCVMA were the TOEFL (Test of English as a Foreign Language), TSE (Test of Spoken English) and TWE (Test of Written English) referred to collectively in this Decision as the "TOEFL suite of tests". Of this suite of tests, the one that is at issue in this complaint is the TSE, in particular, the score required by the BCVMA for foreign-trained veterinarians to become registered with it. The TSE score set by the BCVMA was 55; the possible scores ranged between 20 and 60. The BCVMA's

TSE score requirement is referred to as the English Language Standard for purposes of this Decision.

[157] The particulars of the allegations regarding the English Language Standard are set out in the pleadings and summarized in *Brar (No. 1)*. The parties also made submissions regarding the allegations. The following is a summary of the pleadings and submissions of the parties.

[158] The Complainants allege that the English Language Standard was imposed, at a level that was unreasonable to limit the registration of Indo-Canadian veterinarians, operating low-cost clinics in British Columbia and that both the intent of adopting the English Language Standard, and its effect, were discriminatory. The English Language Standard had an adverse impact on some individual applicants and on the Complainants generally. The Complainants alleged that language is "tightly associated" with a person's place of origin, race and ancestry. The Complainants allege that the English Language Standard was higher than any other standard imposed by a professional licensing body in British Columbia, Canada and/or in the United States. The Complainants allege that the process of establishing the English Language Standard, through the "Standard-Setting Workshop", was tainted by discrimination. The Complainants also allege that the information provided by the BCVMA to its members, through the process of adopting the English Language Standard, was inaccurate and that the BCVMA failed to appropriately consult with the membership.

[159] The Complainants allege that the English Language Standard is not a *bona fide* occupational requirement and, further, that the BCVMA failed to provide reasonable accommodation for those foreign-trained Indo-Canadian veterinarians who wanted to practice in British Columbia. The Complainants allege that the interview option was not a reasonable accommodation to the English Language Standard as the pass score was set at a level equivalent to the high TSE score.

[160] The BCVMA says that it adopted the English Language Standard to provide an objective method of assessing the English language proficiency of foreign-trained veterinarians applying for registration in British Columbia pursuant to s. 11 of the *Veterinarians Act*. The BCVMA argues that setting a requirement that a person be

proficient in English, for membership in an occupation, is not discriminatory. The BCVMA argues that it established an English Language Task Force in November 2003 to consider the issue of English language testing and it was this Task Force that recommended the TOEFL suite of tests be adopted. A Standard-Setting Workshop was convened, which included members of the Indo-Canadian community and, through this process, the TSE score was set at 55; this score was adopted by Council by way of policy on May 1, 2004 and became the English Language Standard. The BCVMA agrees that it established an English Language Standard that was higher than other professional regulatory bodies.

[161] The BCVMA says that none of the Complainants have been adversely affected by the English Language Standard. The BCVMA says that since May 2004, when the English Language Standard was put in place, many applicants, including Indo-Canadians, have met the BCVMA's objective standard and been registered. Further, foreign-trained veterinarians have been accommodated through a process of waivers, an interview option and Council's obligation to exercise its discretion to accept equivalent scores from other internationally recognized English language testing services.

[162] The BCVMA argues that the Complainants' final argument "deviated entirely" from that which was advanced throughout this proceeding. Generally, it argues that the Complainants advanced an argument of "direct and intentional" discrimination and, in their final argument, argue that the BCVMA engaged in "indirect and adverse impact discrimination". I disagree with this assertion. The pleadings and evidence clearly reflect that the Complainants were pursuing an allegation that the English Language Standard adversely affected Indo-Canadians, both individually and as a group, and that it was implemented with the intention to limit those from India and the Punjab from being registered with the BCVMA.

[163] The evidence with respect to the English language standard is set out in **Appendix "H"**.

2. Findings

[164] Based on the evidence outlined in **Appendix "H"** to this Decision, I make the following findings of fact with respect to the English Language Standard. For ease of reference, I have set out the findings, in the same manner, and following the same structure, as the evidence was referred to in **Appendix "H"**.

[165] I make the following findings with respect to the Surrey Veterinary Association ("SVA"):

- Dr. O'Grady was instrumental in establishing the SVA and was instrumental in bringing those issues identified by the SVA to be of concern to the attention of the BCVMA. I find that members of the SVA were subsequently involved in the steps that led to the BCVMA implementing the English Language Standard and/or who met with the BCVMA to discuss English proficiency issues, including Drs. O'Grady, Virani, Sekhon, Hurdal, Schild, Maan, Kocheff and Rana;

- SVA discussed those low-cost clinics owned and/or operated by Indo-Canadians including those clinics owned by Drs. Bhullar and Bajwa. I find that the SVA specifically discussed whether these veterinarians could meet the BCVMA's practice and facility standards while offering low-cost services. I find that members of the SVA specifically discussed Dr. Bhullar in a negative manner and then later circulated these unsubstantiated rumours about his lower practice and facility standards, despite there being no evidence to support their claims. Although some members of the SVA, such as Dr. Kaler, testified that Dr. O'Grady had not raised concerns about Dr. Bhullar's business practices at the SVA's meetings, I found Dr. Kaler's evidence less than truthful in this respect;

- I find that the comments made by Drs. Sekhon and Maan at the SVA meetings about the education of graduates from the Punjab Agricultural University ("PAU") graduates not meeting British Columbia standards were without foundation. These were made to cast aspersions on Dr. Bhullar and the Indo-Canadian veterinarians associated with him. They suggested that PAU graduates required further training in the North American context to be successful. The evidence confirmed that many Indo-Canadian veterinarians have not done further training before being licensed to practise in British Columbia, yet they have had successful practices. I note that Dr. Bhullar did take the one-year Educational Commission for Foreign Veterinary Graduates ("ECFVG") program offered in the United States;

- I find Drs. Maan and Sekhon's comments, about the ability to cheat on the CPE, were not credible. I find these comments were made to call into question the competence of those veterinarians who took the CPE, which in this case, were the Indo-Canadian veterinarians who were trained at the PAU. I find that there were ongoing discussions of unlicensed practice occurring at Atlas-Vancouver, despite there being no credible evidence to support this allegation;

- I find that Dr. O'Grady and some other members of the SVA, were concerned about the opening of low-cost Indo-Canadian clinics in his area and the competition from these low-cost clinics. I accept that not all members of the SVA had this concern;

- I find that Dr. O'Grady and other members of the SVA discussed opening a clinic close to Atlas-Vancouver when they learned that Dr. Bhullar may be opening a low-cost clinic in Surrey. They planned to open such a clinic to address the competition that such a new clinic might pose for some veterinarians in the Surrey area;

- I find that Dr. Bajwa, who opened Surrey Animal Hospital, was not invited to attend the SVA meetings;

- I find that some members of the SVA, Drs. O'Grady, Hurdal, Virani, Sekhon and Maan, advertised together to address the competition from both the SPCA, in 2000, and Surrey Animal Hospital in 2002, and the low-cost services these clinics were providing;

- I find that the SVA discussed English language proficiency issues and the ability of the public to understand foreign-trained veterinarians, including those from the PAU. Although Dr. O'Grady testified that he had no difficulty understanding foreign-trained Indo-Canadian veterinarians, he was instrumental in circulating rumours to the contrary and was subsequently significantly involved in the implementation of the English Language Standard. I find that he became involved in this issue, in part, because he was concerned about the competition posed by the group of Indo-Canadian low-cost veterinarians involved in this Complaint; and

- I find that, although Drs. Rana, Maan and Sekhon may not have specifically said that the introduction of an English language test was being done to stop the influx of foreign-trained veterinarians, their comments about the education of PAU graduates and their concerns about practice standards could lead to this inference being drawn.

[166] I make the following findings with respect to the background to the implementation of the English Language Standard:

- I find that, during Dr. Leung's tenure, he raised no concerns about the method of assessing the English proficiency of new applicants. There was no evidence before me that Dr. Leung viewed this process as subjective, unfair or biased. I agree that, during Dr. Leung's tenure, everyone was licensed to practice and no concerns were raised about their English proficiency;

- I find that there was no evidence that any applicant to the BCVMA was concerned about the assessment of English proficiency being a biased, unfair and/or subjective process prior to the implementation of the English Language Standard in May 2004;

- I accept that Ms. Osborne was of the view that it would have been easier to 'keep out' foreign-trained veterinarians from practicing in British Columbia under the old interview system as she believed it to be a subjective process. However, there is nothing to support Ms. Osborne's view, as everyone was licensed under the system in place in 2002;

- I do not accept Ms. Osborne's evidence that she was of the view that the BCVMA was at risk in its method of assessing English proficiency when she commenced employment with the BCVMA in 2002. The BCVMA continued licensing new applicants between April 2002 and May 1, 2004; Ms. Osborne did nothing to address this process nor did she take steps to have Council introduce some interim measures to "objectively" assess the English proficiency of new applicants. Given Ms. Osborne's propensity to be rule-bound, I found her actions, during this period, did not reflect her alleged views or concerns about the risk to the BCVMA if it failed to implement an "objective" process to assess English proficiency; and

- I find that the Complainants, and others, were initially and reasonably, concerned about the introduction of a new English assessment process as it might affect their ability to practice in British Columbia if retroactive.

[167] I make the following findings with respect to the Corbett Lake fishing trips:

- I find that Dr. O'Grady repeated unsubstantiated and far-reaching allegations about Dr. Bhullar and Atlas-Vancouver to Dr. Cruickshank, a member of Council, at various times, including at the Corbett Lake fishing trips. I find that, given the context, and the discussion between Ms. Osborne and Dr. Cruickshank on June 25, 2002, that Dr. O'Grady had discussed his concerns about Dr. Bhullar at the June 2002 Corbett Lake fishing trip;

- I find that Dr. O'Grady raised the English language proficiency of some Indo-Canadian veterinarians during his discussions with Dr. Cruickshank. I find that Dr. O'Grady also advised Dr. Cruickshank that some veterinarians were engaged in unlicensed practice and that the working conditions at Atlas-Vancouver were poor and that Dr. Bhullar paid low-wages. In relaying these concerns to Ms. Osborne, I find that Dr. Cruickshank used the word "slavery" to describe the working conditions at Atlas-Vancouver;

- I find that Dr. Forsyth was not involved in the discussions between Drs. O'Grady and Cruickshank about Indo-Canadian veterinarians at these fishing trips;

- Dr. O'Grady was not required to put his concerns, in writing, before Dr. Cruickshank relayed them to Ms. Osborne on June 25, 2002. Despite there being no written complaint that could be investigated, these discussions were subsequently repeated. Both Council and Ms. Osborne were subsequently involved in processing of disciplinary complaints involving those who were the subject of this negative commentary. I find that these unsubstantiated rumours served to create a negative view of Dr. Bhullar before Council and Ms. Osborne; and

- I disagree with Dr. O'Grady's assertion that he was not violating the BCVMA's Code of Ethics when he relayed these rumours to Dr. Cruickshank because Dr. Cruickshank was on Council. The BCVMA's Code of Ethics requires that members not engage in critical comments about a colleague. Unsubstantiated rumours should not be relayed to Council members who then may be later involved in dealing with disciplinary matters involving those same veterinarians, as was the case with respect to the Complainants.

[168] I make the following findings with respect to the letter of June 27, 2002:

- I find that Ms. Osborne had not met with, or spoken to, Dr. O'Grady prior to her discussions with him regarding the process to be followed when he intended to introduce a bylaw change to the English proficiency testing requirements, which request was contained in his letter of June 27, 2002;

- I find that Ms. Osborne could not have known Dr. O'Grady's motivations for introducing the changes to the assessment of English proficiency prior to their discussions or her discussions with Dr. Cruickshank;

- Contrary to Dr. O'Grady's assertion, I find that he asked Dr. Virani to co-author the June 27, 2002 letter, which was written on behalf of the

SVA, to counter the suggestion that the proposal was motivated by racism;

- I find that the SVA had no basis, other than anecdotal rumours, to request a change in how English proficiency was assessed by the BCVMA. Dr. O'Grady had no substantive basis to suggest that clients were unable to speak in English with their foreign-trained veterinarians; he had no such concerns. Dr. Virani testified that he had difficulty communicating with some Indo-Canadian veterinarians, who he suggested were not licensed, who he did not identify. I gave this evidence no weight as a result; and

- Council directed Ms. Osborne to speak to both Drs. O'Grady and Virani to determine if they would accept the Canadian Veterinary Medical Association ("CVMA") processes as addressing their concerns about the BCVMA's assessment of English proficiency set out in their letter. I find that Ms. Osborne spoke to Dr. O'Grady but not to Dr. Virani, suggesting that it was Dr. O'Grady that was the actual driver of the request for change.

[169] I make the following findings with respect to the meeting between Drs. Cruickshank, Sekhon, Maan and Ms. Osborne on August 7, 2002:

- I find that Ms. Osborne's and Dr. Cruickshank's meeting with Drs. Sekhon and Maan on August 7, 2002, outside the BCVMA, to be unusual;

- Drs. Maan and Sekhon were not required to put their concerns in writing before the meeting or after the meeting or to state, in writing, why they were reluctant to do so. This resulted in yet another situation where unsubstantiated, serious and far-reaching allegations, which called into question the training and competence of Indo-Canadian veterinarians, were brought before the BCVMA. Drs. Maan and Sekhon identified a number of issues, including that there was "corrosion" of practice standards occurring at some clinics, facility inspections were not rigorous enough and did not address these practice concerns, the Certificate of Qualification ("CQ") process did not adequately assess the competence of a foreign-trained veterinarians, including those from the PAU, the working conditions at Atlas-Vancouver were poor, unlicensed practice was occurring at Atlas-Vancouver and that the low-fees were being charged by Atlas-Vancouver and other similar clinics were unprofessional. Dr. Bhullar and others, were not given an opportunity to refute such allegations, despite them being discussed within the BCVMA;

- Despite this Ms. Osborne and Dr. Cruickshank did not refuse to listen to Drs. Maan and Sekhon's allegations, absent those allegations being

reduced to writing. I find that such allegations, which were inflammatory and at times, racist, served to place Dr. Bhullar and those associated with him in a negative light before the BCVMA and negatively influenced the BCVMA's views of Dr. Bhullar and others; and

- I was not persuaded that this meeting, held in August 2002, led to the BCVMA's decision to implement a system of unscheduled inspections, discussed elsewhere in this Decision.

[170] I make the following findings with respect to the August 9, 2002 Council meeting:

- Despite its limited knowledge about the CVMA's processes to assess English proficiency, with little or no substantive information that the English proficiency of its registrants was problematic or having engaged in a fulsome discussion of the issue, Council passed a motion to adopt the TOEFL suite of tests at its August 9, 2002 teleconference meeting. I find that there was no information to suggest that this motion was necessary to protect the public interest. The motion was passed despite some Council members acknowledging that the CVMA's processes were an adequate assessment of English proficiency;

- There was no information before Council that complaints, raising English proficiency issues, were increasing. There was no research done with respect to what other regulatory bodies had in place to assess the English language proficiency of applicants for registration;

- Ms. Osborne was always of the view that Council could adopt the change to the assessment of English proficiency by way of policy. However, I find that this was not the initial course being pursued by the BCVMA in August 2002, when the issue was first introduced to the membership;

- The membership was provided with notice that it would be entitled to vote on the motion to amend the Bylaw to introduce the TOEFL suite of tests to assess English proficiency. After receiving this notice, Drs. Bhullar and Rana sent a letter to the BCVMA raising their concerns about this change; I find that Council was not provided with this letter;

- In its motion, passed before the AGM and at the September 12, 2002 Council meeting, Council confirmed it would be withdrawing the motion at the AGM but that it would assure the membership that Council would continue to consult with it. I am not persuaded that consultation through a notice in the Newsletter, published at a later date, was what was anticipated by the membership, especially those ho would be affected, namely Indo-Canadian veterinarians;

- Although Dr. Cruikshank suggested that the BCVMA had not decided to deal with the matter through a policy change, this information was included in the letter to the CVMA, sent after September 2002 Council meeting, and is what eventually occurred. At this early stage, and in September 2002, Council, and Ms. Osborne, fully intended to proceed to implement the change to the English proficiency requirement by way of a change in policy; and

- Although Council put the proposed amendment to the membership for a vote, at the September 2002 AGM, the vote did not take place and the matter proceeded by way of a policy change, without a public discussion or a vote on the matter.

[171] I make the following findings with respect to the September 2002 AGM:

- I find that Dr. Sekhon advised Dr. Bhullar, prior to the commencement of the September 2002 AGM, that regardless of the opposition to the introduction of the TOEFL suite of tests, Council was going to adopt it. I based this finding not only on the evidence of Dr. Bhullar but also on the evidence of both Drs. Jagpal and Benipal, who as noted elsewhere, I found to be credible witnesses;

- I find that at the September 2002 AGM, some members spoke against the introduction of an amendment to the bylaw; there was a lot of discussion about this change. I find that Dr. Cruickshank left the membership with the impression that the bylaw would be returned to it for a vote. I accept that Ms. Osborne had advised the membership that the change to the assessment of English proficiency could be adopted though a change to the BCVMA's registration policy;

- Although Council may not have been legally required to consult with the membership regarding the proposed change to how it assessed the English proficiency of new applicants, Council advised the membership that it would do so. I find that the inference that can be drawn from its change in process was to avoid having a full and public debate on the issue;

- I agree with Dr. Hollingshead that, when a change is made to a bylaw, there is always the possibility of opposition. In the absence of a more fulsome consultation process, including having a membership discussion and vote, Council could not assess the nature and extent of the opposition;

- I agree that membership may vote, in their self-interest, to support a change in a bylaw. I find that Dr. O'Grady was acting in his own self-interest, to address competition in his area from Indo-Canadian veterinarians, when he introduced and later pursued the English

language issue, including becoming the chair of the English Language Task Force and organizing the Standard-Setting Workshop. I find that Council chose to ignore the possible bias on the part of Dr. O'Grady and that Dr. Cruickshank and/or Ms. Osborne did not bring this possibility to its attention;

- I find that the change to the assessment of English proficiency proposed by the BCVMA was a further hurdle which would have to be met by foreign-trained veterinarians, as suggested by some who attended the 2002 AGM;

- I find that Dr. O'Grady asked Dr. Virani to speak at the AGM to reduce any suggestion that the bylaw was racially motivated; and

- I find that Ms. Osborne advised the membership that the change to the English language proficiency requirements would have no impact on existing members as they would not be required to take the TOEFL suite of tests or to otherwise establish English proficiency.

[172] I make the following findings with respect to Dr. Forsyth's letter read at the September 2002 AGM:

- Dr. Forsyth read a letter from a client at the September 2002 AGM. I find that Dr. Forsyth was in favour of an English language test when he read this letter, contrary to his assertion otherwise. Had Dr. Forsyth not supported the bylaw, I am not clear why he would have taken the step to advise his client of the BCVMA's upcoming discussion, obtained her letter and read it in a public forum and within the context of the membership discussing the English proficiency requirements;

- I find that Dr. Forsyth's sole purpose for reading the letter to the membership was to bring to the attention of the membership an English communication issue allegedly of concern to one of his clients. Dr. Forsyth took no steps to confirm the client's allegations before reading the letter at the AGM or to speak to the veterinarian who was the subject of the client's concerns. He made the assumption that the veterinarian had difficulty communicating in English and then relayed this information in a public forum to the membership. By allowing Dr. Forsyth to read the letter, Council permitted unsubstantiated criticism of an unidentified Indo-Canadian veterinarian to be disseminated amongst the membership;

- I find that anyone practicing veterinary medicine in the Lower Mainland would have been able to identify the clinic being discussed; it was emergency service clinic in Coquitlam, of which there is only one owned by an Indo-Canadian veterinarian. I am not persuaded that because Ms. Osborne and/or Drs. King-Harris, Morgan or Roberts

could not identify the clinic, others would also not be able to do so. Ms. Osborne does not work in Coquitlam nor does she practice veterinary medicine. Given that Dr. Morgan did not testify, I can make no finding about her assessment. Although Drs. King-Harris and Roberts are veterinarians, they do not practice in the Lower Mainland nor are they regularly involved with those veterinarians who do so. Given that the clinic could be identified by at least some of those who attended the AGM, the Designated Member was understandably upset that the reading of the letter might tarnish his reputation within the veterinary community;

- I agree with Dr. Jagpal and find that the membership may have been left with the impression that all Indo-Canadians had difficulty communicating in English with their clients;

- I find that the BCVMA had received Dr. Bhullar's complaint about Dr. Forsyth's actions at the September 2002 AGM, on November 24, 2002, but chose to not to deal with it at the time. A complaint file was not opened until April 2003. No reasonable explanation was provided for why this delay occurred;

- I find that Ms. Osborne was unnecessarily dismissive of the concerns raised by Dr. Bhullar and those raised through his lawyer, Mr. Price. I am not persuaded that Ms. Osborne could not have had a meaningful discussion with Mr. Price about Dr. Bhullar's concerns as she had suggested;

- I find that Ms. Osborne delayed in providing Dr. Bhullar with a copy of the tape of the September 2002 AGM. Had she done so in a timely manner, Dr. Bhullar's complaint against Dr. Forsyth might have been resolved as Dr. Bhullar suggested he was acting under the assumption that Dr. Forsyth had read the letter with an East-Indian accent, which was in error. I note that Dr. Bhullar attended this meeting and I was not clear why he was left with the impression he had; and

- I find that Ms. Osborne orally advised Dr. Bhullar of the CRC's decision to dismiss his complaint in July 2003. Had she not done so, I find that Dr. Bhullar would have continued to pursue the matter. However, I find that the delay in sending the closing letter, which was standard practice in all complaints, from July 2003 to September 2007 was unacceptable and disrespectful of Dr. Bhullar's concerns and I accept that it was reasonable that Dr. Bhullar would have viewed it as such.

[173] I make the following findings with respect to the March 2003 Bylaw revisions:

- I find that the BCVMA was entitled to, and did review, its Bylaws from time to time;

- I find that the change to the wording of the Bylaw in March 2003, regarding English proficiency, was substantive. The Bylaw was changed from the BCVMA requiring that an applicant have "knowledge of English language sufficient for the person to carry on veterinary practice" to the applicant being required to provide "proof" of proficiency in the English language, as may be required by Council from time to time. Further, as noted, this revised Bylaw was later relied on to support the BCVMA's introduction of the English proficiency testing requirements;

- I agree that the membership raised no concerns about the revisions made in March 2003, including the change noted above. I find that they failed to do so as they were under the impression that the revisions made no substantive change to what was previously in place for the assessment of English proficiency and they were not specifically directed to this change by Council and/or Ms. Osborne;

- I find that Ms. Osborne directed her staff to start the revisions to the Instruction for Applicants for registration and that it was posted on the BCVMA's website in the Spring of 2003. The document noted that applicants would be required to pass the TOEFL suite of tests in order to be registered if they were from a jurisdiction where the primary language was not English. This document was posted before Council had further considered the issue and passed the final motions required to implement the change to the English proficiency requirements. I find that this would have created the impression that the BCVMA intended to implement the TOEFL suite of test regardless of the outcome of any of its subsequent procedures; and

- Although at different times the BCVMA suggested that the 2003 Bylaws did not substantively change the Bylaw related to English proficiency, I find Council relied on this revised Bylaw to support its motion to adopt the TOEFL suite of tests in January 2004 and March 2004. As Dr. Twidale testified it was more difficult to change a bylaw than to proceed by way of policy. I find this was why the BCVMA proceeded in the manner it did.

[174] I make the following findings with respect the 2003 Council elections:

- Dr. Rana ran for Council on a platform that included criticisms of the practice standards and the education of Indo-Canadian veterinarians graduating from the PAU. I find his assertions to the contrary to be disingenuous;

- I find that Dr. Rana's allegations made to Ms. Osborne about there being threats to his personal safety were overstated and were done to call into question Dr. Bhullar's behaviour and professionalism. These threats were never substantiated;

- I find that Dr. Rana was encouraged to run for Council so that Council would be more diverse. I find that, this in and of itself, is an appropriate step to take, given the number of foreign-trained veterinarians practising in British Columbia; and

- Dr. Rana was appointed to the Practice Accreditation Committee after he was not elected to Council in September 2003. Council is entitled to make appointment to its committees. I find that Council did not consider whether Dr. Rana could approach his duties and decision-making functions with an open and unbiased view towards Indo-Canadian veterinarians, Dr. Bhullar, his business associates and/or Dr. Bhullar's employees, given his previous public and private comments and concerns. There is nothing to suggest that it did so.

[175] I make the following findings with respect to the English Language Task Force:

- I was not persuaded that the method of assessing English proficiency prior to April 2002 was an illegal delegation to the Registrar as Ms. Osborne asserted; no such claim had ever been made by any applicant, Dr. Leung and/or Council. In any event, as Dr. Twidale correctly pointed out, the method of how English proficiency was assessed was up to Council;

- Council passed the motion to establish the English Language Task Force at its November 1, 2003 meeting. Although Council directed the Task Force to consider whether an English proficiency test was necessary at all, I find that the Task Force did not do so and Council did not further address this issue or raise any concerns that the Task Force had failed to do so. I find that, by this stage, Council was already of the view that English testing would be implemented. Further, all members appointed to the Task Force were in favour of English language testing; given this, I find it was not surprising, that the Task Force did not address whether such a test was necessary;

- Dr. O'Grady was appointed by Council to chair this Task Force despite his previous negative commentary about Indo-Canadian veterinarians, who would be subject to any new English language testing requirements. Neither Dr. Cruickshank nor Ms. Osborne advised Council of their previous discussions with Dr. O'Grady so that Council could have fully considered whether to appoint Dr. O'Grady to chair this Task Force. Ms. Osborne often testified that she advised Council on process matters and I find that providing Council with this

information about Dr. O'Grady's possible views and bias fell within this responsibility. As a result, I find that Council did not fully canvass Dr. O'Grady possible bias towards Indo-Canadian veterinarians, or that there may be a perception of bias. I find that the appointment of Drs. Hurdal and Sekhon to this Task Force raised similar concerns given their views about the veterinary and practice standards of Indo-Canadian veterinarians and, in particular, Dr. Bhullar and the other Complainants;

- Council did not place a call for volunteers to participate oin this Task Force. I agree with Dr. Forsyth's assessment that there was no present crisis requiring the implementation of an external English test;

- I find that Dr. O'Grady and Ms. Osborne directed the work of the Task Force and wrote the Report(s) that were eventually given to Council. The other members of the Task Force had little, if any, involvement;

- I find that, contrary to Dr. O'Grady's assertions, having an English language requirement that was different from and more onerous than other jurisdictions would necessarily deter some Indo-Canadian veterinarians from coming to British Columbia;

- I find that, although the membership was asked to comment on the work being done by the Task Force, they were not provided with the Task Force's Report(s). The Reports were not placed on the BCVMA's website, which would have been a simple, inexpensive and an immediate method to distribute them. I find that, as a result, meaningful commentary was not possible. I find that the BCVMA provided no reasonable basis for the failure to take this step;

- The January 2004 Task Force Report included a review of the English language requirements of some professions but not all those professions that Council had requested be reviewed. The Report also did not include the English proficiency requirements of any other veterinary licensing body, except for Ontario. Generally, I found that the Report did not contain all the information sought by Council and it was a generally incomplete review of what was occurring in the various professions, including within the veterinary profession;

- I find that when Council passed its initial motion requiring that applicants pass the TOEFL suite of tests, on August 9, 2002 and again on January 15, 2004, it had no evidence to support the conclusion that some veterinarians did not have sufficient English proficiency to practice veterinary medicine. The evidence they had was anecdotal. I find that there was no comprehensive review of complaints filed with the BCVMA to assess if the lack of English proficiency gave rise to an increase in the number of complaints being made to the BCVMA;

- I accept that Council may change certain registration requirements through a change to one or more of its policies. However, Council had sent the membership Notice that it intended to amend its Bylaw to require specific testing in 2002. It did not bring the matter back to the membership at any time for a vote. Although Council may not have been legally required to do so, the membership, to whom Council is accountable, fully expected this to occur;

- By this stage, Council had already decided to adopt the TOEFL suite of tests. I find that contrary to Ms. Osborne's evidence, although the motion to adopt this suite of tests would be returned to Council for further consideration, there was nothing to suggest that Council did so; the motion was not changed or otherwise altered. It was to return to Council a second time because it was a policy change and this was the required process. To suggest that Council may not adopt the motion as previously passed was misleading;

- I do not accept the BCVMA's assertion that it had met its promise/obligation to consult with the membership by publishing a Notice in the Newsletter asking for comment. I find that this request was significantly different from the impression left with the membership that the matter would be returned to it for consideration in a public forum;

- I find that the time for the membership to respond was problematic. The members were to respond by April 2, 2004; however, Council intended to consider the issue at its March 6, 2004 meeting, which it did and simply adopted the TOEFL suite of tests; the Standard-Setting Workshop followed the next day;

- Although, Dr. Forsyth suggested that Council could reconsider its decision to adopt the TOEFL suite of tests, if the matter was adopted through policy, it never did so, despite the opposition it faced from the Complainants and others. It took no steps to consider and/or to reconsider the basis upon which the change was made;

- At the January 2004 Council meeting, Drs. O'Grady and Forsyth raised concerns about the licensing of foreign-trained veterinarians from unaccredited universities, which includes the PAU. A Licensing Task Force was struck and both Drs. Forsyth and O'Grady were appointed to this Task Force. I find that, based on all the evidence, it is reasonable to infer that both Drs. O'Grady and Forsyth were focused on limiting the registration of Indo-Canadian veterinarians, both through the English language testing process and through a review of the licensing requirements for those same foreign-trained veterinarians; and

- The January 2004 BCVMA Newsletter noted that the BCVMA would require all applicants to pass the TOEFL suite of tests despite the fact that the scores were not yet determined, what other tests might be acceptable and/or what waivers would be available.

[176] I make the following findings with respect to the Standard Setting Workshop:

- I find that there was no general call for participants for the Standard-Setting Workshop. I am not persuaded that such a call could not have been made; it could have been included in one or more of the BCVMA's Newsletters or published on the BCVMA's website. I find that, had there been a general call for volunteers, some of the Complainants may have asked to participate, for example Drs. Bajwa, Benipal, Brar, Manjinder Hans, and Bath. The Workshop occurred the day after Council passed its motion confirming that foreign-trained applicants would be required to take the TOEFL suite of tests. Again, the timing of the process is concerning, especially since there was no evidence of urgency;

- All the members of the Standard-Setting Workshop were chosen by Dr. O'Grady or those known to the participants he had selected; some were members of the SVA. Some of the participants had engaged in negative chatter about Dr. Bhullar and other Indo-Canadian veterinarians; I find that there was no consideration as to whether these individuals might be biased in their approach to setting a standard, including Dr. O'Grady;

- I find that there was no consideration of the English proficiency of those Indo-Canadian veterinarians who participated in the Workshop. I agree with Ms. Kline's evidence that those who participated in the Worksop should be a native, or near-native, English speaker. I find that no Indo-Canadian veterinarian, who participated in the Workshop, met these criteria, including Drs. Rana, Kahlon, Sekhon, Sran and Kaler. Although these individuals could be understood during the Workshop, they were not native or near-native speakers. Further there was no evidence that these Indo-Canadians had achieved a TSE score of 55, the score adopted by the BCVMA;

- I accept that Ms. Kline followed the proper process when she conducted the Workshop. I accept that each profession may set its own TSE score; however, they are not required to do so. Other than the College of Pharmacists, there was little evidence that other professional bodies had gone through their own standard-setting process;

- I find that the participants had a varying degree of understanding regarding how the TSE score of 55 was obtained in the actual test

setting, for example, Drs. O'Grady, Cruickshank, Biernacki, Kocheff, Craven and Sran. I find that it was critical that the participants understood that a mid-point score of 55 could not be given by a rater in the actual test setting, which was the final recommendation of the Workshop. In order to obtain such a TSE score of 55, the highest possible TSE score of 60 had to be given by one of the two raters. Only one participant, Dr. Kocheff, recommended a final TSE score of 60;

- I find that, had the participants fully understood the scoring process, one or more of them may have reconsidered their final recommendation; for example, Drs. Biernacki, Sran, and Craven. As noted by Dr. Kahlon, a TSE score of 60, on the actual test, would be difficult to achieve for foreign-trained veterinarians;

- I find that the participants did discuss their scores, both after the listening to the first set of tapes and again after the second set of tapes. I find that some of these discussions influenced some of the participants. For example, Dr. Kocheff's argument that a veterinarian is entitled to practice the day after being licensed and therefore a high level of proficiency is required led some participants to vote to recommend a TSE score of 55, including Drs. O'Grady and Kahlon. I did not find Dr. Kaler's evidence that he was not influenced by the discussions credible;

- As noted above, Drs. Rana, Sekhon and Kahlon were unable to obtain a TSE score of 55 when they took the test. The fact that they recommended such a score calls into question their motivations for doing so. They knew that such a score would be difficult to achieve for Indo-Canadian veterinarian as that was their experience; and

- Given the steps taken by the Educational Testing Service to ensure that all examinees provide appropriate identification, I find that it was not possible for an examinee to cheat, namely that a different person could take the test for someone else. I find that there was no credible evidence to suggest otherwise.

[177] I make the following findings with respect the TSE score of the College of Pharmacists:

- I find that Ms. Kline advised the participants in the Standard-Setting Workshop that the College of Pharmacists required a TSE score of 55. I find that this gave the Workshop participants, who heard this information, support for the score they had chosen. However, this information was incorrect. I find that it is difficult to, after the fact, assess whether had Ms. Kline given the correct information, the Workshop participants would have reconsidered their scores; and

- The BCVMA relied on the TSE score of the College of Pharmacists to support its position that a TSE score of 55 was an acceptable score to require from its foreign-trained applicants. The BCVMA advised its members, on more than one occasion, that the College required a TSE score was 55 throughout 2004. However, in 2001, the College had reduced its required TSE score to 50. The English Language Task Force's first Report to Council, in January 2004, noted the College's score was 50. Although the College changed the score for the interview, after 2001, the College never raised its TSE score. I find that despite the information in the possession of the BCVMA that the College's TSE score was 50, it continued to rely on Ms. Kline's misinformation. This supports an inference that the BCVMA was always focused on setting a high TSE score.

[178] I make the following findings with respect to the implementation of the English Language Standard:

- The BCVMA adopted the final Report of the Task Force on May 1, 2004. It adopted the recommendation of the Workshop to set the TSE score at 55, although it adopted the American Veterinary Medical Association ("AVMA") scores for the TOEFL and TWE tests, without discussion and without providing its reasons for doing so. Despite Council's assertions that it fully considered the implementation of the TOEFL suite of tests, including the TSE, I find that Council did not engage in much discussion when it implemented the new English testing requirements, including the TSE score of 55 on May 1, 2004;

- I find Ms. Osborne's statement that no other jurisdiction had "critically" assessed what a TSE score of 50 meant was mere speculation. Ms. Osborne had no information about how other jurisdictions had adopted their tests and the related test scores. Had she had such information, I expect it would have been introduced in evidence before me;

- I find that when Council passed the motion to adopt the TSE score of 55, it did not consider impact data, which the ETS suggested should be considered by the decision-maker when adopting a score, as did Ms. Kline;

- As noted, I find that Council did not consider the fact that it had received few complaints about the English communication skills of Indo-Canadian veterinarians. Although complaints may raise communication issues, they were not generally related to the veterinarian's English proficiency but his or her ability to communicate veterinary matters and/or to be appropriately empathetic. As noted above, I find that, although Dr. O'Grady had raised concerns about the increasing number of complaints being filed against Indo-

Canadian veterinarians with the BCVMA, he had no basis to make such a claim;

- I find that Council did not discuss other tests that might be available, equivalent scores, nor had it developed the interview option before it implemented the TOEFL suite of tests and adopted the TSE score of 55. It did not discuss who would be required to take the TSE and who would be entitled to a waiver;

- I find that Council did not consider that it was the only veterinary licensing body, in North America, that required a TSE score of 55. I find that it did not consider that its TSE score was higher than the CVMA and/or the AVMA. I find that it did not provide any credible evidence as to why the BCVMA required a higher standard than any other professional and/or licensing body. It did not consider non-discriminatory factors, as between British Columbia, other Provinces and/or the different States, that might suggest that the BCVMA required a higher test score;

- The BCVMA suggested that it was required to consider the TSE scores of those regulatory bodies only within British Columbia. I find that this was not mandated by the *Act* and/or the ETS Manual. In any event, no other licensing body required a TSE score of 55;

- I find that Council did not consider that no Indo-Canadian veterinarian, who had taken the TSE, and been licensed by the BCVMA up to May 2004, had achieved a TSE score of 55. Council did not consider the statistical information provided by ETS which noted that individuals from India could not generally achieve a TSE score of 55. The information available to the BCVMA was that 96% of foreign-trained individuals from India, and elsewhere, who had taken the TSE could not achieve a score of 55; there is no evidence to suggest that this statistical information was considered by Council;

- I find that Council failed to consider, in any meaningful and substantive manner, if at all, the factors that ETS suggested be considered when passing the motion implementing its TSE score. These factors included a veterinarian's command of the subject matter, his or her motivation to practice in his or her field and/or their interpersonal skills;

- I find that Council did not fully assess the CQ requirements or the mandate of the CVMA when it implemented its English Language Standard. As noted by some Council members, for example Dr. Forsyth, they did not know much about the CVMA processes, including the CPE, as they had not been required to take it. It is unclear

to me how they could have therefore been critical of the CVMA processes to assess English proficiency;

- I find that the Council did not fully consider the conclusions of its own 2000 Education Task Force when it discussed the implementation of the English Language Standard. In particular, the Education Task Force concluded that it would be difficult to come up with a better and more comprehensive process than the National Board Examinations, which were replaced by the North American Veterinary Licensing Examinations in 2000 ("NBE/NAVLE") and Clinical Proficiency Examinations ("CPE"), which they noted was an acceptable measure of veterinary competence. The Task Force was satisfied with the security of the examination processes;

- I find that the examinations that are required to be passed in order to obtain a CQ provided a measure of English proficiency. This was accepted by every other Provincial veterinary licensing body in Canada, except for the BCVMA;

- Ms. Osborne testified that the BCVMA, as a regulatory body, was required to protect the public interest, something that the CVMA was not required to do and this was a justification for having the English Language Standard. Every other licensing body in Canada has a similar mandate yet there was no evidence suggesting that they were concerned about adopting the CVMA's processes as meeting their obligations;

- I was not persuaded that the BCVMA's mandate to protect the public interest was significantly different from the CVMA's obligation to qualify competent veterinarians. Clearly the CVMA acts in the public interest when it issues its CQ to those veterinarians who have passed the NBE/NAVLE and CPE examinations. To suggest otherwise is nonsensical. Further, Ms. Osborne was dismissive of the CVMA's President's claim in November 2004, that the CVMA's CPE is a hands-on test that assesses a candidate's ability to communicate, in English, as relevant information. I find that the BCVMA had no basis to be dismissive of the CVMA's position;

- Ms. Osborne testified that there were risks if the BCVMA accepted the CVMA assessment of English proficiency as meeting the BCVMA English proficiency requirements. I find that there was no risk to the BCVMA in following the CVMA processes and no real risks were identified;

- I find that Ms. Osborne was unfamiliar with the CVMA's processes for assessing both veterinary competence and English proficiency for foreign-trained veterinarians. She had never taken those tests or gone

through the CVMA processes. Ms. Osborne had no objective basis to assert that the CVMA did not adequately assess English proficiency;

- Although Ms. Osborne testified that the BCVMA should be cautious when adopting the standards of another agency, the BCVMA had no difficulty adopting part of the AVMA's English language test score for the TOEFL and TWE, and initially, its waiver language. It seems that it only had to be cautious with respect to the oral component of the TOEFL suite of tests; I find that it provided no reasonable basis for its position in this respect;

- The BCVMA relied on the fact that the licensing bodies in the United States required that foreign-trained veterinarians take the one year ECFGA program, which it suggested would further assess the English proficiency of foreign-trained veterinarians. This was inaccurate, as Dr. O'Grady acknowledged in his evidence before me. I find that this information was easily ascertainable yet the BCVMA took no steps to do so;

- I find that Council did not fully consider its members' responses to Council's request for input into the English Language Task Force. For example, it does not appear that Council considered that one person opposed the implementation of the test, or the reasons for doing so, or that 5 of the 16 responses in support of testing, suggested that the Council adopt those scores used by the AVMA, including its TSE score;

- Council suggested that having an arms-length test for English proficiency would ensure that the Registrar would not be subject to allegations of bias in the English assessment process. I note that no such allegations had ever been made; the Complainants had never made such allegations;

- As noted, the BCVMA continually relied on the College of Pharmacists' TSE score to support its position that the TSE score of 55 was reasonable, despite its own information that the College's TSE score was 50 as contained in the Task Force's initial report. I find that, given Council's continued position, it could not have fully reviewed its own Task Force Report; had it done so, this discrepancy would have been discovered. Given the importance of the issue, and the apparent controversy that occurred after the implementation of the English Language Standard, I find this lack of due diligence surprising;

- Despite the BCVMA being the only licensing body that had a TSE score of 55, it advised the membership in its May Newsletter that it was on par with other professional associations who use language proficiency testing. Clearly the BCVMA was not on par with other

associations and its statement was incorrect and misleading. I find it difficult to accept that given the information before Council, it did not know that this statement was misleading;

- I find that Council took no steps to validate the TSE score of 55 after it was implemented in May 2004, something that the ETS suggested be done. Further, Council did not assess the effects of having to take the tests, or the resulting scores of those who took the test. There was no conclusive evidence that any Complainant and/or non-complainant Indo-Canadian, including those who testified for the Respondents, except for one person, achieved a TSE score of 55; and

- The BCVMA consulted with Ms. Zlotnik about equivalent scores of other internationally-recognized tests of oral English proficiency in April 2005, almost one year after the implementation of the English Language Standard. No credible evidence was provided to explain this delay. Council adopted, as a policy, those equivalent scores in December 2005. This information was not posted on the BCVMA's website until sometime after October 2007. Again, there was no credible explanation for the delay.

[179] I make the following findings with respect to the waiver and interview options:

- The BCVMA established a system of waivers and an interview option;

- The waiver and/or interview option was only available for the TSE part of the English proficiency tests. Foreign-trained applicants were required to take and pass the TOEFL and TWE, or equivalent tests, even if they had achieved a TSE score of 55;

- I find that, although the interview option had yet to be developed, Council moved to implement the English proficiency requirements. The interview test (the "CEAT") for the BCVMA was not developed and available until late-August 2004. I find no credible evidence why the BCVMA moved to implement the English Language Standard without having in place the interview option, which it alleged was provided as an accommodation to those who were unable to, and/or who chose not to, take the TSE;

- The interview option was developed and the scoring set to be equivalent to the TSE scoring bands. Drs. O'Grady, Rana and Ms. Osborne participated in the development of the questions for the oral interview. Ms. Zlotnik testified that she understood that a high level of proficiency was required as the BCVMA did not require a period of internship before a foreign-trained veterinarian, after being licensed, commenced practising. Ms. Zlotnik was under the impression that other licensing bodies had such an internship process; this was an

error. I find that Ms. Zlotnik was given this impression by Drs. O'Grady and Rana and Ms. Osborne and this error was never corrected by them;

- Although the required English functions of a professional may be more demanding, I find it is not significantly different as between professions and or between veterinary associations. For example, the language functions of a veterinarian practising in British Columbia would not be higher and/or different than a veterinarian practising in Ontario and/or Alberta;

- Although the interview option may be more readily available, as suggested by Ms. Zlotnik, it is only readily available to those already in British Columbia. It cannot be taken by someone residing in India who may be considering pursuing licensure in British Columbia;

- The May 2004 BCVMA Newsletter noted that the waiver language was the same as AVMA's waiver language, in that the definition of the "native language" was the same. I find that the waiver language used by the AVMA provided a waiver for veterinarians, from India, from having to take the TSE. In British Columbia, this language would have provided Indo-Canadian veterinarians with a waiver, as they had taken at least three years of secondary or post-secondary education in English. As Ms. Osborne noted, 65% of foreign-trained applicants to the BCVMA are from India;

- Ms. Osborne suggested that the CVMA did not have information about the English language environment of those institutions where foreign-trained veterinarians were educated and therefore its acceptance that these individuals met the required English language education was questionable. I found Ms. Osborne's position surprising; she had no basis upon which to question the CVMA's assessments or conclusions. I find that the letter sent to the CVMA, after the September 12, 2002 meeting, raising the BCVMA concerns that the CVMA had created an inflexible rule and/or a process that prejudged the English proficiency within a specific group was also without foundation;

- I am not persuaded that the language of the AVMA's waiver was 'unclear' requiring the BCVMA to revise the language in the summer of 2004. The AVMA had used this language, without any apparent difficulty. I find that the BCVMA's concerns were related to the fact that Indo-Canadian veterinarians would be entitled to a waiver and that the BCVMA wanted to ensure that this did not occur;

- I find that the change to the waiver language, adopted by Council on August 23, 2004, made it more difficult for Indo-Canadian veterinarians to obtain a waiver. Graduates from the PAU were moved

from Group 3 to Group 4, which Ms. Osborne agreed was a more restrictive category, making it more difficult for its graduates to obtain a waiver; and

- Although Dr. Hollingshead suggested that the change to the waiver language would provide Council with more flexibly when assessing foreign-trained applicants, I find that Council always had this flexibility and the change to the waiver language did not alter this.

[180] I make the following finds with respect to the June 10, 2004 demonstration:

- I find that there was no credible evidence that Dr. Bhullar engaged in, or had engaged in, physical violence and/or intimidation *vis-à-vis* other veterinarians or other members of the Indo-Canadian community before, or after, the demonstration;

- I find the rumour that Dr. Bhullar was going to throw rocks and/or garbage during the June 10, 2004 demonstration was intended to undermine the credibility of Dr. Bhullar and the issues he wanted to raise by demonstrating. There was no credible basis to the rumour;

- I find that Dr. Bhullar and others were entitled to demonstrate; I find that it was not unprofessional to do so. Although the demonstration became noisy and unruly, I am not persuaded that the demonstration was an inappropriate action to have been taken by the Complainants and others;

- I find that the evidence supports the fact that the BCVMA knew before June 10, 2004 that the demonstration was going to occur. Having this information, I find that Ms. Osborne took steps to have Drs. Sekhon, Rana, Singh and Kaler attend the demonstration. I did not find Dr. Rana's evidence that someone, who he could not identify, called him the morning of the demonstration and asked that he come to the BCVMA, credible. I find that he knew of the demonstration before June 10 and fully planned to attend;

- I find that had Drs. Rana, Sekhon, Singh and Kaler not attended the demonstration, at the request of the BCVMA and to support it, it is unlikely that the demonstration would have become unruly. The evidence was clear that the demonstration was peaceful, albeit noisy, until Drs. Rana, Sekhon, Singh and Kaler came out to speak to support the BCVMA. It was a demonstration to oppose the English Language Standard and the BCVMA should have known that, asking Indo-Canadian veterinarians to attend and speak to oppose the position being taken by the demonstrators would cause, or would likely cause, disruption;

- I find that Dr. Bhullar, and the other Complainants, did not enter the BCVMA's offices as alleged. I find that they did not attend a meeting with Dr. Twidale and others later that day;

- I did not believe Dr. Kaler's evidence when he testified that he said nothing to Dr. Bhatia when he pushed Dr. Bhatia away and shook his finger at Dr. Bhatia; this did not ring true. I find that Dr. Bhatia called Dr. Kaler a "traitor". Dr. Twidale, who attended the demonstration, did not see any violence; others did not see such violent actions on the media coverage;

- I find that Ms. Osborne was not hurt during the demonstration, although I find it would have been distressing for her to have been surrounded by some of the demonstrators, who were alleging that she was racist. As Ms. Osborne testified, she was "jostled" but it was not deliberate;

- I find that the CRC discussed the demonstration at its meeting on June 10 and that many of the individual members of the CRC were aware of it, given the alleged heightened state of fear amongst the office staff and Ms. Osborne's expressed views that the actions of the demonstrators was unprofessional; and

- Dr. Sekhon attended the demonstration and then the CRC meeting held later that day. The CRC discussed a number of disciplinary complaint files involving Dr. Bhullar and some other of the Complainants, who were also at the demonstration, but Dr. Sekhon did not recuse himself from the discussions or the votes related to these files. I find it concerning that Dr. Sekhon did not recuse himself.

[181] I make the following findings with respect to the June 12, 2004 Council Meeting:

- I find that Council discussed the demonstration and formed negative views of Dr. Bhullar and those Indo-Canadian veterinarians who participated in it. Although I find that their concerns and discussions were not necessarily inappropriate, I am of the view that it served to support their views, at this time and later, when dealing with Dr. Bhullar and some of the other Complainants that they had a propensity to engage in unprofessional behavior; and

- Council discussed the TSE and continued in its position that its score was consistent with the College of Pharmacists and therefore appropriate, which was an error; it again repeated this assertion in the President's Report published subsequent to this meeting.

[182] I make the following findings with respect to certain letters and publications:

- I find that Drs. Kaler, Rana and others were entitled to express their views and for those views to be published in the BCVMA magazine;

- I find that the BCVMA should have known that, by publishing these letters, it would serve to further inflame the discussions surrounding the English Language Standard and would call into question the professionalism of Dr. Bhullar and the other Indo-Canadians who are Complainants, and who are or were associated with Dr. Bhullar;

- In July and August 2004, Mr. PTL wrote to the BCVMA and advised it that the College of Pharmacists required a TSE score of 50 and that the information being provided to the BCVMA membership was inaccurate. Ms. Osborne was dismissive of this correspondence; I am not persuaded that she had any basis to be so. I find that Ms. Osborne could have simply and quickly checked to see if the information that the BCVMA was disseminating was accurate; however, she did not; and

- Despite having information to the contrary, the BCVMA repeated its assertion that the College of Pharmacists required a TSE score of 55 at the September 2004 AGM.

[183] I make the following findings with respect to the September 2004 AGM:

- During the September 2004 AGM, many veterinarians questioned the BCVMA's TSE score of 55, not just Indo-Canadians. The membership did not understand the scoring process. I find that the BCVMA had an obligation to explain the TSE scoring process, and to provide accurate information about the TSE scores required by other professional bodies, so that the membership could engage in a reasoned and fulsome discussion of the issue. The BCVMA had an obligation to facilitate such discussions and it intentionally chose not to do so. It simply ignored the opposition, despite that some of the opposition was based on the fact that the BCVMA was disseminating inaccurate facts. For example, Council continued to maintain its position that the College of Pharmacists required a TSE score of 55, which was incorrect and misleading;

- I find that the BCVMA ignored Dr. Bhullar's information that most, if not all, Indo-Canadian veterinarians could achieve a TSE score of 50 but not a TSE score of 55, which was supported by the information provided by the ETS, and which the BCVMA ignored;

- After the AGM, Dr. Twidale wrote his President's Report and noted that many disciplinary complaints in the BCVMA's system raised issues of poor communication between foreign-trained veterinarians and clients. I find that Dr. Twidale did not have the statistical

information, or any objective evidence, to support such an assertion. Dr. Twidale acknowledged that his information about complaints raising English proficiency issues was based on hearsay and anecdotal information. He reiterated the incorrect information that the College of Pharmacists required a TSE score of 55; and

- It was not until October 2004, after speaking to Dr. Bhullar, that Ms. Osborne and other members of Council checked to see if the College of Pharmacists required a TSE of 55. Although members of Council, Ms. Kline and Ms. Osborne later apologized to the membership for this error, it was after the TSE had been established, significant controversy had ensued and the concerns of the Complainants, and others, had been ignored.

[184] I make the following findings with respect to the October 30, 2004 Council Meeting:

- I find that those Indo-Canadian veterinarians who attended the October 30 Council meeting were fully aware that each of them supported the BCVMA's English Language Standard and that they were being invited to attend this meeting to express this view. I found their evidence to the contrary not credible;

- Council wanted to revisit its TSE score and the process of establishing it at this meeting. However, instead of having an objective and appropriate discussion, Drs. Kaler, Ubi, Sidhu and Maan engaged in what can only be described as racist, distasteful and extremely inappropriate discussions about Dr. Bhullar, his alleged business practices and his associates. Council not only did not put a stop to this discussion it involved itself in it. I do not accept that Council is obligated to listen to commentary. I am of the view that Council acted contrary to its own Code of Ethics when it did so; its Code of Ethics requires that colleagues should not make unsubstantiated allegations about another colleague;

- I find that Council had no evidence, other than unsubstantiated rumours, that Dr. Bhullar or others engaged in "sweatshop" like working conditions, that Dr. Bhullar's partnership arrangements were inappropriate or that Dr. Bhullar was concerned that his "pipeline" of veterinarians would be curtailed by the English Language Standard;

- I find that Dr. Bhullar, contrary to rumour, did not take advantage of his employees and/or business partners. No Indo-Canadian veterinarian, including those who testified for the Respondents, said that they had been taken advantage of by Dr. Bhullar because of their English language skills or otherwise. There was no credible evidence that the working conditions at Atlas-Vancouver, or other clinics in

which Dr. Bhullar had an interest, were poor and/or could be said to reflect "sweatshop" like conditions. The Indo-Canadian veterinarians who had worked for Dr. Bhullar testified that they were paid salaries acceptable to them and worked reasonable hours. In fact, I find the opposite: Dr. Bhullar assisted Indo-Canadian veterinarians with employment and business opportunities;

- I find that there was no credible evidence that Dr. Bhullar had control over the visas of the Indo-Canadian veterinarians that worked for him. These veterinarians came to Canada as fully educated veterinarians and on the points system. Although English was their second language, they were able to obtain their CQs and, if they chose, were licensed in other provinces or in various states;

- I find that Dr. Bhullar did not take advantage of his business partners. I find the allegations made by Dr. H, which were unsubstantiated as Dr. Hans did not testify, to be based solely on his experience, which is unknown to me. It is true that Dr. Bhullar went into business with many Indo-Canadian veterinarians and sold his interest to his business partner for a profit. There is nothing inappropriate about this and in fact many would see this as an appropriate business model. In my view, making a profit does not equate with inappropriate business practices. If this were the case many institutions would be subject to the claim of inappropriate business activities;

- I find the Council was now trying to justify its decision, both by allowing and, participating in, the negative commentary, listening to the Standard-Setting Tapes and then drawing its own subjective conclusions. I find that if Council was truly intent on revisiting the English Language Standard, it would have followed a different process, which would have included revisiting the Workshop process, reviewing all the objective impact data, the English proficiency requirements of other professions, rather than relying on its own assessment, which occurred after Council had earlier participated in racist and inappropriate commentary;

- Council did not consider all differing and/or opposing views of the English Language Standard. It would have been a simple matter to invite some of those who opposed the English Language Standard to a Council meeting to explain their position, including a non-Complainant; these invitees did not have to include Dr. Bhullar;

- I find that it was inappropriate for Council to have asked Ms. Zlotnik to assess the English proficiency of those Indo-Canadian veterinarians at the meeting;

- In the President's Report published in the November 8, 2004 Newsletter, Dr. Twidale acknowledged that the College of Pharmacists required a TSE score of 50, but had a period of on-the-job training; I find that this further information was the BCVMA's attempt to find another justification for setting its TSE score at 55. Dr. Twidale repeated his earlier comments that were not based on facts, that the BCVMA had received a number of complaints dealing with communication issues, inferring that these complaints related to the English proficiency of foreign-trained veterinarians;

- I agree with Dr. Bhullar that Dr. Twidale's apology for the error, contained in the President's Report was not genuine, given the history of the issues, Council's earlier discussions and the balance of his comments; and

- Subsequent to this meeting, Dr. Kaler was asked to sit as part of the Inquiry pool and Dr. Ubi was invited to sit on the Board of Examiners. There was little information as to how they were appointed or whether they would be biased in their assessments of the issues involving Indo-Canadian veterinarians, in particular Dr. Bhullar and his associates. I find that Council did not consider these issues, despite what they had heard these individuals say and the possible biases they might bring to their decision-making roles. There is nothing to suggest that Council did so.

[185] I make the following findings with respect to the SGMs:

- I find that Dr. Bhullar, and others, were entitled to request SGMs to raise issues of significance to them. However, I am not persuaded that three requests were necessary, given the time and expense involved in calling a SGM, which would have been known to Dr. Bhullar;

- I do not accept that Dr. Bhullar used the members' names to ask for these SGMs without their knowledge and/or consent; and

- I find that the BCVMA set the SGMs in a timely manner and that it was appropriate before setting the dates and sending the Notices that a list of agenda items be provided by Dr. Bhullar and others.

[186] I make the following findings with respect to the evidence of adverse impact:

- I find that the majority of the Complainants were not adversely affected by the English Language Standard in respect of their registration, as they had already been registered when it was implemented on May 1, 2004;

- Drs. Paramjeet Sidhu and Paramjit Sidhu, despite not being licensed in British Columbia, were licensed in other English-speaking jurisdictions

without issues being raised regarding their English proficiency. Further, the BCVMA provided no evidence that these two individuals were unable to practice competently and without incident;

- Dr. Paramjit Sidhu sought a waiver from the TSE requirement. Dr. Paramjit Sidhu was granted a waiver although he achieved an overall IELTS score 6 (the BCVMA required an overall score of 7) with a score of 7 in the speaking band, had more than three years of secondary and post-secondary education in English, some of his work in India was conducted in English, he had worked in British Columbia, had obtained his CQ in English and been licensed in Ontario and Alberta. I find that Dr. Sidhu was adversely affected by the BCVMA's process of assessing his English proficiency which was based on its high English Language Standard;

- Although I accept that Ms. Zlotnik found Dr. Paramjit Sidhu's English "inordinately taxing" I am not persuaded that Dr. Sidhu could not practice veterinary medicine as a result. Further, although Dr. Sidhu's speaking might create a burden on a listener, I am not persuaded that this was a basis to deny him a license. As noted in this Decision, in the actual treatment setting, a client may ask for clarification about issues during their discussion with a veterinarian;

- Dr. Paramjit Sidhu continued to try and improve his English language testing scores and again applied for a waiver in January 2006, which again was denied in March 2006. Dr. Sidhu had improved his IELTS score to an overall score of 6.5 and maintained the speaking score of 7. He had been living in Canada since May 2004. Again, I find that Dr. Sidhu was adversely affected by the BCVMA English Language Standard and the waiver requirements which were based on its restrictive English proficiency assessments;

- I find that, when Dr. Paramjit Sidhu was advised that his request for a waiver had been denied, Ms. Osborne asked for some of his documents to be notarized and resubmitted to the BCVMA, including proof of his Canadian citizenship, proof that he had obtained his CQ and the scores he had received. I find that Ms. Osborne was suspicious of Dr. Sidhu's documentation and she had no basis upon which to be suspicious. I accept that, by this point, Dr. Sidhu understood that he was not going to be licensed and did not provide those documents nor further pursue his application, which in my view was reasonable;

- Dr. Paramjit Sidhu moved to Alberta and worked for the Canada Food Inspection Agency. No evidence was led that Dr. Sidhu was unable to perform his duties, in English, without incident or complaint;

- Dr. Paramjeet Sidhu worked in Canada from 2000 until May 2005 when he received his CQ. Dr. Sidhu was licensed in a number States in 2005 and 2006 and he was provided with the necessary waiver to be registered with the AVMA. From November 2005 to November 2006, Dr. Sidhu worked in Washington State and there was no evidence that he had difficulty communicating in English. Dr. Sidhu was licensed to practice in Alberta in 2006. Dr. Sidhu took the IELTS and received an overall score of 6.5; the BCVMA required an overall score of 7. Dr. Sidhu took the TSE and obtained a score of 45. None of this evidence was challenged by the BCVMA;

- In January 2007, Dr. Paramjeet Sidhu applied to the BCVMA to be registered and applied for a waiver, which was denied. I find that Council's decision that Dr. Sidhu had not provided objective evidence of the use of English in a "broad" practice environment for a significant period of time surprising given Dr. Sidhu had been in Canada for a number of years and had practiced veterinary medicine in the United States for over one year. I find that Dr. Sidhu was adversely affected by the BCVMA's English proficiency requirements;

- I find that Dr. Paramjeet Sidhu's decision not to further pursue his registration reasonable in the circumstances. That he chose to move to California and practice in that jurisdiction is not surprising;

- Drs. Paramjit Sidhu and Paramjeet Sidhu were licensed in April 2009 as a result of the passing of the *Labour Mobility Act*. This hearing concluded in December 2011 and submissions were ongoing through 2012. At no time was any evidence provided that either of these two veterinarians were unable to communicate in English in order to practice in British Columbia or that any concerns had been raised by others related to their English proficiency;

- I find that Dr. Sandhu's decision not to apply to the BCVMA given its TSE requirement reasonable. I find that, although there were other options, such as taking the interview or IELTS, the scores for this test were also based on obtaining an equivalent TSE score of 55. I find that, when Ms. Zlotnik reviewed Dr. Sandhu's testing score, and testified that she would not recommend he be granted a waiver, she failed to consider that he had been working in an English veterinary practice environment since the end of 2004. I do not accept that there was no evidence that he could speak at the required English proficiency level to practice veterinary medicine. I find that Dr. Sandhu was adversely affected by the BCVMA's English proficiency requirements;

- Dr. Singh was denied a waiver when he applied to the BCVMA in 2006, despite having worked in Canada since 2002. Again, I find

Council's conclusion that there was no objective evidence that Dr. Singh was proficient in English surprising. As a result of not being licensed in BC, Dr. Singh was licensed in Washington State where he has practised since December 2006. There was no evidence of any concerns about Dr. Singh's English proficiency within his veterinary practice;

- I was not persuaded that the inability of some of the Complainants to expand their business practices and or to hire other veterinarians was directly related to the English Language Standard. In some cases, they hired other Indo-Canadian veterinarians who had been licensed after May 1, 2004; they could not say if these veterinarians obtained the necessary TSE score or were otherwise provided with a waiver;

- The Complainants testified that some Indo-Canadian veterinarians would not come to British Columbia because of the English Language Standard and that they saw this as a hurdle to being registered in British Columbia that they could not meet. In my view, the English Language Standard was a requirement for registration and therefore could be considered a "hurdle";

- The BCVMA's evidence was that between May 1, 2004 and May 2008, only one Indo-Canadian veterinarian had achieved a TSE score of 55 in order to be registered. This provides some support for the allegation that the English Language Standard was an unachievable hurdle for Indo-Canadian veterinarians;

- After 2009, when the *Labour Mobility Act* come into force, all foreign-trained veterinarians were licensed in British Columbia on proof that they had obtained their CQ. There was no evidence that this change in the licensing process of the BCVMA led to any complaints related to the English proficiency of these veterinarians licensed as a result, including Indo-Canadian veterinarians; and

- All the Indo-Canadian veterinarians who testified before me did so in English. Testifying in a quasi-judicial proceedings is difficult, especially for those whose first language is not English. This difficulty was admirably overcome by all the witnesses regardless of their native language. At times, some witnesses were asked to clarify their evidence, including those who were 'native' English speakers.

[187] I make the following findings with respect to the expert evidence:

- Dr. Marshall researched the TSE score of other veterinary certification associations. I agree with Dr. Marshall's findings that the BCVMA's TSE score exceeded all those veterinarian licensing bodies, as well as most other professional organizations;

- I agree with Dr. Marshall's and Mr. Scales' conclusions that a person's accent interferes with a person's understandability. I agree that, although English may be the common language of a country, accents vary from region to region and may affect the understanding of English as between those regions;

- Dr. Marshall agreed that, during a period of supervision or internship, English proficiency could improve and that this is "substantively" different from having a person practice the day after he or she is licensed. I agree that English proficiency may improve while a person is practising, but this does not provide a basis for establishing a high TSE score. Other veterinary licensing bodies in Canada do not have an internship period yet they do not require a high TSE score. I accept Dr. Marshall's assessment that the BCVMA should have retained an expert linguist to address whether this difference would suggest that the BCVMA should implement a higher TSE score;

- I agree with Dr. Marshall's and Mr. Scales' conclusions that impact data should always be considered by the decision-makers when adopting the TSE score. As noted above, I find that this did not occur in this case;

- I agree with Dr. Marshall that offering an interview option, along with the TSE test, provides flexibility. Dr. Marshall concluded that considering other equivalent scores is appropriate but such scores need to be researched; it is still appropriate to consider other impact data;

- I accept Dr. Marshall's conclusions that those who participated in the Standard-Setting Workshop should be native or near-native English speakers; the person should be able to obtain a TSE score of 55 or 60. Mr. Scales suggested that a person with a TSE score of less than 60 should not participate in the Workshop because it would be difficult for them to judge a speaker at a TSE score of 60. As the evidence illustrated, the Indo-Canadian veterinarians who participated in the Workshop did not have this level of English proficiency; and

- I agree with Mr. Scales that any participant in the Standard-Setting Workshop, who wanted to restrict others from entering the profession, for whatever reasons, should not participate in the Standard-Setting Workshop as they may be biased in their assessments.

Task Force on Licensing

[188] The Complainants allege that the BCVMA created a Task Force on Licensing to further target foreign-trained veterinarians and to create further hurdles for them to meet in order to be registered in British Columbia.

[189] On November 5, 2005, Council struck a task force to review its licensing requirements, including the licensing requirements for foreign-trained veterinarians ("Task Force on Licensing"). The members of the task force included Drs. O'Grady (Chair), Kirby, Twidale and Brocklebank and Ms. Osborne.

[190] On September 9, 2006, the Task Force on Licensing reported back to Council noting the BCVMA's concerns about whether the CPE process adequately tested the skill and knowledge in the veterinary practice of foreign-trained veterinarians and suggested that there was "strong evidence" to conclude that the CPE did not ensure the competency of applicants to the BCVMA, although the reasons for this conclusion were not identified. The Task Force on Licensing recommended that the BCVMA require one to two years of clinical training at an accredited college.

[191] On February 21, 2007, the BCVMA wrote to the National Examining Board raising its concerns. In this letter, it noted that the new Step 3 of the NAVLE examination should be weighted towards clinical experience as the BCVMA had information from its investigations and hearings against graduates from unaccredited schools suggested that some members had serious deficiencies in their clinical knowledge.

[192] On March 26 and 27, 2007, the Task Force on Licensing reported to Council and suggested that the BCVMA lobby the CVMA to have it establish one year of clinical training for those graduates from unaccredited schools, which would include those graduates from the PAU. Council directed Ms. Osborne to speak to the Registrars of the Alberta Veterinary Medical Association and to the College of Veterinarians of Ontario and to others about implementing a one-year clinical training program.

[193] On December 1, 2007, Council passed a motion to continue to discuss a one year training program which would be directed at new graduates with little clinical training.

[194] On October 5, 2008, Council created a Working Group on International Graduates, the purpose of which was to approach government and other stakeholder groups about programs to enhance success in practice for international veterinary graduates. Dr. O'Grady was the Chair of this Working Group. In and around this time, an International Graduates Task Force was also created; Dr. Kirby chaired this task force.

Registration of Drs. Punia and Joshi

1. General Overview

[195] The Complainants allege that the delay in the registration of Dr. Punia illustrates discrimination contrary to the *Code*. Dr. Punia applied to be registered on November 4, 2002 and was registered on March 8, 2003. Dr. Joshi applied to be registered in March 2004. In 2012, as a result of being registered in Alberta, and pursuant to the Interprovincial Mobility Agreement, Dr. Joshi was registered in British Columbia.

[196] The evidence related to the allegation involving Drs. Punia and Joshi are set out in **Appendix "I"**. As noted in **Appendix "I"**, I found both Drs. Punia and Joshi to be credible witnesses.

2. Findings with respect to Dr. Punia

[197] I made the following findings of fact with respect to Dr. Punia:

- I prefer and accept Dr. Punia's evidence about his reasons for leaving the North Animal Hospital over the evidence that his employment was terminated because he was unable to perform routine veterinary services and that his communication skills were poor, reasons set out in Dr. L's letter dated January 27, 2003. It may be that Dr. L did not object to Dr. Punia leaving her employ but Dr. L did not terminate him;

- The BCVMA had asked for references in writing from employers listed in applications for registration. Although this did not always occur, Dr. Punia was not treated differently in this respect;

- There was no reasonable basis for the BCVMA to have delayed in providing Dr. Punia with a copy of Dr. L's first reference letter. I was not persuaded that a covering letter was necessary, although I accept that Ms. Osborne believed that it would be helpful to the process. I find that this delay further frustrated Dr. Punia and accounted for his behaviour at this time;

- The only evidence regarding Dr. Punia's English language abilities came from Dr. L. There was no evidence provided by the Respondents' witnesses that they had difficulty understanding Dr. Punia or that this was a concern. Dr. Punia had spoken to BCVMA staff at least three times prior to Ms. Osborne asking Dr. Punia for proof of his English language ability. Dr. Punia had completed his CQ

and passed the BCVMA's Bylaw and Ethics examination. Given this evidence, I find the BCVMA's request for this information unnecessary;

- The reference letter provided by Dr. S was based on observation, as was Dr. L's reference. I find that Dr. S's reference was not given as much weight as that of Dr. L, although Dr. Punia had worked for Dr. S for a longer period of time. Also, it does not appear that any weight was given to the references provided by Drs. Hans or Bhullar;

- I prefer Dr. Punia's evidence over that provided by Dr. L, in her letter of March 5, 2003, that Dr. Punia did not threaten Dr. L nor did he ask that she withdraw her initial reference letter;

- I find that Ms. Osborne directed Dr. King-Harris to make inquiries about Dr. Punia's test results with the CVMA/NEB despite Dr. Punia having received his CQ. Dr. King-Harris is not involved in the registration of applicants for licensure. Other than being asked to make this inquiry, I find that Dr. King-Harris had no reason to do so. Therefore, I reject Ms. Osborne's evidence that she did not direct Dr. King-Harris to make the inquiry. Further, I find that this request was inappropriate; it was not a step taken in other applications, except for in Dr. Grewal's application, discussed elsewhere in this Decision. I find that Dr. King-Harris' inquiry was nothing more than a "fishing expedition" to try and find further, and possibly negative, information regarding Dr. Punia;

- There is no documentation that Council had directed that it would not consider registrations by teleconference. Before and after Dr. Punia was registered, such teleconferences occurred;

- I accept that Dr. Punia was upset that he was not registered in a timely manner. I also accept that, at times, he was argumentative, aggressive and demanding. I accept that he became more so after he learned that, although he was advised his application was complete, his registration did not proceed because of missing information. I find that, although Dr. Punia had some basis to be frustrated, the way he expressed his frustration was, at times, inappropriate;

- The questions posed by Council on March 8, 2003 regarding the financial relationship between Drs. Bhullar and Punia were inappropriate. This relationship was irrelevant to Dr. Punia's suitability to be licensed in British Columbia. I find that this illustrates Council's willingness to be suspect of those veterinarians associated with Dr. Bhullar;

- Council was concerned about the similarities in the references provided by Indo-Canadian veterinarians. I find that they had no basis for their concerns, given that the references were given by various individuals who were located in different places. The BCVMA does not require a standard-form reference letter;

- Council raised the question of placing restrictions on Dr. Punia's licence during the March 8, 2003 meeting. I am unable to ascertain why this was the case, given that Dr. Punia had, by this point, provided 12 positive references, from various sources and only one negative reference. Despite this overwhelming support for Dr. Punia, Council was still concerned about his ability to practice. These concerns were based on one reference from a Caucasian veterinarian, without supporting documentation, to which it gave significant weight. I accept that Council must consider all references, including being concerned about a negative reference, but I find it gave undue weight to one unsupported reference; and

- I find that the delay in Dr. Punia's registration, from November 4, 2002 to March 8, 2003, was unusual.

3. Findings with respect to Dr. Joshi

[198] I made the following findings of fact with respect to Dr. Joshi:

- Based on all the evidence before me, I find that Dr. Joshi did not engage in unlicensed veterinary practice while volunteering at Avon Animal Hospital;

- Dr. Joshi never wavered in his evidence that he did not engage in unlicensed practice. Although, during the October 8, 2004 Council meeting, Dr. Joshi admitted to doing some surgeries, he was unable to provide any details of them. This was not surprising because he had not performed any surgeries and he admitted doing so because he was under the impression that he would then be licensed;

- Dr. Joshi's evidence was supported by Dr. Mrar, the designated member of Avon. Dr. Mrar never wavered in his position throughout his interactions with the BCVMA. I do not accept that Dr. Rana saw Dr. Joshi performing unlicensed surgery; as he said, this was his "assumption". Given that Dr. Rana was prepared to make negative comments about various individuals, including other Indo-Canadian veterinarians, I found it difficult to believe that his "assumption" was accurate or was based on anything other than mere speculation;

- I find that the BCVMA operated on the assumption that Dr. Joshi was dishonest. This seemed to be without any credible foundation. I accept

that, if the BCVMA receives conflicting information, it is obligated to test this information; however, it is not obligated to pressure one of the parties to change their story or to admit to wrongdoing which was consistently denied;

- I find no basis for the BCVMA's decision not to provide Dr. Joshi with the written allegations made against him when it notified him of these issues in May 2004. Very serious allegations were being made against Dr. Joshi, which ultimately led to the BCVMA's decision not to grant him licensure. Dr. Joshi was entitled to a fair process; he did not receive it;

- I find that the BCVMA was prepared to accept the untested evidence of Crystal and Emily, who clearly had employment and other issues with Dr. Mrar and made numerous and unsubstantiated allegations against him and Dr. Joshi, over Dr. Joshi's consistent position and evidence. I find that Ms. Osborne was convinced that Dr. Joshi had performed unlicensed surgery and did not pursue the issues with him with an open mind;

- The complaints of Emily and Crystal were mainly against Dr. Mrar. Dr. Mrar was not provided with copies of these complaints for many months after they had been received by the BCVMA. Dr. Mrar was ultimately advised of the complaints in November 2004. There was no evidence that, had the BCVMA disclosed the entirety of Emily and Crystal's allegations to Dr. Joshi, this would have adversely affected its investigation into the issues involving Dr. Mrar. This was mere speculation on the part of the BCVMA;

- As noted above, I accept that Dr. Joshi provided his initial sworn affidavit at the request of the BCVMA. Although Ms. Osborne said that Dr. Joshi might have to provide "sworn evidence", it was reasonable for Dr. Joshi to assume that this could be provided in affidavit form;

- I find that Dr. Rana led Dr. Joshi to believe that he could guarantee his licensure, even though this was clearly not possible;

- I find that Ms. Osborne and Dr. Rana suggested to Dr. Joshi, on more than one occasion, that he admit to doing unlicensed surgeries and apologize. I find that these comments served to pressure Dr. Joshi into changing his affidavit, although this might not have been their intent, which he consistently said was accurate. Ms. Osborne's obligation was to simply advise Dr. Joshi that he should be honest with Council; it was not to suggest that he should change his story;

- I accept that Dr. Joshi understood, through his discussions with Ms. Osborne, Mr. Wexler and his own legal counsel that, if he did not "contest" the allegation that he had performed unlicensed surgeries, he would be recommended for licensure and this would be the likely outcome. Dr. Joshi had no reason to disbelieve these assertions. Further, this recommendation was not forthcoming at the October 8, 2004 meeting, even when it was expected, at the commencement of the meeting, that Dr. Joshi was going to admit to performing unlicensed surgeries and apologize;

- I find that Ms. Osborne would have known that, had Dr. Joshi changed his evidence before Council, from that which was contained in his affidavit, Council would have questioned his honesty and character. Both Dr. Hollingshead and Ms. Murray confirmed that this would have been a concern to them and Dr. Hollingshead testified that Ms. Osborne would have known this;

- I find that the simple fact that Dr. Bhullar assisted Dr. Joshi and/or drove with him to the October 8, 2004 hearing was insufficient basis upon which to call into question Dr. Joshi's honesty. Although, by this time, Ms. Osborne, and others, had concerns about Dr. Bhullar's honesty, they had no basis to transfer these adverse views to Dr. Joshi. I find that it was unfortunate that Dr. Bhullar released information regarding Dr. Joshi's registration to the public and that he gave a copy of the recording of Dr. Joshi's meeting with Dr. Rana on June 27, 2004 to the media. This did not serve to advance Dr. Joshi's interests. However, this is not a basis to question Dr. Joshi's honesty or to assert that he had been influenced by others in his statements made to Council;

- In its submissions, the Respondents suggest that, had Dr. Bhullar not inserted himself in this matter, things might have turned out differently for Dr. Joshi. The Respondents suggest that Dr. Bhullar was "behind the manner in which this case unfolded". I am not sure how Dr. Bhullar's involvement is a relevant consideration and the submissions serve to illustrate that Dr. Bhullar's actions had an adverse impact on others dealing with the BCVMA, thus calling into question whether the BCVMA was acting fairly and without bias *vis-à-vis* Dr. Joshi;

- I find that there was an unusual and unnecessary delay in the processing of Dr. Joshi's application for registration. This was particularly true prior to Dr. Joshi filing his Petition to the British Columbia Supreme Court compelling the BCVMA to act and even after the Court proceedings were underway and the Courts' decisions had been received, there was significant delay. I agree with Dr. Twidale's initial assessment that the BCVMA had "strung" Dr. Joshi along. It is my view that it was always open to the BCVMA, and to Dr.

Joshi, to seek a new hearing into Dr. Joshi's application for registration;

- I find Council's position on having the same Council members participate in a second hearing, to be unfair to Dr. Joshi; the Courts, as noted above, confirmed that this was the case;

- I accept that Ms. Osborne did not make negative comments about Indo-Canadian veterinarians during her presentation in Saskatoon; she had no reasons to do so; and

- In summary, I find that many of the steps taken by the BCVMA adversely affected Dr. Joshi, at various times, in his registration process.

Communications

1. Introduction

[199] The Complainants allege that the BCVMA's requirement that they communicate with it only in writing was an aspect of systemic discrimination and retaliatory. Although the BCVMA required that the Complainants communicate with it only in writing, the BCVMA would often contact and/or respond to telephone calls from the Complainants and generally, no concerns were raised about the tone and content of those communications. The Complainants allege that they felt embarrassed by the BCVMA requirements and, in some cases, the requirements were imposed without justification.

[200] The Respondents argue that the requirement that the Complainants communicate with the BCVMA in writing was reasonable in the circumstances, given the ongoing litigation, although Ms. Osborne agreed that both parties failed to abide by this requirement. I do not propose to outline the evidence with respect to this allegation.

2. Communications with Dr. Bhullar

[201] There were also specific concerns raised with respect to Dr. Bhullar's communications with the BCVMA, in particular, his discussion with Dr. Brocklebank in October 2004.

[202] On October 19, 2004, Dr. Brocklebank had a number of discussions with Drs. Johar, Bhullar and O regarding an ongoing dispute between Drs. Johar and O regarding

the transfer of medical records. Dr. Brocklebank had not spoken to Dr. Bhullar prior to this discussion nor did he know who he was; he had only been working at the BCVMA for approximately six weeks when this discussion took place. According to Dr. Brocklebank's notes of the discussions, Dr. Bhullar advised him that he owned 25 clinics, including a clinic with Dr. Johar. Dr. Bhullar alleged that the BCVMA was "siding" with Dr. O, the BCVMA was biased against Indo-Canadian veterinarians and that the COs were generally biased in their investigations involving his clinic. Dr. Bhullar allegedly advised Dr. Brocklebank that he was preparing 250 disciplinary complaints, 10 from each clinic he owned, which Dr. Bhullar allegedly said would show that the BCVMA was biased and it would overburden the BCVMA's resources. Dr. Bhullar raised concerns about the English Language Standard, which served to treat Indo-Canadian veterinarians unfairly. Dr. Brocklebank advised Dr. Bhullar that he was not biased and that Dr. Bhullar should reconsider sending 250 complaints to the BCVMA. Dr. Brocklebank testified that, in his view, Dr. Bhullar was advising him about how he viewed things being done within the BCVMA and his related concerns. Dr. Brocklebank never understood Dr. Bhullar to be saying he was going to file new complaints but that the information he was referring to was contained in existing disciplinary complaint files. Dr. Brocklebank testified that Dr. Bhullar was polite and very matter-of-fact but was frustrated with the BCVMA's processes.

[203] Dr. Bhullar was, at that time, a partner in Haney Animal Hospital; Dr. Johar was the Designated Member. Dr. Bhullar agreed that he told Dr. Brocklebank that the COs applied "double standards" in their investigations against Indo-Canadian veterinarians. Dr. Bhullar agreed that he told Dr. Brocklebank that he knew of 20 to 25 clinics, which had files involving other veterinarians, who were either Caucasian or who were associated with the BCVMA. Dr. Bhullar suggested that these files could be brought to the BCVMA to illustrate that there was a double-standard operating within the BCVMA. Dr. Bhullar denied that he owned 20-25 clinics; at the time, Dr. Bhullar had an interest in 5 or 6 clinics. Dr. Bhullar described his discussion with Dr. Brocklebank as professional and polite.

[204] Dr. Brocklebank testified that he made notes of the discussions after the all the conversations had occurred and, at the direction of Ms. Osborne. His notes set out what

he could recall of the discussions and were in the nature of a "transcript". Dr. Brocklebank testified that he had no independent recollection of the discussions that occurred that day. Dr. Brocklebank did not recall Dr. Bhullar asking that he do anything with the information he had provided nor did he ask Dr. Brocklebank to take his concerns to Council. Dr. Brocklebank did not receive any direction to pursue Dr. Bhullar's concerns further. Dr. Brocklebank agreed that, at that time, he had difficulty understanding Dr. Bhullar.

[205] Ms. Osborne testified that she clarified her understanding of this discussion with Dr. Brocklebank on more than one occasion. Dr. Brocklebank was clear that Dr. Bhullar had said that he intended to overburden the BCVMA with complaints. Ms. Osborne accepted Dr. Brocklebank's information as being truthful. Ms. Osborne agreed that Dr. Bhullar did not file this number of complaints.

[206] On October 21, 2004, Dr. Twidale and Ms. Osborne wrote to Dr. Bhullar advising him that, until further notice, he was to communicate with the office in writing. The reasons given were the pending "complaints and legal challenges" that Dr. Bhullar had initiated against the BCVMA. Dr. Bhullar testified that no other Complainant received a similar letter. Dr. Bhullar testified that he felt that the BCVMA was "isolating" him and that he might be the "main target". Dr. Bhullar testified that he believed that he received this letter in retaliation for filing his human rights complaint in August 2004.

[207] Dr. Bhullar wrote to Dr. Twidale and Ms. Osborne requesting an explanation for why he was required to communicate with the BCVMA in writing. Dr. Bhullar asked why he was being treated differently from other Complainants and from other members of the BCVMA. The letter referenced a discussion that he had with Dr. Twidale; Dr. Bhullar testified that Dr. Twidale had advised him that Dr. Bhullar could call Dr. Twidale at any time about any "personal" problems. On November 9, 2004, Dr. Bhullar received a response to his letter but was not satisfied with it because it did not address why the other Complainants had not received a similar letter. In a letter dated December 14, 2004, but received by the BCVMA on an earlier date, Dr. Bhullar wrote a further letter noting that he had not received an explanation for why he was being treated differently from other Complainants. On December 13, 2004, the BCVMA responded and indicated that its

reasons were contained in its previous correspondence. In this same letter, the BCVMA raised concerns about his earlier discussion with Dr. Brocklebank, including that he owned 25 clinics and intended to generate 10 complaints from each clinic.

[208] Ms. Osborne testified that the BCVMA wanted a written record of its communications with Dr. Bhullar in light of the allegations he was making. Dr. Bhullar was also precluded from personally delivering material to the office because he had misrepresented and/or fabricated his interactions with the BCVMA on a number of occasions. The reason the request to communicate in writing was initially only sent to Dr. Bhullar was because he had "distinguished himself" and behaved in an "extraordinary way" towards the BCVMA. Dr. Bhullar, and others, could have communicated with the BCVMA *via* email or fax and would have received an immediate response if the matter was urgent and the staff resources were available. Ms. Osborne confirmed that, after the letters were sent asking he communicate only in writing, the office did speak with Dr. Bhullar, and others, by telephone, without incident.

[209] Ms. Osborne agreed that Dr. Bhullar was not allowed to come into the office to deliver his medical records. Ms. Osborne did not see that Dr. Bhullar's concerns about having a stamped receipt for his medical records to prove that he had delivered them was a valid concern on his part.

[210] On December 14, 2004, the BCVMA wrote to the other Complainants advising them that they were required to communicate with the BCVMA in writing.

[211] As of September 2008, Dr. Bhullar was still required to communicate with the BCVMA in writing, although sometimes the BCVMA would answer simple question if he called. Dr. Bhullar testified that it depended on the "mood" of the staff person receiving the inquiry.

[212] I find that Dr. Bhullar raised his concerns about the investigation process with Dr. Brocklebank during the discussion about the transfer of medical records. I find that it was inappropriate for Dr. Bhullar to raise his concerns with Dr. Brocklebank about the investigation process when this was not the focus of the discussion and this was his first discussion with Dr. Brocklebank about any issue.

[213] I find that Dr. Bhullar did not allege that he was going to file 250 new disciplinary complaints but that he knew of a number of complaints already in the system that illustrated his concerns about the application of a double-standard. Given the disciplinary complaints were already in the system, there was no basis to the concern that the BCVMA would be subsequently overburdened.

3. Written record of Communications with the Complainants

[214] The BCVMA started to keep track of all of its communications with Dr. Bhullar and the other Complainants; Dr. Bhullar was unaware that the BCVMA was keeping this record. Dr. Bhullar was generally described as being polite in his discussions with the BCVMA staff.

[215] I find that, when the Complainants spoke with the BCVMA's staff, they were polite and professional, which was confirmed by the BCVMA's notes of their discussions with certain of the Complainants, for example Drs. Bhatia and Benipal. I note that there was an allegation that Dr. Benipal had told the BCVMA's receptionist that she was "bloody rude" for requesting that he put his request, for information about registering his wife for an upcoming seminar, in writing. I find that Dr. Benipal did not use such language; I accept Dr. Benipal's explanation that the receptionist must have misheard him.

4. Summary

[216] Generally, I found the Respondents' request that the Complainants communicate with it in writing, in the context of the ongoing litigation, to be reasonable. It is unfortunate that the BCVMA did not abide by its own stated requirement that communications with the Complainants should be in writing but this did not undermine what I view to be a reasonable and non-discriminatory requirement. Although some of the Complainants felt embarrassed by this requirement, especially when issues arose with respect to the transfer of medical records and or the delay that resulted in receiving a response from the BCVMA, which then became known to their clients, I find that this a result of the litigation and a foreseeable consequence of the allegations being made by them.

Ashburner Recording

1. General Overview

[217] Dr. Bhullar, and others, made recordings of some veterinarians involved with the BCVMA, including Dr. Ashburner, the Chair of the Conduct Review Committee at the relevant time. The Complainants allege that, while being taped, Dr. Ashburner made a number of allegedly discriminatory comments about Indo-Canadian veterinarians and, in particular, about Dr. Bhullar (the "Ashburner Recording").

[218] The Complainants allege that Dr. Ashburner's comments illustrate a discriminatory animus towards them which would influence his decision-making role within the CRC when the CRC considered their disciplinary complaints.

[219] The Complainants also allege that the Respondents' failure to address Dr. Ashburner's comments when the Ashburner Recording came to their attention also illustrates their discriminatory animus towards the Complainants.

[220] The evidence with respect to the Ashburner Recording is set out in **Appendix "J"**.

2. Findings

[221] I make the following findings with respect to the Ashburner Recording:

- I find that the process of making the recordings was as described by Bill Bhullar and Mr. Bhullar took the steps to facilitate the recordings at the request of Dr. Bhullar. I find that a number of recordings were made but only those that were helpful to Dr. Bhullar were retained. I also find that some of the recordings malfunctioned and were therefore not able to be retained;

- I accept that Ms. Pendragon did not advise Dr. Ashburner that he was being recorded. Although this method of obtaining information was inappropriate, it is not illegal. The Ashburner Recording was entered into evidence before me, witnesses spoke about it and I have considered its content and the parties' reactions to it in this Decision;

- I am not persuaded that Dr. Bhullar's conduct in facilitating the Ashburner Recording and then disseminating it, is a sufficient basis upon which to refuse to consider the recording in its entirety;

- I accept that, at times, Ms. Pendragon encouraged Dr. Ashburner to make negative comments about Dr. Bhullar and others. However, I find that he went further than just simply responding to her questions and/or the comments posed. Dr. Ashburner could have terminated the discussion, but did not do so. It was unclear to me why he failed to do so;

- I agree that Council would have concerns about the way the Ashburner Recording was made, but I am not persuaded that this was sufficient to support their inaction;

- Generally, I found that Dr. Ashburner's comments were inappropriate and many were negative generalizations about unnamed Indo-Canadian veterinarians. Many of Dr. Ashburner's comments promoted stereotypes based on race or could reasonably be perceived to be doing so, such as his comment about only half of the veterinarians from the Punjab being decent people, the negative commentary about the education system in the Punjab, and that Dr. Bhullar, even if not licensed, would hire other incompetents, which the evidence had shown were Indo-Canadian veterinarians. I accept that Dr. Ashburner did not intend his comments to be racist, but viewed objectively and in context, a reasonable interpretation of the comments is that they are founded on negative stereotypes based on race;

- I do not find that Dr. Ashburner was accurate in his assessment of how many complaints he had heard regarding Dr. Bhullar's practice. His assessment that he heard such negative commentary at least twice a week from clients who came to his clinic was an overstatement on his part;

- Dr. Ashburner discussed Dr. Bhullar and his "group" and those under his "sphere of influence". However, as he acknowledged, he could not identify all those who might fall within this description. I found this troubling, as he was prepared to generalize about certain Indo-Canadian veterinarians without knowledge of their individual circumstances, competence and/or level of education;

- I find that it is reasonable that the Complainants would perceive that Dr. Ashburner might be biased and non-neutral when dealing with their disciplinary complaints, when he grouped Indo-Canadian veterinarians together, especially when he was unable to say who fell into this group. Dr. Ashburner continued to participate in the CRC discussions of disciplinary complaints involving one or more of those that would have fallen into this group;

- I find that it was inappropriate for Dr. Ashburner to make comments that there might be unlicensed veterinarians working at Atlas-

Vancouver when he had no concrete evidence to support these allegations; it was simply rumour. I find that Dr. Ashburner had no substantive basis on which to conclude that Dr. Bhullar hired incompetent veterinarians but he was nonetheless prepared to draw such an inference and to express this view to a client. I find that these comments were generalizations based on those Indo-Canadian veterinarians who were associated with Dr. Bhullar;

- I find that Dr. Ashburner was not simply commenting on the education received by certain veterinarians at unaccredited academic institutions. His comments were broader than this. I find that Ms. Osborne's and Dr. Kirby's suggestion that Dr. Ashburner was discussing only education was not supported by the context in which these comments were made;

- I find that Dr. Ashburner's comment about being able to burn down a clinic, which would be quicker, was not, in and of itself, a racist comment. I accept that he was explaining that there were processes in place and they must be allowed to proceed. I agree that, when this comment was repeated by the Complainants, in various forums, it was taken out of context. However, in reviewing the Transcript in its entirety, and in context, including Dr. Ashburner's other inappropriate and racially-based comments, throughout his meeting with Ms. Pendragon, I find that the Complainants would have reasonably perceived this comment to be racist and that Dr. Ashburner was engaged in racial stereotyping;

- I find that the BCVMA did not take steps to address the comments made by Dr. Ashburner. Initially, it denied that they had occurred, then that the recording and the transcript(s) had been manipulated, which it then failed to listen to, or review, in any substantive manner once they had been obtained. It took no overt steps to deal with Dr. Ashburner until Dr. Bhullar, and others, had filed the s. 15(1) complaint approximately one year after the recording had been made. Council then declined to act and Dr. Bhullar, and others, filed a judicial review compelling the BCVMA to act, which it then did to some limited extent. I also note that, by this time, the hearing of this human rights Complaint had commenced. Given these steps, I disagree with Dr. Kirby's assessment that the Complainants had not taken any steps to address their concerns in any "believable way";

- The s. 15(1) complaint was not investigated; I find that Council could have taken such a step, as acknowledged by Dr. Kirby, but it chose instead to disbelieve the Ashburner Recording. Drs. Brocklebank, King-Harris and Roberts testified that an investigation could have been commenced and they would have investigated it had it been referred to them to do so;

- Many of the BCVMA's witnesses had not reviewed the complete Transcript until preparing for this hearing, which, in and of itself, is astonishing. I found none of their explanations for this failure persuasive, except for those provided by Drs. King-Harris, Roberts and Craven;

- In the circumstances, it would have been most appropriate for Dr. Ashburner to have stepped down or he should have been asked to step down from the CRC, both as the Chair and a member of the committee, while the Ashburner Recording was investigated. This would have served to address many of the Complainants' concerns regarding his continued involvement in the processing of their disciplinary complaints, given their perception that Dr. Ashburner might be disposed to find against them based on some preconceived idea of the nature of their practice. I am not persuaded by the evidence that, had Dr. Ashburner been asked to step down pending an investigation, this would have required others in the BCVMA to step down as Dr. Bhullar, and other Complainants, had made allegations against them as well. I find that this was pure speculation on the part of Council;

- I agree that Dr. Ashburner was entitled to due process in any investigation that was commenced by the BCVMA. However, the BCVMA did not take any steps until forced to do so by the Complainants; Dr. Ashburner was then dealt with fairly;

- I find that the BCVMA was entitled to continue processing disciplinary complaints involving the Complainants. However, this does not mean it was also foreclosed from investigating the actions of Dr. Ashburner or having him step aside while it did so;

- I find that Ms. Osborne, despite being presented with the Transcript, that had been reviewed, edited and accepted by Dr. Ashburner as being his comments, during this human rights Complaint proceeding, still did not accept that it was an accurate Transcript. I find her position in this respect concerning. Ms. Osborne was evasive in responding to questions regarding many of Dr. Ashburner's comments put to her during her evidence, which I concluded was because she wanted to protect Dr. Ashburner;

- I find that, despite Drs. Roberts, King-Harris and Brocklebank raising questions and their concerns about the Ashburner Recording, it appears from the evidence that Ms. Osborne took no steps to act on those concerns or to bring them to the attention of Council. Given that she indicated in her evidence, on numerous occasions, that she was the "guardian" of the disciplinary process, discussed elsewhere in the Decision, her failure to do so is puzzling;

- The Respondents' witnesses generally agreed that the Ashburner Recording raised concerns and they understood that the Complainants would be concerned. However, it appears that this realization did not occur until this hearing was well underway;

- Given the delay and lack of action on the part of the BCVMA in dealing with the Ashburner Recording, I find that the Complainants had a reasonable basis to believe that they could not obtain a fair and unbiased assessment of their disciplinary complaints when those complaints were considered by the CRC;

- I find that, although Dr. Ashburner might have recused himself from the discussions involving Dr. Bhullar, this was not recorded in the CRC Minutes. Further, Dr. Ashburner did not recuse himself from the discussions involving other Complainants. It is concerning that Council took no concrete steps to ensure that this was occurring in the face of the Ashburner Recording, the Transcript of it and the subsequent s. 15(1) complaint that was filed;

- I find that the ultimate Statement of Facts, which was prepared by the BCVMA and given to the Inquiry Committee, the Inquiry Committee decision and the penalty imposed on Dr. Ashburner by Council served to minimize Dr. Ashburner's actions. Although the Ashburner Recording was the subject of public discussion, something taken into account by Council when it considered the penalty to impose on Dr. Ashburner, the impact might have been reduced had the BCVMA taken immediate steps to deal with the recording;

- I find that many of the Respondents' witnesses gave Dr. Ashburner the benefit of the doubt, in that they believed that he could not have made the comments attributed to him even in the face of transcript(s) of the Ashburner Recording being available. This was especially true of Dr. Kirby;

- Dr. Kirby gave some evidence about those Indo-Canadian veterinarians who had allegedly signed certain documents commencing the various legal actions discussed throughout this Decision. According to Dr. Kirby, these Complainants signed the documents and legal actions under "duress". There was little or no evidence from the Complainants, who testified before me, that this was the case. Although there was some hearsay evidence about this, I give it little weight; and

- Dr. Kirby gave evidence about a meeting in Whistler where Dr. Bhullar and others allegedly engaged in threatening and aggressive behaviour. These allegations were not put to Dr. Bhullar, who

allegedly was involved in these behaviours. As a result, I gave this evidence no weight.

[222] In summary, I find that Dr. Ashburner made inappropriate comments, some of which promoted stereotypes based on race, or comments that could reasonably be considered as such. The real issue, however, is the lack of action on the part of the BCVMA, which preferred to assume that Dr. Bhullar would have altered the Ashburner Recording and the Transcript(s) of it instead of conducting a proper investigation into its veracity and Dr. Ashburner's conduct.

Advertising Complaints

[223] The Complainants allege that they were subjected to more restrictive standards regarding advertising. The Complainants alleged that they were restricted from using certain descriptive language to describe their services while other non Indo-Canadian veterinarians were not so restricted. The Complainants allege that advertising complaints were pursued against them and but not against non-Indo-Canadian veterinarians.

[224] The evidence with respect to advertising is set out in **Appendix "K".**

[225] I make the following findings with respect to advertising:

- I accept that the Marketing Guidelines do not have the force of a bylaw. They were adopted by Council to assist the membership and others within the BCVMA, in determining what may, or may not, be in violation of the Code of Ethics should an advertising complaint be filed;

- I find that a complaint letter was not required to initiate an advertising complaint. For example, the evidence illustrated that, as part of the inspection process, inspectors reviewed a member's advertisement and forwarded any concerns to the BCVMA. This process would not have been a complaint letter from a member of the public but, based on the information, the BCVMA could initiate a complaint;

- I find that, in many cases, when an advertising complaint was sent to the BCVMA, the BCVMA became the complainant. As a result, the Complainants would have been unaware of who had made the complaint. I find that this process led the Complainants to question the fairness of the process;

- I find that the BCVMA scrutinized many of the complaints filed against the Complainants under the new Marketing Guidelines, despite the fact that those Guidelines had not been adopted by Council until after the advertisement in question had been disseminated. (Drs. Punia, Benipal, Parbhakar, Johar, and Bhullar) However, I was not persuaded that the CRC's failure to consider this or to interpret and/or apply them when it considered Dr. Bhullar's advertising complaint, or those complaints involving other Complainants, alone, leads to the conclusion that the CRC acted unfairly;

- I find that once the Complainants had disseminated their advertisements, they could not be changed. Once the Complainants learned of the BCVMA concerns, they took steps to change their advertisements and to comply with the Marketing Guidelines (Drs. Benipal, Punia, and Bhullar);

- I find that, from time to time, Ms. Osborne was involved in advertising complaints, although I accept that she did so reluctantly. I accept her view that advertising complaints were not the most serious of complaints that were filed with the BCVMA. I accept Ms. Osborne's evidence that some advertising complaints were motivated by economic issues. I accept that advertising is difficult to regulate and it was difficult to articulate standards, given the different types of advertisements, especially in the internet environment;

- Although Ms. Edwards testified that she dealt with all advertising complaints in a similar fashion, through a deemed undertaking, there was no documentary evidence to support her assertions. I find that this lack of documentary evidence calls into question what, if any, steps were taken with most other members who were not the Complainants;

- A number of Complainants had advertising complaints referred to Inquiry, (Drs. Bhatia, Bajwa, Kamboj, and Sharma). Some of the reports considered by the CRC contained negative commentary about the low-cost fees being charged and questions were raised about whether an appropriate level of medical care could be provided in such circumstances (Dr. Bajwa). I find that there was no evidence that other non-Indo-Canadian veterinarians, with allegedly similar advertising complaints, were referred to Inquiry;

- I find that some of the Complainants had advertising complaints referred to Inquiry by the CRC but were not advised that this had occurred (Dr. Bajwa);

- I find that, although the advertising complaints involving the Complainants, except for Dr. Bhullar, were not ultimately the subject of formal discipline through the Inquiry process, they were nonetheless

pursued and subject to scrutiny (Drs. Punia, Dr. Bhatia, Dr. Benipal, Kamboj and Sharma);

- I find that the BCVMA resolved the Complainants' advertising complaints through a process of deemed undertakings. Ms. Osborne agreed that such a process was inappropriate;

- I find that the Complainants, as a group, decided not to sign the letters setting out the undertaking that they not engage in advertising similar to that which was the basis of the complaint against them. I find that their concerns that, had they done so, further and more serious steps might have been taken against them, was reasonable (Drs. Johar, Punia and Bajwa);

- There was a significant amount of evidence that many veterinarians advertised in a similar manner to the Complainants, which appeared to violate the Marketing Guidelines. There was little evidence to suggest that these were the subject of review by the BCVMA. I accept that the oral and documentary evidence that the Complainants' advertisements were similar to other members and often contained the same or similar wording. Had the BCVMA been concerned about the breach of its Marketing Guidelines by its members, it is my view that it would have taken further steps to address the concerns of the Complainants in the advertising materials of other members sent to it by them. I find that its failure to do so led the Complainants to perceive, correctly, that they were being unfairly targeted;

- I find that some advertising complaints filed against the Complainants, or former Complainants, were motivated by economic competition concerns (Drs. Punia, Bajwa, Hans, Parbhakar, Johar, Kamboj and Bhullar);

- The BCVMA delayed advising some of the Complainants that the advertising complaints against them had been closed. I find that this would have added to the Complainants' sense of being unfairly targeted. I was not persuaded that the "deemed undertaking" provision would have addressed this concern absent a formal letter closing the complaint being sent to them, which was the BCVMA's normal practice (Drs. Bhatia, Bajwa and Punia);

- I find that the BCVMA's retention of open files, without advising those that were the subject of the complaint, provided some evidence that certain Complainants were being monitored. Although the Complainants found out about these files during the course of disclosure in this matter, I accept that they would have felt that they were being subject to unwarranted scrutiny by the BCVMA (Drs. Punia and Bajwa);

- I find there were members of the BCVMA, who were later elected to Council (Drs. O'Grady, Snopek, Dr. Forsyth), or who were involved in BCVMA Committees (Dr. Rana), who filed advertising complaints against the Complainants (Drs. Bajwa, Johar, Sharma, Benipal and Hans). These Council and Committee members were later involved in issues involving these same Complainants. Upon learning who had filed the complaint, and viewed in context, I find that it was reasonable that the Complainants may perceive that these members would not deal with their complaint issues with an open mind;

- Despite the view of Ms. Osborne that advertising complaints were not the most serious complaints that came to the attention of the BCVMA, the BCVMA pursued such a complaint against Dr. Bhullar to Inquiry. It provided no reasonable explanation for doing so;

- I agree that Dr. Bhullar was treated differently from the other Complainants who had similar advertising complaints opened against them. For example, such advertising complaints were closed based on a deemed undertaking and no further steps were taken to pursue them. I accept that this would provide some support for Dr. Bhullar's view that the BCVMA was referring all complaints against him to Inquiry;

- Dr. Brocklebank testified that he had not seen the advertisement that was the subject of complaint A04-067 involving Dr. Bhullar before completing his report to the CRC. I find that this failure raises the concern about both the completeness of the report and the due process afforded to Dr. Bhullar; and

- The advertisement that was the subject of complaint A04-067 was published before the new marketing Guidelines had come into effect and Dr. Bhullar had taken steps to address the concerns raised by the BCVMA. This does not appear to have been considered by the CRC and/or Council. I agree that it was unfair to hold Dr. Bhullar to a standard that was not in effect when he placed his advertisement. Further, the issue of Dr. Bhullar's emergency information available after hours was not an issue referred to Inquiry by the CRC. It is not clear why this issue was then addressed by the Inquiry Committee.

Facility Inspections

[226] The Practice Accreditation Committee oversees facility inspections, which are carried out by Practice Inspectors.

[227] The Complainants alleged that they were unfairly targeted for unscheduled inspections of their facilities. The Respondents deny that this was case.

[228] The evidence with respect to the facility inspections is set out in **Appendix "L"**.

[229] I make the following findings with respect facility inspections:

- I accept Dr. Wetzstein's evidence that he was not aware of the rumours circulating about the Complainants and/or other Indo-Canadian veterinarians during his tenure as a Practice Inspector and outside any information he may have received when preparing to testify before the Tribunal. Dr. Wetzstein did not strike me as a person who would participate in, or listen to, idle gossip;

- I find that Ms. Osborne had expressed her concerns about Dr. Bhullar to Dr. Runnells and that she told him that she feared for her personal safety. I find that Ms. Osborne also raised her concerns about those associated with Dr. Bhullar, including Drs. Bajwa and Johar;

- Given Dr. Rana's views about Dr. Bhullar and those associated with him, which were known to the Complainants, I find that the Complainants would have reasonably perceived that PAC was biased against them. The PAC Minutes do not reflect that Dr. Rana recused himself from the discussions and/or vote on issues involving those facilities owned and/or operated by the Complainants;

- I find that PAC directed that the Practice Inspectors conduct scheduled inspections of facilities throughout British Columbia; inspections were clustered by region and scheduled according to the availability of inspectors;

- I find that Practice Inspectors could, and did, conduct unscheduled inspections, which were inspections without prior notice to the facility;

- I accept that PAC did not act as a punitive committee and that its goal was to ensure that facilities operated to minimum practice standards. I find that PAC took several steps to have members address any deficiencies that arose during the course of a practice inspection, failing which the matter could be referred to the CRC as a disciplinary complaint;

- I find that the Registrar's office provided administrative support to PAC. I was not persuaded that, as a general rule, the Registrar directed the work of PAC;

- I find that PAC had the authority to direct its Practice Inspectors to assist in an investigation of a disciplinary complaint. I find that the Registrar could also ask a Practice Inspector to assist in an investigation, which could include the inspector conducting an unscheduled inspection, photocopying documents and/or specific medical files;

- I find that Dr. Wetzstein did not vary his practice when he conducted practice inspections, whether scheduled or unscheduled. I find that, from time to time, Dr. Wetzstein took photographs when conducting his inspection. The taking of photographs at Dr. Bajwa's clinic was therefore not entirely unusual. I find that PAC and/or the Registrar's office could direct a Practice Inspector to copy specific files during an inspection;

- I find that, in 2000, PAC engaged in a process to revise and update its practice accreditation process. This process resulted in the 2005 Practice Standard, approved by the membership in January 2005. I find that, during this process, regular facility inspections were suspended;

- I find that Council directed that inspections recommence in July 2003 and that facilities could be subject to scheduled or unscheduled inspections. In September 2003, Council passed a motion formalizing PAC's authority to conduct unscheduled inspections;

- I find that, when the inspections were reinstated, those facilities that had 'anecdotal complaints' would be inspected first, which included a number of facilities owned by the Complainants, along with those facilities that had never been inspected prior to opening. I find that the lists generated for those facilities to be inspected, in 2004, referenced facilities that would be subject to an unscheduled inspection, which were all owned and/or operated by Indo-Canadian veterinarians, except for one. I find that there was no substantive information given to PAC that would support the suggestion that there were concerns about these clinics which necessitated unscheduled inspections;

- I find that Ms. Osborne discussed the issue of unscheduled inspections with Dr. Morgan at the time that Dr. Morgan was creating the lists for PAC in 2004. I find that Ms. Osborne advised Dr. Morgan that the focus of the unscheduled inspections should be on these clinics that advertise low prices. Although both Dr. Hollingshead and Ms. Murray testified that Council would not have directed that only Indo-Canadian veterinarians who advertised low-cost services be inspected, this was what the list reflected. There was little evidence about what fees were charged by the other facilities on the lists generated by Dr. Morgan and why, if they were charging low fees, they would not have been the subject of unscheduled inspections. I did not find Ms. Osborne's evidence that she had been misquoted in various emails to be compelling, as she took no steps to correct the information contained in them;

- I find that the Complainants' facilities were listed for unscheduled inspections to a greater extent than those facilities owned, or that appeared to be owned, by other non-Indo-Canadian veterinarians. I

find that the information to support the request for unscheduled inspections was based on rumours and unproven complaints, both oral and written;

- I find that the Complainants did not share equipment for the purposes of facility inspections and Dr. Wetzstein found no evidence to the contrary;

- I do not believe that Dr. Benipal cheated when he addressed the deficiencies by providing photographs of items that may not have been in his facility. There was no evidence to support the allegation that he did;

- I accept that Dr. Wetzstein did not intend to file a complaint against Dr. Benipal when he sent a copy of Dr. Benipal's advertisement to the Registrar's office in 2006, after he concluded his inspection. It was clear from the evidence that Practice Inspectors would review advertising materials as part of their inspection process and bring them to the attention of PAC prior to the 2005 Practice Standards;

- I find that, after the 2005 Practice Standards were passed, PAC set in place a system to have all facilities inspected under the new standards. I accept that facilities opened after January 2005 were to be inspected first; facilities in the second group were those facilities that had opened before January 2005 and they were to be inspected under the old provisions, with a further inspection to take place before the end of 2008. Included in this second group were those facilities that had a number of complaints against them and those complaints would be subject to unscheduled inspections;

- I find that there was no reasonable explanation for Ms. Edwards to send Dr. Wetzstein a list of practice standards that might not be being met in certain facilities, including those facilities that she had listed to be subject to an unscheduled inspection. It does not appear from the evidence that this step had been taken in the past. I find that the concerns outlined in the list generally related to those facilities owned by the Complainants, discussed elsewhere in this Decision. Although they may have related to other facilities, I had no basis to make this finding except from the evidence of Ms. Edwards, which I did not accept on this point;

- I accept Dr. Wetzstein's evidence that some of the concerns raised were "ridiculous", which was illustrated by the fact that these concerns were not subsequently identified during the inspections of facilities owned by the Complainants. Generally, the concerns identified during the unscheduled inspections were "minor" and were addressed by the Designated Members to the satisfaction of PAC;

- Drs. Bhullar and Benipal were subject to unscheduled inspections in September 2005. Many of the Complainants, who were listed as possibly having an unscheduled inspection, did not. For example, Drs. Kamboj's and Mrar's facilities were listed for an unscheduled inspection but they subsequently had notice of it. I note that, with respect to unscheduled inspections in 2004, Drs. Bhatia and Sharma received notice of their upcoming inspections;

- Although the Respondents argued that decisions of PAC were at all times "wholly autonomous" from the Registrar's office, this was not completely accurate. For example, Dr. Brocklebank was asked by Ms. Osborne to request an immediate inspection of Dr. Bajwa's clinic in November 2008. PAC then acted on this request. Although it was PAC's decision to do so, it did not do so based on its own information and/or otherwise initiate the inspection;

- I find that there was no urgent basis for the request to have Dr. Bajwa's clinic inspected by PAC at its earliest convenience. There was no basis to suggest that it was in the public interest to do so, given that events giving rise to the complaint occurred in February 2008, some eight months before the inspection took place. Further, the complaint was received by the BCVMA in April 2008, a month in which Dr. Bajwa's facility underwent a scheduled inspection. If it was in the public interest to act quickly on the complaint, it would have done so at that time. It is difficult to accept that a delay of between April and November would in any way serve to protect the public interest;

- I find that Ms. Osborne knew the Tribunal hearing schedule and would have known that Dr. Bajwa was to give evidence commencing December 2, 2008, in place of Dr. Bhullar, who was then engaged in an Inquiry process at the BCVMA. To suggest otherwise strains credulity; and

- I find that, at all times, the facilities owned and/or operated by the Complainants remained open and the members were able provide services to the public without restriction.

Disclosure Policy

[230] At the direction of Council, in late 2004 and through 2005, a disclosure policy was developed and implemented to allow for publication on the BCVMA website of Notices of Inquiries, which included the pending charges and Inquiry Committee decisions (the "Disclosure Policy").

[231] The Complainants allege that the Disclosure Policy was introduced to target them and/or had a disproportionate impact on them. The Complainants suggest that Ms. Osborne used the Disclosure Policy to undermine the Complainants' assertion that the BCVMA was targeting them and to ensure that the membership would be sceptical of their claims of racism.

[232] The evidence with respect to the Disclosure Policy is set in **Appendix "M"**.

[233] I make the following findings with respect to the Disclosure Policy:

- The BCVMA had the authority to develop and implement the Disclosure Policy;
- Prior to the implementation of the Disclosure Policy, the BCVMA published limited information regarding disciplinary complaints and the information published was not consistent and, in some cases, the identity of the veterinarian was disclosed;
- Ms. Murray initiated the discussion on the development and implementation of the Disclosure Policy and Disclosure Rules when she joined Council;
- Ms. Osborne acted as a resource and assisted in the drafting of the Disclosure Policy and Rules in her capacity as Registrar. Ms. Osborne did not initiate the process. It was ultimately a decision of Council to implement the Disclosure Policy and Disclosure Rules;
- The timeframe between the appointment of the Disclosure Task Force to the passing of the Disclosure Policy and Disclosure Rules was relatively short and took precedence over other matters;
- The BCVMA did not review the disclosure practices of other veterinary organizations; I was not persuaded that, although the BCVMA is subject to British Columbia legislation, this necessarily required it to limit its inquiries;
- The Law Society of British Columbia had decided not to publish charges that were "minor"; the BCVMA did not take such an approach nor was the evidence that they considered doing so. The BCVMA posted all charges. The Law Society of British Columbia also did not publish information retrospectively; the BCVMA did. Despite asserting that the BCVMA was following other similar organizations in BC in making its decision regarding disclosure, it did not entirely do so;

- Council was aware that those who would initially be subject to the Disclosure Policy would, for the most part, be Indo-Canadian veterinarians involved in this human rights complaint, among other civil actions. This information would have been known to them as a result of the referrals to Inquiries that it made; the list of names provided to support a release of monies from the reserve fund; the information contained in various BCVMA's publications and, finally, through the evidence of Dr. Hollingshead in which he noted that certain of the Complainants were litigious and were the ones in the Inquiry process;

- There were no compelling reasons provided by the BCVMA to support its position that the Disclosure Policy would have to have retrospective effect, thereby capturing those in the system, whom Council knew included many of the Complainants;

- Council understood that publishing the information would result in harm to those affected; initially, these were Indo-Canadian veterinarians involved, or previously involved, in this human rights complaint. Not all Council members supported publication. Ms. Osborne was concerned about publication and the possible adverse impact on those veterinarians so identified;

- The CRC met to consider the issue of anonymous publication outside its normal meeting schedule and by teleconference, suggesting that there was some urgency in having the information published, contrary to the BCVMA's assertions;

- Those affected by the Disclosure Policy did not provide evidence of "grievous harm" required by the BCVMA to grant anonymous publication. I accept that the COs were not required to provide this information. However, the two members who were granted anonymous publication also did not provide evidence of grievous harm; this information was provided by Dr. King-Harris and accepted by Council;

- Council knew, prior to the information being posted on the website, that the Complainants would pursue legal action; however, Council directed that the posting occur; and

- Had Council been concerned about its obligation to protect the public interest, it is not clear why it removed the information shortly after it was posted. Although the BCMA suggested that this was done based on legal advice and concerns raised by its insurer, such advice and concerns should have been obtained and/or considered before the posting, as litigation had clearly been threatened.

Disciplinary Complaints

1. General Overview

[234] The Complainants made numerous allegations regarding the processing of disciplinary complaints and that they were treated unfairly and unequally. Specifically, the Complainants allege that:

a. professional conduct complaints against them, often without merit, are accepted and vigorously investigated when other similar, or even more serious complaints, are not pursued;

b. they are not being offered consent resolution options which are provided to other BCVMA members;

c. complaints, involving the Complainants, are being set for hearings, which are stressful, time consuming and expensive when other similar cases are not set for hearing;

d. where there may be a different version of the same event, the BCVMA pursues the allegations against the Indo-Canadian veterinarians but not against others;

e. an equal and reasonable level of procedural fairness is being denied to the Complainants at hearing;

f. the Inquiry panel hearings involving the Complainants have been improperly appointed contrary to the BCVMA's by-laws and the panels have refused to hear arguments pertaining to bias and discrimination against them. The panels have proceeded with the Inquiry despite legal counsel being unavailable, have considered inappropriate evidence, have proceeded on the basis of frivolous charges, have scheduled hearings on weekends and evenings, and the Registrar and BCVMA have interfered with witnesses;

g. they are prohibited from telephoning, emailing or attending in person at the BCVMA. The Complainants are only allowed to fax communications to the BCVMA;

h. the warnings and/or sanctions that have been issued against the Complainants are disproportionate to what are normally issued against others; and

i. the BCVMA has refused to respond to, or investigate, complaints that have been made by the Complainants against other non-Indo-Canadian veterinarians.

[235] The Respondents say that there have been numerous complaints made to the BCVMA about the Complainants which have been duly and properly processed, investigated, handled and/or otherwise resolved in accordance with the *Act*. The Respondents say that all complaints to the BCVMA are assessed and handled in accordance with their individual circumstances. The Respondents say that the Complainants' allegations have been taken out of context and comparisons between complaints, based on minimal facts and speculation, are misleading and inaccurate.

[236] The evidence with respect to the disciplinary complaint process was extensive. As a result, I have separated that evidence into different areas as follows:

- Disciplinary Complaints General – **Appendix "N"**;
- Disciplinary Complaints involving Dr. Bhullar – **Appendix "O"**;
- Disciplinary Complaint 04-052 involving Dr. Bhullar – **Appendix "P"**;
- Inquiries involving Dr. Bhullar – **Appendix "Q"**;
- Disciplinary Complaints involving Dr. Johar – **Appendix "R"**;
- Files involving Dr. Johar and Dr. O – **Appendix "S"**; and
- Q Files – **Appendix "T"**.

2. Disciplinary Complaints General

[237] I make the following findings with respect to those disciplinary complaints involving the Complainants. I set out the findings as they relate to each of the Complainants' and/or former Complainants' disciplinary processes in the same order as the evidence is set out in **Appendix "N"**.

Dr. Bajwa

[238] I make the following findings with respect to file 02-024:

- Dr. Bajwa was responsive to the BCVMA's request for information; he asked for and received extensions to the provision of the requested information. I find that, after the last extension, Dr. Bajwa was four days late in providing the information;

- Dr. Bajwa could not have provided the original medical records or the invoice as they were in the possession of Atlas-Vancouver where he was no longer working;

- The PO identified four issues of concern; Dr. Roberts also identified four issues;

- Dr. Roberts was not influenced by the location of Dr. Bajwa's clinic and/or his competitors in Surrey when she completed her investigation; and

- The invoice is part of the medical records. In this complaint, Dr. Roberts had a copy of the invoice, which had been provided by the PO when she completed her investigation.

[239] I make the following findings with respect to file 02-071:

- Dr. Bajwa provided a timely response to Dr. King-Harris and answered the questions posed to the satisfaction of Dr. King-Harris; and

- There was no basis to suggest that the post-operative infection provided circumstantial evidence that Dr. Bajwa was circumventing costs by reducing his standard of practice and/or by reducing the necessary steps to prepare the animal for treatment.

[240] I make the following findings with respect to file 03-103:

- Dr. Bajwa delayed in providing his medical records to the BCVMA. Dr. Bajwa acknowledged that he had done so; and

- The BCVMA processed this complaint in a timely and appropriate manner.

[241] I make the following findings with respect to file 03-135:

- Although Dr. Bajwa delayed in providing his medical records to the BCVMA he sought and was granted an extension and complied with the extended timelines;

- The BCVMA did not followed up with the PO about her discussions with Dr. O'Brien before making the decision not to pursue a complaint against Dr. O'Brien for her alleged unprofessional comments about Dr. Bajwa. It therefore acted on its own assumption that Dr. IO would not have acted in such a manner;

- I agree with Dr. Bajwa that the BCVMA failed to warn Dr. IO about the tenor of her communications. Although the BCVMA did not pursue a complaint against her, I agree that it would have been

reasonable for the BCVMA to have warned her about the content of her communications, which was something the BCVMA did in other files; and

- I agree that this complaint was closed seven days after the demonstration at the BCVMA regarding the English Language Standard, in which Dr. Bajwa participated. However, I am not persuaded that the inference that can be drawn from this alone that the BCVMA was not retaliating against Dr. Bajwa and/or the Complainants generally for their role in the English language debate; the entirety of the evidence must be assessed before such an inference could be drawn.

[242] I make the following findings with respect to file 04-023:

- I accept that the CRC was becoming concerned about members providing their medical records and other documentation in complaint cases. I find that this paragraph was not just directed at Dr. Bajwa and/or the Complainants generally;

- Dr. Bajwa provided his medical records by the date stipulated in Dr. Roberts' second letter dated June 2, 2004;

- I agree that Dr. Bajwa had a pattern of delaying in providing his medical records, although he generally provided them after receiving the second request letter from the BCVMA; and

- The BCVMA processed this complaint in a timely and appropriate manner.

[243] I make the following findings with respect to file 04-045:

- Dr. HGA offered radiographs and blood work to the PO and these treatment options were declined. This information was written at the same time the other entries were written;

- Although Dr. Bajwa provided his medical records three days late, August 7 and 8 were weekend days. I find that Dr. Bajwa's records were delayed by one business day;

- Dr. Bajwa did not delay in responding to the letter in support of the PO request that the CRC consider her complaint; and

- The BCVMA processed this complaint in a timely and appropriate manner.

[244] I make the following findings with respect to file 04-025:

- The issue raised by the PO was the treatment of Baby Kitty, which was dismissed as against Dr. Johar. The issue raised by Dr. Roberts was Dr. Bajwa's failure to respond in a timely and appropriate manner;

- Dr. Bajwa was asked to respond to Dr. Roberts' questions on three separate occasions, February 13, March 9 and March 30, 2004. Dr. Bajwa responded after the April 8 noon deadline set in the March 30 letter;

- Despite there being a discussion of whether the April 8 date should be set, given it was before the long-weekend and Dr. Bajwa would be busy in his practice, the date was set. I find that there was no urgent basis, or any other reason, that required that this date be set when it was known that Dr. Bajwa may have difficulty meeting it;

- Dr. Bajwa's failure to provide his response by April 8, which was an arbitrary date, had little impact on the investigation of this complaint, including that part of the complaint involving Dr. Johar;

- Dr. Bajwa was to provide his response by noon on Thursday, April 8. The office closed at 5:00 p.m. that day and reopened at 8:30 a.m. on Tuesday, April 13, 2004. The evidence reflects that Dr. Bajwa's response had been received at least by 10:04 a.m. on April 13. In total, Dr. Bajwa's delay, from the last timeline set, was six and one-half hours. I accept that Dr. Bajwa's delay was frustrating for the BCVMA, given that the total delay had been approximately seven weeks, but the short delay from the last timeline set, was minor relative to the significant steps then taken by the BCVMA. Dr. Bajwa's delay posed no risk to the public and the public interest was not engaged;

- I am unable to determine if Dr. Bajwa contacted someone at the BCVMA on April 8, 2004 to say that he would be late. Ms. Edwards was not asked about this during the course of her evidence. I note that Dr. Bajwa had, in the past, called for extensions or had advised he would be late. I find no reason to conclude he would have failed to do so in the circumstances of this complaint;

- The emails exchanged between Ms. Osborne, Ms. Edwards and Dr. Roberts on April 8 and 13, 2004, reflect Ms. Osborne's intent on pursuing this complaint to the CRC level despite the fact that the information had been received early on April 13, 2004;

- Dr. Roberts assumed that Dr. Bajwa's failure to respond in a timely manner illustrated that he was refusing to co-operate with the BCVMA. I find that the information before the BCVMA did not provide a reasonable basis upon which to draw such a serious conclusion, given that Dr. Bajwa did initially respond, in a timely

manner, to the BCVMA in this complaint. The finding that Dr. Bajwa was refusing to co-operate was a serious one, given that Dr. Bajwa had initially responded and did ultimately respond;

- Despite Dr. Roberts' recommendation that this file be closed with a stern letter to Dr. Bajwa, Ms. Osborne directed that this matter go to the CRC. I accept that Ms. Osborne was frustrated with Dr. Bajwa and her view of his tardiness; however, I find that this was not a reasonable basis upon which to pursue this complaint to the CRC level and then to Inquiry, given Ms. Osborn's ongoing assertions that the BCVMA was overworked, faced backlogs and had limited resources;

- Dr. Bajwa was not advised that a complaint had been initiated against him by the BCVMA until he received a copy of the report to the CRC dated May 25, 2004. I find that fairness required that Dr. Bajwa be afforded the opportunity to respond to the complaint before the CRC report was completed; and

- I find that Dr. Bajwa's concern that, if he accepted a reprimand, the BCVMA would take further and more serious actions against him in the future, should he miss a deadline for the filing of a response, reasonable.

[245] I make the following findings with respect to file 04-049:

- I agree with the Complainants that it was evident that it was Dr. Bajwa who performed the ear cleaning. The handwriting in the medical record was similar to the balance of the entries written by Dr. Bajwa, and no issue was raised that they were not Dr. Bajwa's initials. I accept that making assumptions about handwriting may not be appropriate; however, the reasonable response would be for the CO, when making a recommendation to send the issue to Inquiry, to clarify the issue to the extent possible. There was no urgency with respect to this matter which foreclosed Dr. Roberts from pursuing this issue with Dr. Bajwa. The public was not at risk. I find that there was no basis to conclude that Dr. Bajwa tried to mislead the BCVMA by failing to initial this entry;

- There was little basis upon which to conclude that Dr. Bajwa was refusing to co-operate with the BCVMA, attempting to mislead it or was attempting to obstruct the investigation. I agree with the Complainants that Dr. Bajwa was not given the benefit of the doubt in the circumstances;

- I agree with the Complainants that, had there been any question about who did the ear cleaning, it is unclear how Dr. Roberts could have concluded that Dr. Bajwa had failed to provide the requisite level of

care and skill, mislead the BCVMA and/or failed to accurately complete the medical records. If Dr. Roberts could not identify who performed the ear cleaning, then there was little basis upon which these other conclusions could be drawn;

- The PO raised two concerns in her complaint; the treatment of Cleo's ear infection and reimbursement of the fees paid. Dr. Roberts identified two issues in her initial draft CRC report; inaccuracy and completeness of medical records and standard of medical care. The final report, dated February 22, 2005, contained six issues. No explanation was provided for this difference, which resulted in a significant expansion of the allegations against Dr. Bajwa made by the PO;

- Dr. Roberts testified that there was a "pattern" of differences between what a PO had said and Dr. Bajwa's medical records, which raised for her the possibility that the medical records had been altered and/or fabricated. Prior to this complaint, Dr. Roberts had only investigated one complaint where such an issue seems to have been raised (File 02-024). I find that this does not constitute a "pattern" of fabrication or alteration of medical records, which is a very serious allegation to make. I was not persuaded that the POs' information, not given under oath, was a reasonable basis upon which to draw such a serious conclusion;

- I agree with the Complainants that Dr. Roberts and Ms. Osborne engaged in speculation about Dr. Bajwa's motive, in that he had a reason to prevaricate based on the fact that a complaint had been filed against him. Complaints had been filed against Dr. Bajwa in the past and this had not been the case. This is a very serious allegation, which I find was based on little information and was not sufficiently corroborated;

- There were other files that Dr. Roberts investigated during this period, when she was investigating file 04-049 involving Dr. Bajwa, where entries had not been initialed and no issues were raised: Dr. Orser (Vol. 40 04-052) Dr. Sekhon (Vol. 40 04-066);

- There were files where the medical records were preferred over the recollection of the PO: Vol. 41 04-069, 04-078. In this case, Dr. Roberts preferred the information of the POs. I find that, in those cases, no issues were raised that the member may have had a motive to make self-exculpatory statements.

[246] I make the following findings with respect to Inquiry 07-02:

- By the time Council referred this matter to a second Inquiry, Dr. Bajwa was responding to the BCVMA in a timely manner, something not

considered by Council. (see files 04-118; 04-091; 05-007 (partial); 05-015; 05-091);

- I agree with Dr. Kirby that the issues raised by complaints 04-025 and 04-049 were minor; and

- Dr. Bajwa had gone through the first Inquiry and it was the Inquiry Committee which allegedly made the errors that were the subject of judicial review; Dr. Bajwa was required to pay the costs of the judicial review and his own costs for the initial Inquiry. If the BCVMA was concerned about deterrence, whether specific or general, Dr. Bajwa had been significantly punished by the manner in which this file had been processed by it and the costs that he had incurred.

[247] I make the following findings with respect to file 04-091:

- Dr. Bajwa met his obligation to transfer medical records in a timely manner; and

- The BCVMA processed this complaint in a timely and appropriate manner.

[248] I make the following findings with respect to file 04-118:

- Prior to investigating this complaint, Dr. King-Harris had investigated one other complaint involving Dr. Bajwa. No issues of alteration or falsification of records were raised in that investigation. It is unclear to me why Dr. King-Harris would assume that Dr. Bajwa would have altered or fabricated his records. I find that Dr. King-Harris had no basis for doing so;

- The POs raised three issues in their complaint; Dr. King-Harris identified six issues in his report to the CRC;

- It was clear from a comparison of Dr. Bajwa's medical records, provided to Dr. King-Harris by the second opinion veterinarian, and prior to Dr. Bajwa knowing of the complaint, his records were the same as those he provided to the BCVMA. I find that this evidence illustrates that Dr. King-Harris had no basis upon which to suggest that Dr. Bajwa had falsified his medical records to be self-exculpatory. It may be that the information in the records was different from that which the POs recalled discussing with Dr. Bajwa, but that does not lead to the conclusion that the medical records were falsified or altered, which would have to have been done before they were forwarded to the second opinion veterinarian;

- The Practice Standards in force at the time that Dr. Bajwa wrote this medical record required Dr. Bajwa to record only abnormalities when conducting an examination; Dr. Bajwa met this standard; and

- Dr. Bajwa responded to Dr. King-Harris' requests for information in a timely manner. Dr. Bajwa provided his medical records to the second opinion veterinarian in a timely manner.

[249] I make the following findings with respect to file 05-007:

- Dr. Bajwa responded to the BCVMA in a timely manner; and

- The BCVMA processed this complaint in a timely and appropriate manner.

[250] I make the following findings with respect to file 05-015:

- Dr. Bajwa provided timely responses to the BCVMA;

- The PO raised three issues in her complaint, treatment, release of the cat and issues regarding the payment of fees. Dr. Roberts identified seven issues in her report to the CRC;

- Having reviewed Dr. Bajwa's medical records, I find that there was no basis to suggest that he had altered or changed his medical records. The POs might have a different recollection of what occurred but this does not lead to the conclusion that Dr. Bajwa altered his medical records. Dr. Bajwa had no reason to do so;

- The PO's refusal to pay for the treatment provided by Dr. Bajwa and her subsequent actions to obtain the cat after she had returned it, called into question her credibility, which I find was not adequately or reasonably assessed when this complaint was investigated. Within this context, I find that the PO's actions undermine her "strong evidence" that Dr. Bajwa refused to return the cat unless she paid the treatment fees or that her evidence should otherwise be preferred;

- Dr. Bajwa provided IV fluid therapy and other treatments for Nagano despite the PO's statements to the contrary, some of which were based on hearsay;

- The PO never paid for the treatment of Nagano nor did Dr. Bajwa pursue this payment; and

- Dr. Bajwa did not mislead the BCVMA. I find that there is little factual basis to make such a serious allegation.

[251] I make the following findings with respect to file 05-091:

- Dr. Bajwa provided a timely response to the BCVMA;

- The BCVMA processed this complaint in a timely and appropriate manner.

[252] I make the following findings with respect to 06-067:

- Dr. Bajwa responded in a timely manner, but not always appropriately, to the request made by the BCVMA;

- The PO identified five issues in her complaint; Dr. Roberts did not investigate two of the issues. Dr. Roberts' report to the CRC identified three issues;

- The Complainants assert that this was the first time that the specific issue of the legibility of Dr. Bajwa's medical records was raised with him, yet the this issue was referred to Inquiry within the context of the standard of Dr. Bajwa's medical records. As noted, Dr. Roberts testified that it is often difficult to read another veterinarian's handwriting, and such records might have to be clarified. In previous files, the issue had been the content of the medical records, not their legibility. I accept that the legibility of Dr. Bajwa's medical records was an issue raised in this disciplinary complaint, when it was not raised in other files, including with respect to Dr. Kaler's medical records, but that was not the only concern raised by Dr. Roberts. This concern was raised, in addition to concerns regarding missing information, which Dr. Bajwa agreed had not been included. Had the only issue referred to Inquiry been the legibility of Dr. Bajwa's medical records, this might have raised a concern about fairness or the application of a "double-standard";

- Dr. Bajwa had no reason to lie about the events surrounding the transfer of medical records as this could be, and was, easily confirmed during the investigation. In any event, the CRC did not refer this issue to Inquiry;

- I accept that the Complainants were concerned about how they were being treated in the disciplinary process and that there might have been discrimination at play in the decisions that were being made. I accept that part of Dr. Bajwa's comments, in his July 18, 2007 letter, was to raise these concerns and to find a method by which they could be addressed or at last considered. I accept that he was frustrated with the processes he faced, although he should have taken other, more appropriate, steps to express this frustration; and

- In the context of this complaint investigation, there was little evidence that Dr. Roberts acted in a biased or unfair manner. I find that Dr.

Roberts was respectful and polite in her dealing with Dr. Bajwa. Dr. Bajwa was entitled to raise his concerns about the investigation process. Although this may not have been the most appropriate forum in which to do so, it is unclear how he could have raised his concerns absent filing a petition with the Court.

[253] I make the following findings with respect to 06-083:

- Dr. Bajwa responded to the BCVMA in a timely manner; and
- The BCVMA processed this complaint in a timely and appropriate manner.

Dr. Bhatia

[254] I make the following findings with respect to file 04-006:

- Dr. Bhatia had a reasonable basis to be suspicious of the BCVMA's decision to pursue this complaint after his participation in the June 10, 2004 demonstration as it had been filed in February and no steps had been taken with respect to it;
- I accept that Dr. Bhatia may have understood that the BCVMA may open another complaint against him if he failed to send his medical records based on his discussion with Ms. Osborne, although she may not have specifically made such a statement;
- I accept that Dr. Bhatia did not understand that he had to send his medical records to the BCVMA regardless of who had filed the complaint. After this was clarified by Dr. Roberts, Dr. Bhatia immediately forwarded the relevant medical records. I find that Dr. Bhatia co-operated with the BCVMA;
- I accept that Dr. Bhatia did not receive the July 22, 2004 message from Ms. Osborne. Dr. Bhatia had always been responsive to the BCVMA and I find that there was no basis to conclude that he failed to do so in this case. I find that Dr. Bhatia did not lie as suggested by Ms. Osborne; and
- I do not accept that Dr. Bhatia's comments, made in this complaint, were part of a campaign to start creating a false record against Ms. Osborne. Dr. Bhatia was concerned about how this complaint was processed and about who had made the complaint, both of which were reasonable concerns given the circumstances.

[255] I make the following findings with respect to file 04-101:

- Dr. Bhatia provided a timely and reasonable response to the BCVMA. Once he became aware of the name associated with the file, he retrieved it and sent it to the BCVMA;

- It was not reasonable that Dr. Bhatia would recall a notation in the file, under a different name, that CJ had called some two months earlier about Rosie and spoken to his staff;

- The BCVMA made only one request for the medical records; the notation in Dr. Bhatia's Complaint History that two requests had been made was inaccurate; and

- The BCVMA processed this complaint in a timely and appropriate manner.

[256] I make the following findings with respect to file 04-108:

- Dr. Rana's allegations were serious and wide-ranging, yet he was not required to put his concerns in writing before the BCVMA engaged in its internal discussions, including within Council, as suggested by Dr. Cruickshank;

- Dr. Rana had prepared and circulated his vision statement that called into question the education of Indo-Canadian veterinarians; he should have expected that his vision statement would be circulated within the membership and those who attended, or were attending, the PAU would be upset by such comments. I did not find the dissemination of the information to be inappropriate. I find that the public reaction, which appears to have occurred within the Indo-Canadian community, did not interfere with the Council election process;

- The BCVMA did not notify Drs. Bhatia and Bhullar that Dr. Rana was making certain allegations against each of them. I find that notification was required given that the issues were being discussed within Council and a fellow colleague was contacted (Dr. PB) during the investigation. I agree with Dr. Bhatia that the failure to take this step may serve to lower his professional reputation within the BCVMA community, although there was no evidence to support that this occurred;

- Dr. Rana's concerns about Dr. Bhullar threatening to harm him and his family, and the other related comments, were made to undermine Dr. Bhullar's professional reputation within the BCVMA. There was no direct evidence, other than Dr. Rana's evidence within the context of this complaint, which I did not believe, that Dr. Bhullar had made such threats;

- Dr. Rana's unproven allegations served to create the impression within the BCVMA that Dr. Bhullar engaged in, or would engage in, inappropriate and threatening behaviour;

- The letter received by the BCVMA on August 12, 2003 from a member contained the same information that Dr. Rana had provided to Ms. Osborne. In this sense, it was not misinformation, regardless of whether or not Dr. Rana had filed a legal action as he had alleged;

- Ms. Osborne, Dr. Roberts, or any of the members on Council did not take the reasonable step of contacting Drs. Bhullar and/or Bhatia to confirm Dr. Rana's allegations. Given the seriousness of the allegations this would have been an appropriate step. I find that the BCVMA's position that it opened this file on a "precautionary" and/or "preliminary" basis did not undermine its obligation to provide Drs. Bhullar and Bhatia with a fair process. Given this failure, I find that it was reasonable for Dr. Bhatia to conclude that the investigation was unfair; and

- I find no basis for the delay, from November 2003 to May 2007, in notifying Drs. Bhullar and Bhatia of the complaint and that it had closed it. I do not accept that the BCVMA's workload was such that this complaint could not have been processed in a timely manner.

[257] I make the following findings with respect to file 05-013:

- Dr. Bhatia provided a timely and appropriate response to the BCVMA; and

- The BCVMA processed this complaint in a timely and appropriate manner.

[258] I make the following findings with respect to 06-002:

- Dr. Bhatia responded to the BCVMA in a timely and appropriate manner;

- Dr. Bhatia did not create or alter his medical records after he received a copy of the complaint. I find that there was no reasonable basis upon which such an allegation could be made. The second opinion veterinarian provided a copy the medical records received in August 2005, long before Dr. Bhatia was aware of the complaint, and they were the same as those received by the BCVMA in April 2006;

- The error in the date contained in the medical record was a mistake. I find that there was nothing untoward about this error. It would have been a simple step for Dr. King-Harris to contact the locum to confirm the date of the surgery;

- The PO identified two issues of concern; Dr. King-Harris identified three issues in his report to the CRC;

- Dr. King-Harris did not speak to Dr. Bhatia about the error in the date in the medical record and the deportment issue before completing his report. I find no reasonable basis for his failure to do so; and

- I accept that Dr. Bhatia would have been upset when he received Dr. King-Harris' report. However, I am not persuaded that this foreclosed him from providing his comments, although he did so once the CRC directed Dr. King-Harris to pursue certain issues with him.

[259] I make the following findings with respect to file 07-015:

- Dr. Bhatia provided his medical records in a timely manner; and

- I accept that Dr. Bhatia would have been upset by the delay in the notification to him that this complaint had been filed, although I find that this was an oversight on the part of the BCVMA and not a deliberate failure to notify.

[260] I make the following findings with respect to file 07-059:

- This complaint remained opened for a significant period of time for no apparent reason; and

- The BCVMA failed to process this complaint in a timely manner.

Dr. Benipal

[261] I make the following findings with respect to file 03-081:

- Dr. Benipal would have felt insulted by this complaint and the allegation that he had used fishing line as suture material. However, I find that the BCVMA took appropriate and timely steps to investigate this complaint; and

- The BCVMA took appropriate steps when it advised Dr. Snopek that he should communicate with other veterinarians before filing a complaint.

[262] I make the following findings with respect to file 03-016b:

- Dr. Benipal was not advised about who had made the complaint against him and there was no credible reason provided why this had not occurred; and

- The BCVMA conducted an appropriate and timely investigation into this complaint.

[263] I make the following findings with respect to file 05-059:

- Dr. Roberts did not ask Dr. Snopek what discussions he had with the PO prior to the filing of this complaint against Dr. Benipal, despite being the basis for the serious allegation regarding Dr. Benipal's deportment toward a colleague and Dr. Roberts' understanding that there was some animosity between these two veterinarians. There was no explanation for not taking this reasonable step;

- The PO identified two issues of concern in her complaint; Dr. Roberts identified four issues in her report to the CRC;

- Dr. Benipal could have been more responsive to the CRC and provided it with the materials that it was requesting. Although he eventually provided training for his staff, this was not what the CRC was requesting; and

- Dr. Benipal was a credible witness. I am unable to conclude that the statements he made to the BCVMA were misleading or intended to be misleading. I can find no basis for why he would have done so.

[264] I make the following findings with respect to file 05-072:

- Despite the BCVMA not advising Dr. Benipal of this complaint until it had been closed, they took action with respect to it including making a referral to PAC and drawing adverse inferences about his veterinary practice and alleged harassment of his employees. I find that, in this respect, Dr. Benipal was justified in his view that this matter was not properly investigated;

- The Respondents used this file as an example of Dr. Benipal wrongfully alleging unfair treatment, despite his minimal involvement in the file. I find that the Respondents have mischaracterized Dr. Benipal's evidence and the issue. Dr. Benipal's concern was that the file was open for one year, investigated and certain issues referred to PAC all without his input. Bylaw 49(2) requires that the Registrar must give a copy of the complaint to the member. Although there is an exception to this requirement in s. 46(3) if it is necessary for the "effective investigation" of the complaint, I find that there was no basis for such an exception in this case and the Respondents did not provide evidence to the contrary; and

- Ms. Osborne formed a particular view of Dr. Benipal based on her involvement in this complaint. I find no basis for her assertions that Dr. Benipal as being in 'lock-step' with Dr. Bhullar, which in her view

was problematic. Dr. Benipal spoke at meetings and signed letters that questioned the steps being taken by the BCVMA, and in particular with respect to the English Language Standard. Dr. Benipal was entitled to express his views in these various forums. Fairness requires that Dr. Benipal be investigated separately and apart from his association with Dr. Bhullar and/or his appropriate and public statements regarding the English Language Standard.

[265] I make the following findings with respect to complaint 05-088:

- Dr. Benipal provided an appropriate and timely response to the BCVMA; and
- There was no basis to pursue this complaint. Generally, the BCVMA does not investigate complaints that deal with billing issues and/or allegations of rudeness. It is not clear why it did so in this case.

[266] I find that I find that the BCVMA processed complaint 06-066 in a timely and appropriate manner.

[267] I find that the processing of complaint 09-008 was appropriate, although it remained open for a lengthy period of time for no apparent reason.

Dr. Punia

[268] I make the following findings with respect to file 06-047:

- Dr. Punia provided timely and appropriate responses to the BCVMA;
- I agree that Dr. Punia had no reason to bribe the PO as he was not involved in the treatment of Sadie and was not at risk of being disciplined;
- The investigation into the issues raised by this complaint was appropriate;
- I accept Dr. Roberts' explanation of why she forwarded this complaint to the CRC for its decision, in that she viewed the PO as being aggressive; and
- The paragraph related to the medical records was included in the letter to Dr. Punia in error.

Dr. Hans

[269] I make the following findings with respect to 99-040:

- Dr. Hans provided a timely and appropriate response to the BCVMA; and

- The BCVMA appropriately processed this complaint and no concerns were raised by Dr. Hans with respect to it, although it remained opened for a lengthy period of time.

[270] I make the following findings with respect to file 03-045:

- Dr. Hans provided a timely and appropriate response to the BCVMA; and

- The BCVMA processed this complaint in a timely and appropriate manner.

[271] I make the following findings with respect to file 05-039:

- Dr. Hans provided a timely and appropriate response to the BCVMA; and

- The BCVMA processed this complaint in a timely and appropriate manner.

Dr. Parbhakar

[272] I make the following findings with respect to file 04-003:

- Dr. Parbhakar was an honest and credible witness. Although, at times he did not answer the questions put to him and was argumentative, I did not conclude that was because he was refusing to tell the truth. His experience with the BCVMA had not been a good one, from his perspective and I accept that this, at times, made it challenging for him to be responsive to questions put to him regarding these interactions;

- Dr. King-Harris' negative comments, in the letter to the PO, about the English language requirements of new registrants, were inappropriate given his evidence that it must be assumed that if a veterinarian passes the CPE, he or she was sufficiently proficient in the English language to practice veterinary medicine; and

- There was no evidence in this complaint that Dr. King-Harris had spoken to Dr. Parbhakar such that he could comment about Dr. Parbhakar's English proficiency either directly or indirectly as he did in his letter to the PO.

[273] I make the following findings with respect to file 06-047:

- Dr. Parbhakar provided appropriate and timely responses to the BCVMA;

- I was not persuaded that the letter to Dr. Punia about the medical records was an intentional breach of Dr. Parbhakar's confidentiality or that it would have adversely affected his character before Dr. Punia. Dr. Punia did not testify that it had done so; and

- The BCVMA made an error; it was not intentional nor was it meant to cause Dr. Parbhakar any harm.

Dr. Jagpal

[274] I make the following findings with respect to file 03-046:

- Dr. Jagpal provided a timely response to the BCVMA; and

- I find that there was no basis, in this complaint, that would suggest that Dr. Jagpal failed to act honestly in his dealings with the BCVMA. The error at issue in this complaint had been made by SuperPages as Dr. Jagpal had explained. There was, therefore, no basis for not accepting Dr. Jagpal's explanation as truthful.

[275] I make the following findings with respect to file 03-104:

- Dr. Jagpal provided a timely response to the BCVMA;

- The POs identified one issue of concern in their complaint; Dr. King-Harris identified four issues in his report to the CRC;

- Having reviewed the medical records, I find that the header on the records received by VAEC from Dr. Jagpal were not sufficiently clear that the serious conclusion could be drawn that they were dishonest. Dr. Jagpal had faxed the blood work to VAEC and this could have explained the reference to the September 25 date that Dr. King-Harris had suggested was dishonest; and

- It was inappropriate for Dr. King-Harris to meet with Dr. SP and to listen to his unsubstantiated allegations regarding Dr. Jagpal and his alleged treatment of Fluffy. Dr. SP was not required to put his allegations in writing and Dr. Jagpal was not given the opportunity to respond.

[276] I make the following findings with respect to file 03-131:

- The PO identified four issues of concern in her complaint; Dr. King-Harris identified six issues in his report to the CRC;

- There was no basis, except for the untested information provided by Dr. SP, for the allegation that Dr. Jagpal had falsified his medical records. Given this was a serious allegation, and given the other allegations being made by Dr. SP, it is not clear why the BCVMA did not use its subpoena power requiring Dr. SP to attend the Inquiry and give evidence under oath;

- Dr. Jagpal did not testify about this file. As with file 03-104, I find that it was processed appropriately by Council, albeit with some delays. Those Council members involved in this Inquiry included Drs. O'Grady, Hollingshead and Kirby.

Dr. Rajwinder Singh

[277] I make the following findings with respect to file 04-114:

- Although Dr. Bhullar did respond to the BCVMA his response not timely; and

- The BCVMA processed this complaint in a timely and appropriate manner.

[278] I make the following findings with respect to file 05-099:

- The PO identified one issue of concern in her complaint; Dr. King-Harris identified five issues in his report to the CRC;

- Dr. Bhullar was not provided with a copy of the complaint when Dr. King-Harris asked for his comment. I find that although Dr. Bhullar did respond to the BCVMA's second request in a timely manner, some of the content of his response was inappropriate and irrelevant to the issues raised by this disciplinary complaint. However, given that Dr. Bhullar had not received a copy of the complaint, his concerns about the BCVMA involving him in this investigation must been seen in this context;

- Dr. Bhullar would reasonably expect to be provided with a copy of the complaint in order to respond appropriately. I do not accept that Dr. Bhullar used this complaint to continue to perpetuate an "attack" on the Respondents through his actions in this Complaint as the Respondents have suggested;

- There was no basis to suggest that that Dr. Bhullar had attempted to "frustrate" the BCVMA's attempt to investigate the complaints against Dr. Singh, who worked at Atlas-Vancouver; and

- With respect to the issues involving Dr. Singh there was nothing unusual about the process followed by the BCVMA.

[279] I make the following findings with respect to 05-102:

- The POs identified one issue of concern in their complaint; Dr. King-Harris identified four issues in his report to the CRC;

- There was little objective information to support the allegation that Dr. Singh fabricated his medical records, which is a serious allegation. Further, Dr. King-Harris testified that Dr. Singh dealt with the BCVMA honestly and with integrity throughout the ACR process and provided it with further information, undermining his original assessment that Dr. Singh might have fabricated his medical records. It is not clear why this information could not have been obtained prior to the report to the CRC being completed;

- I do not agree that Dr. Singh was treated fairly and in good faith in the processing of his disciplinary complaints, 05-099 and 05-102, given the concerns raised about his honesty and integrity, with little foundation;

- The Respondents relied on Dr. King-Harris' evidence to suggest that Dr. Singh had developed a 'meaningful, amicable, and professional relationship with the Registrar's office'. Given that Dr. Singh did not testify, I can make no finding in this respect.

Dr. Parminder Mangat

[280] I make the following findings with respect to file 00-070:

- Dr. Mangat was generally responsive to the BCVMA's requests for information;

- The PO identified two issues of concern; Dr. Roberts identified five issues;

- Dr. Roberts' investigation was appropriate;

- Dr. Mangat was put to considerable expense and time in having to proceed with this Inquiry twice, which was the result of an error on the part of the BCVMA;

- I accept Dr. Roberts' evidence that the BCVMA wanted Dr. Mangat to confirm that Dr. Bhullar was the individual involved in file 04-052, despite Dr. Bhullar's denial. Dr. Mangat identified Mr. G. Singh as the person involved and never wavered in his position. I find that this

information should have been provided to Dr. Bhullar, as part of the disclosure process, prior to the commencement of Dr. Bhullar's Inquiry into complaint 04-052. This is discussed elsewhere in this Decision. I find that this provided some support for Dr. Bhullar's allegation that the BCVMA entered into the Consent Resolution with Dr. Mangat in the hopes that he would testify against Dr. Bhullar in file 04-052;

- Although Dr. Mangat was not suspended from practice, the CRC initially sought a period of suspension as part of the Consent Resolution; and

- Given that Dr. Mangat did not testify, I can make no finding on his reasons for not testifying before me or his view regarding the fairness of the process. I cannot make any findings with respect to whether some of the other Complainants used Dr. Mangat's name on documents without his consent or that he was fearful of being seen to be negotiating with the BCVMA. I also cannot make any finding about why Dr. Mangat decided to engage in the ACR process.

[281] I make the following findings with respect to file 02-010:

- The PO identified three issues of concern; Dr. Roberts identified five issues in her report to the CRC; and

- Dr. Mangat provided timely and appropriate responses to the BCVMA.

[282] I make the following findings with respect to file 06-085:

- Dr. Mangat provided a timely and appropriate response to the BCVMA; and

- There was no reasonable explanation for the delay in the processing of this complaint and/or the sending the closing letter to Dr. Mangat.

[283] I make the following findings with respect to file 06-008:

- Dr. Mangat provided a timely and appropriate response to the BCVMA; and

- The BCVMA processed this complaint in a timely and appropriate manner.

[284] My findings with respect to Dr. Mangat's involvement in 04-052, which also involved Dr. Bhullar, are discussed in relation to the complaint involving Dr. Bhullar.

Dr. Sharma

[285] I make the following findings with respect to that part of file 03-125a involving Dr. Sharma:

- Dr. Sharma was generally responsive to the BCVMA;
- The PO identified two concerns in her complaint; Dr. Roberts identified three issues in her report to the CRC;
- I agree with Dr. Roberts that it is not inappropriate for a PO and a veterinarian to discuss financial issues, including the reimbursement of fees paid for medical care;
- I was not persuaded that Dr. Sharma's medical records were fraudulent, which is a serious charge to make against a professional. Dr. Sharma's additions to the medical records were for clarification and did not add substantively to them. As Dr. Roberts said, the additions were minor;
- I find that neither Dr. Bhullar, nor Dr. Sharma, asked, or suggested, that the PO drop her complaint to the BCVMA in exchange for a refund of the monies that she had paid for the treatment of Gypsy. The PO was clear on this point;
- Dr. Roberts raised concerns about Dr. Bhullar's deportment in her report to the CRC without having first provided Dr. Bhullar with the opportunity to respond. I find that Dr. Roberts' language to describe Dr. Bhullar's actions, in that he had allegedly attempted to use "guilt" and "intimidation" to influence a witness, was inflammatory, especially since he had yet to be advised of, or had the ability to respond to, this allegation; and
- The BCVMA breached Dr. Bhullar's privacy when it referred to a complaint being opened against Dr. Bhullar, in its letter to Dr. Sharma advising him of the CRC's decision to refer the matter to Inquiry, was a breach of Dr. Bhullar's privacy.

[286] I make the following findings with respect to file 04-027:

- The POs raised a number of concerns in their discussions with the BCVMA and in their subsequent signed statement; Dr. King-Harris initially raised four issues in his report to the CRC. In his subsequent report he raised nine issues of concern;
- I was not persuaded by Dr. King-Harris' explanation of why he prepared the POs' statements that formed the basis of this complaint;

generally the BCVMA will not act on a complaint unless it is in writing. I was not persuaded that, because the allegations were serious and the POs were upset, they should not have been required to prepare their own statement;

- Dr. Sharma was not provided with the notes of the BCVMA's discussions with the POs and Ms. LKH. I can find no basis which would support the BCVMA's refusal to provide this information during the course of the investigation. In my view, a fair investigation would include Dr. Sharma being aware of all the allegations against him and the basis of those allegations;

- Once the BCVMA was in possession of the information that Dr. Sharma had altered his medical records, it did not take steps to obtain the removed document and to provide it to Dr. Sharma during the course of the investigation. I accept that Dr. King-Harris did not have the document when he wrote his first report and did not know about it. However, Ms. Osborne knew about it, had reviewed Dr. King-Harris' first report and yet did not raise it. I did not find Ms. Osborne's explanation of why the BCVMA did not do so persuasive; the altered medical record was clearly relevant to the investigation;

- The BCVMA's reliance on its obligation to provide disclosure of all relevant information when the matter is referred to Inquiry does not undermine its obligation to provide such information to Dr. Sharma during the investigation, especially since the BCVMA relied on this information to support its recommendation to refer the matter to Inquiry;

- While there is no question that Dr. Sharma engaged in unprofessional conduct when destroying a page from the medical record, I find that it was reasonable for Dr. Sharma to assume that the BCVMA was attempting to have him make admissions against his interest when they withheld the torn medical records and the notes of the various discussions it had with the POs and Ms. LKH;

- It was not clear to me why, or upon what credible basis, Dr. King-Harris raised the issue of Dr. Sharma's English language proficiency and/or his mental capacity in his report to the CRC. I agree with the Complainants that these concerns were raised to further support Dr. King-Harris' recommendation that this matter be referred to Inquiry;

- I agree with the Complainants that Dr. King-Harris' telephone call to Dr. Sharma, after sending his report, was extremely unusual. I find that Dr. King-Harris made this call to see if Dr. Sharma would make admissions against his interest; there was no other credible reason for him making this call;

- I was not persuaded that the steps taken by Ms. Osborne, in the processing of this complaint, were done with the intent of removing Dr. Sharma's license to practise, although I accept she instructed the Prosecutor to seek a five-year suspension of Dr. Sharma's license;

- I find that the investigation into the POs' allegations was done quickly, despite the assertions of Ms. Osborne, and others, that the BCVMA was under a considerable workload in and around this time; and

- I make no comment on the findings of the Inquiry Committee, including Dr. Sharma's right to a lawyer during that process.

[287] I make the following findings with respect to file 04-048:

- This complaint was processed quickly and appropriately; and

- Dr. Sharma was generally responsive to the BCVMA's request for information.

[288] I make the following findings with respect to files 04-082:

- Ms. Osborne met with Ms. LKH on February 3, 2005, along with Dr. King-Harris, whether in person or by teleconference;

- The BCVMA did not take steps to ascertain if Ms. LKH had removed the file related to Kasper from Dr. Sharma`s facility and that was why he could not locate it;

- The BCVMA did not further examine Ms. LKH's credibility given her concerns about Dr. Sharma's treatment of her animals, her wide-ranging allegations and the subsequent missing file related to her animal. This concern was not raised in Dr. King-Harris' first report to the CRC. It would have been reasonable for the BCVMA to have approached the investigation of the allegations raised by the employees with greater scepticism, especially if they were not supported by documentary information and/or where they were making similar and wide-ranging allegations;

- The BCVMA did not require the employees to provide all of their allegations in writing or to sign their statements before relying on them. Dr. Sharma was entitled to receive the allegations of the three employees, in writing, during the investigation process; this would have ensured a transparent process. I see no basis why Dr. Sharma was not given full disclosure during the investigation process; I did not accept Ms. Osborne's reasons for the failure to do so persuasive;

- The employees raised a number of concerns in their discussions with the BCVMA and concerns were also raised in the complaint filed by

Ms. LKH; Dr. King-Harris raised eleven issues in his report to the CRC;

- There was an inordinate delay between Council referring this complaint to Inquiry and the Notice of Inquiry being sent to Dr. Sharma. I was not persuaded that the workload of the BCVMA was a reasonable basis for the delay; and

- Given that Dr. Sharma did not testify, I am unable to find that either Dr. King-Harris or Ms. Osborne discussed the human rights complaint with him or that the ACR process was predicated on him withdrawing from this Complaint, which he did not do. Dr. Sharma did not testify. I make no finding about where the delay in concluding the ACR process was related to this human rights Complaint.

[289] I make the following findings with respect to file 05-052:

- Dr. Sharma was responsive to the BCVMA's request for information; and

- This complaint was processed in a timely and appropriate manner by the BCVMA.

[290] I make the following findings with respect to file 06-017:

- Dr. Sharma responded to the BCVMA in a timely manner;

- The PO raised two issues in her complaint; Dr. King-Harris raised three issues in his report to the CRC;

- I was not persuaded that Dr. King-Harris' workload was a sufficient reason for the delay in the processing of this complaint;

- I was not persuaded by Dr. King-Harris' evidence that one of the reasons that the CRC dismissed this complaint was that it needed convincing evidence to pursue it further, given that Dr. Sharma was a Complainant. This standard was generally the standard applied by the CRC and the failure to have such evidence generally led the CRC to dismiss a disciplinary complaint.

[291] I make the following findings with respect to file 07-039:

- Dr. Sharma provided a timely response to the BCVMA; and

- This complaint was processed by the BCVMA in an appropriate and timely manner.

Dr. Brar

[292] I make the following findings with respect to file 04-032:

- Dr. Brar provided timely and appropriate responses to the BCVMA. I find that Dr. Brar was entitled to raise his concerns of institutional bias before the Inquiry Committee; that was the only forum in which such an allegation could be raised. That he did so does not suggest he acted inappropriately;

- The PO raised three issues regarding the care of Timber; Dr. King-Harris raised eight issues in his report to the CRC;

- Dr. King-Harris did not obtain Dr. Brar's response to the allegations made by the two second opinion veterinarians and the PO, before completing his report to the CRC, despite relying on their information to a great extent in his report. I am not persuaded that Dr. Brar's opportunity to respond to the report sufficiently addressed this failure;

- It was not clear from the evidence how, when Dr. King-Harris first reviewed the complaint and identified two issues, this was then expanded to eight issues. It appears that Dr. King-Harris was prepared to expand the issues based on information not put to Dr. Brar or raised by the PO;

- Dr. King-Harris raised the concerns that Dr. Brar had falsified his medical records, which I have noted elsewhere is a serious charge, based on the information from the second opinion veterinarians and the PO; this serious allegation was not put to Dr. Brar before being identified in the report to the CRC;

- I accept that Dr. Brar would have been "shocked", as he noted in his communication with the BCVMA, when he received the correspondence regarding the Disclosure Policy; I was not persuaded that Dr. Brar had received any communications from the BCVMA between June 2004 and June 2005; and

- The BCVMA did not take responsibility for its mistake in misdirecting Dr. Brar's information to another practicing veterinarian. That it attempted to blame the other veterinarian, who was also Indo-Canadian, was surprising and troubling.

[293] I make the following findings with respect to file 04-037:

- Ms. Dionela was a credible witness;

- Ms. Dionela never provided nanny services for Ms. Osborne, although she was a nanny by profession. She provided cleaning services for Ms.

Osborne on the weekend, when she was not otherwise employed as a nanny;

- Ms. Dionela was the owner of Lucky;
- I accept that Ms. Dionela did not know that Ms. Osborne worked for the BCVMA until their second discussion about the death of Lucky;
- Ms. Dionela raised three issues regarding the care of Lucky; Dr. King-Harris raised six issues in his report to the CRC;
- Ms. Dionela did not advise Ms. Osborne, in their first discussion, about the death of Lucky, who had treated Lucky or what hospital Lucky was taken to;
- Ms. Osborne advised Ms. Dionela that she could file a complaint with the BCVMA to address her concerns about what happened; there was nothing untoward about Ms. Osborne doing so. I find that Ms. Osborne did not "conspire" with Ms. Dionela to create this complaint as the Complainants have alleged;
- Dr. Brar referred Lucky to an emergency facility for a blood transfusion;
- I find that, early in the investigation, Dr. King-Harris became aware of the relationship between Ms. Osborne and Ms. Dionela;
- There was insufficient information from which Dr. King-Harris could conclude that Dr. Brar had fabricated his medical records;
- Dr. Brar was generally responsive to the BCVMA's requests for information;
- The BCVMA made an error in notifying the wrong respondent veterinarian about the Inquiry into this complaint. This error was not discovered until the commencement of Inquiry. Given the preparation into this matter for the Inquiry, it is surprising that the error was not found prior to this time. It was the BCVMA's error, yet it did not take responsibility for it;
- Ms. Osborne's relationship to Ms. Dionela does not, without more, give rise to a concern about impartiality, unless Ms. Osborne had directed the investigation or participated in the Inquiry Committee's decision, which it does not appear was the case;
- Ms. Osborne had some involvement in the Inquiry process and the recommendation of the penalties proposed by the Prosecutor.

However, I was not persuaded that this involvement compromised the fairness of the proceedings; and

- It was appropriate for Ms. Osborne to advise Council about the demonstration occurring at the BCVMA during the Inquiry into this complaint.

[294] I make the following findings with respect file 04-034:

- Dr. Brar was generally responsive to the BCVMA; and
- There are no issues raised by the processing of this disciplinary complaint.

[295] I make the following findings with respect to file 04-068:

- Dr. Brar was generally responsive to this complaint;
- The complainant raised two issues; Dr. King-Harris also raised two issues in his report to the CRC;
- There was no basis to question the veracity of Dr. Brar's medical records; and
- It was appropriate for Dr. Brar to question the steps taken by Dr. King-Harris, in this investigation, including raising concerns about Dr. King-Harris contacting his client without his knowledge. I am unable to conclude that Dr. Brar raised his concerns as an attack on the BCVMA's investigative process and to use it as a defence to this complaint as alleged by the Respondents.

[296] I find that complaint 05-056 was processed appropriately and in a timely manner.

[297] I make the following findings with respect to file 05-071b:

- Dr. Brar responded to the BCVMA in a timely manner but some his comments were not helpful to the investigation;
- Given that Dr. Brar did not testify, I am unable to determine why Dr. Brar delayed in filing this complaint, the PO's role in his doing so or that the complaint was filed for an improper purpose as alleged by Dr. King-Harris.

[298] I make the following findings with respect to file 05-078:

- Dr. Brar generally provided timely and appropriate responses to the BCVMA;

- The PO raised two issues regarding the care of Nash; Dr. King-Harris raised two issues in his report to the CRC;

- There was little evidence to support Dr. King-Harris' allegation that Dr. Brar had falsified his medical records, which I found to be a very serious allegation; and

- Dr. King-Harris did not further consider the second opinion veterinarian's role in this complaint and whether that veterinarian had inflamed the situation as noted by the CRC and Dr. Craven. Such assessments are a necessary part of a fair process. This supported Dr. Brar's written concerns that this was not a responsible investigation.

[299] I make the following findings with respect to file 07-004:

- There are no issues raised by the BCVMA processing of this complaint; and

- Dr. Brar provided timely and, for the most part, appropriate response to the BCVMA.

Dr. Kamboj

[300] I make the following findings with respect to file 04-005:

- The PO raised one issue regarding the care of Trapper; Dr. King-Harris raised three issues in his report to the CRC;

- Dr. Kamboj provided timely responses to the BCVMA;

- It was not inappropriate for Dr. Kamboj to raise concerns about the credibility of the PO;

- This complaint provides one example of the CRC's ability to refer the complaint to the ACR process before asking Council to cause an Inquiry;

- Dr. King-Harris did not further investigate the allegations raised in this complaint before he completed his report to the CRC; as noted below, he gave Dr. Kamboj considerable benefit of the doubt in the ACR process. I am not sure why he did not do so during the investigation; and

- The BCVMA did not fully consider whether Dr. Kamboj should have been compensated for the costs he incurred in the first Inquiry; the Inquiry had to be restarted as a result of one member of the Inquiry Committee resigning, which was not as a result of any action on the

part of Dr. Kamboj. Although this matter eventually resolved through the ACR process, Dr. Kamboj still incurred such costs.

[301] I make the following finding with respect to file 04-070:

- Dr. Kamboj provided timely responses to the BCVMA;
- The notes with respect to Dr. SP's allegations were included in the file despite Dr. King-Harris testifying that they did not relate to this file. It is unclear what impact this interview, and the wide-ranging allegations made by Dr. SP, had on this investigation and provides some basis for the Complainants' concerns that it might have been unfair;
- There was nothing inappropriate in Dr. King-Harris seeking the opinion of an expert in this case;
- The POs raised four issues regarding the care of Tippy; Dr. King-Harris raised six issues in his report to the CRC;
- Dr. King-Harris' assessment that Dr. Kamboj had fabricated his medical records was speculative. That the records may have been incomplete or contained inaccurate information does not lead to the conclusion that they were fabricated. I find that there was no basis for Dr. King-Harris' conclusion that Dr. Kamboj was untruthful or ungovernable;
- Dr. Kamboj would have raised concerns about Dr. King-Harris' questions, set out in the letter to him dated July 28, 2005, given their content which suggested that Dr. Kamboj may have been trying to hide something;
- There was a lengthy delay between March 21, 2006, when Council referred these complaints to Inquiry, and when Dr. Kamboj was advised of Council's decision; I did not find the explanation, that the BCVMA's workload was the cause of the delay, to be a reasonable or compelling explanation;
- I find that Dr. Kamboj's demeanour at BCVMA's meetings as irrelevant to any of the issues raised in this complaint. Dr. Kamboj is entitled to express his view, regardless of whether or not it is supportive of the BCVMA's processes and procedures; and
- The Respondents referred to these disciplinary complaints to suggest that, in a pattern familiar in these proceedings, these matters were resolved though the ACR process once Dr. Kamboj began responding to the Respondents in good faith and without Mr. Pyper's intervention, ultimately moving to a respectful and amicable relationship with the Respondents. I make no findings, in the absence of Dr. Kamboj's

evidence, why he allegedly became more co-operative with the BCVMA and/or no longer used the services of Mr. Pyper. Dr. Kamboj's willingness to resolve these complaints could have been related to the time and cost of pursuing them.

Dr. Mrar

[302] I make the following findings with respect to file 03-017:

- The BCVMA dealt with this complaint in a timely manner; and
- Dr. Mrar was not advised of the complaint and allowed to respond before concerns were raised about the communication styles of his staff.

[303] I make the following findings with respect to file 03-072:

- Despite the BCVMA's position that it could not deal with a number of issues given its workload, it spent considerable time meeting with Dr. Mrar's employees and processing this complaint;
- The employees raised numerous allegations; Dr. King-Harris referred to 14 charges in his report to the CRC;
- I agree with the Complainants that the information provided by the employees could not be independently corroborated as they initially met as a group with the BCVMA; although they met separately later in the process, I find by this time, their information would have been influenced by what others had said in the joint meeting. I was persuaded that the employees had various motivations for making these allegations, given their pursuit of a variety of allegations in various forums;
- I find that Dr. King-Harris and/or Ms. Osborne could not have taken the allegations of Dr. Mrar's threatening the employees seriously, despite referring to them in the report to the CRC; had they done so, they would have referred the matter to the appropriate authorities;
- I find that Dr. King-Harris and/or Ms. Osborne did not, in any substantive way, assess the credibility of the employees. After Sue recanted her allegations and asserted that all the allegations had been made-up, the BCVMA did not re-open the investigation, even to take the step of speaking to the other employees;
- There was an inordinate, and unexplained, delay in meeting with the employees and then advising Dr. Mrar of the complaint;

- I find that it was inappropriate, and possibly damaging to Dr. Mrar's professional reputation, for the BCVMA to have contacted his clients, without his consent;

- The BCVMA knew of the allegations giving rise to this complaint since at least July 2003. Dr. Mrar was not advised of the complaint until May 2005. Dr. Mrar was given a very short extension in order to respond to the wide-ranging allegations. The BCVMA advised in September 2005 that it was concerned about any further delays given its mandate to protect the public. Given that the allegations had been known to it for more than two years by this point, I find its reliance on its mandate to be disingenuous;

- Had the BCVMA been concerned about protecting the public, it is not clear why an inspection was not done, either scheduled or unscheduled, and/or files reviewed by the BCVMA;

- Dr. King-Harris' investigation into the allegations raised by this complaint was "poor". For example, he did not fully assess the credibility of the witnesses, he delayed in notifying Dr. Mrar of the allegations and the finding of the practice Inspectors, among other concerns;

- Dr. King-Harris' extensive, and inflammatory, references to the involvement of Dr. Mrar in other legal proceedings, in his report to the CRC, were inappropriate. I find that the language used was an attempt to cast Dr. Mrar in a negative light and to give support to the recommendation that the CRC refer this complaint to Inquiry on all issues. I agree with the Complainants that such language and the reference to other legal proceedings could give rise to an appearance of bias in the processing of this complaint;

- The BCVMA's position that Dr. Mrar engaged in other legal proceedings to thwart the BCVMA's disciplinary process was complete speculation; and

- I was not persuaded that Ms. Osborne was not motivated by these other legal proceedings to pursue this disciplinary complaint against Dr. Mrar, although the authority to refer complaints to Inquiry rests with the CRC and Council, not the Registrar.

[304] I make the following findings with respect to file 03-077:

- This complaint raised one issue; Dr. King-Harris noted in his report to the CRC that this complaint raised five issues;

- Dr. Mrar was not advised that the allegation giving rise to this complaint was initially made by one of his employees in the summer of 2003;

- The explanation given to Dr. Mrar for the delay in the processing of this complaint was not completely accurate;

- Despite the BCVMA's position that complaints are to be in writing, it acted on this complaint, which was a telephone complaint; and

- Dr. Mrar did not fail to respond to the BCVMA in a timely and/or appropriate manner. Dr. Mrar was entitled to know who had filed the complaint against him before responding.

[305] I make the following findings with respect to file 03-093:

- The complaint letter raised two issues; Dr. King-Harris discussed five issues in his report; and

- I find no basis for the lengthy delay in the processing of this complaint.

[306] I make the following findings with respect to file 03-099:

- The POs raised one issue in their complaint; Dr. King-Harris raised three issues in his report to the CRC;

- Dr. Mrar provided timely and appropriate responses to the BCVMA;

- There was no basis to allege that Dr. Mrar had falsified his medical records, a serious charge. This was not an issue raised by Dr. King-Harris in his report to the CRC nor had Dr. Mrar been given the opportunity to respond to it before the matter was referred to Inquiry;

- Dr. Mrar released Pepper to the person he believed to be the owner, who was the breeder; and

- I find no basis for the delay in the processing of this complaint.

[307] I make the following findings with respect to file 04-033:

- The POs raised four issues in their complaint; Dr. King-Harris raised six issues in his report to the CRC;

- Dr. Mrar responded to the BCVMA in a timely and appropriate manner;

- There was little information upon which to base the allegation that Dr. Mrar had falsified his medical records;

- It was inappropriate for Dr. King-Harris to raise the issue of Dr. Mrar's English proficiency based simply on the POs' allegations, who may not have understood what was being said for a variety of reasons; and

- Dr. Mrar was not provided with the details of the allegations before being required to respond to the complaint. I find that there was no reasonable basis for why this step was not taken.

[308] I make the following findings with respect to file 04-081:

- The PO raised two issues in her complaint; Dr. King-Harris raised three issues in his report to the CRC;

- Dr. Mrar provided a timely and appropriate response to the BCVMA;

- There was little basis for Dr. King-Harris' allegation that Dr. Mrar had falsified his medical records, which was then noted by the CRC as not being provable; and

- A charge was listed on the Notice of Inquiry in relation to an allegation that had not been referred to Inquiry by the CRC.

[309] I make the following findings with respect to 05-036:

- The PO raised a number of issues in her complaint; Dr. King-Harris raised ten issues in his report to the CRC;

- There was a reasonable basis for Dr. Mrar's concerns about Dr. Rana's involvement in this complaint. I find that there was a basis upon which to conclude that Dr. Rana had instigated this complaint;

- The content of Dr. Mrar's second response to the BCVMA was inappropriate;

- Dr. King-Harris did not have a sufficient basis upon which to allege that Dr. Mrar was not proficient in English, which was based on his own assessment that Dr. Mrar's letter was confusing;

- There was little basis for the allegation that Dr. Mrar had falsified his medical records;

- Dr. Mrar did not charge for services that he did not render; and

- There was no basis for the allegation that Dr. Mrar had misleading advertisements. Dr. Mrar had provided a quote for services on the telephone, which might have changed once the animal was treated; however, this is not misleading advertising.

[310] I make the following findings with respect to file 06-022:

- Dr. Mrar's initial response to the BCVMA was inappropriate, although his subsequent response was; and
- There was an unreasonable delay in the processing of this complaint, which was relatively straightforward.

3. Disciplinary Complaints – Dr. Bhullar

[311] Dr. Bhullar testified that, during Dr. Leung's tenure, the process of dealing with disciplinary complaints was the same but that, generally, the BCVMA believed the veterinarian, did not allege that the veterinarian was lying or had fabricated his records and did not speculate about the facts. Prior to 1997, information about disciplinary cases was published in the newsletter, including the name of the veterinarian and the facility, but after 1997 that practice stopped. The BCVMA then only published information about substantiated complaints, without identifying the name of the veterinarian and/or the facility. That policy was changed in 2005 with the introduction of the Disclosure Policy discussed elsewhere in this Decision.

[312] Generally, when testifying about his disciplinary complaints, Dr. Bhullar made numerous allegations against others, that the charges against him had been made-up and that he had been treated differently than others throughout the process. He was often asked to return to the question posed as he did not answer it; he instead discussed other and unrelated matters. It was an unfortunate approach. Although I did not find that he lied about his actions, it made him appear unco-operative and obstructionist as the Respondents have argued. Given the propensity of Dr. Bhullar to take such an approach, I have not set out all of the circumstances in which this occurred as the Transcripts speak for themselves.

[313] At times, Dr. Bhullar also testified about the evidence that some of the witnesses gave during his Inquiries. I have, for the most part, ignored that evidence.

[314] Dr. Bhullar, along with some of the other Complainants, filed a number of complaints against other members of the BCVMA, Ms. Osborne, Drs. King-Harris, Roberts, O'Grady, Craven, and Ashburner, among others, with the BCVMA. Dr. Bhullar and others also filed a number of civil actions and complaints to other bodies, such as the

Ombudsperson's Office, against these same people as well as others. I do not propose to set out all of Dr. Bhullar's evidence with respect to these actions, which were related to his concerns about the implementation of the English Language Standard, the Ashburner recording, and the investigative process with respect to his disciplinary complaints, among other issues. Dr. Bhullar generally denied that these complaints contained false allegations.

[315] Dr. Bhullar, along with others, sent numerous emails to the members of the BCVMA raising concerns about, and making numerous allegations against, Drs. King-Harris and Roberts, the CRC, Council and Ms. Osborne. The emails and letters also contained information about disciplinary complaint files. Dr. Bhullar denied that he was attempting to "blame" Ms. Osborne and others for the problems he had experienced with the BCVMA.

[316] Dr. King-Harris investigated a number of disciplinary complaints involving Dr. Bhullar. He continued to do so despite the fact that he had formed the view, by mid-2004, that Dr. Bhullar, along with Dr. Johar, were unprincipled, untruthful, and ungovernable. He came to this view as a result of his investigations and the allegations made against him by Drs. Bhullar and Johar.

[317] In my view it was important to assess the processing of the disciplinary complaints, involving Dr. Bhullar and others, at the time it was done. Although much evidence was given about what occurred and the justification for the actions taken by various individuals, I have tried to consider this evidence in the context of the initial processing of the complaints and not as after-the-fact justification for their actions and or speculations about what might have been occurring at the time.

[318] There were a number of disciplinary complaints (19) filed against Dr. Bhullar prior to 2001. I note that a number of the complaints that were filed in 1998 were filed after there was a media report about Dr. Bhullar. No complaints were filed against him in either 2001 or 2002. Generally, these complaints were processed quickly and without incident. Dr. Bhullar was generally responsive and co-operative throughout those investigations. Dr. Bhullar engaged in the ACR process and accepted sanctions. The BCVMA sent investigators to Dr. Bhullar's facility to investigate both medical and

practice standards issues, and did so without questions and/or Dr. Bhullar challenging its authority to do so. The BCVMA also closed a complaint when a PO withdrew the complaint.

[319] The BCVMA generally accepted Dr. Bhullar's medical records as accurate and believed them. The BCVMA accepted his explanations of what had transpired during the course of his interactions with the PO. Dr. Bhullar's reaction to these complaints did not suggest that he was "ungovernable".

[320] I do not propose to set out all these early complaints or the evidence with respect to them, although I have considered it.

[321] However, I address some of those complaints, along with others.

[322] I make the following findings with respect to those disciplinary complaints involving Dr. Bhullar. I set out the findings as they relate to each of his disciplinary complaints in the same order as the evidence is set out in **Appendix "O"**.

[323] I make the following findings with respect to complaint 97-14:

- This complaint raised one issue and one issue was pursued through to the investigation process;
- Dr. Bhullar did not allege that the BCVMA treated him differently or adversely in the processing of this complaint;
- Dr. Bhullar was co-operative, engaged in the ACR process and accepted the sanctions imposed by the BCVMA in the Consent Resolution;
- I find that Dr. Sonnendrucker did not tell Dr. Bhullar he had gifted hands but he may have taken this meaning from what she said to him during her observations;
- It was not unreasonable for Dr. Bhullar to raise his concerns about the reference to the foreign-trained veterinarian in the article published by the BCVMA. If the BCVMA had concerns about Dr. Bhullar's training, it would have been better to address it directly with him and not to leave it open to speculation, amongst the membership, who was the foreign-trained veterinarian involved or to suggest there was a problem with foreign-trained veterinarians generally.

[324] I make the following findings with respect to file 98-007:

- This file was process quickly; and
- Dr. Bhullar was responsive to the BCVMA's requests.

[325] I make the following findings with respect to file 98-008:

- This complaint was processed quickly and appropriately;
- Although I agree that it may have been inappropriate for Dr. Bhullar to contact the PO after receiving the complaint letter, I agree with Dr. Sonnendrucker that it would not amount to unprofessional conduct. I find that it is not inappropriate for Dr. Bhullar to refund the client in order to resolve the issue between them.

[326] I make the following findings with respect to file 98-009:

- The BCVMA processed this complaint efficiently;
- Dr. Bhullar called the PO and I find that he did so in order to try and resolve her complaint. I accept that he did not ask her to withdraw her complaint as he knew that she could not do so, although this might have been the result if the matter was resolved;
- It was appropriate for Dr. Leung to ask Dr. Sonnendrucker not to investigate complaints while her actions were under review;
- Although Dr. Bhullar initially had concerns about Dr. Hilts attending his clinic, he accepted Dr. Leung's explanation for why this step was undertaken and the authority of the CO in such circumstances.

[327] The only issue arising from complaint 99-034 was the concern that it took a lengthy time to process.

[328] I make the following findings with respect to file 99-035:

- This complaint was processed quickly by the BCVMA;
- Dr. Bhullar was generally responsive to the BCVMA, although there was an unexplained delay in his response to the June 1, 1999 letter he received from the BCVMA providing the tattoo number; and
- I find nothing inappropriate in Dr. Bhullar contacting the PO to confirm who had treated her cat, given the confusion in the tattoo numbers.

[329] I make the following findings with respect to file 99-037:

- This complaint was not processed quickly but much of the delay resulted from the transfer of files between Drs. Maks and Roberts;
- Dr. Bhullar was responsive to the BCVMA;
- Dr. Bhullar came to a resolution through the ACR process and accepted the sanctions imposed.

[330] I make the following findings with respect to file 99-055:

- There was an unexplained delay in the processing of this complaint;
- Dr. Bhullar was responsive to the BCVMA's enquiries; and
- The veracity of Dr. Bhullar's medical records was accepted by the CRC.

[331] I make the following findings with respect to complaint file 99-089:

- This complaint was processed quickly by the BCVMA and no issues were raised regarding Dr. Bhullar's alleged conduct, which was based on hearsay information.

[332] I make the following findings with respect to file 00-043:

- This complaint was processed relatively quickly; and
- Dr. Bhullar was responsive to the BCVMA, although his response was provided five days late. No concerns were raised about the delay in his response.

[333] I make the following findings with respect to file 02-097:

- There were no issues arising from the processing of this complaint and it was processed quickly.

[334] I make the following findings with respect to file 03-078:

- Dr. Bhullar provided responses to the BCVMA, although they were not timely;
- It was clear that Ms. Edwards had difficulty, at times, communicating with Dr. Bhullar. Although the discussions between Ms. Edwards and Dr. Bhullar and Dr. King-Harris and Dr. Bhullar were different, I was not persuaded that this difference was a sufficient basis to draw the conclusion that Dr. Bhullar was untruthful or that he was intending to mislead the BCVMA, especially since Ms. Edwards was clear that her discussion was confusing and unusual;

- The evidence was clear that Dr. Brar obtained the informed consent from the PO; despite this, Dr. Bhullar was the only one pursued with respect to this issue. The information that Dr. Brar had provided to the PO was critical to the assessment of informed consent yet he was not asked what he said to the PO. Dr. King-Harris suggested that the issue became what Dr. Bhullar had said after the surgery; it is unclear how a charge of informed consent arises after the event in question had taken place in the circumstances of this complaint;

- There were a number of relevant factual errors in Dr. King-Harris' report to the CRC, which in my view left the impression that Dr. Bhullar's involvement in the case was greater than it actually was. I accept that Dr. Bhullar referred the PO to a specialist, which was confirmed by Dr. Brar; I find no basis upon which he would have failed to do so;

- There was a dispute about Dr. Bhullar's competence to perform the debark surgery and what was conveyed to the PO in this respect. Dr. King-Harris did not attempt to clarify the number of debark surgeries Dr. Bhullar had performed and their outcomes. This would have been a simple enquiry. Further, because Dr. Bhullar's description of the surgery was similar to that set out in a text book does not, in and of itself, reflect that he failed to competently perform the surgery. As everyone acknowledged, complications may result from surgery, even when done correctly;

- Dr. Bhullar was pursued for requesting the necropsy report, despite Dr. Brar confirming that it was he who made the request;

- There was nothing inappropriate in Dr. Bhullar wanting to have Dr. Brar review the medical records of Atlas-Vancouver and to add his own comments, if necessary, before Dr. Bhullar forwarded them to the BCVMA. Dr. Brar was present for the surgery and had interacted with the PO;

- I was not persuaded that there was a sufficient basis to allege that Dr. Bhullar had falsified his medical records which, as Dr. King-Harris acknowledged, formed the basis of many of the other charges;

- I accept that Dr. Bhullar was upset when he received Dr. King-Harris' report to the CRC. However, it was not appropriate that he allege that Dr. King-Harris was biased. Dr. Bhullar should have put his concerns in writing;

- I find that Council processed the request to send this complaint to Inquiry quickly; I was unclear how the matter was placed on the Council's agenda two days after the CRC had met;

- I make no comment about the findings of the Inquiry Committee or the procedural issues arising in that context.

[335] I make the following findings with respect to file 03-111:

- This complaint took a lengthy period of time to investigate. There was a significant and unexplained delay between this matter being referred to Inquiry by Council on December 10, 2005 and the Inquiry Committee considering this complaint in December 2008;

- I find that the BCVMA used considerable resources in the processing of this complaint;

- The delay in notifying Dr. Bhullar of a complaint against him arising from the complaint against Dr. Bajwa was lengthy. Further, given the length of the delay and the limited information in the letter of November 25, 2003, which referred to file 02-024, and the fact that the PO had received a copy of the invoice, I was not persuaded that Dr. Bhullar would have understood the context in which he was being asked to provide this information and the assumption that he would have done so was unreasonable;

- The letter to Dr. Bhullar, setting out the issue regarding invoices was not particular to any complaint, did not refer to complaint 02-024 or to any of the discussions that he had had with Ms. Edwards. Dr. Bhullar responded. That the BCVMA did not accept his response, does not lead to a general finding that he failed to respond. Further the fact that it took the BCVMA almost one year to follow-up belies any claim that the failure was critical;

- I accept that Ms. Osborne directed Dr. Roberts to continue with the investigation against Dr. Bhullar, despite the invoice having been received by the PO and the complaint against Dr. Bajwa being closed;

- I agree with the Complainants that raising the issue with respect to Dr. Bhullar in the report to the CRC involving Dr. Bajwa, without notice to Dr. Bhullar, was unfair and denied him the opportunity to provide a response;

- I accept that Dr. Bhullar keeps his invoices; that he may have done so separately from the medical file is not an issue of the failure to maintain invoices or that they could not be retrieved. Clearly, they could be retrieved as the PO had a copy, as did Dr. Bhullar, when he spoke to the PO and made the correction to the error of $2 in the addition;

- I accept that Dr. Bhullar delayed in responding to Dr. Roberts' letters of January 25, 2005 and February 10, 2005 and provided no reasonable explanation for the delay. However, Dr. Bhullar did then respond;

- Based on the information before me, I was not persuaded that Dr. Bhullar tried to obstruct this investigation or that he significantly delayed it. Dr. Bhullar was the cause of a two-month delay. He was never specifically asked for the invoice in file 02-024. I find the language to describe Dr. Bhullar's conduct in the report to the CRC dated March 1, 2005 was overstated. The BCVMA had the invoice it required, making it clear that such an invoice could be retrieved by Dr. Bhullar;

- I find that the BCVMA had no basis to be suspicious of Dr. Bhullar's invoice. There was simply a $2 error in addition that was rectified;

- Given the circumstances, I agree with the Complainants that the sanctions being sought by the CRC were severe in comparison to the issue raised by this complaint;

- In my view, had the BCVMA been concerned about Dr. Bhullar's inability to retrieve invoices, and they felt that this was in the public interest to pursue, it could have asked that a practice inspector review the issue of the invoices during the course of an inspection. Dr. Bhullar was subject to an unscheduled inspection on September 14, 2005 before this matter was referred to Inquiry in December 2005;

- Further, as noted in complaint file 04-007, and in other files, Dr. Bhullar had provided copies of invoices to the PO; and

- I agree with Dr. Roberts' initial assessment that this file should have been closed; given that the BCVMA continued to pursue it, it is not surprising that Dr. Bhullar would have felt that he was being targeted through the investigation process and/or that the BCVMA may have been retaliating against him for raising his concerns about the English Language Standard.

[336] I make the following findings regarding complaint 03-125:

- Based on the evidence, I was not persuaded that Dr. Bhullar inserted himself into this complaint. The PO wanted a refund, Dr. Sharma referred the issue to Dr. Bhullar and the discussions with the PO resulted;

- Initially, and on January 26, 2004, the PO said that Dr. Bhullar did not ask her to drop the charges against Dr. Sharma; at this time, there was no complaint against Dr. Bhullar. Although the PO had suggested that she felt pressured to drop the complaint against Dr. Sharma, and she

might have felt pressured to do so, it was also clear that Dr. Bhullar had not asked her to do so. On June 9, 2004, some six months later, Dr. Roberts spoke to the PO and she suggested that Dr. Bhullar had asked her to drop the charges against Dr. Sharma, and she felt pressured to do so, but told him that she would think about it. The PO confirmed this in her letter of June 11, 2004. On November 7, 2004, the PO advised that Dr. Bhullar had "repeatedly" asked her to drop the charges but she did not feel pressured to do so. The PO's story, in some respects, changed over time;

- The PO's daughter was equivocal in her description of the discussions between her mother and Dr. Bhullar. The PO's daughter could not be viewed as a disinterested witness;

- It was unreasonable and adverse to Dr. Bhullar for Dr. Roberts to have included prejudicial information about him in her first report to the CRC involving Dr. Sharma. She suggested that Dr. Bhullar had engaged in misconduct, extortion and intimidation of witnesses; she did so without having given Dr. Bhullar the opportunity to respond and the alleged conduct had not been fully investigated. These allegations were serious. As Dr. Roberts testified, this was probably not the best approach;

- I was not persuaded that, because the issues were interwoven as between Drs. Sharma and Bhullar, this provided a reasonable basis for the inclusion of this information in the report involving Dr. Sharma, without Dr. Bhullar having received notice of the charges against him and an opportunity to respond;

- I did not find it an unusual approach for the BCVMA to have provided the PO with Dr. Bhullar's response to the allegations against him and to ask for her comments, nor was I persuaded that it was done to make the case "stronger";

- It is clear, throughout, that the PO wanted a refund of her money; how the money was paid was her second concern, despite her comments about Dr. Bhullar's behaviour;

- The initial complaint was not against Dr. Bhullar; when he spoke to the PO he was not subject to a disciplinary complaint; he had no motive to try and bribe a witness. It does not appear that this was sufficiently considered by the CRC before it referred this matter to Council to cause an Inquiry; and

- The PO's letter of December 19, 2004, made it clear that she wanted the complaint to proceed against Dr. Sharma, which was always her

focus. It was the decision of the BCVMA to focus on the conduct of Dr. Bhullar.

[337] I make the following findings with respect to file 04-001:

- The complaint was processed relatively quickly by the BCVMA;
- The complaint was against Dr. Parbhakar; despite this, the complaint was pursued against Dr. Bhullar without notice to him;
- The issue regarding the delay in the transfer of medical records was not raised by the PO and/or Dr. AN as a concern, although this was pursued by the BCVMA to Inquiry;
- I accept Dr. Parbhakar's evidence that everyone was careful about completing their records, given the events occurring at that time;
- Dr. Bhullar provided a timely response to the BCVMA's second request for the medical records. Both Drs. Bhullar and King-Harris agreed that a second request for medical records is not uncommon;
- I find it was unreasonable for the CRC to conclude that Dr. Bhullar's medical records were fabricated, as there was little credible evidence to suggest that this was the case. Although the medical records may have contained insufficient information and/or were written on separate pages, this is not a basis upon which to conclude that they were fabricated. Further, because not all pages were faxed to Dr. AN, namely those records of Dr. Parbhakar, this was not a basis to allege that Dr. Bhullar had fabricated medical records. It is of note that this charge did not proceed to Inquiry;
- Although no one raised an issue of the delay in forwarding the medical records, Dr. King-Harris did so. Given that there appears to have been no adverse consequences for Snickers and no one raised the issue, it is surprising that the BCVMA would do so;
- Although I accept that it was appropriate for the CRC to consider complaints involving the same member together, it appears from the evidence that there was a concerted effort to do so with respect to Dr. Bhullar, even where, as was the case here, the complaint was not against him;
- Although Dr. Bhullar raised concerns about Council's motion referring this matter to Inquiry, I was not persuaded that it had failed to pass the motion or that Dr. Bhullar's subsequent Inquiry was improperly constituted; and

- I agree with Dr. Bhullar that the posting of this complaint on the website, with the three charges identified, two of which were subsequently withdrawn, could have an adverse impact on his professional reputation.

[338] I make the following findings with respect to file 04-007:

- This complaint was processed quickly by the BCVMA;

- Dr. Bhullar admitted that he made a mistake in the medical record;

- Everyone involved in this complaint knew that Princess was "intact", including Dr. King-Harris. I did not accept that Dr. King-Harris did not know that Princess was intact when he started his investigation as it was clear from the original complaint letter and the PO;

- I find no reasonable basis for the BCVMA not to have provided Dr. Bhullar with the original complaint letter. In this case, it was unfair to Dr. Bhullar for it to have failed to do so;

- I agree that this was a simple case; it became more complicated when the BCVMA failed to provide Dr. Bhullar with the original complaint letter and suggested that Princess had been spayed when it knew that this was not the case. The matter grew from the one issue that there was an error in the medical records, which Dr. Bhullar admitted, to seven charges being referred to Inquiry. Dr. King-Harris believed Dr. Bhullar to be dishonest, which led to finding numerous charges. This was, in my view, an indication that the BCVMA was viewing Dr. Bhullar with suspicion and expending significant resources to pursue him;

- Given the circumstances, I was not persuaded that Dr. Bhullar's actions, in calling the PO, were inappropriate or led to the conclusion that he was ungovernable or that he was attempting to bribe the PO; he had no reason to do so, given that she had not filed the complaint against him and was generally happy with his services. I find nothing improper in offering to compensate the PO for allowing him to re-examine Princess as she would have been put to the time and trouble of doing so. I do not accept that he attempted to bribe the PO. The PO was not the complainant but a witness and he had the right to speak with her. Because he was upset when he did so was the result of the actions of the BCVMA;

- I not conclude that Dr. Bhullar had lied to the BCVMA when advising them of the number of files he had with similar names. The evidence suggests that he had two files that were similar; this one and one other;

- I accept that it would have been helpful for Dr. Bhullar to have provided this second file but he was not asked for it; this would have been a simple request for Dr. King-Harris to have made during the course of this investigation;

- Dr. King-Harris did not speak to Dr. Punia about his discussions with Dr. Eisen before completing his report; it is unclear why he failed to do so as Dr. Punia had information relevant to this investigation;

- Dr. Bhullar acknowledged that he changed the medical record and crossed out that a spay had been performed; although it is unclear when he did so, nothing turned on this as he admitted that he did so;

- There was a delay of approximately four days in Atlas-Vancouver sending the medical records to Kitsilano; Dr. Bhullar was not in the clinic. However, as the Designated Member, he is responsible for the actions of his staff;

- Although there was a delay in sending the medical records to the second opinion veterinarian, the request for the record had been initiated by the BCVMA and could not be considered urgent. It is also troubling that the BCVMA would speak to this veterinarian to request that he not ask for Dr. Bhullar's medical records and advise the BCVMA if he intended to do so;

- I find there was an insufficient basis for the BCVMA to allege that Dr. Bhullar had falsified his medical records; and

- I did not find it surprising that Dr. Bhullar would have viewed this investigation as biased.

[339] I make the following findings with respect to file 04-095:

- Despite the BCVMA's continued assertion that it was overburdened with work, it had the resources to have three people meet with FM, including Dr. King-Harris, who had to travel to do so;

- There was little credible evidence to confirm that Dr. Bhullar knew about FM's meeting with the BCVMA and I accept that he did not know about this complaint until disclosure occurred in the proceedings; and

- It was reasonable that Ms. Osborne was concerned about FM's credibility, given the nature and extent of her allegations.

[340] I make the following findings with respect to file 04-109:

- There was a lengthy delay in the processing of this complaint. Dr. Bhullar was not advised of the complaint until almost one year after it had been received by the BCVMA and five months after it had been assigned a file number and an investigator. I am not persuaded that any of the explanations given by Dr. King-Harris and/or Ms. Osborne adequately addressed this delay;

- Despite not receiving the original post, the BCVMA pursued this investigation through to the Inquiry. CJ should have been required to produce it before the matter proceeded;

- In the absence of the post, it was impossible to conclude that it did not contain race-based comments and other negative commentary about Dr. Bhullar and his clinic;

- I agree with Dr. Bhullar that he had the right to contact CJ and to ask her to remove the offending post. I also accept that he felt he had an obligation to advise her that, if she failed to remove the post, he would speak with his lawyer. I am unable to conclude that this was threatening. Dr. Bhullar was obligated to advise Ms. Jackson of the steps he might take if she failed to remove the posting, and he did so;

- I accept that the original posting was inflammatory, otherwise Dr. Bhullar would have had no reasons to contact CJ;

- Given that the original post had not been received, it is unclear why the BCVMA assumed jurisdiction over the matter. Given its constant reliance on workload to explain delays, this was surprising;

- Despite Dr. King-Harris accepting that this complaint would be hard to prove, without the original post, it was pursued. I was not persuaded that a referral to Inquiry was necessary in order to access the post. In any event, this was the basis for the complaint being withdrawn at the Inquiry (08-04), some four years later and after Dr. Bhullar had expended resources in defending against it;

- Dr. Bhullar did respond to the complaint after the second request was made. This suggestion that he did not do so was inaccurate. That the BCVMA did not like his response does not lead to the conclusion that he failed to do so; and

- Dr. Bhullar's view that the BCVMA was targeting him for disciplinary proceedings was reasonable.

[341] I make the following findings with respect to file 04-110:

- Dr. H filed a complaint and it was accepted as such by the BCVMA. For the BCVMA to suggest otherwise was inaccurate and did not accord with its own oral and documentary evidence;

- This complaint remained open for two and one-half years and was investigated by the BCVMA despite no notice being given to Dr. Bhullar;

- There was no basis for Dr. King-Harris to enquire about Dr. Bhullar's qualifications, other than speculation;

- I found Dr. H's allegation to be fantastic and inflammatory. Despite this, he was not cautioned by the BCVMA and no complaint was opened against him;

- Given that Dr. H did not testify, I am unable to assess his credibility, but I do not accept the BCVMA's assessment of it;

- It was unreasonable and unfair to Dr. Bhullar for Dr. King-Harris to have used this interview to gain information about other complaints, without notice to Dr. Bhullar; and

- The complaint provides confirmation that the BCVMA was monitoring Dr. Bhullar's behaviour in that it kept this complaint open for "tracking purposes".

[342] I make the following findings with respect to file 05-010:

- This file remained open for a lengthy period of time without notice to Dr. Bhullar, which was unfair to him;

- In my view, it was unreasonable for the BCVMA to contact Central Laboratory based on a complaint that could not be located and the wide-ranging and undocumented allegations of Drs. H and SP. This was nothing more than a fishing expedition;

- I agree that the BCVMA's request was in violation of Dr. Bhullar's and the PO's privacy rights, given that it was based on speculation; and

- There was no reason for the BCVMA to have kept this file open for the length of time it did other than to ensure the information was available should anything else come to light *vis-à-vis* Dr. Bhullar. I agree that this was another indication that Dr. Bhullar was being targeted.

[343] I make the following findings with respect to file 05-018/04-046:

- This file was investigated quickly by the BCVMA and closed, but Dr. Bhullar was never advised that this was the case;

- I accept Dr. Bhullar's view that he was not required to disclose the personal information about the circumstances regarding why Dr. Kahlon left Atlas-Vancouver. That information was obtainable from Dr. Kahlon. Nonetheless Dr. Bhullar denied he fired Dr. Kahlon and he had no reason to lie about this issue; and

- It was concerning that Dr. King-Harris had the view that Dr. Bhullar would not provide the BCVMA with an honest answer. Given that Dr. King-Harris had this view, and it resulted in him not speaking to Dr. Bhullar during the investigation as a result, this was unfair to Dr. Bhullar. It would have been reasonable for Dr. King-Harris to step-aside and have another investigator assume carriage of this file.

[344] I make the following findings with respect to file 05-024:

- This file was process quickly and appropriately by the BCVMA.

[345] I make the following findings with respect to file 05-044:

- Dr. Bhullar was responsive to the BCVMA, although his responses were not always timely. Although Dr. Bhullar's responses might not have been as fulsome as the BCVMA required, he did respond. Dr. Bhullar did not provide any comments to the CRC about Dr. King-Harris' report. He is not required to do so. Because he did not do so and suggested in his evidence that this would not make a difference to the outcome, is not a basis upon which to conclude that Dr. Bhullar was generally non-responsive;

- Dr. Bhullar provided ongoing care for Kirby, in a difficult situation. I accept Dr. Bhullar's evidence that the PO came every day and would have been fully aware of Dr. Bhullar's care; had he been concerned about Kirby's care, as he subsequently alleged, I expect that he would have taken steps to move Kirby. I am supported in this conclusion by the fact that, after Kirby was discharged, he took Kirby to Capilano, despite Dr. Bhullar telling him to bring Kirby back to him if necessary;

- I accept that both Dr. Bhullar and the PO's regular veterinarian recommended that Kirby be taken to ACCG; I find no basis to suggest that Dr. Bhullar did not do so as he had no reason to lie. Although the PO said that Dr. Bhullar never referred him to the ACCG, this is, at best, a conflict in the version of information being provided, as between the PO and Dr. Bhullar's medical records, and not a basis to suggest that Dr. Bhullar had misled the BCVMA and/or falsified his medical records. Dr. King-Harris goes on to suggest that if Dr. Bhullar had recommended that Kirby be taken to ACCG, this was an indication that he could not manage the treatment of Kirby; however, Dr. Bhullar

clearly managed the treatment of Kirby, for a number of days, who was in critical condition;

- If Dr. Bhullar only suggested a referral to the ACCG after he did the surgery, this would not be surprising in the circumstances, given the critical nature of Kirby's injuries, which was not disputed, and his attempt to save Kirby. It would not be surprising that he acted first and then made the recommendation;

- Dr. King-Harris suggested that the PO might not have been able to give informed consent if the referral to the ACCG had not been made. I find this conclusion unreasonable, given that Dr. Bhullar treated Kirby for five days, the PO visited often and the PO had spoken to his regular veterinarian on April 26, who suggested taking Kirby to ACCG. In these circumstances, it is difficult to understand that the PO was unable to give informed consent, especially since Dr. King-Harris described him as being objective, careful, and articulate;

- Although a concern was raised that the medial records had not been initialled, it was clear that Dr. Bhullar had provide the care for Kirby and initialled the records on April 30, when Kirby was discharged. This issue was not often raised as a concern in other files but was done so here despite Dr. King-Harris knowing that Dr. Bhullar had provided the care for Kirby, except for the initial contact when Kirby was first brought to Atlas-Vancouver; the PO confirmed that this was the case, and the PO filed his complaint against Dr. Bhullar and no one else;

- There was very little information to suggest that Dr. Bhullar falsified his medical records to deliberately mislead the BCVMA and/or that his records were written to be self-exculpatory;

- It was unclear, from the evidence, when Dr. Bhullar transferred his medical records to Capilano. It was an urgent situation and Dr. Bhullar would have known this and should have immediately sent the records. The records appear to have been first requested by Capilano on May 2, after Kirby had died, and were received no later than May 4. The PO suggested he asked Dr. Bhullar to send the records to Capilano on May 1, and he received a copy from Capilano on May 3. The PO received a copy of the radiographs on May 1 from Atlas-Vancouver. Dr. Bhullar said that the medical records were sent on May 1 and there is a notation in his medical records that they had been sent that day. Despite the conflicting information, Dr. King-Harris concluded in his report that Dr. Bhullar failed to transfer the medical records in a timely manner, was untruthful about when the records were transferred and misled the BCVMA in this respect;

- Dr. King-Harris relied on other unproven complaints to suggest that Dr. Bhullar was not credible. I accept that Dr. Bhullar would have viewed this as an attempt to use one complaint to bolster another. Further, given that Dr. King-Harris had formed the view that Dr. Bhullar was generally dishonest, it is not surprising that he came to this conclusion;

- Dr. Bhullar noted that he mailed the invoice to the PO on May 1. The PO did not pay the invoice; it was paid by the owners of the Rottweilers. Dr. Bhullar provided a copy of the invoice to the BCVMA with his medical records. He had no reason not to provide it to the PO and/or to mislead the BCVMA in this respect;

- I note that Dr. Bhullar never called the PO and asked him to drop the charges against him, nor did he offer him money to do so, despite the complaint being against him;

- Dr. King-Harris did not speak to Dr. Bhullar during the course of the investigation, although he spoke to others involved in the file; and

- Dr. Bhullar had no basis to file a s. 15 complaint against the treating veterinarians at Capilano. He had no basis to suggest that Capilano should not have performed surgery without his records. I agree that Dr. Bhullar had no basis to suggest that the veterinarians at Capilano instigated this complaint by what the veterinarians may have said to the PO about Kirby.

[346] Complaint 05-110 remained outstanding for a lengthy period of time, but appropriately closed.

[347] I make the following findings with respect to file 05-116:

- I was not persuaded that the BCVMA was attempting to create a complaint against Dr. Bhullar, when it communicated with the POs in September 2005, leading them to filing a complaint that named Dr. Bhullar as the respondent veterinarian;

- Based on the evidence, I was unable to conclude that Dr. Bhullar was attempting to mislead this Tribunal when he described how this complaint came about;

- Dr. Bhullar provided his medical records to VAEC in a timely manner, within four to six hours, and given that they were requested sometime after 8:30 pm;

- I agree with Dr. Bhullar that he was only one of the veterinarians who provided treatment to Maxi but he was the only veterinarian named in

the complaint and the only one pursued by the BCVMA. I was not persuaded that all of the actions of the other veterinarians were Dr. Bhullar's responsibility. This is not the standard applied in other complaints;

- I accept that there was confusion about what Dr. Bhullar had faxed to the BCVMA, but he did send his records. I am of the view that this would have led Dr. Bhullar to be frustrated with the BCVMA and to express this to the staff. It was unreasonable for Dr. Bhullar to keep faxing the medical records, when the BCVMA sought his original medical records, which he sent before the matter was considered by the CRC. Given the evidence, I was not persuaded he was failing to respond appropriately to the BCVMA;

- I accept that, when Dr. Bhullar attended the BCVMA's office, he spoke with Ms. Edwards in a manner that could be viewed as inappropriate; he interrupted her and accused her of lying;

- There was no basis to review Dr. Bhullar's medical records back to 1998, when Maxi died in November 2004 and the last dose of medication at issue was given in 2001, and not by Dr. Bhullar. As Ms. Osborne advised the POs, there was no clear evidence that Dr. Bhullar's treatment materially contributed to Maxi's illness and/or death;

- I was concerned about Dr. King-Harris' evidence that the CRC was apprehensive about having to deal with a complaint involving Dr. Bhullar and their ability to objectively deal with these matters. If this was indeed the case, this raises serious questions about the fairness of the process; and

- Although this complaint was dismissed, Dr. Bhullar was still subject to scrutiny by the BCVMA when other veterinarians providing treatment to Maxi were not.

[348] I make the following findings with respect to complaint 05-117:

- The BCVMA processed this complaint quickly;

- Despite that the issue had been resolved, and the BCVMA's continued insistence that it was under an extreme workload, it pursued this complaint, which was ultimately referred to Inquiry;

- The BCVMA did not follow its normal practice to provide Dr. Bhullar with a follow-up request for his medical records. I was not persuaded that there was a reasonable basis for its failure to do so, including its reliance on unproven allegations to support its decision, was not appropriate. However, I accept that, in many complaints, Dr. Bhullar

delayed in sending his medical records, which was clearly frustrating for the BCVMA; and

- I accept that Dr. Bhullar would have perceived the processing of this complaint another example of the BCVMA targeting him, but I note some of the responsibility for the BCVMA pursuing this complaint lies with him.

[349] I make the following findings with respect to file 06-050:

- This complaint took an unreasonable period of time to complete;
- Dr. Bhullar's comments that Dr. Roberts was incompetent and biased were inappropriate and not an appropriate response to the complaint, which was straightforward; and
- I agree with Dr. Bhullar that he was treated fairly in the processing of this complaint.

4. Disciplinary Complaint 04-052 involving Dr. Bhullar

Introduction

[350] The parties provided significant evidence and submissions about complaint 04-052 and those involved in it. This was a complaint filed by Ross Walker and Kyle Susan Walker about the treatment of their cat, "Joe", at Killarney Animal Hospital ("Killarney"). The Walkers sought a refund of the monies that they paid for the medical services provided at Killarney. Mr. Singh was involved in meeting with the Walkers to provide the refund and obtained their signed affidavit stating that they would withdraw their complaint to the BCVMA. The Respondents suggested that it was Dr. Bhullar who impersonated Mr. Singh; the Complainants disputed this and introduced evidence suggesting that it was not Dr. Bhullar. The Respondents relied on this evidence to suggest that Dr. Bhullar both, perjured himself, and suborned perjury, by having others give false testimony before me, namely Victor Bains, a Notary Public and Gurdev Singh Somul, who testified that he was Mr. Singh. As a result, the Respondents argue that this Complaint should be dismissed in its entirety.

[351] It is not the role of the Tribunal to determine if a witness that testified before it committed perjury. This is a criminal concept and is subject to criminal sanction based on the criminal standard of proof. I will make no finding of perjury.

[352] As discussed elsewhere, it is the role of the Tribunal to assess the credibility of those who appear before it, including Dr. Bhullar's credibility.

[353] Dr. Bhullar, Mr. Somul and Mr. Bains testified on behalf of the Complainants. Dr. King-Harris, Ms. Osborne, and Mr. Walker and Mrs. Walker testified for the Respondents. Dr. Mangat, who was involved in the treatment of Joe and the co-owner of Killarney, did not testify; he was not called by either party.

Orders to Attend

[354] As noted, the Complainants introduced evidence suggesting that Dr. Bhullar was not Mr. Singh. The Walkers were both involved with meeting with Mr. Singh. As a result, and so that the Walkers could identify Dr. Bhullar and/or Mr. Somul as being Mr. Singh, the Respondents sought two Orders to Attend for Dr. Bhullar and Mr. Somul. The Respondents sought to have them present during that part of the hearing, while the Walkers were testifying on September 27 and 28, 2011.

[355] The Respondents argued that Dr. Bhullar had lied to this Tribunal about his involvement in the Walkers' complaint. They argued that he impersonated Mr. Singh. They said that, if this is proven to be true, it calls into question the *bona fides* of Dr. Bhullar's claims of discrimination, which should be dismissed. This issue also goes to the heart of Dr. Bhullar's credibility. The Respondents argued that these Orders to Attend must be granted unless the Tribunal was of the view that the evidence was "definitely not necessary" or helpful in resolving the issue of whether Dr. Bhullar lied or fabricated evidence in this proceeding. The Respondents argued that, at the Inquiry, Dr. Bhullar was identified as Mr. Singh. The Inquiry Committee found that it was Dr. Bhullar who was Mr. Singh.

[356] The Respondents argued that, after the Walkers testified, Dr. Bhullar and/or Mr. Somul could be recalled, if necessary. The Respondents argued that they were not seeking an advantage in this matter but wanted to resolve any doubt as to the identity of Mr. Singh.

[357] Having considered the parties' submissions and the authorities referred to by them, I declined to issue the Orders to Attend and advised the parties on September 27, 2011 that my reasons would follow. These are my reasons.

[358] I have the discretion to issue and/or to decline to issue Orders to Attend. I must determine whether the evidence obtained through the further attendance of Dr. Bhullar and/or Mr. Somul, for the purpose of the Walkers being asked to identify Mr. Singh, was necessary and relevant to the issues I must determine.

[359] Both Dr. Bhullar and Mr. Somul were examined and cross-examined at length about each of their participation in the Walkers' complaint and the identity of Mr. Singh. I do not dispute that their evidence may be relevant to the identity of Mr. Singh. Had the Respondents wanted the Walkers to identify them, they could have sought an order, amending my order excluding witnesses and for the limited purpose of allowing the Walkers to attend part of the hearing while their evidence was ongoing.

[360] The Respondents suggest that the failure to issue these Orders to Attend would result in a breach of procedural fairness and natural justice. Because the evidence may assist the Respondents, or is the "best evidence", does not necessarily mean that excluding this evidence would be a breach of fairness.

[361] The Respondents also suggest that, if I declined to issue the Orders to Attend, they would be denied a fair hearing. That the Respondents chose to focus on the actions of Dr. Bhullar to defend against the numerous allegations of discrimination raised in this Complaint was their decision. The Respondents called numerous witnesses, who testified in excess of 150 days and introduced thousands of documents into evidence. In my view, the denial of these two Orders to Attend does not lead to the conclusion that they have been denied a fair hearing. In my view, every effort was made to ensure that the hearing process was fair to both parties.

[362] Dr. Bhullar did not attend during the Walkers' evidence and advised the Respondents that he would not do so. The Respondents should have anticipated that this might occur, given that they believed that Dr. Bhullar was lying about his involvement in the Walkers' complaint.

[363] I disagree that the attendance of Dr. Bhullar and/or Mr. Somul goes to the heart of Dr. Bhullar's claim of discrimination in his complaint. This may go to one aspect of Dr. Bhullar's complaint and/or his credibility, but the Complaint before me has many parts and many Complainants. The actions of Dr. Bhullar and/or Mr. Somul do not speak to these other issues or the Complainants' other claims of discrimination.

[364] The Respondents' alternate request was to have Dr. Bhullar and/or Mr. Somul re-attend for cross-examination. In my view, this would be in effect a splitting of their case and would be unfair to the Complainants.

[365] Finally, and in any event, the identity of Mr. Singh is not of much importance to the issues in this Complaint. I have repeatedly said I would not revisit the findings of fact made at Inquiry, yet both parties invite me to do so in this regard. This Complaint process is about whether the BCVMA has discriminated; not whether the Inquiry Committee otherwise erred in its own process or findings of fact. While Dr. Bhullar's credibility is an issue, whether his evidence was truthful on this specific incident is not necessary to the issues before me. The question of who is Mr. Singh is collateral to the issues I am required to determine. Although some of the evidence about this disciplinary complaint is relevant to the determinations I must make, I have not found it necessary or appropriate to make this specific determination.

Findings

[366] The evidence related to this complaint is set out in **Appendix "P"**.

[367] I make the following findings with respect to disciplinary complaint 04-052 involving Dr. Bhullar:

- Ms. Osborne had considerable contact with the Walkers before they filed their complaint, including issues related to the reimbursement of the fees that they had paid to Dr. Mangat. I found this level of contact to be unusual;
- The BCVMA assisted in arranging for the necropsy to be performed and paid for it; it is unclear why it did so;

- The Walkers spoke to Dr. Mangat, on numerous occasions, seeking reimbursement of the fees they had paid to him. After Joe's death, their focus became obtaining a refund;

- Dr. King-Harris did not take steps to determine what interest Dr. Bhullar had in Killarney; it is not clear why he failed to do so;

- The Walkers knew, before they signed the affidavit, that the BCVMA would not terminate the investigation despite their sworn statements that they were withdrawing their complaint. Further, after the Walkers had signed the affidavit, they sent it to the BCVMA with a note, which suggested that they knew the complaint would continue;

- The events that occurred on July 29, 2004 with respect to the Walkers' meeting with Mr. Singh are not generally in dispute. They met with Mr. Singh in the morning, attended Mr. Bains' office, signed the affidavit and received a refund;

- Although the Walkers were concerned about the content of the affidavit, I find that they were not coerced into signing it; they wanted a refund of the monies that they had paid for Joe and signed the affidavit in order to obtain this money. Mr. Walker and, to a lesser extent, Mrs. Walker, did not strike me as individuals who could be coerced; they were fully aware of their actions and undertook them voluntarily. I agree with Dr. King-Harris' assessment that the Walkers had not acted in good faith;

- It was also clear that the Walkers participated in the drafting of the affidavit and changes were made to it based on their concerns. This does not suggest coercion;

- I find that Mrs. Walker was not threatened by Mr. Singh nor did she tell the BCVMA that he gave her the "creeps".

- The delay in sending the Walkers' complaint to Dr. Mangat, until they had received their refund, was unreasonable and was only done to ensure that the Walkers would be reimbursed, although it was clear that Dr. Mangat knew a complaint had been filed. Given that the BCVMA continually took the position that it does not engage in issues of reimbursement between a veterinarian and his or her client, it is unclear why Dr. King-Harris took this unusual step, other than to assist the Walkers in a questionable process;

- The investigation into Dr. Mangat's conduct did not terminate with the signing of the affidavit. Despite the BCVMA receiving the affidavit in August 2004, they did not take the position that "trickery" or "coercive" behaviour had occurred until they learned of the cell phone number and determined that it belonged to Dr. Bhullar;

- I was not persuaded that the evidence supported the conclusion that the Walkers saw a picture of Dr. Bhullar when they met with Dr. King-Harris and Ms. Osborne on February 2, 2005. I was not persuaded that the Walkers had seen Dr. Bhullar before they attended his Inquiry to give evidence, although I accept Mr. Walkers' evidence that he saw Dr. Bhullar before he identified him during his evidence at the Inquiry;

- Ms. Osborne and Dr. King-Harris continually testified that the BCVMA was experiencing a significant workload; notwithstanding this, they pursued a complaint against Dr. Bhullar and expended significant resources in doing so. They did so although no complaint had been filed by the Walkers, the Walkers were happy with having received a reimbursement and wanted to put the matter behind them and the investigation involving Dr. Mangat was ongoing;

- Ms. Osborne and Dr. King-Harris attended Mr. Bains' office without an appointment; they did so in order to obtain admissions from Mr. Bains against Dr. Bhullar. They provided misinformation to Mr. Bains, about there not being a Dr. Singh registered with the BCVMA. I do not agree with Dr. King-Harris' evidence that this was not an unusual step to take;

- I was not persuaded that either Dr. King-Harris and/or Ms. Osborne fabricated their notes of their meeting with Mr. Bains or that they failed to record, to the best of their ability, what had been said to them;

- Although Mr. Bains allegedly told Ms. Osborne and Dr. King-Harris that Dr. Bhullar participated in the drafting of the Walkers' affidavit, he did not tell them that it was Dr. Bhullar who met with them at Dr. Mangat's clinic, brought them to his office and then drove them back to the clinic. In this respect, Mr. Bains did not corroborate the Walkers' information as to the identity of Mr. Singh as suggested by Dr. King-Harris;

- The entire investigation involving Dr. Bhullar was triggered by the Walkers advising the BCVMA of the cell phone number they had recorded that allegedly belonged to Mr. Singh; both Ms. Osborne and Dr. King-Harris knew this number belonged to Dr. Bhullar. Dr. King-Harris and Ms. Osborne pursued the investigation of the identity of Mr. Singh based on this one alleged fact;

- At no time, prior to the matter proceeding before the Inquiry Committee, did the BCVMA confirm with the Walkers that it was Dr. Bhullar who was Mr. Singh. In my view, a fair investigative process, especially one that could have significant and adverse consequences for Dr. Bhullar, required that the Walkers identify Dr. Bhullar as Mr. Singh and then give Dr. Bhullar the opportunity to respond;

- Further, no one from the BCVMA contacted Dr. GL, the other veterinarian involved in the care of Joe, and who was in attendance at the notary's office. Dr. GL would have had information relevant to the investigation and to the identity of Mr. Singh;

- Dr. Bhullar was provided with a copy of the BCVMA's complaint against him on March 31, 2005; Dr. Bhullar was given only six days to respond to the complaint, which was not the BCVMA's normal practice. Generally, respondent veterinarians are provided with two weeks to respond to a complaint. I disagree with Dr. King-Harris' assessment that the normal process was followed with respect to the processing of this complaint;

- Ms. Osborne and/or Dr. King-Harris misled Dr. Bhullar when they advised him that the Walkers had filed a complaint against him;

- Dr. King-Harris' report to the CRC was completed on April 7, 2005 and the report raised numerous issues; in my view, this report was most likely completed before Dr. Bhullar had been given the opportunity to respond to the complaint. Dr. King-Harris raised numerous issues, all related to the identify of Mr. Singh and the related issue of Dr. Bhullar's involvement in drafting the affidavit, despite not having confirmed with the Walkers that it was indeed Dr. Bhullar who they met with;

- Dr. Bhullar sought the Walkers' original complaint letter; I find that this was a reasonable request, given the letter that he received on March 31, 2005, referred to the Walkers having filed a complaint against him;

- It was clear that Dr. Bhullar's cell phone was used to call the Walkers. The events surrounding this call and who made the call are issues that have been determined by the Inquiry Committee and I will not further comment. However, it is unclear why Dr. Bhullar would have been involved in this matter, given he had no business interest in Killarney, he was not the treating veterinarian, there was no complaint filed against him and he had no employment or other business relationship with Dr. Mangat;

- I accept that Dr. Bhullar attended Mr. Bains' office for a variety of reasons, given his business and real estate interests. I also accept that Dr. Bhullar was in attendance at Mr. Bains' office on July 29, 2004, the day the affidavit was signed;

- I do not agree that Dr. Mangat was a "bit player" in the issues involving the Walkers; his clinic provided the treatment for Joe; he agreed to reimburse the Walkers on certain conditions; he provided the

money that was given to the Walkers after they signed the affidavit; he was at the notary's office when the affidavit was signed purporting to withdraw the complaint against him and Dr. GL and, as Dr. King-Harris correctly said, was complicit in that process;

- At no time during the investigation of the complaint against Dr. Bhullar did Dr. Mangat say that it was Dr. Bhullar who was involved in the preparation of the affidavit. Dr. Mangat said, and maintained, that it was his friend, Mr. Singh, who was involved in obtaining the affidavit from the Walkers;

- Ms. Osborne and/or Dr. King-Harris never followed-up with Dr. Mangat to obtain the contact information for Mr. Singh. They did not follow-up with Mr. Bains regarding the identity of the second person was who was in attendance when the Walkers signed the affidavit. It is unclear why they failed to do so, given all the steps they took, for example, meeting with the Walkers and Mr. Bains, and their view that Mr. Singh was Dr. Bhullar. This was a simple and straightforward inquiry which they failed to make;

- It is also puzzling that Mr. Wexler would not have confirmed with the Walkers, when he met with them to prepare them to give evidence at the Inquiry, their evidence and their ability to identify Dr. Bhullar. I was not persuaded that the Walkers were unaware that they were attending Dr. Bhullar's Inquiry for any purpose other than to identify Dr. Bhullar, given that this was the sole purpose for their attendance;

- Despite Dr. Mangat testifying at Dr. Bhullar's Inquiry that Dr. Bhullar was not Mr. Singh, he was not sanctioned for misleading the BCVMA and/or lying under oath. Dr. Mangat was not sanctioned for his involvement in reimbursing the Walkers and/or obtaining the affidavit, despite the clear fact that the affidavit was drafted and signed to have the complaint against him withdrawn;

- It is not clear why, prior to the Inquiry, Dr. Bhullar was not provided with disclosure of the various notes of the discussions that Ms. Osborne and/or Drs. King-Harris and Roberts had with the Walkers and/or Dr. Mangat, with respect to the identity of Mr. Singh. This was exculpatory information and it would have been fair to disclose it;

- I make no findings as to the identity of Mr. Singh as this is collateral to the issues I must determine in this Complaint. However, it is my view that the investigation into the complaint and the process leading to the Inquiry was highly unusual, flawed, and unfair; and

- I agree that Dr. Bhullar would have perceived the BCVMA as targeting him throughout this investigation and that it expended significant resources in doing so.

5. Inquiries Involving Dr. Bhullar

[368] I make no findings with respect to those Inquiries involving Dr. Bhullar. The evidence related to these Inquiries is briefly set out in **Appendix "Q"**.

6. Disciplinary Complaints – Dr. Johar

[369] I make the following findings with respect to those disciplinary complaints involving Dr. Johar. I set out the findings as they relate to each of his disciplinary complaints in the same order as the evidence is set out in **Appendix "R"**.

[370] I make the following findings with respect to complaint 03-109:

- The complaint was processed quickly by the BCVMA;
- Dr. Johar was responsive; and
- The file illustrates that the CRC may refer the matter to the ACR process, without first referring it to Inquiry, which had been suggested in other disciplinary complaint files.

[371] I make the following findings with respect to file 04-100:

- The file was processed quickly by the BCVMA;
- Although it was appropriate to close this complaint, it was not appropriate to assume that Dr. Johar had engaged in inappropriate communication, without giving him the opportunity to respond;
- Although the BCVMA suggested that it closed the file because it did not trigger its jurisdiction, it nonetheless drew adverse conclusions about Dr. Johar's conduct;
- Despite Ms. Osborne's reference to there being two versions of the same event and that the BCVMA could not prefer one over the other, she only had one version, as Dr. Johar was unaware of the complaint against him;
- Dr. Johar was entitled to raise his concerns about how this complaint was processed; however, I was not persuaded that the sending of

numerous letters, and making numerous allegations, were appropriate in the circumstances; and

- Had the BCVMA obtained Dr. Johar's input, he might not have written and/or distributed the letters that he did.

[372] I make the following findings with respect to file 04-111:

- The BCVMA's processing of this complaint was extremely inappropriate and unfair;

- The BCVMA believed that Dr. Johar had lied about his medical records being missing; they had no reason to assume that this was the case. In other complaints, where Dr. Johar had been named a respondent, he provided his records;

- I was not persuaded that the BCVMA could not have sent an inspector/investigator to Dr. Johar's clinic to review the medical records. Given that many of the allegation suggested that Dr. Johar was engaged in unprofessional conduct and inappropriate treatment of animals it was the BCVMA's obligation to act in the public interest and to immediately investigate these allegations;

- The BCVMA had no basis to assume that Dr. Johar would deny an inspector/investigator access to his clinic; this assumption was based on pure speculation, the assumption that Dr. Johar was unethical and ungovernable was inappropriate. It was also used as a justification to have AR copy Dr. Johar's medical records without his knowledge or consent;

- I found it shocking that the BCVMA would contact Dr. Johar's clients without his knowledge. It would have been known to both Dr. King-Harris and Ms. Osborne that, when doing so, there would have been an adverse impact on Dr. Johar's professional reputation. I acknowledge that Dr. King-Harris became reluctant to continue to make such calls;

- I find it surprising that LEK's allegations proceeded to Inquiry when AR's allegations were withdrawn as they were inter-related;

- Ms. Osborne failed to adequately assess AR's credibility in light of the allegations made by the SPCA and then subsequently by LEK; and

- It is not surprising that Dr. Johar became suspicious of the BCVMA and its actions with respect to him. In my view, he had a basis for his suspicions. However, I find that many of Dr. Johar's subsequent letters contained inappropriate content and made unnecessary and inflammatory allegations.

[373] I make the following findings with respect to file 05-012:

- Dr. Johar had no reason to contact the regular veterinarian and did not do so. He had no relationship with the PO prior to when she came to ask for the fluids to be dispensed to her;

- Dr. Johar did not know the PO. He was asked to dispense fluids and did so, within a timely manner. I agree with Dr. Craven that it was not inappropriate for Dr. Johar to ask for the medical records in such circumstances, although I find that he did not have the PO's specific consent to do so;

- I accept that Dr. Johar would not have suggested that the PO re-use the needles as they were inexpensive. It is possible that the PO misunderstood Dr. Johar but this does not seem to have been considered by Dr. King-Harris. I accept that Dr. Johar felt obligated to explain to the PO how to administer the fluids. I did not find that this was inappropriate, given he had never met the PO;

- I accept that Dr. Johar had a basis to question the medical records, given that the animal described was not the animal in question. However, I accept that this was a clerical error. Dr. Johar had no basis to allege otherwise;

- Ms. Osborne participated in drafting Dr. King-Harris' report to the CRC; however, Dr. King-Harris was the investigator and signed the report and it was his obligation to ensure that the facts and analysis were accurate;

- I agree with Dr. King-Harris that this was a relatively straightforward complaint. I disagree that it was only Dr. Johar who made it complex;

- I did not find that Dr. Johar misled the BCVMA and/or a colleague in this complaint. These are serious allegations, which were based on little information. Dr. Johar never spoke to the regular veterinarian;

- This was a minor complaint but the BCVMA used significant resources in the processing of it.

[374] I make the following findings with sect to file 05-035:

- Dr. Johar failed to respond appropriately to the BCVMA. I find that Dr. Johar sent numerous and inappropriate letters to the BCVMA;

- It may be that Dr. Johar believed that the BCVMA was not processing the complaints that he had filed quickly, but this did not provide a reasonable basis for Dr. Johar's failure to respond appropriately.

- Although I accept that Dr. Johar was reluctant to provide the medical records to a person who was not confirmed to be an owner of Lucy, he did provide his medical records on April 8, 2005;

- Dr. Johar should have provided the complete records to the second opinion veterinarian on request; Dr. Johar would have known about the urgency of the request, given that at least one puppy had died while at Haney. However, the PO provided the second opinion veterinarian with the copies that she had received on April 8, 2005;

- Dr. King-Harris failed to provide full disclose to Dr. Johar regarding the information he had about the anaesthetic protocols and his discussion with an expert that he had prior to the completion of his report to the CRC;

- Dr. King-Harris raised the issue of Dr. Johar threatening a colleague, although he did not ask for Dr. Johar's response to this issue before setting out the allegation in his report to the CRC;

- I was not persuaded that Dr. Johar created false medical records or that they were created after the fact;

- I make no finding about Dr. Johar's care of the puppies and/or whether his treatment led to their death.

7. Disciplinary Complaints – Drs. Johar and O

[375] There were a number of disciplinary complaints involving Dr. Johar and Dr. O. Many of these files related to the interactions between them. Dr. O is not a Complainant and is not Indo-Canadian.

[376] I make the following findings with respect to those disciplinary complaints involving Dr. Johar and Dr. O. I set out the findings as they relate to each of these disciplinary complaints in the same order as the evidence is set out in **Appendix "S"**.

[377] I make the following findings with respect to file 04-029:

- It is not clear why Dr. King-Harris decided initially not to advise Dr. Johar that it was Dr. O who had filed the complaint. This information would be relevant to Dr. Johar;

- Dr. Johar provided timely responses to the BCVMA;

- This complaint was processed relatively quickly by the BCVMA, within nine months, from the time it was received to when it was referred to Inquiry;

- Dr. King-Harris' failure to advise Dr. Johar that he was not pursuing the ACR process, after their discussion on July 29, 2005, was unreasonable. I accept that Dr. Johar might have been aggressive and accusatory but this did not undermine the BCVMA's obligation to respond to Dr. Johar's request; and

- It was unreasonable for the BCVMA to fail to disclose Dr. King-Harris' assessment of Dr. O's radiographs to Dr. Johar; this was the issue raised in the initial complaint and the assessment was relevant to the investigation.

[378] I make the following findings with respect to file 04-062:

- As noted elsewhere, I make no findings with respect to the medical issues raised by Dr. Johar in his complaint and the dose rates of the various medications administered by Dr. O;

- I accepted Dr. Johar's explanation for why he delayed, for three months, in the filing of this complaint. He filed the complaint when the PO brought the issue to his attention. As the evidence illustrated, the BCVMA has investigated complaints which have been filed sometime after the events at issue took place;

- Although the BCVMA acknowledged receipt of Dr. Johar's complaint, it delayed in the processing of it. I accept that the file may have been transferred between Drs. Brocklebank and Roberts, but the lengthy delay was unexplained;

- I accept that some of Dr. Johar's language was inappropriate and, at times, inflammatory. This did not provide a basis for Ms. Osborne's conclusion that this complaint was vexatious. Dr. Roberts did not view this complaint as retaliation and agreed that Dr. Johar had a basis upon which to raise his concerns. I was not persuaded that, because this complaint had not been filed by the PO, it should not have been investigated by the BCVMA; the BCVMA investigates complaints filed by members and has the authority to do so;

- The BCVMA's explanation for the delay in responding to Dr. Johar's many communications was unreasonable. I accept that the BCVMA was dealing with a "volume" of other matters, but these also included extensive investigations into Dr. Johar's conduct, which it had the time and resources to do. Based on the evidence before me, I accept Dr.

Johar's view that the BCVMA was dealing with complaints against him on a priority basis;

- I was not persuaded that Dr. Roberts' investigation into this matter was inappropriate or biased;

- I agree that Dr. O's medical records did not contain certain information; I accept that Dr. Roberts believed Dr. O's explanation of what had occurred. Although Dr. Roberts could have raised concerns that Dr. O had mislead the BCVMA, that she did not do so does not lead to the conclusion that her investigation was incomplete and/or biased. I agree with Dr. Roberts in that she had no reason to protect Dr. O;

- I have no basis upon which to disbelieve Dr. Roberts' evidence that she received information from Ms. Edwards about Dr. O's induction medication, despite the fact that the note of the discussion had not been disclosed;

- I accept Dr. Roberts' evidence that she attended the CRC to defend her initial decision to close the file. Although Ms. Osborne disagreed, her explanation of the role of the CO was consistent with Dr. Roberts' view, albeit Ms. Osborne described it differently;

- The BCVMA had no basis to assume that Dr. Johar was lying to it about receiving the September 1, 2005 closing letter. There was no objective evidence that the closing letter had been sent by registered mail to Dr. Johar. Given the BCVMA's own evidence that Dr. Johar communicated with it continually and with respect to a variety of issues, I expect that he would have raised his concerns about Dr. Roberts' investigation as soon as he received her closing letter, which he subsequently did;

- As Dr. Roberts correctly pointed out, it was obvious on the face of Dr. Johar's letters that he had not received her closing letter. It would have been of little consequence for the BCVMA to have resent the closing letter; Ms. Osborne's refusal to do so was unreasonable;

- Despite the CRC noting that Dr. O's medical records were not optimal and that he should be advised of this, this was not included in the letter of November 12, 2009;

- Dr. Johar's request to have the complaints involving him and Dr. O investigated by an outside investigator was reasonable in the circumstances. If the BCVMA wanted to take such a step, it could have done so, has done so in other files and did not question its authority to do so. There was no evidence that, had another investigator been appointed, Dr. Johar would have taken issue with his or her

investigation. The suggestion that he would have done so was speculative;

- Ms. Osborne's assertion that the BCVMA would only initiate a complaint if it was contained in an original letter and signed was inaccurate; the BCVMA initiated such complaints in many other cases;

- There were significant delays in the processing of this complaint, which I found to be unreasonable. Further, there was no reason to delay in advising Dr. Johar of the CRC decision upholding Dr. Roberts' decision to close the file; the delay of over two years was excessive;

- Dr. Johar had no basis upon which to file a s. 15 complaint against Dr. Roberts, although I was not persuaded that he did so to intimidate Dr. Roberts; and

- Although Dr. Ashburner raised concerns about Dr. Johar's motivation for filing this complaint, I was not persuaded that he had a basis upon which to do so; Dr. O also filed complaints against Dr. Johar but his motivation was not generally questioned.

[379] I make the following findings with respect to files 04-077 and 04-097:

- I accept that there was some confusion about these complaints;

- I accept that, initially, these complaints raised conduct issues and this was the reason they were assigned to Dr. Brocklebank;

- Ms. Osborne had discussions with Dr. O about the transfer of medical records; she did not have similar discussions with Dr. Johar. Dr. O also sent written communications to Ms. Osborne and/or copied her on his communications with Dr. Johar, despite that she was not the investigator;

- The information is clear that Dr. O delayed in sending the medical records for Spike. It is unclear if the entire medical records were ever sent;

- Dr. Johar provided inappropriate responses to the BCVMA;

- Both veterinarians made allegations against each other. The BCVMA did not investigate Dr. Johar's allegations against Dr. O because of his alleged inappropriate response to the BCVMA and its belief that Dr. Johar was harassing Dr. O. However, it investigated those allegations made by Dr. O against Dr. Johar. While I accept that some of Dr. Johar's responses were inappropriate, this did not provide a credible and reasonable explanation for the differential treatment;

- Dr. Brocklebank recorded his discussion with Dr. Johar, without Dr. Johar's knowledge. Dr. Johar made inappropriate allegations against Dr. Brocklebank during this discussion, which I accept Dr. Brocklebank would have viewed as a personal attack;

- Although Ms. Osborne suggested that both Drs. O and Johar acted unprofessionally, only Dr. Johar's conduct was pursued through the discipline process; other complaint files were opened against him as a result;

- There was no explanation for the BCVMA's failure to investigate Dr. O's allegation that a member of Council had advised him that Dr. Johar used outdated vaccines;

- I accept Dr. Johar's evidence that he did not have a file under the name of Lilo and/or the PO. Dr. Johar generally produced and/or acknowledged that he had medical records, properly identified, that were requested by other veterinarians and/or the BCVMA. I am unable to conclude that he would mislead the BCVMA in this respect, in this complaint; and

- Dr. King-Harris recommended complaint 04-077, against Dr. O, be dismissed when he dealt with file 04-123, despite acknowledging that Dr. O had delayed in sending the records. I am not persuaded that Dr. King-Harris had a basis to question the *bona fides* of Dr. Johar's complaint based on the information obtained from Ms. Rithaler. The CRC dismissed this complaint.

[380] I make the following findings with respect to file 04-078a:

- Dr. Johar provided timely responses to this complaint;

- The information was clear that Dr. O had made negative comments to the PO about Dr. Johar and his training as a veterinarian. Ms. Osborne spoke to Dr. O and accepted his assertion that he did not say what had been alleged. Ms. Osborne did not follow-up with the PO nor did she review the notes made by Dr. Brocklebank about his discussion with the PO, who had confirmed Dr. Johar's allegations. Despite there being evidence that Dr. O made negative comments about Dr. Johar and that he misled the BCVMA in this respect, this complaint was closed;

- The focus of the complaint became Dr. Johar's conduct which, in the circumstance, I viewed as unreasonable. Had Dr. O not made the negative comments that he did to the PO, it is unlikely that Dr. Johar would have filed this complaint;

- Ms. Osborne gave Dr. O considerable benefit of the doubt with respect to his credibility. In my view, the BCVMA's views of Dr. Johar's lack

of credibility led the BCVMA to disbelieve Dr. Johar in this complaint, despite clear evidence that Dr. Johar's complaint had merit and was *bona fide*; and

- There was no reasonable explanation for the delay in the processing of this complaint. The BCVMA was able to make the initial inquiries quickly. As noted elsewhere, I was not persuaded by Ms. Osborne's explanation that this complaint could not be dealt-with in a timely manner, given it was straightforward, because of the backlog in cases.

[381] I make the following findings with respect to files 04-078b and 04-079:

- The BCVMA accepted Dr. O's explanation for why certain medical records had not been transferred;

- Despite Dr. O's delay of twelve days in sending Suzy's medical records, this was not raised as a concern with him. The BCVMA provided no reasonable explanation for this except that it was prepared to accept Dr. O's actions without question. I was not persuaded that Dr. Johar's concern that Dr. O was trying to put him out of business were without foundation, given the entirety of Dr. O's actions. That they became the subject of another complaint against Dr. Johar was surprising; and

- As with Dr. Johar's other correspondence, the BCVMA did not provide timely, or any, response.

[382] I make the following findings with respect to file 04-092:

- This complaint was processed in a timely manner;

- I accept that Dr. Johar did not provide a basis for why the medical records were urgently required; and

- The BCVMA accepted Dr. O's explanation for the steps he took with respect to this file, without confirming this information with Dr. Johar and/or his receptionist. It is not clear why this step was not taken.

[383] I make the following findings with respect to file 04-093:

- There was unreasonable delay in sending the closing letters to Drs. Johar and O;

- The BCVMA accepted Dr. O's explanation of why he only sent Dr. Johar part of the medical record. It did not contact the PO for confirmation;

- I agree that Dr. Johar had no basis to question Dr. King-Harris' ability to investigate this complaint as Dr. King-Harris was not involved in it; and

- I accept that Dr. Brocklebank did not generally investigate those complaints involving Dr. Johar; however, this does not address Dr. Johar's perception that this might have been the case, given the steps taken by the BCVMA to pursue complaints against him.

[384] I make the following findings with respect to file 04-098:

- It was not clear if Dr. O paid to have these articles published. However, whether Dr. O paid to have them published was not the issue before the BCVMA; he clearly sent them to be published, his clinic was identified and he signed as authoring them;

- No steps were taken to confirm whether the author of *Is Anaesthetic Safe?* gave Dr. O permission to publish the article under his name;

- Upon a review of the articles, I conclude that they raised concerns about low-cost services and were comparative in nature; the information in the articles was clear. These were clearly advertisements done to draw attention to the services provided by Dr. O and his facility. Although Dr. Johar and/or his facility was not identified, I am not persuaded that a reader would not come to the conclusion that clinics providing low-cost services, such as Haney, were inferior to clinics, such as Dr. O's clinic, which did not provide such low-cost services;

- Dr. Johar provided no information about the adverse impact on his business as a result of these article and I make no findings in this respect; and

- The BCVMA provided no reasonable explanation for the delay in acknowledging Dr. Johar's complaint or the processing of it. I find that Dr. Johar received an acknowledgement of this complaint, although there was a delay in sending it to him.

[385] I make the following findings with respect to file 04-099:

- Dr. Johar received the BCVMA's acknowledgement letter of October 2, 2004;

- Dr. Brocklebank did not confirm with the PO the information provided by Dr. O, despite the discrepancy between Dr. O's information. No reasonable explanation was given for this failure; and

- It is not clear why these files were not referred to an outside lawyer before 2011. This may have served to resolve these complaints, reduce the animosity and reduce the content and volume of Dr. Johar's communications with the BCVMA.

[386] I make the following findings with respect to file 04-105:

- The BCVMA processed this complaint in a timely manner;

- Dr. O was not asked to re-send the medical records despite Dr. Johar's repeated assertions that they had not been received. It is not clear why he was not asked to do so as it was a simple and straightforward request and would have resolved this complaint;

- I was not persuaded that the BCVMA could not have dealt with this file separately from others;

- It was clear that Dr. Brocklebank accepted Dr. O's version of what occurred over Dr. Johar's version; he accepted Dr. O as being truthful but not Dr. Johar. He did so despite not confirming with Dr. Johar's receptionist that Dr. O had delivered the medical records, which would have been a simple and straightforward inquiry;

- I accept that Dr. Johar's comments and allegations, made during his discussions with Dr. Brocklebank, about Dr. Brocklebank, were inappropriate and could be considered unprofessional. I find that Dr. Johar alleged that Dr. Brocklebank was racist and had no basis to do so;

- I note that many of Dr. O's comments made about Dr. Johar were also inappropriate and unprofessional but the BCVMA's focus remained on Dr. Johar's conduct even when Dr. O sent Dr. Johar an email that was clearly unprofessional and inflammatory; and

- The BCVMA refused to re-open this complaint despite Dr. Johar's continued assertion that he had not received Harmston's medical records and no written proof had been received from Dr. O that he had delivered the records. In my view this was unreasonable.

[387] I make the following findings with respect to file 04-123:

- Ms. Osborne had no basis to request information from the specialist, which was an unusual step for her to take in a complaint raising medical competency issues. A reasonable inference is that, because Dr. Johar was involved, she questioned the veracity of the PO's allegations and the *bona fides* of the complaint. I did not accept that she needed to "flesh out" the information;

- There was no reasonable explanation for why there was a delay in the processing of this complaint and, in particular, why it took six months for the investigation to commence. I find that the reliance on workload, in this matter, among others, to be an inadequate explanation for the delay;

- There was no reasonable basis for the conclusion that Dr. Johar might have coached the PO to file his complaint and/or that he participated in the drafting of it;

- The reliance on the information from AR, about the transfer of medical records, without first giving Dr. Johar the opportunity to respond, was unfair to him, given that this was used to question the *bona fides* of this part of the complaint;

- Despite evidence that Dr. O failed to transfer the medical records, he was not sanctioned;

- I accept that Dr. F's race played no role in Dr. King-Harris' investigation. However, Dr. F made disparaging comments about Dr. Johar and she was not sanctioned. Dr. King-Harris suggested that he did not recommend sanction because these comments were not public. Many of Dr. Johar's comments about Dr. O and others were not public but he was nonetheless sanctioned and/or the letters containing such commentary became the subject of other disciplinary complaints (see 05-113); and

- The BCVMA could have advised Dr. Johar that this complaint had been dismissed. The PO had given Dr. Johar authority to communicate with the BCVMA with respect to this matter. Dr. Johar had also filed a complaint dealing with the transfer of the medical records and it was not reasonable that the BCVMA failed to advise him of the CRC's decision in this complaint regarding the same issue.

[388] I make the following findings with respect to file 05-081:

- Based on the evidence of Dr. Brocklebank, I accept that medical records still need to be transferred, even when an animal has died;

- It is not clear why Dr. Johar required Sasha's medical records, given that Sasha had died one year previously;

- Dr. O was not required to provide written confirmation that the PO had asked him not to transfer the medical records and/or that the PO had told Dr. O that he was now concerned about Dr. O's treatment of Sasha. Given Dr. O's allegation that Dr. Johar had made negative comments about him, his request that Dr. Johar be investigated for unprofessional conduct and the BCVMA's step in opening yet another

conduct-related file against Dr. Johar, this was a reasonable and necessary step; and

- Despite Dr. O's refusal to send Sasha's medical records and his negative commentary about Dr. Johar, he was not sanctioned.

[389] I make the following findings with respect to file 05-109:

- Dr. O followed Dr. Johar in his car; the RCMP confirmed that Dr. O had done so and knew he was doing so. Dr. O told the BCVMA he did not know that it was Dr. Johar in the car, which was not accurate;

- The BCVMA raised no concerns about Dr. O's conduct in following Dr. Johar, which was allegedly unprofessional. I find that its failure to do so was unreasonable. Further, the BCVMA did not file a complaint against Dr. O for misleading it and there was no reasonable basis and/or explanation for why it did not do so; and

- Although Ms. Osborne took immediate steps to investigate Dr. Johar's allegations, it was unclear what happened to this complaint.

[390] I make the following findings with respect to files 05-113 and 05-114:

- The BCVMA opened a conduct-related file against Dr. Johar; it does not appear that it opened a similar file against Dr. O;

- It was unclear why the BCVMA maintained this file or what steps it intended to take with respect to it;

- Although Ms. Osborne testified that the file had been closed, the closing letter had yet to be sent, which was unreasonable given the decision to close the file had been made; and

- It was reasonable for Dr. Johar to ask for copies of the letters contained in file 05-113/05-114 so that he could respond.

[391] I make the following findings with respect to file 06-059:

- There appears to have been a significant delay, without a reasonable explanation, in commencing the investigation into Dr. Johar's complaint.

[392] I make the following findings with respect to file 06-061:

- Both Drs. Johar and O acted inappropriately in this case.

[393] I make the following findings about file 06-080:

- This file is a further illustration that there was a difficult relationship between Drs. O and Johar;

- It was unfortunate that Drs. Johar and O had not been advised that these files had been closed; and

- I accept that Dr. Johar would be concerned that some of these files, which named him as the respondent veterinarian, were opened, and remained open, without his knowledge and despite his assertion that the medical records at issue had been transferred.

[394] I make the following finds with respect to files 07-050 and 07-054:

- Dr. Johar received an acknowledgment of his complaint 07-050 and his statements to the contrary were not credible;

- There was an unreasonable delay between the filing of these complaints and the completion of the investigation and a further unexplained delay between the CRC's decision and the sending of the post-CRC letters to Drs. O and Johar;

- Both Drs. Johar and O made negative comments about the other;

- Dr. Roberts was not questioning Dr. Johar's training or education when she asked for further information. This was an appropriate part of the investigative process;

- Dr. Johar's allegations against the BCVMA, and its COs, were inappropriate;

- Dr. O was not questioned about the delay in sending the pages from Mikey's medical records. His explanation of what had occurred was accepted; the BCVMA took no steps to confirm Dr. O's statements with his staff, which would have been a reasonable step in the circumstances and is something that had been done in other investigations;

- The BCVMA accepted Dr. O's explanation that he had not received Dr. Roberts' report to the CRC. Given that Dr. O had always received communications, in the past, from the BCVMA, without incident, I agree with Dr. Roberts that Dr. O had received the report and had not read it. There was no suggestion that Dr. O had misled the BCVMA or was attempting to do so in this respect; and

- Dr. Johar was afforded the opportunity to appear before the CRC and at his convenience. It was reasonable for the CRC to deny him further adjournments and to limit the time and content of his submissions.

[395] I make the following findings with respect to complaint 08-037a and 08-037b:

- I accept that both Mr. Waller and Ms. Nelson prepared their own complaint statements and affidavits. I do not accept that Dr. Johar participated in that process other than to review them;

- The delay in processing this complaint was unreasonable;

- I accept that Ms. Nelson contacted the BCVMA on numerous occasions and was concerned about the delay in the processing of her complaint. I accept her evidence that she did not always receive a response;

- Despite the BCVMA investigation into this complaint, Dr. O never transferred the medical records;

- I accept that Dr. O had contacted Ms. Osborne about this file and that she had not responded. Dr. O had ongoing and direct communications with Ms. Osborne. That he described them as "closed door" does not undermine that he had discussions with Ms. Osborne, the nature and content of which were not always recorded. I accept that he spoke to her, and others, about Indo-Canadian veterinarians and/or Dr. Johar;

- I accept that Dr. Brocklebank did not have discussions with Dr. O about Indo-Canadian veterinarians. I accept that the reference to "John" in Dr. O's letter could have been a reference to one of the lawyers for the BCVMA who had the same first name;

- I did not accept that Ms. Osborne did not know and/or understand that Dr. O had a history of making disparaging comments about the Complainants in and before 2005; she saw much of his correspondence and spoke with him on a number of occasions. Further, Ms. Osborne would have been aware of Dr. O's view of low-cost clinics, having seen the two articles he published in 2004.

- Dr. O refused to transfer the medical records; there was evidence that this was the case and that Dr. O may have misled the BCVMA about this issue. Dr. O also attempted to interfere with the investigation by contacting the treating veterinarian, on numerous occasions, to have her alter her statement in this respect.

8. Q Files

[396] The Complainants referred to a number of disciplinary files involving other veterinarians. The Complainants allege that these files illustrate that the Complainants were treated differently from those veterinarians named as respondent veterinarians in the

processing of those complaint and use these files as comparator files. These files were referred to as the Q Files.

[397] I make the following findings with respect to these Q files. I set out the findings as they relate to each of these disciplinary complaints in the same order as the evidence is set out in **Appendix "T"**.

[398] I make the following findings with respect to file 99-088:

- Given the delay in filing the complaint by the POs, the conclusions of the BCVMA were reasonable.

[399] I make the following findings with respect to file 00-004:

- It is not clear why Dr. King-Harris did not ascertain that the files referred to by Dr. AN were not in the public domain before he completed his first report to the CRC, given he subsequently recommended that the matter be referred to Inquiry;
- Despite Dr. Bhullar asking that his complaint be withdrawn, it was still investigated by the BCVMA; and
- This was a straightforward complaint yet it took an unexplained length of time to conclude.

[400] I make the following findings with respect to file 03-015:

- The POs raised three issues in their complaint; Dr. King-Harris identified one issue in his report to the CRC;
- The BCVMA found that Dr. SK had made a serious error during the course of the investigation;
- I accept Dr. King-Harris' conclusion that Dr. SK's medical records were not so deficient as to require further investigation;
- Dr. King-Harris did not question the veracity of the information provided by Dr. SK;
- The CRC referred the matter to the ACR process, without first referring it to Inquiry; and
- There was a lengthy delay in the processing of this complaint.

[401] I make the following findings with respect to file 04-011:

- This file was processed without delay;

- The PO raised one issue in the complaint; the file was closed without being referred to the CRC;

- The investigation into this complaint was reasonable; and

- Dr. Roberts agreed that Dr. McIntyre's medical records were missing information and that she did not raise this as a concern to the CRC nor did she suggest that the medical records might have been fabricated.

[402] I make the following findings with respect to file 04-038:

- This complaint was processed without delay;

- The PO raised one issue in his complaint; Dr. Roberts considered the same issue in her report to the CRC;

- Dr. Ferrier did not participate in the discussions regarding this file;

- There was no evidence to suggest that Dr. OBN was a friend of Ms. Osborne;

- Although Dr. Bhullar had provided information to the PO about the complaint process and assisted him in the drafting of the complaint letter, there was nothing inappropriate in him doing so;

- I accept that the medical decisions raised by this complaint and the decision to dismiss it were made by the CRC and not Ms. Osborne; and

- There was a lengthy delay in the BCVMA responding to the PO's March 7, 2005 letter raising his concerns about the investigation and Ms. Osborne's letter of October 20, 2005, although I note he had received the letter.

[403] I make the following findings with respect to file 04-065:

- There was no undue delay in the processing of this complaint;

- Dr. Johar raised one issue in his complaint; the file was closed without being referred to the CRC;

- Dr. Johar had no basis to allege that Dr. Brocklebank was biased or that Ms. McLeod and others at the BCVMA had acted unprofessionally in the processing of this complaint;

- I accept Dr. Brocklebank's evidence that Dr. Rana's role on the Practice Accreditation Committee had no bearing on this investigation, although Dr. Rana should have sent the records without delay; and

- Dr. Rana's allegation that Dr. Johar was misleading the BCVMA was without foundation.

[404] I make the following findings with respect to file 04-066:

- The file was processed without delay;
- The PO raised three issues in her complaint; the file was closed without being referred to the CRC;
- I accept that Dr. Sekhon's role on the CRC played no role in Dr. Roberts' investigation;
- Although there was a delay in sending the medical records and it was an emergency situation, Dr. Sekhon was not advised that this was a concern in the closing letter to him and no issue of falsification of medical records was raised;
- No issues were raised regarding Dr. Sekhon's medical records, including that they had not been initialed, did not contain details of treatment and medication administered; and
- The information provided by Dr. Sekhon to the BCVMA was accepted and not verified with Dr. Bajwa and/or the PO.

[405] I make the following findings with respect to file 04-069:

- Dr. Kamboj raised one issue in his complaint; the file was closed without being referred to the CRC;
- There was a lengthy delay in the processing of this file;
- Dr. O's comments, which Dr. Roberts acknowledged denigrated other veterinarians and which were verified by the PO, were not referred to the CRC. Dr. O's denial was accepted despite the PO having no reason to misrepresent her discussion with Dr. O. I was not persuaded that, simply because the PO could not corroborate her discussion with Dr. O, that this was a sufficient basis to disregard her allegations; and
- Dr. O was given considerable benefit of doubt as to his credibility in this circumstance.

[406] I make the following findings with respect to file 04-072:

- There was no delay in the processing of this complaint;
- The PO raised two issues in his complaint; the file was initially closed without referral to the CRC;

- Dr. King-Harris did not seek the medical records and comments of the other veterinarians involved in the care of Molly, which was unusual as this is normally the step taken during the course of an investigation;

- Molly underwent an unnecessary surgery and her medical issue was not initially diagnosed and, when it was, the PO was not informed. In such circumstances, it was surprising that the BCVMA did not take measures to address these issues. In my view, the veterinarians involved in this complaint were given considerable benefit of the doubt in the treatment provided, despite the adverse consequences for Molly;

- Had the PO not sought a review of Dr. King-Harris' initial decision to close the file, the investigation would have remained incomplete; and

- There was no basis to suggest that the PO's request for review was in some way tainted by the assistance of a veterinarian, as suggested by Dr. King-Harris and Ms. Osborne. The PO was entitled to request a review and did so. That the PO may have been assisted in this process was not surprising or inappropriate in the circumstances, given that Molly had undergone unnecessary surgery.

[407] I make the following findings with respect to file 04-076:

- This complaint was processed quickly;

- Dr. Johar raised one issue in his complaint; the file was closed without referral to the CRC;

- Dr. Brocklebank did not contact Dr. Johar's receptionist to confirm what Dr. Rana had said to her, which would have been a reasonable step in the investigative process and, given that the receptionist could have verified Dr. Johar's allegations of rudeness; and

- Despite making negative comments about Dr. Johar's competence, Dr. Rana was not sanctioned for doing so.

[408] I make the following findings with respect to file 04-087:

- This file was processed quickly;

- Dr. Mrar raised two issues in his complaint; the file was closed without being referred to the CRC;

- Dr. King-Harris did not contact the PO to verify the allegation that Dr. K, or someone else working with her, made negative comments about Dr. Mrar. In my view, this step should have been taken, given the ultimate conclusion that the CRC believed this complaint to be frivolous and vexatious;

- Although information had been added to the medical records, no issue was raised regarding the falsification of medical records;

- The comments made by Dr. King-Harris and Ms. Osborne about the content of the letter written by Dr. Mrar to request a review were speculative, and appear to suggest that Dr. Mrar's request was not *bona fide*;

- The conclusion that this complaint was filed in retaliation was mere speculation; and

- It was clear that Dr. K's comments were meant to impugn Dr. Mrar's professional integrity. The BCVMA appears to condone such comments so long as they are made to it. Given that the BCVMA was the regulatory authority, such comments could affect its view of Dr. Mrar.

[409] I make the following findings with respect to file 04-122:

- This complaint was processed quickly by the BCVMA;

- The POs raised a number of concerns in their complaint, which were address by Dr. King-Harris in his report to the CRC;

- Dr. TA delayed providing the medical records to the POs. I accept he was concerned about what steps the POs might take as a result of the death of Red Boy, including taking legal action. The delay may have been reasonable in the circumstances; in files involving the Complainants, a charge for falsifying the medical records is often raised;

- Similarly, although an issue about the timeliness of when the records had been created was raised by the complaint, Dr. King-Harris dismissed that notion that the records might have been "doctored";

- I find nothing to suggest that Ms. Toom delayed in the filing of her complaint for an improper purpose or that her recollection of what occurred was undermined by such a delay;

- It was clear that Ms. Toom was a co-owner and had advised against giving Red Boy anesthetic. Dr. TA ignored this information but was not sanctioned for doing so;

- It was clear that Ms. Toom contacted the BCVMA on a number of occasions and I accept that, at times, she was difficult to deal with. It was also clear that Dr. King-Harris viewed Ms. Toom and the concerns that she raised with disdain;

- It was not clear why Dr. King-Harris did not confirm the information provided by the POs with the locum or Dr. TA's staff before completing his report to the CRC;

- With respect to the issue of informed consent, Dr. King-Harris suggested that the issue was clouded by the POs seeking compensation; in my view, this was an unreasonable assessment. As the files reflect, POs often seek compensation; in those files involving the Complainants, their information is not generally questioned as was the case here;

- The POs provided information suggesting that Dr. TA was rude, unreasonable and difficult to deal-with. Dr. King-Harris' conclusion that the POs had not provided independent information on this issue was not supported by the evidence before me;

- Dr. King-Harris accepted Dr. TA's views of what happened but not the POs', despite his acknowledgement that neither could be objective; and

- I accept that Ms. Osborne and Ms. Toom spoke about Ms. Toom's regular veterinarian and perhaps other veterinarians in the Tsawwassen area. I accept that they discussed the services provided by these veterinarians but I was not persuaded that Ms. Osborne meant to call into question the competence of these veterinarians.

[410] I find that file 04-124 was processed quickly by the BCVMA, although it was one year before the file was closed.

[411] I make the following findings with respect to 05-014:

- Dr. Mrar raised two issues in his complaint; the complaint was never investigated;

- Although I accept that Dr. Mrar's complaint letter was difficult to read, I was not persuaded that this was a basis upon which to decline to proceed with the matter. Many of the complaint letters were difficult to read but, nonetheless, the BCVMA took steps to process them;

- The BCVMA often proceeds with investigating complaints based on third-party hearsay; I see no basis why it could not have done so in this case; and

- The BCVMA had and does proceed with complaints filed by members; that it refused to proceed with this complaint in the absence of a complaint from the PO was not supported by the evidence.

[412] I make the following findings with respect to file 05-015:

- This file was investigated within a reasonable period of time;
- The PO raised one issue in her complaint; the file was closed with a referral to the CRC; and
- Dr. Roberts agreed that the medial records provided in this case were deficient but she did not raise this as an issue; I found her explanation for not doing so reasonable in the circumstances.

[413] I make the following findings with respect to file 05-049:

- The employee raised one issue in her complaint; the file was closed without a referral to the CRC;
- Dr. SH alleged that she had difficulty getting medical records from Dr. Benipal; Dr. King-Harris did not take steps to confirm that this was the case yet suggested that it was the fault of the complainant employee that Dr. SH acted in the manner she did;
- Dr. King-Harris failed to put the allegation made by the disgruntled employee to Dr. Benipal; Dr. Benipal was entitled to provide a response to these allegations and to provide further information about the employee's status and work schedule; and
- The language used in the April 19, 2006 letter in file 05-088 was significantly different from the one Dr. King-Harris wrote closing this file. In file 05-088, blame was not placed on the complainant party as was the case here.

[414] I make the following findings with respect to file 05-053:

- This file was processed quickly by Dr. Roberts;
- Dr. Johar raised two issues in his complaint; the file was closed without referral to the CRC;
- Although Dr. Roberts commented on Dr. Johar's radiograph, I accept that she was not negatively commenting on his technique;
- Dr. DL had made critical comments about Dr. Johar and other low-cost clinics but was not cautioned about doing so;
- Dr. Johar had no basis upon which to suggest that Dr. Roberts was biased in her investigation or that she was racist; and
- Upon a review of Dr. Johar's letters of October 3 and 21, 2005, I find that they contained a request for a review that was not followed-up.

[415] I make the following findings with respect to file 05-064:

- The PO raised two issues in her complaint; Dr. King-Harris referred these two related issues to the CRC;
- This file illustrates that the CRC may refer a complaint to the ACR process without first referring it to Inquiry;
- There was insufficient information to conclude that Dr. Bhullar was involved in the filing of this complaint;
- Dr. King-Harris did not confirm with the PO the steps taken by Dr. Ashburner during his investigation, including those that were not noted in his medical records;
- Although Dr. King-Harris did not raise concerns about Dr. Ashburner's medical records, including that his list of differentials was incomplete, and he acknowledged that he should have done so, he does so in other complaints involving the Complainants;
- Although Dr. Ashburner delayed in forwarding his medical records to the BCVMA, no issue was raised that he may have falsified his medical records as is done in some of the files involving the Complainants;
- Despite Dr. Ashburner's medical records missing information, Dr. King-Harris preferred his records over the complaint filed by the PO as they were allegedly written contemporaneously to the event. I was not persuaded that the PO's delay in sending her complaint was a sufficient basis from which to draw this conclusion;
- Dr. King-Harris noted that Dr. Ashburner made an "isolated mistake", a standard not always applied to files involving the Complainants;
- Dr. Ashburner was given the benefit of the doubt in that, had the PO returned to his clinic, he would have properly diagnosed and treated the problem. I view this conclusion as mere speculation and a standard not applied in other cases involving the Complainants;
- Despite Dr. Ashburner leaving the CRC meeting, which was appropriate, I expect that the CRC knew that the complaint involved him. However, I did not find that this knowledge created a bias in their decision-making process. The CRC was clearly concerned about this file and the treatment provided by Dr. Ashburner; and
- I was not persuaded that the publication of this complaint, which was inappropriate, was a sufficient basis to reduce the sanctions imposed on Dr. Ashburner.

[416] I make the following findings with respect to file 05-066:

- This file was investigated quickly, although not completely;
- The PO raised two issues in the complaint; the file was closed without referral to the CRC;
- It is not clear why Dr. King-Harris did not obtain the comments of the other treating veterinarian and then considered the PO's allegations against him;
- Dr. King-Harris accepted Dr. Ashburner's version of what occurred without providing this information to the PO to allow for the PO to comment;
- Dr. Ashburner delayed in sending his medical records, his records were incomplete and deficient in some areas, but no issues were raised to the CRC. Dr. King-Harris accepted that the medical records met the bare minimum standard under the Code of Ethics, a standard not always applied. Dr. King-Harris raised no issue that the medical records may have been falsified;
- Dr. King-Harris applied the standard of competence as being acceptable, not optimal; this standard is not applied in all cases; and
- The appeal paragraph was not included in the closing letter to the PO; in the circumstances, it would have been reasonable to advise the PO of the right to appeal, despite Dr. King-Harris' view that there was no substantive basis to warrant a review.

[417] I make the following findings with respect to file 05-068:

- There was an unreasonable delay in the processing of this complaint;
- Ms. Aziz raised two issues in her complaint; these were addressed in the report to the CRC;
- Although Dr. Bhullar assisted Ms. Aziz in her complaint, this alone does not justify the BCVMA's suspicions, including that Ms. Aziz was vindictive or was motivated by anger, given that Acacia had died, and that there were issues in the release of the medical records. In my view, Ms. Osborne was dismissive of this complaint because of Dr. Bhullar's involvement;
- Dr. Forsyth delayed in releasing the medical records and necropsy report. Despite Dr. King-Harris' view that Dr. Forsyth may not have been completely forthright about this issue, it was not pursued;

- Although there was a delay in the release of the medical records, no issue was raised that the medical records may have been fabricated. Further, the medical records contained information that was allegedly not relayed to Ms. Aziz but no issue was raised that, in this respect, the medical records had been fabricated;

- I accept that Dr. King-Harris had no reason to disbelieve Dr. SR with respect to how she prepared the medical records but Dr. King-Harris did not believe Ms. Aziz and Ms. Aziz did not have the opportunity to respond to Dr. SR's assertion;

- Dr. Forsyth inserted himself into the investigation and had private communications with Ms. Osborne outside the investigation being done by Dr. King-Harris;

- No issue was raised that Dr. Forsyth misled Ms. Aziz with respect to the completion of the medical records by Dr. Reed or his requirement that the medical records be returned to him before he would provide payment. There was no suggestion that he might have been attempting to interfere with the investigative process;

- It was unusual that Dr. King-Harris would call Drs. SR and Forsyth about the complaint before sending it to them. Dr. King-Harris provided no reasonable explanation for why he took this step. In my view, he did so because of Dr. Forsyth's role on Council; there is no other explanation;

- There was no reasonable basis for Dr. Forsyth to ask that his response to the complaint be kept confidential;

- Dr. King-Harris was of the view that the issue involving Dr. Forsyth should have been referred to the CRC. It was unusual that, given Ms. Osborne's disagreement, she would then draft her own part of the report to go to the CRC and recommend that the allegation regarding Dr. Forsyth be dismissed; and

- Given the unexplained and unnecessary delay in the processing of this complaint, it was not surprising that Ms. Aziz was upset and called the BCVMA on a number of occasions.

[418] I make the following findings with respect to file 05-070:

- This file was processed within a reasonable period of time;

- The PO raised one issue in her complaint; the file was closed without referral to the CRC; and

- Dr. Bhullar provided a timely and appropriate response to Dr. Roberts' inquiries.

[419] I make the following findings with respect to file 05-073:

- The PO raised one issue in the complaint. The initial investigation into this complaint was done quickly and initially closed on January 16, 2006 without referral to the CRC. However, there was a lengthy delay in the processing of the review initiated by the PO in March 2006;

- Dr. King-Harris called Dr. Sekhon before sending him the complaint; this was an unusual step;

- It is not clear why Dr. King-Harris would have assumed that Dr. Sekhon would not modify his medical records when he found out about the complaint, a concern that Dr. King-Harris has had in other cases;

- Dr. King-Harris speculated, without foundation, that the PO had been coached to file her complaint because she delayed in doing so and because her letter of complaint allegedly contained inflammatory language and unfounded allegations. The complaint was filed two and one-half months after Bibie had died. In the circumstances, I did not find this to be a lengthy delay;

- Despite the missing information in Dr. Sekhon's medical records, this was not raised as a concern to the CRC before Dr. King-Harris closed the file;

- Given that Bibie had died, it was surprising that Dr. King-Harris was not more thorough in his investigation of the medication administered, the dose rates and the method of administration. It appears that there was a rush to complete the investigation and that the BCVMA did not take the complaint seriously;

- Although Dr. King-Harris acknowledged that he made an error during his initial investigation, this was only after it had been raised by Dr. Johar in February 2006, of which the BCVMA was critical, and the file had been closed. Had Dr. Johar not written this letter, Dr. King-Harris may not have realized his mistake. Further, Dr. Johar had the consent of the PO to raise concerns about the investigation and it was not inappropriate for him to do so;

- Dr. King-Harris did not speak to the PO, Dr. Sekhon's assistant or Dr. Bajwa during his investigation; he provided no reasonable explanation for this failure;

- Dr. King-Harris did not investigate Dr. Sekhon's allegation that the PO had impersonated Ms. Osborne, until the review of his decision was sought. Given that this was a serious and inflammatory allegation which, in my view, was raised by Dr. Sekhon to discredit the PO, it should have been fully canvassed;

- Although the PO may not have drafted her letter requesting a review of the decision to close her file, or other subsequent letters, she was entitled to seek such a review. Although I agree that the PO had no basis to allege that Dr. King-Harris was biased, it did appear that he had not fully investigated this complaint, involving a member of the CRC, before closing it, which might have raised the perception of bias;

- Dr. Bajwa's medical records had not been requested until after the file had been closed; there was no explanation for the delay in requesting his records, given that he was involved in this complaint;

- The FVGA's dissemination of this complaint to the BCVMA membership was inappropriate;

- The decision of the BCVMA to receive information from the PO only by mail was inappropriate. I agree with Dr. Bajwa that this had not been requested of POs in other cases. The BCVMA has, and does, communicate with POs, and other complainants, by fax and email;

- Dr. King-Harris provided his draft CRC report to Dr. Sekhon before he had competed it; this was an unusual and unnecessary step suggesting preferential treatment;

- Although Dr. King-Harris preferred to refer the matter to the CRC before entering the ACR process, he did not do so with Dr. Sekhon. I find it was highly unusual for him to do so and Ms. Osborne's support for this process was also unusual. In my view, this led to the suggestion that Dr. King-Harris was providing Dr. Sekhon with preferential treatment, which may not have actually been his intent;

- The BCVMA accepted Dr. Sekhon's assertion that he had been receiving negative publicity within his community and was being publicly vilified, without fully investigating this issue. Given that the CRC relied on this information when it considered Dr. Sekhon's Consent Resolution, it would have been reasonable for this issue to have been fully canvassed;

- There was no information to support Dr. Sekhon's assertion that he had experienced a financial loss as a result of the publication of this complaint, although this was referred to in Dr. King-Harris' report to the CRC; and

- I agree that the PO should not have been advised that the matter had been closed until the Consent Resolution had been signed by all parties.

[420] I make the following findings regarding file 05-075:

- The complaint was processed within a reasonable period of time;
- The PO raised two issues in her complaint; the file was closed with a referral to the CRC. The PO sought a review which was then considered by the CRC. The CRC upheld Dr. Roberts' initial decision;
- Despite the BCVMA's position that it does not raise concerns about the second opinion veterinarian, it raised concerns about Dr. Bhullar's alleged delay in sending his medical records to the BCVMA;
- Dr. Roberts did not require Dr. Bhullar's medical records to complete her investigation, although she raised this in her closing letter. Given that Dr. Roberts was raising this as a concern, it was unreasonable that she did not first contact Dr. Bhullar, by telephone, about his medical records, a simple and straightforward inquiry;
- Generally, the BCVMA does not pursue the issues raised by a complaint after it is closed; however it continued to pursue Dr. Bhullar for his medical records without reasonable justification;
- Dr. Kassam made critical comments about Dr. Bhullar and others at Atlas; she was not sanctioned and/or warned for doing so;
- I accept that Dr. Bhullar faxed his medical records to the BCVMA and the date in his medical records was an error. I find that there was no reasonable basis for the suggestion that he might have fabricated his medical records. The complaint was not against him; and
- I accept Dr. Roberts' assertion that, at the time this complaint was investigated in 2006, only abnormal findings needed to be recorded in the medical records.

[421] I make the following Findings with respect to 06-039:

- The PO raised one issue in the complaint; the file was closed without a referral to the CRC;
- This file was processed quickly and appropriately by the BCVMA; and
- Despite what might be the POs' motivation for filing the complaint was or that Dr. King-Harris viewed it to be and/or that the contents of

the complaint were "inaccurate", this does not suggest that it was not honest.

[422] I make the following findings with respect to file 06-062:

- Dr. Johar raised one concern in his complaint; the file was closed without a referral to the CRC; and
- There was an unexplained and unreasonable delay in the processing of this complaint.

IX ANALYSIS

Introduction

[423] The Complainants alleged discrimination under ss. 7, 8, 14 and 43 of the *Code* and on the grounds of race, ancestry, colour, place of origin and political belief. Dr. Grewal also alleges discrimination on the grounds of mental disability and criminal conviction unrelated to his intended employment; Dr. Grewal's complaint is discussed elsewhere in this Decision.

[424] Before dealing with the specific allegations raised by the Complainants, I will deal with some preliminary legal issues raised by the parties.

DAPA and s. 23 of the *Veterinarians Act*

1. Introduction

[425] The Respondents rely *Disciplinary Authority Protection Act*, R.S.B.C. 1996, c. 98 (the "*DAPA*") and s. 23 of the *Veterinarians Act*, which they say protect them from liability in relation to most, if not all, of the conduct alleged in the Complaint.

[426] The *DAPA* provides:

> **Protection for exercise of disciplinary powers**
>
> **1** If,
>
> > (a) by an Act a corporation is established having as one of its purposes the regulation of the profession or occupation practised or carried on by the members of the corporation, and

> (b) disciplinary powers over the members of the corporation in respect of their conduct in the profession or occupation regulated are conferred by the Act on the corporation, or on any body of its members, or on any official or member of the corporation,
>
> no liability is incurred by the corporation, or by any body of the members, or by any official or member of the corporation, or by any person retained as counsel, solicitor or agent by the corporation for any act or thing done in the exercise of the disciplinary powers conferred or in doing any act or thing in preparation for the exercise of those powers, unless the act or thing is done maliciously and without reasonable and probable cause.
>
> **Allegation required in pleadings**
>
> **2** If any action is brought in respect of any act or thing referred to in section 1, the plaintiff expressly alleges in the pleadings that the act or thing was done maliciously and without reasonable and probable cause, and if at the trial of the action, on the general issue being pleaded, the plaintiff fails to prove the allegation, the action must be dismissed.

[427] Section 23 of the *Act* provides that:

> No liabilities are incurred by the council or any inquiry committee or by any member of any such bodies for anything done or purported to be done in good faith under this Act.

[428] The Respondents argue that a finding of discrimination under the *Code* against them would require a finding, under the *DAPA*, of malicious acts without reasonable and probable cause and, under the *Act*, of bad faith.

[429] Because the Complainants did not address these issues, the Respondents ask me to proceed on the basis that the Complainants concede that the Respondents did not act maliciously or without reasonable and probable cause. They say the Complainants' reply is improper and those parts of the Complaint involving the conduct of the Council should be summarily dismissed. Alternatively, the Respondents argue I cannot impose liability on them but may grant remedies that do not impose liability.

2. Objections to Complainants' Reply

[430] The Respondents applied to strike portions of the Complainants' reply submissions regarding the *DAPA* and s. 23 of the *Veterinarians Act*, arguing that they had raised the *DAPA* and s. 23 as a defence in their pleadings and the Complainants had an obligation to address these defences when they filed their initial submission as opposed to doing so in reply.

[431] I denied the Respondents' request, indicating that my reasons would follow. I now provide those reasons.

[432] Generally, the Complainants submit that they are entitled to address the Respondents' submissions regarding the *DAPA* and s. 23 of the *Act* in reply. In essence, they argue that they could not have anticipated the extent to which the Respondents would rely on these statutes to limit the jurisdiction of the Tribunal nor could they have anticipated "how and why" these statutory provisions would operate as a defence to the Complaint.

[433] As noted, the Respondents raised the *DAPA* and s. 23 of the *Act* as a defence to this Complaint in their pleadings. However, because they did so, does not lead to the conclusion that the Complainants are obligated to address these defences, absent the Respondents' submissions on this point. As the Complainants correctly point out, they are not required to anticipate what, if anything, the Respondents might say about the *DAPA* and/or s. 23 in their closing submissions.

[434] I also note that the Respondents did not specifically raise the *DAPA* or s. 23 of the *Act* in their no evidence motion, nor did they raise the application of these provisions in their applications to dismiss and/or to limit the scope of the Complaint.

[435] In their opening statement with respect to the second part of the hearing, the Respondents referred to the *DAPA* and submitted:

> The Association raised this statutory protection in its Amended Response and will provide full submissions on its significance in final argument. It is sufficient for now to note that it cannot be validly claimed that the Respondents exercised their disciplinary powers in this case maliciously and without reasonable and probable cause.

[436] Clearly, the Respondents intended to argue the application of the DAPA and/or s. 23 of the *Act* to their actions in their final argument, which would necessarily follow those final submissions made by the Complainants. This is not an unusual process. That this happened in this case should be no surprise to the Respondents.

[437] The Respondents suggest that, since the *DAPA* is a "brief statute", outlining the requirements for imposing liability on individuals exercising disciplinary powers, the Respondents' position should be "unsurprising". The length of a statute is irrelevant to a parties' obligation to anticipate legal arguments in defence to a human rights complaint. On a review of the Respondents' submissions, it is unclear how the Complainants could have anticipated that the Respondents would take the position that the *DAPA* and/or s. 23 of the *Act* was a full answer to most of the allegations in this Complaint, that the Complaint should be summarily dismissed without a consideration of the discrimination issues and/or that these statutes limit the Tribunal's remedial authority, if discrimination is found.

[438] The Respondents argue that the onus lies with the Complainants to establish that the individuals involved in this Complaint acted with malice and without reasonable and probable cause, the test set-out in the *DAPA*. Since they did not do so in their initial submissions, they should not be allowed to do so in reply. The test for establishing discrimination is well-established and is discussed elsewhere in this decision; the Complainants addressed the test for establishing discrimination in their submissions. The Complainants could not have anticipated that the Respondents would seek to have them establish the elements of different tests under separate statutory regimes.

[439] The Complainants submit that the Respondents have taken conflicting positions in different legal forums, namely before this Tribunal, the BC Supreme Court and the BC Court of Appeal regarding the extent of my jurisdiction. The decisions of the Courts are addressed elsewhere in this decision. Again, that the parties may disagree about the impact of the Courts' decisions on the extent of my jurisdiction, the human rights tests to be met and the nature of the remedies available if discrimination is proven, this is not a basis upon which to strike portions of the Complainants' reply submissions that speak to those issues.

[440] For these reasons, I find that the Complainants' reply submissions were properly within the scope of reply as they were responsive to the issues raised by the Respondents in respect of the *DAPA* and s. 23 of the *Act*, and did not raise new issues: *Pausch v. Abbotsford School District No. 34*, 2008 BCHRT 154, para. 18. In any event, I found the Complainants' submissions generally helpful and I have exercised my discretion to consider them, despite the Respondents' objections discussed above.

3. Respondents' General Position

[441] Generally, the Respondents submit that there is no conflict between the provisions of the *Code* and the *DAPA*.

[442] Specifically, the Respondents submit that the *DAPA*:

> ... protects them from liability for any conduct alleged in the Complaint involving the exercise of their disciplinary powers under the *Veterinarians Act*. Further, s. 23 of the *Veterinarians Act* protects the council and inquiry committees from liability for any conduct alleged in the Complaint done or purported to be done under the *Veterinarians Act*.
>
> The *DAPA* shields professional associations and their members from liability for any actions taken in the exercise of their disciplinary powers, unless they act maliciously and without reasonable and probable cause. This protection is similar to the protection extended to judges, crown prosecutors, and some administrative decision-makers.
>
> Section 23 of the *Veterinarians Act* shields council and inquiry committees from liability for anything done or purported to be done in good faith under the *Veterinarians Act*. This protection is similar to the protection extended to administrative decision-makers, including the Human Rights Tribunal.
>
> ...
>
> The purpose of the protections granted by s. 23 of the *Veterinarians Act* and *DAPA* is clear. It is fundamental to the proper functioning of the legal system and the Rule of Law that those responsible for the interpretation, implementation and enforcement of legal rules and standards be able to carry out their duties and fulfill their legal obligations without fear of liability...
>
> Without this protection, those charged with bringing the Rule of Law into effect could be improperly influenced, intimidated, and subject to overwhelming financial and practical burdens, by litigants of a vexatious

> nature with substantial resources. These litigants could overwhelm legal institutions and undermine judges and administrative decision-makers by bringing elaborate, confrontational and burdensome proceedings against those institutions and decision-makers. In our submission, this is precisely what the Bhullar Business Associates have done in pursuing this Complaint.

[443] The Respondents submit that the *DAPA's* protection from liability is limited in three respects: first, it only protects disciplinary bodies in the exercise of disciplinary powers; second, it only protects from "liability" and does not preclude traditional administrative law remedies; and finally, it does not provide absolute immunity as the decision-maker can be pursued if the decision was made maliciously and without reasonable and probable cause.

[444] The Respondents submit that the protection afforded by the *DAPA* is "broad and all-encompassing, granting immunity from liability however that liability may arise or be pursued". The Respondents also argue that the *DAPA* provides a complete answer to all of the allegations raised by the Complaint.

[445] The Respondents submit that the Complainants have the burden of proving that the BCVMA acted with malice and without reasonable and probable cause and the failure to do so should result in their Complaint being dismissed. The Respondents submit:

> ... the *DAPA* provides a complete answer to all of the allegations in the Complaint involving the exercise of disciplinary powers and s. 23 provides a complete answer to all of the allegations in the Complaint involving the conduct of the Council. The Complainants have not submitted or proven that any of this allegedly discriminatory conduct was done in bad faith (so as to avoid the application of s. 23), or maliciously and without reasonable and probable cause (so as to avoid the application of the *DAPA*). Consequently, those parts of the Complaint involving the exercise of disciplinary power or involving conduct of the Council should be summarily dismissed, without any inquiry into whether the conduct was discriminatory.
>
> Alternatively, even if the Tribunal refuses to dismiss all or part of the Complaint summarily and inquires into and makes findings of discrimination, it is submitted that the Tribunal cannot impose any liability on the Respondents for any conduct involving the conduct of the Council or the exercise of disciplinary powers. The Tribunal may, however, grant remedies that do not impose liability.

[446] I will now address the Respondents' specific arguments, setting out the Complainants' reply submissions and the Respondents' additional submissions, where appropriate.

4. Conflict between the *Code* and *DAPA* and s. 23 of the *Veterinarians Act*

[447] Section 4 of the *Code* provides that "if there is a conflict between this *Code* and any other enactment, this *Code* prevails".

[448] The Respondents submit that there is no conflict between the *Code* and the *DAPA* or s. 23 of the *Act*. Generally, the Respondents argue that:

> ...the immunity provided by *DAPA* only has the effect of either adding a very specific qualification to the scope of the *Code* or, alternatively, limiting the remedies available to the Tribunal should it find that discrimination has been proven.

[449] Further, the Respondents argue that:

> If there were a conflict between the *Code* and these provisions, it must follow that there is also a conflict between the *Code* and the immunity provided to judges in British Columbia by virtue of the *Supreme Court Act*, and the *Provincial Court Act* to administrative decision-makers under the *Administrative Tribunals Act* and their enabling statutes, and to Crown prosecutors at common law. Further, if there were such a conflict, and section 4 of the *Code* were interpreted as overriding the immunity granted by s. 23 or *DAPA*, the statutory and common-law immunity granted to judges, administrative decision-makers and crown prosecutors must also be overridden.
>
> ...
>
> If the arguments that the *Code* and the *DAPA* conflict were accepted, it would seriously undermine the immunity provided by *DAPA*. Claimants would be able to circumvent the immunity simply by characterizing a complaint as falling under the *Code*, as opposed to some other legal rule or obligation. There is absolutely no evidence of a legislative intention to carve out an exception to the immunity provided by *DAPA* for discrimination claims.

[450] The Respondents say that their "reliance" upon *DAPA* was further confirmed in the notice they filed pursuant to s. 46.1 of the *Administrative Tribunals Act*, S.B.C. 2004 c. 45 ("*ATA*"), filed on July 5, 2010. Section 46.1(3)-(9) of the *ATA* applies to this

Tribunal (s. 32 of the *Code*) and generally provides that a party must give the Attorney General of BC notice that it intends to raise an issue of conflict between the *Code* and another enactment. Section 46.1 sets out the process that must be followed in such circumstances.

[451] The Tribunal did not receive a copy of the notice pursuant to s. 46.1(3) referred to above nor was the Tribunal advised by the Attorney General of British Columbia that it had received this notice and what steps, if any, it would take in relation to these proceedings. There is nothing before me to suggest that the Complainants received a copy of the notice. However, I accept the Respondents' assertion that they gave proper notice.

[452] The Complainants argue that the "immunity provisions" of the *DAPA* and/or s. 23 of the *Act* do not exempt the normal application of the *Code* and the test for discrimination is not altered by these statutes. Further, there is nothing in the *DAPA* or the *Act* that exempts the application of the *Code* or circumvents the provision of s. 4.

[453] In this section, I address issues of conflict between the statutes and whether the provisions of s. 23 and/or the *DAPA* come into conflict with the *Code's* provisions such that the *Code* must give way.

[454] In *Insurance Corp. of British Columbia v. Heerspink* [1982] 2 S.C.R. 145, the Supreme Court of Canada was clear that two statutory enactments can stand together provided that there is no "direct conflict" between them. (Mr. Justice Ritchie p. 7). In his concurring decision, Mr. Justice Lamer held that, "absent express and unequivocal language" in the *Code* or the other statute at issue, the *Code* prevails when conflict arises. Further, human rights legislation and the values it protects, save constitutional laws, are more important than all others. (p. 10; see also *Gwinner v. Alberta (Human Resources and Employment)*, 2002 ABQB 685 paras. 68-77; aff'd *Gwinner v. Alberta (Human Resources and Employment*, 2004 ABCA 210; *British Columbia (Workers' Compensation Board) v. British Columbia (Council of Human Rights)* [1990] B.C.J. No. 1367 (B.C.C.A.); *British Columbia Council of Licensed Practical Nurses v. Mans*, [1993] B.C.J. No. 371 (B.C.C.A.); *Winnipeg School Division No. 1 v. Craton*, [1985] 2 S.C.R. 150); *Fossum v. Society of Notaries Public of British Columbia (No. 2)*, 2011 BCHRT 310 ("*Fossum*") (para. 306).

[455] The Respondents suggest the Court in *Heerspink* "emphasized that a court should not be searching for conflict, but instead, where possible, should interpret the two enactments to avoid any conflict".

[456] I agree that if there is no conflict between the *Code* and another statute, then the two enactments can stand together. This is clear from the case law and is simply common sense. I also agree I should not search for a conflict between statutes.

[457] As noted above, the Respondents say that there is no conflict between the statutes and the Complainants say that there is, based on the Respondents' position that the *DAPA* and s. 23 of the *Act* apply to the Tribunal proceedings. The Respondents say that the immunity from liability is not limited to actions. I am not persuaded that this is accurate.

[458] First, the *DAPA* is only two sections long and must be read as a whole. While s. 1 does not refer to an action, s. 2 refers only to an action.

[459] The *DAPA* refers to actions and it is clear that it is meant to capture civil proceedings and not complaints filed under the *Code*. The law is clear that a complaint of discrimination must be filed with the Tribunal. There is no civil cause of action available to complainants. (see *Seneca College v. Bhadauria*, [1981] 2 S.C.R. 181 p. 195; *Bajwa v. British Columbia Veterinary Medical Association*, 2012 BCSC 878, paras. 83 and 138)

[460] Second, the Respondents referred to a number of cases to suggest that the *DAPA* applies to Tribunal proceedings: *Netupsky v. Association of Professional Engineers and Geoscientists of the Province of BC et al.*, 2001 BCSC 1007; *Taylor v. The Law Society of British Columbia*, 2010 BCSC 1098; *Allen v. College of Dental Surgeons of British Columbia*, 2005 BCSC 842. These cases all dealt with civil claims for damages. A plain reading of the *DAPA* indicates it protects against liability from damages flowing from a cause of action.

[461] Further, none of these cases address complaints filed under the *Code* or the interrelationship of the test for discrimination and establishing malice and no reasonable or probable cause under s. 23 of the *Act* and/or the *DAPA*. There is no requirement that a complainant prove a separate cause of action before their complaint of discrimination is considered and these cases do not stand for this proposition. Because the *Code* expressly

deals with disciplinary authorities, and sets out the remedies available in any complaint, it is my view that the two statutes may be read harmoniously, such that there is no conflict.

[462] With respect to s. 23 of the *Act*, it is my view that "liabilities" probably means liability for damages, which would flow from an action. Again, I am not persuaded that this creates a conflict with the *Code* provisions.

[463] The Respondents suggest that the *DAPA* only adds a "qualification to the scope of the *Code*". The *DAPA*, absent specific language, cannot limit the scope of the *Code*. To suggest otherwise necessarily creates a conflict that must be addressed. As noted in *Heerspink*, conflicts are resolved in favour of the *Code*.

[464] The Respondents, in essence, argue for a different test for discrimination that has been set out in those cases dealing with human rights issues. I do not accept the Respondents' assertion that the *DAPA* and s. 23 "simply add an additional requirement of proof of bad faith, malice and no reasonable and probable cause before a claim for liability can succeed against a disciplinary authority" or that it "merely superimposes additional conditions that must be established in any claim" including claims under the *Code*.

[465] The wording and/or the interpretation of the *Code* provisions do not support the Respondents' assertion that absent proof of bad faith, malice and reasonable and probable cause, the Complaint must be dismissed without an inquiry into whether the conduct was discriminatory. A purpose of the *Code* is to redress discriminatory conduct; this cannot be circumvented by the application of the *DAPA*, absent clear and unequivocal language. Further, the *Code* is clear that intent need not be proven to establish discrimination: s. 2 of the *Code*. Importing a requirement that bad faith or malice and no reasonable and probable cause must be proven, necessarily imports an intentional element into the establishment of discrimination.

[466] The Respondents also made submissions regarding the meaning of those elements of the test that they say I must determine, namely, the meaning of malice, reasonable and probable cause and bad faith. They say that absent "objective" evidence of these elements, liability does not flow. In essence, the Respondents suggest that there must be

"intent" to act maliciously, without reasonable probable cause and bad faith. Again this is contrary to the *Code* and the tests established for the determination of discrimination.

[467] Further, the Tribunal did not address the provisions of the *DAPA* in *Fossum*. However, it is clear from that decision, also dealing with the regulation of a profession, that the Tribunal used the traditional test for establishing discrimination. (paras. 237 and 238) Mr. Fossum was not required to establish that the actions of the Societies of Notaries Public acted with malice and without reasonable and probable cause.

[468] The Respondents argue that "[t]here is absolutely no evidence of a legislative intention to carve out an exception to the immunity provided by *DAPA* for discrimination claims." In my view, and as noted above, the *DAPA* does not apply to proceedings under the *Code* and therefore no such "carving out an exception" applies. Further, in making such an argument, the Respondents seek to reverse the prevailing and consistent case law on this issue. If a particular legislative provision is to operate, notwithstanding the *Code*, there must be a clear and unequivocal statement to this effect in either that statute at issue, here the *DAPA* and *Act*, or the *Code*. There is no such specific language included in these statutes.

[469] The Legislature clearly intended for the *Code* to apply to professional associations, which would include the BCVMA and to the services it provides to the public. There is no exemption provided to the BCVMA from the application of ss. 8 and 14 of the *Code*. Further, in 2010, the Legislature passed new legislation reorganizing the BCVMA and continuing it under the College of Veterinarians of British Columbia: *Act*, S.B.C. 2010 c. 15. The Legislature did not exempt the actions and/or the decision-making processes of the College from the application of the *Code*.

[470] The Respondents suggest that the provisions of the *DAPA* limit the nature of the remedies that can be imposed if I find that the Respondents discriminated contrary to the *Code*. They suggest that this is less intrusive than requiring an additional level of proof. There is no "express or unequivocal" language that would lead to this conclusion in any of the statutes referred to by the Respondents. The *DAPA* does not expressly state that the limiting provisions of the *DAPA* apply to the *Code's* remedial provisions set out in s. 37(2). The *Code* provides for no such limitation.

[471] As noted above, the Complainants assert that the Respondents have taken conflicting positions before the Tribunal and the Courts. They argue that the Respondents "are essentially attempting to deprive the Complainants of a potential legal remedy for the alleged wrongful conduct of the respondents in any forum". The Respondents disagree with these assertions. As noted elsewhere in this decision, the Courts, in accepting the arguments before it made by the Respondents, have directed that I deal with the issues of discrimination and institutional bias, falling within my jurisdiction, and have not indicated that I am foreclosed from, or limited in, doing so because of the *DAPA* or s. 23 of the *Act*.

5. Flood Gates Argument

[472] The Respondents suggest that if a conflict were found between these statutes, such that the *Code* prevails, it would "seriously undermine the immunity provisions of the *DAPA*" as claimants could "circumvent the immunity simply be characterizing a complaint as falling under the *Code*..." I disagree. Absent discrimination, which determination falls squarely to be determined by the Tribunal, those who make decisions that might fall under the *DAPA* may be immune from liability absent malice and no reasonable and probable cause in a civil cause of action. In any event, individuals in BC are entitled to the protections of the *Code* and are entitled to file human rights complaints. These complaints will be dealt with on their merits and within the context of the issues raised, including whether they fall within the Tribunal's jurisdiction.

[473] For the Respondents to suggest that the Complainants are attempting to circumvent the provisions of *DAPA* by filing a human rights complaint, is inconsistent with the prevailing case law, including those decisions rendered by the BCVMA's Inquiry Committees and the Courts, involving some, or all, of the same parties that are before me, that issues of discrimination are to be addressed by the Tribunal. (see ***Bajwa v. British Columbia Veterinary Medical Association***, 2011 BCCA 265 paras. 30-39; ***Bajwa v. British Columbia Veterinary Medical Association***, 2012 BCSC 878, paras. 77 and 81)

[474] As noted ss. 8 and 14 of the *Code* apply to occupational associations, including the BCVMA; the BCVMA is not exempted from these provisions in its enabling statute.

Clearly the Complainants were entitled to file a complaint of discrimination under these provisions. That they did so does not mean that they are circumventing the provisions of the *DAPA*.

[475] Further, had the Respondents believed that these sections of the *Code* are limited by the *DAPA* and s. 23 of the *Act* such that the Complaint ought to be summarily dismissed because of the lack of evidence of bad faith, malice or the lack of reasonable and probable grounds, that argument ought to have been advanced long before the conclusion of this lengthy hearing.

[476] Finally, the Tribunal has dealt with a number of complaints where the named respondent was a regulatory body. Its jurisdiction to do so has not been successfully challenged: *Bitonti v. College of Physicians & Surgeons of British Columbia*, [1999] B.C.H.R.T.D. No. 60 ("*Bitonti*"); *Van Leening v. College of Physical Therapists*, 2006 BCHRT 357; *LeBlancq v. B.C. Association of Speech Pathologists and Audiologists*, 2006 BCHRT 456; *Gichuru v. The Law Society of British Columbia*, 2009 BCHRT 360 ("*Gichuru*"); *Fossum*.

6. Other Statutes and Jurisprudence

[477] The Respondents argue that the meaning of the *DAPA* should be informed by other statues and common law principles.

[478] The Respondents argue that the *DAPA* and s. 23 of the *Act* operate to create "immunity" for those decisions-makers captured by these provisions. Although it may be that the decisions of the Inquiry Committee are not subject to review by the Tribunal, discussed elsewhere in this Decision, I am not persuaded that either the *DAPA* or s. 23 provides such "immunity" to all those persons that the Respondents seek to have described as "decision-makers" in this Complaint.

[479] The Respondents also argue that the immunity provided by the *DAPA* is similar to the immunity provided to judges (s. 3(1) of the *Supreme Court Act*, RSBC 1996, c. 443; s. 42 of the *Provincial Court Act*, RSBC 1996 c. 379), crown prosecutors (common law) and administrative decision-makers (s. 56 of the *ATA*) for acts done in the course of their decision-making or investigative authority. They argue that the immunity provided to

crown prosecutors is particularly relevant here for two reasons. The language of malice and reasonable and probable cause, applied to the decisions of Crown Prosecutors, mirrors the language in the *DAPA* and second, the members of the BCVMA exercise a statutory prosecutorial function when they investigate and prosecute disciplinary complaints.

[480] The Respondents also argue that:

> The *Code* serves to promote the adherence to human rights and ultimately the rule of law. The rationale animating immunity for decision-makers exercising quasi-adjudicative powers as part of [a] legal system is to preserve the integrity of the office of the decision-maker and the decision-making process itself. The proper avenue to challenge decisions of judges or administrative decision-makers is through judicial review or the exercise of statutory rights of appeal, and not through a claim of personal liability...

[481] The Respondents also rely on a number of cases to suggest that the *DAPA* provides immunity to the BCVMA's disciplinary decision-makers and therefore its decisions are not subject to review under the *Code*.

[482] In *Morier* v. *Rivard*, [1985] 2 S.C.R. 716, a lawyer had brought an action for compensation under s. 49 of the *Charter of human rights and freedoms*, R.S.Q., c. C-12 against the Commission de police. The Court referred to s. 22 of the *Police Act*, R.S.Q., c. P-13 and s. 16 of the *Act respecting public inquiry commissions*, R.S.Q., c. C-37, which provide:

> s. 22 of the *Police Act*:
>
> For the purposes of an inquiry held by it under this act or any other act, the Commission, each of its members and every person authorized by it to make an inquiry are vested with the powers and immunity of a commissioner appointed under the Act respecting public inquiry commissions.
>
> s. 16 of the *Act respecting public inquiry commissions*:
>
> The Commissioners shall have the same protections and privileges as are conferred upon judges of the Superior Court, for any act dome or omitted in the execution of their duty.

[483] It is the interrelationship of these provisions that provided immunity to the Commission de police in that they enjoy the same immunity as judges of the Superior Court in their decision-making processes. This was expressly provided for in the legislation. There are no similar provisions in the *DAPA*.

[484] In *Taylor v. Canada (Attorney General)*, [2000] F.C.J. 268 (F.C.A.) ("*Taylor*"), Mr. Taylor filed a complaint with the Canadian Human Rights Commission alleging that the conduct of Whealy J. contravened the *Canadian Human Rights Act*, when Whealy J. ordered Mr. Taylor to remove his religious headdress. Mr. Taylor also filed a complaint with the Canadian Judicial Council.

[485] The Commission dismissed Mr. Taylor's human rights complaint finding that it did not have jurisdiction over the complaint as Whealy J. benefitted from the common-law principle of absolute immunity for judges. The Commission's decision was upheld on judicial review and by the Federal Court of Appeal. In its decision, the Federal Court of Appeal found that the common law principle of judicial immunity, which is a fundamental constitutional principle, applied to the actions of Whealy J; the only possible narrow exception was if Whealy J. had knowingly acting outside his jurisdiction, which he had not. (see also *MacKeigan v. Hickman*, [1989] 2 S.C.R. 796; *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 S.C.R. 3; *Joseph-Tiwary v. British Columbia (Ministry of Attorney General)*, 2007 BCHRT 331)

[486] I also note that Mr. Taylor was not left without a remedy as his complaint to the Canadian Judicial Council was ongoing when the Federal Court of Appeal released its decision. In the Complaint before me, the Respondents have taken the position that I should not consider the discrimination issues while, at the same time, taking the position before the Courts that the issues of discrimination and the related issue of institutional bias be left to me to decide. Had I agreed with the Respondents' position regarding immunity provided to the BCVMA and those making decisions in the disciplinary process, the Complainants could be left without a remedy. This would be in direct conflict with the Courts' directions and the purposes and language of the *Code*, which provides that a complaint of discrimination lies against professional associations.

[487] In *Gonzalez v. British Columbia (Attorney General)*, 2009 BCSC 639, Ms. Gonzalez filed a human rights complaint against a judge of the Provincial Court alleging that he made some discriminatory comments in relation to her physical disability. Ms. Gonzales also alleged that the Ministry of the Attorney General discriminated against her as it was responsible for the administration of the court. The Tribunal concluded that it was without jurisdiction to hear the complaint as the judge's conduct was subject to judicial immunity.

[488] Ms. Gonzalez judicially reviewed the Tribunal's decision. The BC Supreme Court upheld the Tribunal's decision finding that s. 42 of the *Provincial Court Act* grants judicial immunity to provincial court judges in the exercise of their duties. The Court disagreed with *Taylor* preferring to follow the Ontario decision in *Baryluk v. (c.o.b. Wyrd Sisters) v. Campbell*, [2008] O.J. No. 4279 (C.J.) finding that there was no bad faith exception to judicial immunity. I note that Ms. Gonzales also filed a complaint with the Chief Justice of the Provincial Court who initially responded to her concerns and a new practice direction was issued concerning the accommodation of people with disabilities in all areas of the provincial court system.

[489] Subsequent to this decision, the Ministry of the Attorney filed an application to dismiss those parts of Ms. Gonzalez's complaint against it. The Tribunal dismissed those parts of the complaint against the Ministry finding that the administration of the Provincial Court falls under the authority of the Chief Judge of that court, pursuant to ss. 19(3) and 11(1) of the *Provincial Court Act* and is therefore subject to judicial immunity set out therein. (*Gonzalez v. British Columbia (Ministry of Attorney General)*, 2009 BCHRT 313)

[490] In these cases, the concept of judicial immunity was applied as codified or through the common-law principle of judicial immunity which, as noted, is a constitutional principle. (see *Taylor* paras. 57-59) Those that make decisions under the *Act* are not judges nor do they enjoy the protection of judicial immunity described in these cases. There is nothing in the *Act* or the *DAPA* that would suggest otherwise.

[491] I disagree that these cases taken together, or separately, stand for the proposition that the "statutory grant of immunity in *DAPA* must be applicable to the [*Code*]". In my

view, this is to cloak BCVMA with a form of judicial immunity which is neither supported in the common law, its governing statute or the *DAPA*.

[492] The Respondents refer to *Murphy v. British Columbia (Ministry for Children and Families*), [1999] B.C.H.R.T.D. No. 19 ("*Murphy*") for support that the grant of immunity to an administrative body applies to complaints filed under the *Code*. This issue was not squarely addressed in that case and I do not accept the Respondents' proposition that the Tribunal Member "appeared to accept that the immunity granted to the Director of Children and Family Services would apply to proceedings under the *Code*." However, the Tribunal did confirm that an "expression of immunity must be clear and unambiguous": *Murphy* at para. 19.

[493] The Respondents refer to three decisions of the Human Rights Tribunal of Ontario ("HRTO") which concluded that statutory and common-law immunity, granted to administrative decision-makers, applies to complaints filed under the Ontario *Human Rights Code*, R.S.O. 1990, c. H. 19. By extension, the Respondents argue that such immunity applies to complaints filed under the *Code* against them.

[494] In *Cartier v. Nairn*, 2009 HRTO 2208 ("*Cartier*"), the complainant filed a human rights complaint alleging that a labour arbitrator contravened the Ontario *Human Rights Code* when the arbitrator made certain findings, contained in the decision, to which the complainant took exception. The Ontario Tribunal, in relying on *Taylor* and *Gonzalez*, along with decisions speaking to immunity afforded to other administrative boards, concluded that judicial immunity should be extended to arbitrators as this would serve to protect their independent decision-making process. The Ontario Tribunal also noted that arbitrators have jurisdiction to interpret and apply the *Code's* provisions. Further, the Tribunal noted that there were no allegations that the arbitrator had knowingly acted beyond her jurisdiction, which might have adversely affected the immunity available. (see also *Kogan v. Human Rights Tribunal of Ontario*, 2011 HRTO 1486)

[495] In *Hazel v. Ainsworth Engineered Corp.*, 2009 HRTO 2180 ("*Hazel*"), the issue before the HRTO was whether a labour arbitrator was entitled to immunity, in his role as a mediator, against complaints filed under the Ontario *Human Rights Code*. In finding that such immunity applied, the Ontario Tribunal stated:

... In general, there is no good reason why the immunity provided to judges, the purpose of which is to ensure independence in decision-making and finality of process, should not extend to others who exercise quasi-judicial adjudicative functions. Administrative tribunals and labour arbitrators play a critical role within the justice system. They are called upon to determine serious disputes between parties, and adjudicate fundamental rights of citizens. Independence in thought and decision-making is no less important for a member of a quasi-judicial tribunal or an arbitrator than for a judge. Finality of the decisions (subject to rights of appeal or review) is no less important for the parties.

Balanced against this important general principle is whether it is appropriate to find that arbitrators and mediators should be immune from claims under the *Code* for any decision, or action, taken within the sphere of the dispute resolution process. If it is appropriate to hold that immunity should apply, are there limits to the types of decisions that are protected? Are there circumstances where immunity is not necessary to protect the integrity of the administrative justice system?

It is trite law, but bears repeating, that the purpose of human rights legislation is remedial, not punitive. One of its objects is to ensure all persons have access to services and facilities, regardless of a proscribed ground of discrimination. The *Code* aims to remove barriers to equal access. In so doing, it places responsibilities on those who provide services to take steps and institute accommodation measures, to ensure full and equal participation. If arbitration and mediation is a service within the meaning of the *Code*, and I have found that it is, one must proceed cautiously before finding there should be a broad and absolute immunity granted to arbitrators and mediators, who play an important role in that service. Immunity, in that it is an exemption to the application of the *Code*, should be given no larger an application than is necessary to protect the countervailing interest at stake, in this case, independence of decision-making.

...

Having considered the arguments and jurisprudence, I accept that arbitrators and mediators are entitled to immunity from human rights claims, at least with respect to the exercise of their decision-making and dispute resolution functions. Regarding arbitrators, I accept that in considering evidence and submissions, and making decisions, they are exercising a quasi-judicial function comparable to that of judges, and are therefore entitled to immunity.

...

> The touchstone for the application of immunity is to ensure independence of the decision-making and dispute resolution process. Immunity applies to those functions that can legitimately be said to be integral to that process, and to the effective exercise of the duties of the arbitrator or mediator. (paras. 84-86, 95 and 98)

[496] In *Robinson v. Ontario Municipal Board*, 2010 HRTO 207, the issue before the HRTO was whether the members of Ontario Municipal Board ("OMB") were protected by the principle of judicial immunity in making the interlocutory decisions before it. The Panel, in relying on *Cartier*, found that the decisions made by the OMB, during the hearing process, were protected by judicial immunity.

[497] The decisions of the HRTO are not binding on me and I decline to follow them. As can been seen, each case raised different concerns, which required the HRTO to decide whether, and to what extent, "immunity" applied. In some cases, there were other avenues for a complainant to raise his or her concerns related to the conduct of the decision-maker. The Panel Chair in *Hazel* took a more cautionary approach in the grant of immunity, which was, in my view, more in keeping with the fundamental protections provided by the *Code*, which should not easily be displaced. In coming to its decisions, the HRTO was inclined to grant other administrative bodies immunity based on the underlying policies that animate the constitutional principle of judicial immunity such as independence and finality in the decision-making process. I also note that this Tribunal has also declined to follow the Ontario cases: *Madadi v. British Columbia (Ministry of Education)*, 2012 BCHRT 380.

[498] The Complainants refer to *Miele v. Famous Players Inc.*, 2000 BCHRT 5 ("*Miele*"). In *Miele*, Famous Players relied on s. 568 of the *Vancouver Charter* as a statutory defence to the allegation of discrimination. The Tribunal confirmed that, although the *Vancouver Charter* provided an exemption to complying with bylaws that came into effect after the renovations at issue were completed, this did not provide a defence to the Famous Players.

[499] There is nothing in this decision that suggests that any administrative body had made a decision prior to Famous Players' raising the defence before the Tribunal. In my view, although *Miele* is helpful as a general statement of the primacy of the *Code*, it is not

on all fours with the issues raised by the *DAPA* or s. 23 of the *Act* and whether the grant of immunity applies to all the decision-makers within the BCVMA.

[500] The Complainants also rely on *Dindial v. Capital Region Housing Corp. et al.*, 2004 BCHRT 95 ("*Dindal*"). In *Dindial*, the respondents filed an application to have the complaint dismissed against the individual respondents. They argued that, pursuant to the *Business Corporation Act*, S.B.C. 2002, c. 57, individual directors were not personally liable for breaches of the *Code* by the Capital Region Housing Corp. In dismissing this argument, the Tribunal said:

> ... I note that provisions of the *BCA* respecting the liability of directors for acts of the corporation are not relevant to this determination. First, I was not referred to any provision of the *BCA* which specifically provided that directors cannot be held personally liable for a breach of the *Code*... (para. 14)

[501] Finally, the Complainants rely on *Kayne v. Strata Plan LMS 2374*, 2004 BCHRT 62 ("*Kayne*"). In *Kayne*, Mr. Kayne sought to add individual respondents to his complaint, who were all members of the Strata Council. One of the proposed respondents argued that s. 22(1) of the *Strata Property Act*, S.B.C. 1998, c. 43, protected him against personal liability if he had acted honestly and in good faith in the performance of his duties. Further, to add him as a respondent would "subvert the clear intent of the legislature regarding liability of strata council members." In dismissing this argument, the Tribunal concluded that this provision did not protect the individual respondent from liability under the *Code*.

[502] *Dindial* and *Kayne* do not assist in addressing the question of immunity.

[503] In summary, I find that the constitutional principle of judicial immunity does not apply to the decisions of the BCVMA. I further find that the DAPA and/or s. 23 of the *Veterinarians Act* do not provide such immunity from the *Code's* provisions. However, this raises the troubling question of the nature and extent of the *Code's* oversight when allegations of discrimination are made against a quasi-judicial body, such as the Inquiry Committee of the BCVMA. Although I have addressed this issue in in *Brar (No. 1)*, *Brar (No. 9)* and *Brar (No. 10)*, I again turn to this question.

7. Is there a limit to the *Code*'s oversight?

[504] I accept that "judicial immunity" does not apply to shield the decisions of the BCVMA from the provisions of the *Code*. This would suggest that the Tribunal has the jurisdiction to review all of the decisions of BCVMA, regardless of the forum in which those decisions were made. However, as I have noted in my previous decisions, I have jurisdiction to review those decisions of the BCVMA, except for those Inquiry Committee's process decisions and findings of fact.

[505] The grant of judicial immunity is rooted in the principle of judicial independence. Judges should be able to make their decisions free from civil liability or interference from other branches of government. In civil actions, the Courts have granted quasi-judicial bodies similar immunity pursuant to common law principles of immunity.

[506] In *Edwards v. Law Society of Upper Canada*, [2000] O. J. No. 2085 (C.A.) ("*Edwards*"), a group of investors, who were not members of the Law Society, sued the Law Society of Upper Canada in negligence, breach of trust and breach of contract for its failure to conduct an adequate investigation into actions of a law firm that held certain monies in trust for them. The Court of Appeal dismissed the action finding that Law Society did not owe a duty of care to the investors, who were members of the public. The Court concluded that the Law Society's disciplinary proceedings were "judicial or at least quasi-judicial in nature and that, in relation to them, the Law Society is immune from negligence suits". The Court was clear that the quasi-judicial processes of the Law Society were beyond review by the courts in a civil action. (para. 20; see also *Harris v. Law Society of Alberta*, [1936] 1 D.L.R. 401; *French v. Law Society of Upper Canada* (1976), 9 O.R. (2d) 473 (C.A.); *Calvert v. Law society of Upper Canada* (1981), 32 O.R. (2d) 176 (H.C.J.); *Lee v. Law Society of Upper Canada*, [1994] O.J. No. 1468 (Gen. Div.))

[507] In *Edwards*, the question was also raised about the conduct of Secretary of the Law Society, after the complaint had been filed by the investors, and whether the Secretary was liable in negligence. In relying on s. 9 of the *Law Society Act*, R.S.O. 1990, c. L.8, the Court was prepared to extend the grant of immunity to the employees of the Law Society "who are charged with the responsibility of investigating and processing the

complaint that end up in the discipline arena". (para. 33; see also *Hung v. Gardiner*, 2002 BCSC 1234, aff'd *Hung v. Gardiner*, 2003 BCCA 257) The Court was reluctant to impose civil liability on those persons acting in good faith and within their statutory parameters. (para. 43)

[508] In *Welbridge Holdings Ltd. v. Greater Winnipeg* (1970), 22 D.L.R. (3d) 470 (S.C.C.), the Supreme Court of Canada held that the municipality could be held liable in tort or contract for those actions that were administrative or ministerial but not for those decisions that were legislative or quasi-judicial. (p. 968-969)

[509] In *Stark v. Auerbach* (1979), 11 B.C.L.R. 355 (SC), the plaintiff filed an action in libel against the Board of Review of the Workers' Compensation Board, for comments it made in its written decision. In *Stark*, the Court reviewed the functions of the Board of Review in question to determine whether immunity would apply. The Court found that the "function" of the Board of Review "in making a decision is similar to the function of a court in reaching a decision." This included weighing evidence and coming to a decision with reasons. The Court held that:

> ... public policy and convenience require that absolute immunity be extended to members of a judicial or quasi-judicial tribunal from action for any statement appearing in a decision made pursuant to a statutory duty imposed on the tribunal.
>
> ... the basis of this privilege is public policy. The independence of the judge or the tribunal members and the freedom of those who testify or otherwise participate in the hearing must be preserved to ensure the proper administration of justice. Public policy requires that none of the participants be open to influence by fear of a possible defamation action. (para. 15-22)

[510] In *R. v. Budgell*, 2012 BCSC 1302, the issue was whether a Vice-Chair of the Labour Relations Board was subject to criminal liability such that the Court could issue process on two Informations sworn by Mr. Budgell. The Court dismissed Mr. Budgell's appeal from the decision of another judge, who had declined to issue the Informations, concluding that the Vice-Chair was entitled to judicial immunity from criminal liability. The Court cited, with approval, the Supreme Court of Canada's comments regarding judicial immunity in *Beauregard v. Canada*, [1986] 2 S.C.R. 56. The Supreme Court of

Canada, in *Beauregard*, concluded that judicial independence exists so that judges can be free from outside influences, whether it is a government body, groups or individuals. As the Court noted, the "goal of judicial independence is the maintenance of public confidence in the impartiality of the judiciary..." (paras. 14-17)

[511] It is clear from these decisions that judicial immunity is grounded in public policy in that the public needs to have confidence that judicial decision-makers are free from outside influences unrelated to the specific functions they are required to perform. As can be seen, and in the context of civil actions, the Courts have been prepared to extend the common law principle of immunity to quasi-judicial decision makers.

[512] The Tribunal does not have jurisdiction to sit in judicial review of decisions made by other quasi-judicial bodies. Even when discrimination is alleged, the Tribunal may not proceed with the complaint. As noted in *Golmohammadi v. WCB and others*, 2006 BCHRT 177, there might be other valid reasons, even in the face of an allegation of discrimination, which might persuade the Tribunal to dismiss a complaint on a preliminary basis.

[513] In this Complaint, I came to this conclusion when I determined that my jurisdiction to address the alleged discrimination was circumscribed in that I would not revisit the findings of fact made by the Inquiry Committee; this role lies with the court on judicial review. The Complainants did not allege that the Inquiry Committees made discriminatory comments during the hearing or in their written decisions setting out their findings of fact.

[514] I have rendered two decisions on my jurisdiction. Had the Respondents understood that my decisions on my jurisdiction were incorrect or that the determination of this Complaint was limited by the *DAPA* and/or s. 23 of the *Act,* in that immunity applied to all disciplinary decision-makers, the applicable test to be applied and the remedies available, they were required to address this issue before the end of this hearing. Having failed to do so, having proceeded with this matter for some eight years after this Complaint was filed and having taken the position they have before the Courts regarding the appropriate forum for the resolution of the issues in the Complaint, suggest that the Respondents do not question my jurisdiction over the entirety of the issues raised in this

Complaint. It is not fair or appropriate to rely on these provisions, at this stage, to address this failure.

[515] As the Complainants point out, the Courts in BC have considered this Complaint in the context of other judicial reviews filed by certain of the Complainants. The Courts have not held that this Tribunal is foreclosed from considering the Complaint because of the immunity that might be afforded by the *DAPA* and have discussed my decisions speaking to my jurisdiction. Further, the Courts have suggested, on more than one occasion, that my jurisdiction extends to determinations of discrimination within the BCVMA decision-making processes and also with respect to institutional bias, as it relates to the Inquiry Committee and other decision-makers within the BCVMA. These decisions call into question the Respondents' assertion that "[t]here is simply no principled basis for finding that statutory grants of immunity do not apply to the *Code* and in particular that s. 23 and the *DAPA* do not apply to the *Code*".

8. How should the *DAPA* be applied to complaints under the *Code?*

[516] The Respondents submit that the onus lies with the Complainants to prove that the "disciplinary association" acted with malice and without reasonable and probable cause. Further, the "entire claim must be dismissed summarily, without consideration of the merits of the claim, if the [Complainants have] failed to plead and prove on the evidence that the disciplinary association acted maliciously and without probable cause."

[517] I must determine if discrimination occurred on the evidence before me; my jurisdiction lies within the four corners of the *Code*. If I make determinations under the *DAPA* alone, I would be acting outside my jurisdiction. Further, to suggest that this Complaint might be dismissed without a determination of discrimination is incorrect, contrary to the *Code's* provisions, ignores the role of the Tribunal members in making such determinations and finally, in the context of this Complaint, it would require that I ignore the express directions from the Courts that this Tribunal is to address the discrimination issues raised by the Complainants.

9. The *DAPA* and s. 23 of the *Veterinarians Act* do not limit the remedies available to the Tribunal under the *Code*

[518] The Respondents submit:

> If contrary to these decisions, the Tribunal finds that *DAPA* does not permit the summary dismissal of complaints, without consideration of the merits of the claim, it is submitted, in the alternative, that the Tribunal should find that s. 23 and *DAPA*, limit the remedial discretion of the Tribunal if the complainant has failed to prove that the disciplinary body acted maliciously and without reasonable and probable cause in case of *DAPA*, or Council has acted in bad faith in case of s. 23. Specifically, the Tribunal could not impose any remedy that could be characterized as the imposition of "liability". This would not preclude the traditional administrative law remedies of declaratory relief, setting aside decisions, reconsideration, or issuing procedural or substantive directions.

[519] Again, the Respondents are seeking to apply the provisions of the *DAPA* and s. 23 to the *Code*, and in this specific instance, to limit the remedies that might be available should discrimination be found. There is nothing in the *Code* that limits my authority and/or discretion to grant remedies, provided they fall within the jurisdiction of the Tribunal, set out in s. 37 of the *Code*, and discrimination is proven. Neither the *DAPA* nor s. 23 of the *Act* limits this jurisdiction.

[520] The Respondents submit that, although the *DAPA* and/or s. 23 of the *Act* cannot prohibit any remedy to which the Complainants are entitled to under the *Code* pursuant to s. 37(2)(b) through (d), these provisions "merely qualify" the discretion to impose liability in those cases in which bad faith, malice and absence of reasonable and probable cause have been proven".

[521] Had the Legislature wanted the *DAPA* and/or the *Act* to limit the remedies available for a violation of the *Code*, it could have easily included such a provision in the relevant statute. It did not. To suggest that the immunity provisions could be "easily defeated" ignores the fundamental importance of human rights in our society, the quasi-constitutional nature of the *Code*, the role of the Tribunal in ensuring that these rights are protected and providing remedial relief when violations have been found. (see *British Columbia v. Bolster*, 2005 BCSC, appeal dismissed *British Columbia v. Bolster*, 2007 BCCA 65 at paras. 50, 76-78; leave to appeal refused [2007] S.C.C.A. No. 167)

10. Summary

[522] In summary, I find that my jurisdiction to hear and determine this Complaint is not circumscribed by the *DAPA* or s. 23 of the *Act*. The principles of judicial immunity do not limit the Tribunal's jurisdiction under the *Code* regarding the BCVMA. Further, I find that the test for discrimination is that developed in the human rights context. Finally, I find that the remedies available under the *Code* are not qualified by the provisions of the *DAPA* or s. 23 of the *Act*.

Individual Liability

1. Introduction

[523] The Complainants alleged that Ms. Osborne breached the *Code* and argued that she should be personally liable for such breaches, despite her position within the BCVMA. The Respondents argued the opposite and that the allegations against Ms. Osborne, in her personal capacity as Registrar, were filed for improper motives or in bad faith. Further, they argue that when an institution is named, such as the BCVMA, there is no basis to continue a complaint against an individual who acted within her authority.

[524] In this section, I address only the issue of whether Ms. Osborne, as an individual, is subject to the *Code's* provisions, where an institution has also been named.

2. The *Code*'s Provisions

[525] Initially, the Complaint against Ms. Osborne was filed under ss. 7, 8, 14 and 43 of the *Code*. The Complainants withdrew that part of the Complaint against Ms. Osborne filed under s. 14 of the *Code* as this section provides only that trade unions, employers' organizations or occupational associations are capture by this provision. The Complaint continued against her under the other referenced provisions of the *Code*.

[526] In ss. 7, 8 and 43 of the *Code* a "person" is precluded from discriminating in those areas identified. A person is defined in s. 1 as including other institutions, such as occupational associations. On a plain reading of the section, a person clearly includes individuals.

[527] There is nothing in the wording of the *Code* that would suggest that individuals are not subject to ss. 7, 8 and 43 of the *Code*. That a corporate entity might be liable for the actions of its employees does not suggest that individuals are not subject to findings of discrimination. Section 44(2) provides that an institution is held responsible for the acts of its employees. It is generally the entity best placed to provide redress once discrimination is found. Institutions do not act without individuals. Generally these individuals will act within their authority but that does not suggest that in doing so, they act in a non-discriminatory manner. Their actions must be assessed on the facts of each case and should not be presumed to be exempt from liability simply because an institution is also named as a party. I am unable to conclude that if an individual acts contrary to the *Code*, even if they are acting within their scope of authority and the institution acts liability, they should not be subject to the *Code*.

[528] If there are proven allegations that individuals acted in a manner that breached the *Code*, the purposes of the *Code* mandate that they should be subject to its provisions. The purposes of the *Code* include also include that there should be no impediments to the full and free participation in the economic, social, political and cultural life of BC and that the *Code* serves to foster a climate of understanding and mutual respect. If the *Code's* provisions are breached, a complaint is entitled to remedial relief. It is unclear to me how the *Code's* purposes could be fully met if the individual's actions were shielded from liability merely because an institution, for which they work or represent, is subject to the *Code*.

3. Decisions of the Tribunal

[529] The parties referred to a number of cases and I review those decisions here.

[530] In *Dindial*, Mr. Dindial file a complaint on behalf of his son alleging that the Capital Region Housing Corporation ("CRHC") and members of the Board of Directors discriminated contrary to the *Code*. The CRHC applied to dismiss the complaint against the individual named respondents pursuant to certain provisions of s. 27 of the *Code*. The Tribunal dismissed the complaint against all the individual respondents, except one. In coming to its decision, the Tribunal noted that:

> Corporate entities may, of course, be named as responding parties to a complaint of discrimination. Further, s. 44(2) of the *Code* provides that a corporation will be liable for the acts or omissions of its employees, officers, and directors committed within the scope of their authority. However, in naming a corporate party as a respondent, a complainant is not thereby precluded from also naming individual respondents who are employees, directors or officers of the corporate respondent... What is required is some allegation in the complaint that the named individual respondents breached the *Code*. (para. 13; see also *Stone v. Coast Mountain Bus Company Ltd. and others*, 2005 BCHRT 50 at paras. 46 and 47; *Daley v. B.C. (Ministry of Heath) and others*, 2006 BCHRT 341 at para. 48)

[531] In *Kayne,* Mr. Kayne sought to add certain members of the Owners' Strata as party respondents to the complaint. The Tribunal applied the test set out in *Payne v. Otsuka Pharmaceutical Co.*, (2001) 41 C.H.R.R. D/52 (Ont. Bd. of Inq.), dealing with adding respondent to a complaint, which required that there be "some reliable evidence" upon which a finding of liability could be found. (para. 34; see also *Munroe v. C.A. Boom Residential Engineering and other*, 2004 BCHRT 12) The Tribunal noted that individuals should not be able to "hide behind a corporate veil" and thwart the purposes of the *Code*. Further, it said that the "potential of personal liability is an important factor that serves to ensure compliance with the *Code*." The Tribunal granted the application and added the individual respondents as parties to the complaint. (para. 38) In a different case, based on a similar application, the respondent sought to add two individuals to the complaint as party respondents: *Baird v. Finder Financial Services*, 2010 BCHRT 153. The Tribunal declined to add these individuals, although it concluded that Mr. Girard was involved in most of the alleged discriminatory conduct and appeared to have been the directing mind of Finder. The Tribunal concluded that it would not be in the public interest to do so as the primary purpose for their participation was to obtain their evidence, which could be accomplished in other ways. Another factor considered by the Tribunal in coming to its decision was the fact that Ms. Baird did not name these individuals as parties to her complaint. (paras. 28-31)

[532] In *Vetro v. Klassen and Pacific Transit Cooperative (No. 2)*, 2005 BCHRT 263, a number of applications were before the Tribunal, including an application to dismiss that part of the complaint against Ms. Klassen pursuant to s. 27(1)(b) of the *Code*. The

respondents argued that, given there were no allegations that Ms. Klassen acted outside the scope of her authority or ignored the directions of the Board of Directors, the complaint against her should be dismissed. The Tribunal dismissed this application. The Tribunal was of the view that the manner in which a manager responds to a request to redress discriminatory conduct might attract individual liability. The Tribunal referred to *Dudnik v. York Condominium Corp. No. 216*, (1988) 9 C.H.R.R. D/5080, with approval, which noted that human rights legislation is directed to addressing unlawful discrimination by all person, be they institutions or individuals. (para. 34; see also *Primack v. Azim Enterprises Co. (c.o.b. Uncle Sam's Restaurant)* [1991] B.C.C.H.R.D. No. 24, paras. 13-17)

[533] At noted by the Complainants, the Tribunal has, in some cases, dismissed complaints against individual respondents pursuant to s. 27(1)(d)(ii), which provides that a complaint might be dismissed, on a preliminary basis, if it would not further the purposes of the *Code* to proceed with it. In *Daley v. British Columbia (Ministry of Health)*, 2006 BCHRT 341 ("*Daley*"), the Ministry of Health filed an application to dismiss the complaint or, in the alternative, to dismiss that part of the complaint against the two named individual respondents. In coming to its decision, the Tribunal discussed a number of policy reasons why it might not further the purposes of the *Code* to proceed with a complaint against an individual respondent when an institutional respondent has been named:

- The institutional entity has been named as a respondent and it has the capacity to fulfill any remedies ordered by the Tribunal and has irrevocably acknowledged its responsibility to fulfill any remedial orders.
- The institution has acknowledged that the acts or omissions are acts or omissions as its own.
- The acts or omissions were done within the course of the individual's authority.
- The individual was not the directing mind behind the actions nor had the ability to "substantially influence the course of action taken".
- The individual does not have a degree of individual culpability. (paras. 60-62)

[534] In *Daley*, the Tribunal carefully reviewed the complaint before it to determine if there were allegations against the individual respondents, which would take their actions outside their normal course of employment, and the degree of individual culpability, such as whether the person was alleged to be the directing mind behind the discrimination or substantially influenced the corporate respondent's course of action. After doing so, the Tribunal declined to dismiss the complaint against them. (paras. 72-74)

[535] Similarly, in *J and J obo R v. BC (Min. of Children and Family Development) and Havens*, 2006 BCHRT 449, the Tribunal refused to dismiss the complaint against Ms. Havens pursuant to s. 27(1) concluding that there was some information suggesting that Ms. Havens was "primarily or significantly" responsible for the application of the impugned criteria to R and as such was the "directing" mind, or at least one of two of the directing minds involved in the alleged discrimination. (paras. 52 and 55)

[536] *Dixon v. Goddard*, 2011 BCHRT 46, after considering the factors set out in *Daley*, the Tribunal refused to dismiss a complaint against the individual respondent pursuant to s. 27(1)(d)(ii) of the *Code*. The Tribunal concluded that, if the allegations were proven, the individual would have had some measure of culpability. Further, it was alleged that this individual had failed to address Mr. Dixon's concerns. (para. 62) The Tribunal's decision, in respect of this issue, was upheld on judicial review: *Goddard v. Dixon*, 2012 BCSC 161, paras. 160-165.

[537] In each of these cases, the Tribunal reviewed the complaint and found that there were allegations which, if proven, would constitute a breach of the *Code* by the individual respondent. Absent such allegations, the complaint(s) against the individual would be dismissed as noted.

[538] In other cases, the Tribunal has declined to dismiss against an individual respondent based on the *Daley* factors, but has assessed whether there was a measure of culpability sufficient to allow the complaint to proceed against him or her: see *Lockhart v. B.C. (Ministry of Public Safety and Solicitor General) and others*, 2011 BCHRT 211; *Horrocks v. Kerrisdale Community Centre Society*, 2011 BCHRT 279.

[539] In *Ford v. Peak Products Manufacturing Inc.*, 2010 BCHRT 155, the Tribunal dismissed the complaint against the individual respondent finding that the evidence did

not establish that he had a measure of individual culpability nor was he directly involved in the decision to terminate Ms. Ford. Although the Tribunal discussed the factors set out in *Daley*, I note that its decision was made in the context of the Tribunal assessing the entirety of the evidence at the conclusion of the hearing. (paras. 87-88)

[540] More recently, in *M. v. The University and others*, 2012 BCHRT 437, the Tribunal declined to add certain respondents to a complaint and applied the factors set out in *Daley* and *Stock v. Great West Life Insurance (No. 2)*, 2006 BCHRT 472. The Tribunal concluded that since the University was prepared to assume liability for the individual respondents' actions, which are not clearly set out in the decision, and that these individuals were acting within the scope of their employment, they should not be added as party respondents. It does not appear that the Tribunal fully canvassed the allegations when it came to its conclusion. In my view, such a decision should be approached with caution; complaint(s) should not be dismissed simply because an institution is named as a party respondent.

[541] In my view, the Tribunal should proceed with caution when dismissing complaints against individual respondents based on the factors set out in *Daley*. Clearly the Tribunal in *Daley* took such a cautious approach.

[542] As the Respondents correctly point out, the hearing of the Complaint is at an end. The Complaint proceeded against Ms. Osborne. The Complaint against her was not dismissed despite the Respondents bringing two preliminary applications: *Brar (No. 1)* and *Brar and others v. BCVMA and Osborne (No. 16)*, 2010 BCHRT 182. The Respondents did not seek judicial review of those decisions. It is now my function to determine if Ms. Osborne took any steps which might have contravened the *Code*. The Respondents argue that in the absence of evidence of discriminatory actions or intent, no individual liability arises. I note here that intent is not necessary to found a complaint of discrimination, but agree that individual liability arises only if the evidence supports it.

[543] In their submissions regarding the dismissal of the complaint against Ms. Osborne, the Respondents acknowledged that Ms. Osborne, in her role as Registrar, was involved either directly or indirectly, in the decisions involving the Complainants thus acting within the scope of her employment. However, because Ms. Osborne acted within the

scope of her employment does not answer the question of whether her actions breached the *Code*. Finally, while the *Veterinarians Act* and/or the BCVMA's Bylaws provide the Registrar with authority to take action in varies areas of the regulatory process this does not serve to shield Ms. Osborne's actions from the *Code's* oversight. In any event, what role Ms. Osborne may or may not have played in the BCVMA's decisions, and whether those decisions or actions were discriminatory, will be addressed in this Decision.

[544] The allegations against Ms. Osborne fall into several categories, which I summarize here:

- Ms. Osborne played a key role in the development and implementation of the English Language Standard;
- Ms. Osborne plays significant role in the registration of new applicants, including Dr. Joshi, by gathering information and decided when the matter would proceed to Council;
- Ms. Osborne was involved in notifying the Complainants that they could only communicate with the BCVMA in writing;
- Ms. Osborne played a role in the unscheduled inspections of facilities owned by the Complainants;
- Ms. Osborne was involved in the advertising issue through her participation in the review of the CO's reports to the CRC and through her direct communications with members of the BCVMA;
- Ms. Osborne was directly and significantly involved in the disciplinary processes involving the Complainants;
- Ms. Osborne was involved in the development and implementation of the Disclosure Policy which resulted in those Inquires involving the Complainants being published on the website; and
- Ms. Osborne was involved in some of the events after the disclosure of the recording involving Dr. Ashburner, the Chair of the CRC.

[545] I address these allegations elsewhere in this Decision.

4. Conclusion

[546] I find that individuals are subject to the *Code's* provisions, where allegations are made that could constitute a breach, despite an institution also being named. There is no basis to read down the *Code* to come to a different conclusion.

Section 7

1. Introduction

[547] Section 7 provides:

> (1) A person must not publish, issue or display, or cause to be published, issued or displayed, any statement, publication, notice, sign, symbol, emblem or other representation that
>
> > (a) indicates discrimination or an intention to discriminate against a person or a group or class of persons, or
> >
> > (b) is likely to expose a person or a group or class of persons to hatred or contempt
>
> because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or that group or class of persons.
>
> (2) Subsection (1) does not apply to a private communication, a communication intended to be private or a communication related to an activity otherwise permitted by this Code.

[548] In the Amended Complaint, the Complainants alleged:

> ... that in BCVMA publications and statements, including newsletters, reports and speeches, the BCVMA council, executive, personnel and/or committee members have been falsely casting the Complainants as trouble-makers who come from a country where the veterinary standards are low and the necessary veterinary qualifications are much easier to obtain. The Complainants are further being accused of attempting to: make the BCVMA impotent; lower the standards of the profession; and negatively affect the welfare of animals, "who depend on a strong, competent and ethical profession", which implies that the Complainants do not equally possess or care about these qualities, all of which has likely exposed the Complainants to contempt from their colleagues.

[549] Generally, the Complainants argued that, in order to prove discrimination in publication, they are required to show that the Respondents published, issued, made or endorsed statements which indicated discrimination or an intention to discriminate against them, or was likely to expose the Complainants to hatred or contempt because of their race, colour, ancestry, place of origin and political belief.

[550] The Complainants provided particulars, in their individual complaints, filed with the Tribunal; some of those particulars identified the documents that they alleged contravened s. 7 and others were more general and non-specific. The more specific documents that were identified included the LINK newspaper article dated September 18, 2004, the BCVMA Newsletter of 2004, BC Veterinarian, Summer 2004 and BCVMA's 2004 Annual Report 2004. The particulars also refer to various oral communications and media reports, either in print or radio.

[551] The Respondents generally denied they discriminated in various publications and/or statements.

2. Discriminatory Statements covered under ss. 8 and/or 14 of the *Code*

[552] The Complainants rely on the *Pardy v. Earle and others (No. 4)*, 2011 BCHRT 101 ("*Pardy*") (aff'd *Ismail v. British Columbia (Human Rights Tribunal)*, 2103 BCSC 1079) for support that discriminatory statements are also captured under other provisions of the *Code,* including ss. 8 and 14 of the *Code*.

[553] In *Pardy*, Ms. Pardy, a lesbian, alleged that the respondents discriminated against her in the provision of a service customarily available to the public based on her sex and sexual orientation. Ms. Pardy was in attendance at Zesty's restaurant on an evening when an open-microphone comedy show was offered. Mr. Earle was the master-of-ceremonies. Mr. Earle took the microphone and made negative comments about Ms. Pardy and those with her.

[554] In addressing Ms. Pardy's complaint under s 8 of the *Code*, the Respondents argued that the legislative purpose of s. 8 is different from s. 7, which protects against discriminatory statements. As such, the respondents in *Pardy* argued that a different and

more rigorous test for establishing discrimination, when statements are at issue, was required as this recognized the importance of freedom of expression.

[555] In addressing this argument, the Tribunal said:

> "Discriminatory statements" may arise in the context of other areas in which discrimination is prohibited, including services (s. 8), tenancy (s. 10), and employment (s. 13) of the *Code*. There is nothing about the structure of the Code, or the cases decided under it, to support the view that complaints about expression can only be brought under s. 7. Indeed, it is difficult to imagine a case in which discrimination under the other sections would not necessarily involve some form of "expression" by words or conduct.
>
> I conclude that there is no warrant for treating discriminatory acts and discriminatory statements separately under the *Code*, or for requiring that a complaint of discriminatory expression must be brought under s. 7. Accordingly, the Zesty respondents have not established that s. 7 recognizes the importance of free expression by creating a different and higher test for discriminatory statements, or that Mr. Earle's statements to and about Ms. Pardy were justified if she does not meet that higher test. (*Pardy*, paras. 459-460)

[556] I agree with the Tribunal's analysis in *Pardy* as it relates to s. 8 of the *Code*. The test for establishing discrimination under s. 8 remains the same. Evidence speaking to whether discrimination has occurred under s. 8 may include documents and public statements; this evidence will be considered within the s. 8 analysis. The same is true for s. 14 of the *Code*.

[557] Although s. 8 captures alleged discriminatory documents made in relationship to services customarily available to the public, and which might have been published to the membership beyond the Complainants, this does not foreclose the Complainants from filing a separate complaint under s. 7. I agree with the Respondents that the Tribunal in *Pardy* only determined that discriminatory statements were not only captured under s. 7 of the *Code*; it does not relieve the Complainants from meeting the relevant test for discrimination under s. 7.

[558] The Respondents suggest that given that the publications and/or statements at issue in this complaint may be considered under s. 8 of the *Code*, the Complainants continued pursuit of a complaint under s. 7 "demonstrates the extent to which the

Complainants have perceived of the *Code* as a punitive statute, demonstrates the abusive nature of these proceedings, and illustrates the extent to which this Tribunal has been put to an improper purpose."

[559] The Complainants are entitled to pursue their Complaint under s. 7, along with other areas of discrimination as is any complainant. Because they do so does not, in my view, illustrate that they are attempting to abuse this human rights proceeding. Further, as noted below, although I have dismissed this part of the Complaint, this does not suggest an improper purpose.

3. Case Law with respect to s. 7 of the *Code*

[560] In *Stacey v. Campbell (c.o.b. Choose Life Canada)*, 2002 BCHRT 35, the Tribunal considered whether an advertisement placed by Choose Life Canada in the Globe and Mail, which contained commentary about homosexuals, contravened s. 7(1)(a). The Tribunal concluded that the advertisement did not indicate discrimination or an intention to discriminate on the basis of sexual orientation, although it did conclude that the advertisement would offend many readers, including gays and lesbians. The Tribunal made no determination as to whether the advertisement was likely to expose Mr. Stacey to hatred and contempt contemplated by s. 7(1)(b) as that issue was not before him. The Tribunal was clear that determinations under s. 7(1)(a) are distinct from those under s. 7(1)(b) of the *Code*.

[561] In *Abrams v. North Shore Free Press Ltd. (c.o.b. "North Shore News")*, [1999] B.C.H.R.T.D. No. 5 ("*Abrams"*), the Tribunal discussed the interpretation of s. 7(1)(b). In *Abrams*, Mr. Abrams an active member of the Jewish community in Victoria filed a complaint alleging that the columns written by Doug Collins and published in the North Shore News, and syndicated to other newspapers, contained "race-baiting themes" and content that "vilified Jews (among others)".

[562] The Tribunal referred to and discussed with approval, with a slight modification, the following the two-part test for considering a complaint under s. 7(1)(b) determined by the Tribunal in *Canadian Jewish Congress v. North Shore Free Press Ltd. (No. 7)*, 30 C.H.R.R. D/5 ("*CJC*"):

> First, does the communication itself express hatred or contempt of a person or group on the basis of one or more of the listed ground? Would a reasonable person understand this message as expressing hatred or contempt?
>
> Second, assessed in its context, is the likely effect of the communication to make it more acceptable for others to manifest hatred or contempt against the person or group concerned? Would a reasonable person consider it likely to increase the risk of exposure of target group members to hatred or contempt? (*CJC*, para. 130; *Abrams*, paras. 36 and 44)

[563] In *Elmasry and Habib v. Roger's Publishing and MacQueen (No. 4)*, 2008 BCHRT 378 ("*Elmasry*"), the Tribunal considered whether an article, entitled "The New World Order", which as an excerpt from the book, *America Alone*, authored by Mark Steyn, and which MacLeans published in its October 23, 2006 edition (the "Article"), contravened s. 7(1)(b) of the *Code* in that exposed Muslims in British Columbia to hatred and contempt on the basis of their religion.

[564] The Tribunal in *Elmasry* considered the test articulated in both *CJC* and *Abrams*, and the discussion of this issue set out in *Kane (Re)*, [2001] A.J. No. 915 and the Saskatchewan Court of Appeal's decision in *Owens v. Sask. (Human Rights Commission)*, [2006] S.J. No. 221. After doing the so, the Tribunal concluded:

> In our view, the Saskatchewan Court of Appeal's comments in *Owens*, adapted to the specific wording of the *Code*, are helpful in articulating the appropriate test and synthesizing the case law in a meaningful way. Although articulated somewhat differently than was done by the Tribunal in *CJC* and *Abrams*, the essence of the analysis is the same. That is, objectively considered by a reasonable person aware of the relevant context and circumstances, does the publication in question expose the target group to feelings of an ardent nature and unusually strong and deeply felt emotions of detestation, calumny and vilification?
>
> To the extent that we may be seen to be departing from the Tribunal's earlier statements of the appropriate test under s. 7(1)(b), in the panel's view, the *Owens* test best reflects an appropriate and *Charter* sensitive balancing of the two competing rights in this case. It is also sufficiently flexible to take into account the overwhelming presence of the Internet and the dramatic changes in the public's access to information and modes of communication that were in their infancy when both *CJC* and *Abrams* were decided. The interpretation and application of human rights law must be flexible enough to ensure that each case brought under s. 7(1)(b) of the

Code is considered in light of the context in which the communication is made.

We note that, in considering similar wording in the *Civil Rights Protection Act*, R.S.B.C. 1996, c. 49, the Owens test was cited with approval by the BC Supreme Court in *Maughan v. UBC*, 2008 BCSC 14, paras. 343-345.

We conclude that assessing the publication's meaning in its context includes consideration of:

- the vulnerability of the target group;
- the degree to which the publication on its face contains hateful words or reinforces existing stereotypes;
- the content and tone of the message;
- the social and historical background for the publication;
- the credibility likely to be accorded the publication; and
- how the publication is presented.

In any given case, one or more of the considerations might predominate the assessment, and other considerations might be appropriate.

Although, on its face, s. 7(1)(b) does not include any specific defences, factors such as whether the statement or publication is true or is part of a larger political debate are also contextual considerations that are relevant to determining whether, objectively, a publication is more likely to expose a person or group to hatred or contempt. These issues are most appropriately considered in assessing the relevant context and circumstances in which a publication is made.

The harm addressed by s. 7(1)(b) is that when messages are conveyed that arouse "unusually strong feelings and deeply felt emotions of detestation, calumny and vilification" they will undermine the promotion of equality, guaranteed in the *Charter* and reflected in one of the *Code's* purposes, as outlined in s. 3. (Paras. 80-86)

[565] After reviewing the evidence, the Tribunal in *Elmasry*, concluded that the evidence did not establish a nexus between the Article and the probability that it exposed Muslims to hatred and contempt in British Columbia. (para. 138-140)

[566] Further, the Tribunal in *Elmasry* concluded that although the Article in question included factual, historical and religious inaccuracies and stereotypes regarding Islam and

Muslims this was insufficient to establish a contravention of s. 7(1)(b) of the *Code*. (paras. 129, 140-150) A similar conclusion was reached in ***Watt v. The Abbotsford Times and others***, 2009 BCHRT 141, para. 18.

[567] In ***Palmer and Palmer v. BCTF and others***, 2008 BCHRT 322, the Tribunal considered the BCTF's application to dismiss the complaint against it. The Palmers identified themselves as members of the Fundamentalist Latter Day Saints and both were involved in the Mormon Hills School in differing capacities. The Palmers filed a complaint alleging that certain publications of the BCTF including a letter to the premier, a news release and a petition to the court, were discriminatory as they were aimed at encouraging the government to take steps to address the alleged sexual exploitation and discriminatory teaching within the Bountiful community and at one of its schools. In dismissing the complaint, the Tribunal concluded that, interpreting s. 7 within the context of the purposes of the *Code* set out in s. 3, it is not a contravention of the *Code* to discuss issues already in the public domain about an issue of legitimate public interest and to seek action on the issues identified so long as the publication does not otherwise satisfy the s. 7 test. (paras. 55-56)

[568] In ***Fossum***, Mr. Fossum alleged that the Society of Notaries Public of British Columbia discriminated against him when it published a notice about him on its website contrary to s. 7 of the *Code*. The Tribunal dismissed this part of Mr. Fossum's complaint, applying *Elmasry*, that the Tribunal does not have jurisdiction over website publication. (paras. 22 and 23)

[569] More recently, in ***Saskatchewan (Human Rights Commission) v. Whatcott***, 2013 SCC 11 ("***Whatcott***"), the Supreme Court of Canada set out an approach to applying "hate speech" provision of the Saskatchewan human rights legislation, which is similar in wording to s. 7(1)(b) of the *Code*. The Court set out the following three principles.

[570] First, the hate speech prohibition must be applied "objectively". The issue is "whether a reasonable person, aware of the context and circumstances surrounding the expression, would view it as exposing the protected group to hatred". (***Whatcott***, para. 56)

[571] Second, the term "hatred or contempt" is limited to extreme manifestations of the emotion described by the words "detestation" and "vilification". It excludes repugnant

and offensive expression which "does not incite the level of abhorrence, delegitimization and rejection" causing discrimination or other harmful effects. (*Whatcott*, para. 57)

[572] Third, the focus is on the likely effect of the expression. It is likely to expose the targeted person or group to hatred by others? The repugnancy of the idea expressed is not enough on its own. The author's intention is also irrelevant. (*Whatcott*, para. 58)

[573] The Court concluded:

> In light of these three principles, where the term "hatred" is used in the context of a prohibition of expression in human rights legislation, it should be applied objectively to determine whether a reasonable person, aware of the context and circumstances, would view the expression as likely to expose a person or persons to detestation and vilification on the basis of a prohibited ground of discrimination. (para. 59)

[574] The Court also noted that the prohibition does not capture expression which debates the merits of reducing the rights on vulnerable groups in society. It only restricts the use of expression exposing them to hatred as a part of that debate. It does not target the ideas, but their mode of expression in public and the effect that this mode of expression may have. Further, representations made in private settings would also not be captured by provisions prohibiting publication, display or broadcast of the expression. (*Whatcott,* paras. 51 and 53)

4. Evidence in support of a contravention of s. 7

[575] The Complainants refer to certain evidence to support their allegations that the respondents have contravened s. 7 of the *Code*. I will discuss each in turn.

The October 30, 2004 Council meeting

[576] On October 30, 2004, a few Indo-Canadians, Drs. Manjit Kaler, Ravi Mann and Avatar Ubi, appeared before Council to speak about the English Language Standard. Council members who attended included Drs. Twidale, Forsyth, Hollingshead, McLeod, McTaggart and Starrak and Ms. Murray. Staff from the Registrar's office attending included Ms. Osborne, Dr. Brocklebank and Mr. McKinnon, Council secretary. Ms.

Zlotnik, who the BCVMA had consulted with respect to the interview option to the English Language Standard, also attended.

[577] During the course of this meeting, negative comments were made about Dr. Bhullar and the other Complainants, which the Complainants described as being extreme and inflammatory and which openly denigrated them before a body of their peers and those in positions of authority who could adversely affect them. The Complainants also suggest that after this meeting, Drs. Kaler, Mann and Ubi were appointed to positions within the BCVMA whereby they could potentially cause harm to the Complainants. The Complainants allege that the comments were made to "try and stoke an atmosphere of hatred and contempt" towards them. These comments are fully set out in the transcript of this meeting (Exhibit 1024). I set out some of those comments here:

- The letter being circulated to the members from the Complainants indicated a "philosophy of intimidation" which Dr. Kaler suggested would lead to personal phone calls or threats and possibly physical intimidation;

- Dr. Mann noted that Council had not seen sweatshop labour or child poverty and suggested that those who cannot speak English would fall prey to those people who run such clinics inferring that it as Dr. Bhullar who operated such clinics;

- Dr. Ubi suggested that Dr. Bhullar's personal interest was being affected as the pipeline was being "choked" because of the English Language Standard. Dr. Ubi referred to the practice of assisting Indo-Canadians to set up a veterinary practice and then selling it at a profit to that same person. Dr. Ubi suggested that Dr. Bhullar was "evil".;

- Ms. Osborne referred to Dr. Bhullar as the "ringleader" of the group that opposed the English Language Standard. She suggested he had been identified as physically threatening and potentially violent; and

- Dr. Twidale after comments had been made about sweatshop labour and Dr. Bhullar's allegedly threatening and violent behaviour said that it was sad that there were veterinarians "working sweatshop labour in the back right now" and it is a big problem facing the BCVMA at that time.

[578] The first issue to be address is whether these communications were published issued or displayed as contemplated by s. 7 of the *Code*.

[579] I agree with the Complainants that Council meetings, including this meeting, are not "private meetings". The *Veterinarians Act* and Bylaws are silent on whether Council's meetings are public, or private, meetings. Bylaw 18(6) provides that Council may hold all or part of its meeting *in camera*. The inference from this is that meeting are public unless otherwise declared to be *in camera*. As noted in the evidence, members of the public are invited to speak at Council meetings and BCVMA's members may request to do so. There is no evidence that a member of the BCVMA and/or public member sought to attend a Council meeting and was prevented from doing so. However, even if the meeting was "public" the question remains as to whether the statements were "published": thus captured by s. 7.

[580] I am not persuaded that what Council and/or Ms. Osborne knew about what these individuals would say, before the meeting took place, triggers the application of s. 7.

[581] These statements were not published by the BCVMA nor were they issued or displayed. To the extent that the comments, especially the one made by Dr. Twidale during the course of the meeting, have been repeated and "published", it has been done by the Complainants, not the Respondents. The Complainants cannot rely on their own actions, in distributing and publishing these comments to support a claim of discrimination against the Respondents under s. 7 of the *Code*.

[582] I agree with the Complainants that Dr. O'Grady was instrumental in having Drs. Kaler, Ubi and Mann attend the Council meeting and that he was aware that they were attending to support the English Language Standard. Because Dr. O'Grady, who also supported the Standard, may have made negative and inflammatory comments about the Complainants, discussed elsewhere in this Decision, does not provide a basis for concluding that that the comments made at the October 30, 2004 were published, issued or displayed by the Respondents.

[583] Although the comments made at this meeting may be captured under s. 8 and/or s. 14 of the *Code*, they are not comments that were published, issued or displayed by the Respondents and on this basis alone the Complaint dealing with this allegation must fail.

[584] I agree with the Complainants that the comments made by the attendees, Drs. Ubi, Kaler and Mann, were inflammatory and exposed some the Complainants and, in

particular Dr. Bhullar, to hatred and contempt. However, they were not members of Council and not named as parties to this Complaint. That they later held positions of "authority" within the BCVMA, does not provide a basis for concluding that the Respondents contravened s. 7 of the *Code*.

[585] The Respondents suggest that the comments made by Drs. Ubi, Kaler and Mann who are Indo-Canadians, educated at the Punjab Agricultural University, were not racially motivated, derogatory or stereotypical. The Respondents suggest that these attendees were expressing their concerns about Dr. Bhullar's "unethical business practices" and could not be interpreted to be denigrating veterinarians from India or those that had been trained in India. The purpose of the meeting was to discuss the English Language Standard; instead it descended into a discussion of Dr. Bhullar's business practices, which the BCVMA clearly viewed as exploitative and "unscrupulous". I find no basis to conclude that such adverse commentary would serve to move the debate about the appropriateness of the English Language Standard forward in a non-discriminatory manner. This is discussed further in the ss. 8/14 analysis.

[586] I find that Dr. Twidale's comment that "sweatshops" were a problem the BCVMA was facing was an inflammatory comment. I agree with the Complainants that the term "sweatshop" is a derogatory term that is generally known to connote long hours, low wages and poor working conditions. I disagree with the Respondents that such a reference would not reflect racial stereotyping of Indo-Canadian business owners. Clearly such a comment, that a person operates a 'sweatshop', is a negative stereotype, which may be raced-based. However, I am not persuaded that within the context of the Council meeting on October 30, 2004, this comment was published, issued or displayed. The failure of Dr. Twidale, as the President at the time, to control the comments being made at this meeting and to address them, will be considered under s. 8 and/or 14 of the *Code*. The influence or adverse impact that such comments might have had on future decisions of Council involving the Complainants is also discussed elsewhere.

[587] Ms. Osborne's comments about Dr. Bhullar being a ringleader and possibly threatening and violent were also inflammatory. I agree that Dr. Bhullar is the self-described, and appointed, leader of the group of Complainants. Describing someone as a

leader of a group is significantly different from referring to a person as a 'ringleader', which many would view as a negative comment. However, I am not persuaded that this comment was published, issued or displayed as contemplated by s. 7 of the *Code*. As noted with those comments made by Dr. Twidale, they will be considered under s. 8 and/or s. 14 of the *Code*.

[588] I agree with the Complainants that there was no credible evidence that Dr. Bhullar and/or the other Complainants have engaged in threatening or violent behaviour towards the BCVMA, its employees, volunteers or contractors (the issue of Dr. Grewal's behaviour is discussed elsewhere). Further, there was is no credible evidence that Dr. Bhullar threatened and/or exploited any of his employees or business associates.

Tape Recordings

[589] Dr. Bhullar participated in taping certain individuals, including Drs. Rana and Ashburner. That the Complainants then published and distributed the statements made during these taped discussions does not make the Respondents subject to s. 7 of the *Code*. The BCVMA did not publish, issue or display these comments.

[590] There is a third recording of a member that the Complainants have referred in their evidence and submissions. This veterinarian is not a member of the BCVMA's Council, any BCVMA committee, a contractor or a staff member. Any comments made by this individual cannot be used to support a claim that the Respondents contravened the *Code* 7.

Reference to Incorrect Information

[591] In their Amended Complaint, the Complainants referred to certain articles that contained incorrect information regarding the TSE score that was used by the College of Pharmacists of British Columbia. The Complainants alleged that this incorrect information convened s. 7 of the *Code*.

[592] I accept that this information was published by the BCVMA and was incorrect. As noted in *Watt*, misinformation is not a sufficient basis to establish a contravention of s. 7 of the *Code*.

[593] I accept that this information was used to support the BCVMA's position that a TSE score of 55 was reasonable within the professional context. However, I find that a reasonable person, aware of the circumstances, would not view this published misinformation as exposing the Complainants to cause detestation or the vilification of the Complainants, or contempt toward them, either individually, or as a group.

[594] I was not persuaded that this communication, alone, discriminated against the Complainants. Whether the reliance on this misinformation, in conjunction with the other evidence, is captured by ss. 8 and/or 14 of the *Code* is discussed elsewhere.

BCVMA's Denial of Allegations in Media Reports and other Legal Proceedings

[595] There were a number of media articles written about the issues raised in this Complaint, including in the LINK newspaper and the Vancouver Sun. There were a number of lawsuits filed by the Complainants in the BC Supreme Court.

[596] The Respondents were entitled to, and did deny the various allegations against them in media articles and, in some cases, used strong language to do so. The Respondents also denied the allegations in the various legal proceedings. Simply denying allegations cannot form the basis of a complaint of discrimination contrary to s. 7 of the *Code*.

[597] I am not persuaded that the Respondents' language, in denying the allegations, meets the required threshold established by the cases considering s. 7 of the *Code*.

BCVMA Publications

[598] The BCVMA publishes various materials, including *The BC Veterinarian* and the *BCMVA Newsletter*. This is a publication captured by s. 7 of the *Code*.

[599] The BCVMA was entitled to, and did, deny that it was implementing its English Language Standard and/or its Marketing Guidelines for discriminatory reasons. Such commentary is not a contravention of s. 7 of the *Code*.

[600] In her Registrar's Report contained in *The BC Veterinarian*, Summer 2004 publication, Ms. Osborne wrote the following comments:

> Lastly, the BCVMA has a made a very strong, positive step in advancing the fairness and equality of its admission process with the adoption of an arms-length English language proficiency requirement. This has been the subject of much attention and unfortunately some considerable and troubling distortion. There are no ulterior motives on the part of the BCVMA. We are unwavering in our commitment to protect the public and animals and to ensure fairness and equal treatment of all members. It behooves all of our members to speak with accuracy, integrity and care and with a foundation of fact when making public statements about their governing body. Anything less falls short of the standard expected of a professional.

[601] This same BC Veterinarian publication contained two letters: one letter was written by Drs. Kaler, Rana, Sekhon, Bassi, Singh and Mann and the second letter was authored by Dr. Rana alone. The letter, authored by Dr. Kaler and others, contained negative commentary about three members who had had made critical comments about the BCVMA, which they wrote were not the views of the majority of Indo-Canadian veterinarians. They note that these members misled the public in their comments to the Vancouver Sun and held a "noisy" and uncivilized" demonstration in front of the BCVMA's offices. In the letter authored by Dr. Rana, he indicated that he was part of a group of 26 Indo-Canadian veterinarians, and denied that this group had ever faced unfair or discriminatory treatment by the BCVMA. Dr. Rana wrote that the English Language Standard was not "remotely" connected to stopping Indio-Canadian veterinarians from practicing in British Columbia; it reflected what all professional organizations required, including the American Veterinary Medical Association. Dr. Rana was critical of the June 10, 2004 demonstration saying that it gave a bad name to all Indo-Canadian veterinarians and damaged the reputation of the profession.

[602] In discussing the introduction of the English Language Standard, the BCVMA noted that this "positive" step, being taken by it, was the subject of "marked misinformation and distortion". The article notes that the allegations that this Standard was being introduced to keep out certain applicants, to remove certain members from practice and/or to close certain clinics, were "fallacies".

[603] Although I find that the Respondents should have been more cautious when deciding to publish these letters, that they did so does not suggest that, viewed

objectively, the Complainants were exposed to detestation and vilification such that the protections afforded by s. 7 of the *Code* are triggered.

The Complainants' Communications with the Public

[604] Dr. Bhullar, and others, on their own behalf or on behalf of the BC Veterinarians for Justice, authored a number of articles, news releases, letters to the membership and letters to the BCVMA regarding particular cases involving them and other Indo-Canadian veterinarians. These communications, authored by the Complainants, cannot form the basis of a complaint of discrimination under s. 7 against the Respondents. That the Complainants chose to circulate this information was their decision and it was, in my view, an unfortunate one.

Conclusion

[605] I conclusion, I dismiss that part of the Complaint alleging discrimination contrary to s. 7 of the Code. I will consider the Complainants' allegations that these comments and publications under analysis related to ss. 8 and 14 of the *Code*.

Section 8 of the *Code*

1. Introduction

[606] The Complainants filed their Complaint under ss. 8 and 14 of the *Code*. The Respondents concede that s. 14 "applies to the entirety of the Complainants' Complaint against the BCVMA, as it prohibits discrimination by occupational associations". The Respondents do not dispute that the BCVMA is an occupational association as defined in s. 1 of the *Code*. Ms. Osborne is not captured by s. 14 as this section does not apply to individuals: *Ratsoy v. BCTF*, 2005 BCHRT 53. That part of the Complaint alleging that Ms. Osborne discriminated against the Complainants contrary to s. 14 of the *Code* was withdrawn by the Complainants prior to the commencement of the hearing.

[607] In their Amendment Form for Response to Complaint, filed on July 3, 2007, the Respondents said that they were not providing services customarily available to the

public, in the registering and/or in its disciplinary role over its members. Therefore s. 8 did not apply and the Complaint, on this basis, should be dismissed.

[608] Generally, the Respondents argued that the Complaint under s. 8 cannot succeed for two reasons: first, s. 8 of the *Code* does not apply to the regulatory activities of an occupational association *vis-à-vis* its members or applicants for membership as this is covered by s. 14 of the *Code*; and second, even if s. 8 could apply to such activities, these activities are not services customarily available to the public.

[609] In this part of the Decision, the issue to be addressed is whether the BCVMA provides services customarily available to the public such that its actions would be captured by s. 8 of the *Code*.

[610] Sections 8 and 14 of the *Code* provide:

> Section 8
>
> (1) A person must not, without a bona fide and reasonable justification,
>
> (a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or
>
> (b) discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the public
>
> because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or class of persons.
>
> ...
>
> Section 14
>
> (1) A trade union, employers' organization or occupational association must not
>
> (a) exclude any person from membership,
>
> (b) expel or suspend any member, or
>
> (c) discriminate against any person or member
>
> because of the race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability,

> sex, sexual orientation or age of that person or member, or because that person or member has been convicted of a criminal or summary conviction offence that is unrelated to the membership or intended membership.

[611] The Complainants argue that, having failed to raise the application of s. 8 earlier, the Respondents should be prevented from doing so at this late stage of the process. In my view, despite the fact that the Respondents could have pursued this issue earlier in these proceedings, it is a question that must still be answered. If s. 8 does not apply to the BCVMA's activities *vis-à-vis* its members, those parts of the Complaint against Ms. Osborne must be dismissed. The following questions are raised: Can s. 8 encompass the activities of an occupational association *vis-à-vis* its members? If so, are the BCVMA's activities, at issue in this Complaint, services customarily available to the public within the meaning of s. 8?

2. Can s. 8 encompass the activities of an occupational association *vis-à-vis* its members?

[612] It is a question of statutory interpretation whether s. 8 can apply to the activities of an occupational association *vis-à-vis* its members. The Supreme Court of Canada has repeatedly said that human rights legislation should be given a broad, liberal and purposive approach that recognizes its special nature; it is not quite constitutional but more than ordinary: *Ontario Human Rights Commission and O'Malley v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536 ("*O'Malley*"), p. 547.

[613] The Complainants rely on *University of British Columbia v. Berg*, [1993] 2 S.C.R. 353 ("*Berg*"). Ms. Berg filed a complaint alleging that the University denied her a key and a rating sheet because of her mental disability. The British Columbia Council of Human Rights' decision in favour of Ms. Berg was set aside on judicial review, but restored on appeal to the Supreme Court of Canada. In concluding that the key and rating sheet were services customarily available to the public within the meaning of s. 3 (now s. 8 of the *Code*), Lamer C.J., writing for the majority, held that the "public" in relation to a service may be a subset of the general public. A quantitative approach is not helpful. (pp. 36-38) Lamer C.J. continued:

> Instead, in determining which activities of the School are covered by the Act, one must take a principled approach which looks to the relationship created between the service or facility provider and the service or facility user by the particular service or facility. Some services or facilities will create public relationships between the School's representatives and its students, while other services or facilities may establish only private relationships between the same individuals. (p. 38)

[614] On this approach, if the service creates a public relationship between an occupational association and its members (or prospective members), s. 8 would apply.

[615] The Respondents argue, on the other hand, that s. 14 applies exclusively to this Complaint and that *Gould v. Yukon Order of Pioneers*, [1996] 1 S.C.R. 571 ("*Gould*") fully answers the question of the application of s. 8 of the *Code* to this Complaint and that it is binding on this Tribunal. For the following reasons, I disagree.

[616] In *Gould*, a woman applied to be a member of the Yukon Order of Pioneers (the "Order"), an all-male membership organization whose primary objects were social, historical and cultural with its paramount objective being the well-being of its members. The organization collected and preserved certain historical literature and materials and made them available to the public. (para. 22)

[617] Ms. Gould was denied membership in the Order and filed a complaint under s. 8 of the Yukon *Human Rights Act*, R.S.Y. (1986) (Supp.), c. 11, which provided:

> No person shall discriminate
>
> (a) when offering or providing services, goods, or facilities to the public,
>
> (b) in connection with any aspect of employment or application for employment,
>
> (c) in connection with any aspect of membership in or representation by any trade union, trade association, occupational association, or professional association,
>
> ...

[618] The majority of the Supreme Court of Canada concluded that the Order was not captured within the meaning of s. 8(c), and that s. 8(a) did not apply to membership in the Order. In speaking for six members of the Court, Iacobucci J. considered the objects of the legislation, including the elimination of discrimination, and the "Bill of Rights"

portion of the legislation, including associational rights. Mr. Justice Iacobucci noted the potential for tension in the objects, even within the associational right where "there may be a tension between a group's interest in self-definition and an outsider's interest in joining or associating with the group". (p. 12) He then turned to s. 8 and stated:

> It is immediately apparent that the legislature has turned its mind to the question of membership as a category of prohibited discrimination. Membership is dealt with expressly -- and separately from "services, goods, or facilities". Further s. 8(c) forbids discrimination "in connection with any aspect of membership" in certain listed types of organizations. These organizations collectively deal with livelihood and economic relationship but not social or cultural ones.
>
> When I apply a liberal and purposive approach as I have described it above to these provisions, it is clear to me that s. 8(a) cannot bear the interpretation that the intervener and the appellant Gould would ascribe to it.
>
> ... I would not rule out the possibility that there might be a situation in which membership could constitute a service offered to the public. But s. 8(c) is suggestive of a legislative intent to treat membership and services separately. Section 8(a) should not be read in a way that would deprive s. 8(c) of all meaning... Moreover, although s. 8(c) may itself be subject to a large and liberal interpretation, such that the types of organizations listed might be interpreted generously, it does not extend to the Order. If organizations are conceptualized as ranging across a spectrum from purely economic to the purely social, with business, trade, and professional associations near the economic end and religious and cultural groups near the social end, the Order is close to the latter. It may be, by contrast, that other groups could be found, on a liberal and purposive approach, to be closer to the former but I need not discuss that in this case. (emphasis in original) (paras. 12-14)

[619] Mr. Justice Iacobucci noted that his decision was "consistent with *Berg*" and he was neither derogating from, nor adding to, the principles established in *Berg*. (para. 18)

[620] In his concurring judgement, and referring to *Berg* with approval, Mr. Justice La Forest stated that the correct approach is to identify the service in question, and then to determine whether that service gives rise to a public relationship between the service provider and the service user. (para. 56)

[621] Mr. Justice La Forest disagreed with the majority regarding the relationship between s. 8(a) and (c):

> It seems to me that s. 8 is intended to prohibit any of the forms of discrimination set forth in s. 8, whether in the provision of services (s. 8(a)), in connection with employment (s. 8(b)), membership in certain occupations (s. 8(c)), and so on. The clauses are complementary and supportive of one another and the goal of prohibiting discrimination. They were never intended to be construed as exclusive logic-tight compartments. There may be overlap, and I cannot see how one can say that discriminatory conduct that fairly falls within one category can be excluded from that category simply because another category deals with other activities that may bear on the same matter. That, to me, does not accord with the ordinary rules for the interpretation of statues, let alone a human rights statute which my colleague agrees should be generously interpreted.
>
> ... To me the mention of "membership" in s. 8(c) does not disclose an intention to deal with membership generally. Rather it covers a narrower category of situations. I agree with my colleague, as is evident from my previous discussion, that, however, generously one may interpret the statute, one cannot rewrite it so as to cover situations other than for which it provides...
>
> There are good reasons to set forth a list such as that which appears in s. 8(c). They comprise organizations which the legislature (quite rightly in my view) perceives to be rendering services to the public, and consequently should be free from discrimination...
>
> ...the spectrum envisioned by Iacobucci J., flowing from the purely economic at one end to the purely social at the other end, is unsatisfactory. Thus I would gather that s. 8(c) would not comprise universities since refusal of admission to universities on the basis of a prohibited ground of discrimination would involve discrimination in rendering services provided by the university, which, on the basis of the reasoning in *Berg*, supra, would appear to be covered by s. 8(a). Other organizations would undoubtedly give rise to similar difficulties. To divorce membership and services in the manner proposed seems to me to be highly artificial.
>
> ...It is best to consider the relevant service to determine if it is offered to the public, as opposed to the nature of the organization. This focuses debate on the relevant competing values I have already mentioned. (paras. 89-93)

[622] Two Justices dissented. Madam Justice L'Heureux-Dubé quoted with approval Mr. Justice Lamer's conclusion in *Berg* and noted that:

> Ultimately, there is no need to take a parsimonious approach to the interpretation of the notion of "providing services to the public". It is true that discrimination is not prohibited in the Yukon if it does not occur in

> one of the contexts listed in s. 8. However, in interpreting the terms used in s. 8 and ascribing a purpose to the particular prohibitions listed in that section, it must be remembered that the broad legislative objects of the Act are to eradicate discrimination and further the recognition of the equality and inherent dignity of every human being. I therefore agree with La Forest J. that a "broad range of activities... may constitute services generally available, or offered to the public"...
>
> ...
>
> I conclude, therefore, that there is no principle of law requiring the Board to restrict the application of s. 8(a) to situations where the discrimination is directed against potential users of the service. The only test that is articulated in the provision, namely: whether the discrimination occurred "when offering or providing services... to the public"... (paras. 134 and 146)

[623] I do not accept the Respondents' argument that it follows from *Gould* that because s. 14 of the *Code* deals specifically with alleged discrimination by occupational associations, the Legislature intended that s. 8 would not apply to occupational associations or its staff *vis-à-vis* its membership.

[624] First, as the Complainants correctly point out, the issue in *Gould* was whether the Order, a fraternal institution providing membership to a specific group, men, to the exclusion of others, women, was captured by the legislation. In this case, the issue is whether certain activities of the BCVMA, a regulatory body, which is captured by the *Code*, are services customarily available to the public, such that s. 8 may also apply to its activities. What *Gould* requires is an examination of the purposes of the *Code*, the institution, the services provided and to whom those services are provided. *Gould* does not answer the question of the applicability of s. 8 in this case as suggested by the Respondents but it provides a road map for how that issue should be considered.

[625] I also note that the focus of the majority in *Gould* was on the scope of the legislation. Iacobucci J. saw a clear tension between the anti-discrimination provisions of the Act and its associational rights. That tension does not arise in the circumstances of an occupational association which the legislature explicitly intends is subject to the *Code*.

[626] Second, while the majority also focused on the fact that the Yukon legislature had "turned its mind to the question of membership as a category of prohibited

discrimination" and that it dealt with membership expressly and separately from services, goods, or facilities, it did not rule out the possibility that membership could constitute a service offered to the public. In other words, the majority judgment does not hold that the existence of a "membership" provision precludes the application of a "services" provision.

[627] I agree with the Complainants that *Gould* does not stand for the proposition that if the activity at issue is captured under one section of the *Code*, it cannot also fall under another section of the *Code*. As noted by Mr. Justice La Forest in *Gould*, these sections are not mutually exclusive.

[628] The Respondents also rely on *Bitonti*, in which Dr. Bitonti, and others, filed a complaint against the College and others, alleging discrimination contrary to ss. 3 (now s. 8 of the *Code*) and s. 8 (now s. 13 of the *Code*) of the *Human Rights Act*, S.B.C. 1984, c. 22. The complaint was amended to include an allegation against the College under s. 9 (now s. 14 of the *Code*). The College argued, relying on *Gould*, that s. 3 of the Act did not apply because membership in an association was covered by s. 9. The complainants conceded that membership was covered under s. 9 but alleged that the College had also discriminated against them in respect of services unrelated to membership. (para. 60)

[629] The Tribunal concluded, for the purposes of that decision alone, that s. 3 of the *Human Rights Act* did not apply. The Tribunal stated:

> The College takes the position that, given the similarity of s. 9 of the *Act* to s. 8(c) of the Yukon legislation, admission into an occupational association cannot be an "accommodation, service or facility customarily available to the public" under s. 3 of the *Act*. The College says that, if s. 3 applied to occupational associations like itself, then s. 9 would be deprived of all meaning. It says that the existence of s. 9 "is suggestive of a legislative intent to treat membership and services separately".
>
> Section 9 of the *Act* is similar to s. 8(c) of the Yukon legislation. I see only two differences. The first is that the Yukon provision is contained in the same section as the prohibition of discrimination regarding services, goods and facilities; Iacobucci J. said that the section must be read as a whole (at 587). The second is that the wording of the two provisions is different. It is difficult, however, to give much weight to either of these distinguishing factors. The Supreme Court of Canada has said that "differences in wording between provinces should not obscure the essentially similar

purposes of such provisions, unless the wording clearly evinces a difference in purpose on behalf of a particular provincial legislature": see *Berg* per Lamer C.J. at 373, cited with approval in *Gould* per Iacobucci J. at 585. Neither of the differences between the British Columbia and Yukon provisions clearly indicate that the intention of the two legislatures differed in respect of the scope of the meaning of "service" or "membership".

For the purposes of this case alone, I am prepared to conclude that s. 3 is inapplicable. This is principally because s. 9 is clearly applicable to occupational associations. As I discuss below, I am not persuaded by the College's argument that it is prejudiced by the amendment to the form of the complaint to reference s. 9 of the *Act*. The College's position that it is an occupational association within the meaning of s. 9 solely for the purpose of defending the s. 3 allegation is simply untenable. Furthermore, in this case, the service being offered is indistinguishable from membership in the College. The discriminatory effect alleged is the same, that is, the denial of the right to practise medicine in British Columbia. There is therefore no reason to embark upon another analysis under s. 3. Finally, the contrary position was not argued before me. The Complainants agreed that, to the extent the service at issue is membership in the College, s. 3 does not apply.

However, I hasten to add that I have several concerns about this conclusion. First, although the majority in *Gould* referred to the legislature's intent to treat membership and services separately, it also left open the possibility that membership could constitute a service.

Second, the majority in *Gould* relied on the fact that the organization, a fraternal order, was not of the same type as those listed in s. 8(c). It held that the legislature intended to prohibit discrimination regarding membership in certain types of organizations. That intention would have been undermined if s. 8(a) were extended to prohibit discrimination regarding membership in a different sort of organization. In the present case, the organization is one of those listed in s. 9 of the *Act*. Thus, the same concern does not arise. The legislature clearly intended to prohibit organizations like the College from discriminating regarding membership.

Third, I do not agree with the College's submission that, if s. 3 applied to its registration of members, s. 9 would be deprived of all meaning. According to the majority in *Gould*, s. 9 restricts the reach of the *Act* to certain types of organizations. This is the case whether s. 9 applies, s. 3 applies, or both apply. Thus, the majority's reasoning in *Gould* need not be read as creating mutually exclusive spheres in which discrimination is prohibited. Moreover, such a narrow and restrictive approach to the interpretation of human rights legislation would run contrary to the interpretative approach laid down by the Court in innumerable cases.

> If I am wrong in concluding that *Gould* precludes the application of s. 3 in this case, I would have no hesitation in finding that the registration of members in the College is a service customarily available to the public under s. 3 of the *Act*. The College is a public institution, which is responsible for according the right to practice medicine in British Columbia. There can be no doubt that its relationship with applicants is a public one. I reject the College's submission that its use of eligibility criteria results in the Complainants falling outside of the "public". This submission is entirely inconsistent with the reasoning in *Berg*... (paras. 67-73)

[630] The Respondents argue that the Tribunal was correct and ought not to have expressed "reluctance" to apply *Gould*. However, I agree with each of the concerns expressed by the Tribunal in *Bitonti*. In particular, I agree that *Gould* does not require a narrow reading of the *Code* in which the areas of discrimination are mutually exclusive.

[631] In this regard, the Complainants refer to *Smith v. Telecommunications Workers Union*, 2003 BCHRT 33, where the Tribunal found that the union's organizing services was a service captured by s. 8 of the *Code*. In *Smith*, the Tribunal found that s. 14 was "clearly applicable" to the allegations raised by Ms. Smith but also determined that s. 8 was applicable given the nature of the service at issue. The Tribunal declined to follow *Gould* or *Bitonti*, saying "*Gould* provides reasoning for narrowly interpreting the Yukon *Act* when the service at issue was membership in an organization not of the type clearly included in the *Act*, and, in my view, it can be distinguished on that basis." (paras. 26 and 27)

[632] The Respondents rely on *Stephenson v. Sooke Lake Modular Home Co-operative Assn. (No. 3)*, 2008 BCHRT 161 ("*Stephenson (No. 3)*"). Ms. Stephenson purchased a unit in the modular home park owned by the Sooke Lake Modular Home Co-operative Association (the "Association"). At the time of purchase, Ms. Stephenson was required to sign an agreement with the Association. One of the terms of the Agreement was that no one under the age of 16 could be a regular occupant or resident of the unit (the "Under 16 Rule"). In 2006, Ms. Stephenson gave birth to a daughter and was subsequently advised that she was in violation of the Under 16 Rule and she had one year to move from the park. Ms. Stephenson filed a complaint against the Association alleging that it discriminated against her based on family status pursuant to ss. 8 and 10 of the *Code*.

[633] The Tribunal dismissed the complaint. In concluding that s. 8 of the *Code* did not apply to the relationship between Ms. Stephenson and the Association, the Tribunal found that s. 8 does not provide "an additional prohibition in relation to an age-related rule in a place of residence" and that an additional prohibition would be contrary to legislative intention, especially "where what is complained of in this complaint – the Under 16 Rule – is indistinguishable from a term set out in the Agreement with respect to the purchase of a share in the Association." (para. 39) The Tribunal went on to say, however, that this did not mean that the Association does not provide services to its shareholders that could be subject to s. 8. The Tribunal said further that the relationship between the complainant and Association was not a "private" one such that s. 8 would not apply. (paras. 41-45) Contrary to the Respondents' assertion, the Tribunal did not apply *Bitonti* to all the services that might be offered by the Association.

[634] The Tribunal in *Stephenson (No. 3)* applied *Tenant A v. Landlord and Manager (No. 2)*, 2007 BCHRT 321, where the tenant filed a complaint under ss. 8 and 10 alleging that both the landlord and manager discriminated against her when they failed to deal appropriately with her complaint against another tenant. The Tribunal dismissed the complaint under s. 8 of the *Code* finding that any "services" provided by the landlord were captured under s. 10 of the *Code*. The Tribunal stated that the Legislature had turned its mind to each of the two areas of discrimination and had drawn distinctions between them. The grounds of discrimination are not identical and each section has different defences and exemptions. The Tribunal concluded that it would contrary to the intention of the Legislature to superimpose s. 8 as an additional prohibition on discrimination in relation to tenancy. The Tribunal noted that in some cases, where a landlord may provide services, other than to a tenant, s. 8 may apply. (paras. 10-14)

[635] The Tribunal in both *Stephenson (No. 3)* and *Tenant A* referred to *Dow v. Summit Logistics Inc. and Retail Wholesale Union Local 580*, 2006 BCHRT 158, which involved allegations under ss. 8, 13 and 14 against Mr. Dow's union and employer. The Tribunal accepted that a complaint against a trade union might fall under both ss. 13 and 14, though it dismissed the complaint against the union on other grounds. In dismissing the complaint against the union filed under s. 8 of the *Code*, the Tribunal said ss. 13 and 14 "provide a comprehensive code, establishing and defining a union's human rights

obligations in the representation of its members in a unionized workplace" and that nothing further would be added "by superimposing" s. 8 on those obligations". (para. 30)

[636] I note that, with respect to the obligations of a union under ss. 13 and 14 of the *Code*, the Tribunal has held that the provisions are not mutually exclusive: *Ferris v. Office and Technical Employees Union, Local 15* (1999), 36 C.H.R.R. D/ 329, paras. 79-80. To the extent that cases such as *Dow* suggest that the areas of discrimination were intended to be mutually exclusive or watertight compartments, I find that approach inconsistent with the required broad and purposive interpretation.

[637] The Complainants respond that the statement in *Dow* was made without analysis or reference to authorities and that, in any event, something is added in this case by considering s. 8, namely, a means to address discrimination against an individual respondent. I agree that, in contrast to *Dow* and *Tenant A*, the application of s. 8 could encompass the allegations against the BCVMA's Registrar.

[638] The Respondents also rely on the Tribunal's decision in *Potter v. College of Physicians and Surgeons of British Columbia*, [1999] B.C.H.R.T.D. No. 31 ("*Potter*"), as an example of the Tribunal dealing appropriately with the division between an occupational association's services which may be captured by s. 8 of the *Code* (such as requests for information about the status of a veterinarian, or if a public member alleges discrimination in the manner in which the BCVMA processed his or her disciplinary complaint filed against a veterinarian) and its activities which fall within the scope of s. 14.

[639] In *Potter*, the complainants filed a complaint against the College alleging that it had discriminated against Dr. Potter under s. 8 of the *Code*, regarding the manner in which it handled her complaint against another doctor, and under ss. 13 and 14, regarding other allegations. The complaint under s. 13 was withdrawn at the beginning of the hearing, and the complaint heard by the Tribunal was in relation to separate allegations under ss. 8 and 14. The Tribunal was not asked to and did not address any potential overlap between the provisions so I find the case of little assistance.

[640] The Respondents argue that, in limiting the prohibition on discrimination relating to membership by organizations in s. 14 to the organizations themselves rather than to

"persons", the Legislature specifically intended to preclude claims against individual respondents in relation to these types of activities. It is well-established in the Tribunal's case law that the language of s. 14 precludes a complaint against an individual under that provision. In my view, however, the choice of language does not demonstrate a clear legislative intention that an employee of a s. 14 organization is not subject to the *Code*'s provisions in all dealings with membership activities.

[641] Although not referenced by the parties, I note that the Tribunal in ***Nesdoly v. Okanagan University College Faculty Assn.***, 2005 BCHRT 422 ("*Nesdoly*") made *obiter* comments to the contrary. That complaint alleged discrimination under ss. 13 and 14 against Mr. Nesdoly's union and the union president, arising out of the Union's change to a term of the payment of strike pay. The Tribunal noted that a complaint under s. 13(1)(b) against a union or individual acting on behalf of a union may be sustained where the alleged conduct affected the complainant in a substantive way. The Tribunal concluded that respondents' acts did not substantively affect Mr. Nesdoly's employment and, on this basis, dismissed the s. 13 complaint against both the union and its president. The Tribunal added that s. 13(1)(b) "cannot be interpreted in a way that would open the door to a complaint thereunder against an individual … on the same set of facts and for the same alleged act which cannot support a s. 14 complaint against that individual." The Tribunal said that would be contrary to the intention of the Legislature as set out in ***Ratsoy v. British Columbia Teachers' Federation and others***, 2005 BCHRT 53. (paras. 23-29)

[642] I disagree with the Tribunal's *obiter* statement in *Nesdoly*.

[643] First, I note that *Ratsoy* stands merely for the proposition that individual members of a union are not subject to s. 14. Second, *Nesdoly* would carve out an exception from s. 13 in relation to conduct that could also violate s. 14, based solely on the legislative intention respecting potential respondents under s. 14. In my view, the language of s. 14 is not sufficiently clear to, in effect, read down the application of another provision of the *Code* which prohibits "persons" from discriminating.

[644] There is no dispute that a staff member of a s. 14 organization is subject to the *Code*'s provisions generally. In the union context, for example, a union staff member is a "person" within the meaning of s. 13 of the *Code*. In the context of this complaint, there

is no dispute that BCVMA staff are "persons" within the meaning of s. 8 of the *Code*, as it applies to services that the association provides to the general public.

[645] Second, with respect to the policy reasons cited by the Respondents for not allowing discrimination complaints against individuals in relation to an organization's activities *vis-à-vis* members and applicants, I note that human rights legislation in other Canadian jurisdictions, such as that in *Gould*, does not contain such a limitation.

[646] Third, given that s. 8 applies to an organization's staff in relation to services customarily available to the public, if ss. 8 and 14 do not set out mutually exclusive areas in which discrimination is prohibited, it would require clear language to preclude the application of s. 8 to staff only in relation to services *vis-à-vis* members or applicants for membership.

[647] I do not interpret the lack of reference in s. 14 to employees or other officials of an occupational association to mean that individual members of an occupational association are shielded from claims of discrimination under other sections of the *Code*. I do not find that s. 14 limits the operation of s. 8, which serves to capture individuals who discriminate in the provision of a service customarily available to the public, including services customarily available to the public provided by the institutions listed in s. 14.

[648] I agree with the Complainants that in s. 14, the Legislature does not provide an exemption respecting individuals, but is silent on individual culpability; if it had wanted to foreclose the application of s. 8 to individuals working for such organizations described in s. 14, it could have been express about its intent. Further, the *Code* is remedial in its purpose; restricting its application, on the facts of this Complaint, would serve to undermine this purpose.

[649] The Respondents argue that given all the allegations against Ms. Osborne relate to the services provided to the Complainants as members, or applicants for membership, these allegations all fall within the scope of the activities of the BCVMA captured under s. 14 of the *Code*. It may be that these activities are captured by s. 14, but that does not foreclose these same activities from being captured by s. 8. As Mr. Justice La Forest stated in *Gould*, because the activities are covered in one area does not mean that they are excluded from another area. The various sections of s. 8 of the Yukon *Human Rights Act*

were never meant to be "logic-tight compartments". The same is true in this case. Sections 8 and 14 can co-exist and regulate similar activities. This would not undermine the application of s. 14. I am not persuaded that *Gould,* or the language of s. 14, limits the application of the *Code*, as suggested by the Respondents.

3. Does Section 8 Apply in this Case?

[650] As noted above, the Complainants rely on the principles set out in *Berg* for determining whether the services offered by the BCVMA to members and applicants for membership are services customarily available to the public within the meaning of s. 8. The Respondents say that in *Gould*, La Forest J. said the focus of the inquiry is on the nature of the service itself and whether it gives rise to a public relationship between the service provide and user. They argue that the requisite public relationship is different from the "more intimate relationship created between an association and its members".

[651] The Respondents say that *Berg* was applied by the B.C. Court of Appeal in *Marine Drive Golf Club v. Buntain*, 2007 BCCA 17 ("*Buntain*"), leave to appeal to the Supreme Court of Canada denied [2007] SCCA No. 112, which held that s. 8 did not apply to the circumstances of that complaint. The Court of Appeal concluded:

> The Golf Club and its members have come together as a result of a private selection process based on attributes personal to the members. Thus, the nature of the service-provider and the service-user indicate a private, not a public, relationship. The Golf Club is closer to the "purely social" rather than "purely economic" end of the organizational spectrum. It is entitled to discriminate at the initial stage of admission to its organization. Since the *Code* does not apply at the initial stage of admission to membership, it does not apply within the private organization. (para. 49)

[652] The Respondents acknowledge that the BCVMA is closer to the university in *Berg* than the golf club in *Buntain*, but say that the services in issue in this case are not offered to the public. Rather, they say, the services create a relationship that is not public but "a relatively select and discrete relationship between the BCVMA and members of the veterinarian community in the province."

[653] The Respondents refer also to *H.M.T.Q. v. Crockford* 2005 BCSC 663 ("*Crockford*"), appeal allowed on other grounds 2006 BCCA 360, for the proposition that

the fact that a service provider may offer services to the public or serve the public interest does not mean all its services are customarily available to the public.

[654] There is no serious dispute between the parties respecting the applicable test under s. 8. Instead, it is the application of the test that is at issue and to which I turn. I address first, the nature of the BCVMA, the services at issue, and whether the services at issue create a public relationship between the BCVMA and its members.

Nature of the Institution

[655] As noted by Mr. Justice La Forest in *Gould*, in considering the nature of the institution, the relevant factors include the size, selectivity, purpose, involvement of non-members in the activities, the commercial aspect of the organization and finally, how intimate or personal the relationship is among the members should be considered. Generally, the more personal the relationship is among the members of an organization, the more likely the organization will not be found to have a "public relationship" with those individuals who access its services.

[656] The BCVMA is a creature of statute, which does not define it as a private institution. The purpose of the BCVMA is not social or private. The BCVMA regulates the practice of veterinarian medicine within British Columbia. As noted elsewhere in this decision, the primary purpose of the BCVMA is to protect the public interest; it is not simply to protect the private interests of its members. The BCVMA is not an "intimate association" as contemplated in *Gould*. (para. 86)

[657] Clearly the BCVMA has a commercial purpose; unless a veterinarian is registered as a member with it, he or she cannot practice veterinary medicine in British Columbia. Although the registration of a veterinarian in British Columbia must be approved by Council, this is not a personal or private matter. There is a formal and public process that must be followed by an applicant to the BCVMA, which is mandated through its constituting legislation and bylaws. The Registrar is involved in gathering information to facilitate this application process. Its membership is open to all those who meet the qualifications to practice veterinary medicine in British Columbia. The BCVMA provides oversight of its members in the public interest. If a disciplinary complaint is filed against

a member, he or she may face discipline by the Council up to and including erasure. If a member is erased, he or she cannot practice as a veterinarian in British Columbia. Although this decision is made through the regulatory process, it has a direct commercial consequence for the member. There is nothing private about this action.

[658] As noted elsewhere in this decision, the Registrar, who during the relevant period, was not a veterinarian, was involved in many of the services provided by the BCVMA pursuant to the *Act* and the Bylaws. The Registrar oversees the disciplinary complaint process, including making representations to Council regarding the findings of the Inquiry Committee, sanctions and remedial actions. The Registrar is involved in collecting information regarding applications for registration and may make recommendations with respect to such applications. The Registrar oversees the Council election process, provides administrative support to the Practice Accreditation Committee that conducts the inspections and is involved in many other services offered by the BCVMA.

[659] The BCVMA hires lawyers to "prosecute" its disciplinary complaint before Inquiry Committees and before Council. The BCVMA's administrative staff are not veterinarians. In this sense, it cannot be seen to be a "private" organization in the sense described in *Gould* or *Buntain*.

[660] I conclude that the BCVMA is a public institution.

The services provided by the BCVMA

[661] In their submission, the Complainants state:

> The regulatory services of the BCVMA included: creation of By-laws, the Code of Ethics, and the Facility Standards; provision of training related to the by-laws and Code of Ethics; licensing and registration of veterinarians; inspection and certification of veterinary facilities; regulation of professional competence and conduct through disciplinary complaints and advice to veterinarians; and, prosecution of unlicensed veterinary practice.

[662] The Respondents suggest that the services at issue in this Complaint are those services that it provides to its members and to those applying for membership. They say that s. 8 would apply to those services that it provides to the "general public", which are

not services to its members involving membership in the organization and identified above.

[663] The starting place for determining what services the BCVMA provides is the *Act*. As noted elsewhere in this decision, s. 10 of the *Act* provides Council with the authority to pass Bylaws to carry out the objects of the BCVMA. This power includes setting criteria for registration as a member, setting categories for veterinarians so registered, setting rules for the conduct of members, including establishing a Code of Ethics and disciplining members, including the power to erase a member.

[664] A veterinarian cannot practice his or her profession in British Columbia without being registered with the BCVMA; in this respect membership is not voluntary. Members are required to pay annual fees in order to maintain their practicing status and are subject to levies imposed by the BCVMA to meet certain special costs. Members are subject to facility inspections. If it is found that a facility has failed to meet the Practice Standards set by the BCVMA, the BCVMA may revoke a facility's accreditation, thus preventing the facility from operating.

[665] The BCVMA also regulates unlicensed practice; those individuals so regulated are not members of the BCVMA. The BCVMA provides general medical and practice information through its publications and website to both veterinarians and the public. The BCVMA answers enquiries from both the public and the profession.

[666] Any person may file a disciplinary complaint with the BCVMA. Once such a complaint is filed, the BCVMA's regulatory processes are triggered.

[667] The BCVMA Bylaws set out in more detail what services are provided by the BCVMA and how those services are to be provided.

[668] As can be seen, there are a multitude of services provided by the BCVMA, which exceed what occurs during a veterinarian's application for registration and or/the disciplinary process. In *Gould* it was the denial of membership in the Order that was at issue. The services at issue before me are much broader than membership. In this case, there are allegations of discrimination that cover a range of the services provided by the BCVMA related to its general oversight of the veterinarian profession. The Complainants

allege discrimination in the registration of new applicants, in the disciplinary process, both when a Complainant was the person filing the disciplinary complaint and when he was the respondent veterinarian, how they were treated in the publication of information on the BCVMA website, that they were targeted in the facility inspection process, and that they were differently treated regarding advertising, to name but a few allegations.

[669] I agree with the Respondents that s. 8(c) of the Yukon *Human Rights Act* covered more services that just membership; it also covered representation of a member by the trade union or association. Although these two areas are captured under s. 14 of the *Code*, other services are provided by the BCVMA are not.

[670] In summary, I find that the services provided by the BCVMA include:

1. consideration of and registration of new members;
2. accepting disciplinary complaints and processing those complaints through to resolution;
3. regulation of unlicensed veterinary practice;
4. regulation of advertising;
5. facility inspections and accreditation; and
6. the provision of general medical and practice information through its publications and website.

Do the services create a public relationship between the BCVMA and its Members?

[671] Section 3 of the *Act* sets out the objects of the BCVMA:

> The general objects of the association are to promote and increase the knowledge, skill and proficiency of its members in all things relating to veterinary medicine and to the veterinary profession.

[672] In their submission, the Complainants say:

> The regulatory functions of the BCVMA existe first and foremost to protect the public. In *Gichuru*, the Tribunal noted that The Law Society took the position that its purpose and the purpose of all law societies, as the regulator of a self-governing profession, was the protection of clients and more largely the public...(para. 14)

[673] As the Complainants correctly point out, the evidence before me is that the BCVMA's two main objects are to regulate the profession in the public interest and to promote the interests of the profession. The regulation of the profession in the public interest was seen as the more important of these two functions.

[674] In the new statute governing the practice of veterinary medicine in British Columbia that came into force in September 2010, the objects of the College of Veterinary Medicine, previously the BCVMA, are to protect the public interest and to exercise its powers and discharge its responsibilities in the public interest, confirming the views of the Respondents' witnesses that the regulation of the profession in the public interest is the primary goal of the BCVMA. (*Veterinarians Act*, 2010, s. 3)

[675] The Complainants also argue that:

> These regulatory services benefited animal owners by ensuring that they received quality veterinary care. These services also benefited the public at large through the contribution of these services to public health, to the prevention of infectious diseases, to the response to infectious diseases, to the security of food production, and to proper control of prescription medications and bio-hazardous materials. Veterinarians benefited from these services as members of the public at large, since veterinarians do not lose their status as members of the public at large when they become veterinarians.
>
> Finally, veterinarians benefited from these regulatory services as veterinarians. The registration, inspection, and disciplinary control of other veterinarians, as well as the prosecution of those performing unlicensed veterinary services, were important to preserving the monopoly of veterinarians to provide veterinary services, and helped to protect the public image of veterinarians as professional and accountable. Both were of great benefit to veterinarians as practitioners. Registration by the BCVMA of a given veterinarian was also of benefit to that person, permitting that person to earn their living practicing veterinary medicine.
>
> It is notable that in relation to regulation of the veterinary profession, the same action benefitted various groups and individuals in different ways. For example, the regulatory process involved in the decision to licence a particular veterinarian benefitted that veterinarian, if he or she became licensed, as well as benefiting the rest of the profession and the public at large. The service itself is a single indivisible process or event but it had a range of benefits for different sets of people all of whom were the public for that service.

[676] Further, in discussing who is the "public" to whom the BCVMA provides its services, the Complainants submit:

> The "public" in relation to the regulatory functions of the BCVMA was broad. That "public" was divided into subsets in terms of the actual benefits received. The "public" for the regulatory functions of the BCVMA included veterinarians.
>
> The regulatory services of the BCVMA were services customarily available to the general public and to veterinarians, who themselves were part of the general public. To the extent that services were provided to veterinarians as veterinarians, the subset of veterinarians was simply another "public" for the regulatory services of the BCVMA.
>
> ... the regulatory functions of the BCVMA are covered by s. 8 of the BC Human Rights *Code*, even if there may be different benefits for various sub-sets of the public flowing from those regulatory functions, including the subset of veterinarians. Even if it were not the case that the regulatory functions of the BCVMA were services to the general and animal owning public, under the principles and analysis in *Berg*, these regulatory services would still have as their "public" those legally and properly qualified to be veterinarians in British Columbia.

[677] The Respondents argue that:

> ...the BCVMA and its staff do not provide services to the public and for the benefit of the public, which may be caught within s. 8 of the *Code*. As noted above, if a member of the public sought to bring a complaint against the BCVMA alleging discrimination in its handling of a complaint against one of its members, s. 8 would apply to the services provided to the pet owner in relation to the processing of the pet owners' complaint – i.e. the service the BCVMA provides in receiving and investigating complaints from pet owners and other members of the public against its members are part of its mandate to protect the public.
>
> However, activities which the BCVMA undertakes in relation to its own members and potential members as part of its regulatory mandate, such as registration, establishing of practice standards, the promulgation of Bylaws and Codes of Ethics, and disciplinary processes, are not provided to the public nor customarily available to the public. As such, they fall outside of s. 8 of the *Code*.

[678] The Respondents say that because the BCVMA acts in the public interest, this does not mean that all of its services are customarily available to the public. In this respect they rely on the Courts' reasoning *Crockford*. I agree that simply because an institution

may act in the public interest, does not necessarily mean that s. 8 is engaged. The facts of each case must be considered to determine whether the service at issue creates, or is an incident, of a public relationship between the service provider and service user. It is my view that there is a range of services provided by the BCVMA, some that are provided to its members, some that are provided to the public and some are provided to both.

[679] The Respondents rely on both *Gould* and *Berg* for support for their position that the relationship between the BCVMA and its members, and applicants for membership, is not "public" within the meaning of s. 8.

[680] The Respondents submit that in considering all the factors set out in *Gould*, the services provided by the BCVMA are not services customarily available to the public. The BCVMA's services are "selectively provided to individuals who have already qualified as members or (with respect to registration) who consider that they are or want to become members".

[681] The only issue in *Gould* was whether membership in a private and fraternal club was a service customarily available to the public. As noted, the BCVMA is neither a private club nor a fraternal organization. In my view, the BCVMA is a public institution that provides its services to the public broadly, and more narrowly, to its members through its regulatory oversight and membership processes.

[682] I do not agree with the Respondents' assertion that the BCVMA provides its services to a "relatively select and discrete" group of members within the veterinarian community. Rather, I find that the relationship between the BCVMA and its members is akin to the relationship between UBC and its students, as in *Berg*. The nature of the BCVMA and the service-user veterinarians indicates a very public relationship. (*Berg*, para. 65)

[683] Further, as in *Berg*, I find that the services at issue are incidents of this very public relationship, and that they are services that are customarily available to the public of veterinarians.

[684] As *Berg* points out, there can be various subsets of the public to which a service is made available. In this case, veterinarians are regulated by the BCVMA, but they can also

file disciplinary and/or advertising complaints, as any member of the public may do. The BCVMA investigates these complaints. There are many examples of this in the evidence before me: for example those complaints involving Drs. Johar and O. Veterinarians may fall into various "subsets" of the public that access the BCVMA's services.

[685] I am also supported in this view by the broadly public nature of most of the services at issue. For example, one of the allegations before me is that Ms. Osborne discriminated against the Complainants in processing disciplinary complaints against them differently from others, whether filed by other veterinarians or the general public. Clearly, Ms. Osborne was engaged in providing a service customarily available to the general public when doing so. At the same time, Ms. Osborne was dealing with the Complainants as respondents in these disciplinary complaints. Pet owners are part of one subset of the public in this respect and the Complainants are members of another subset of the public. This highlights the public nature of the services and that each subset has the right to be free from discrimination.

[686] This is not to say that all of the services at issue are of the same very public nature. For example, when the BCVMA intervenes in the transfer of medical records from one veterinarian to another, this does not engage the public at large. Nonetheless, such services are incidents of what I have found to be a public relationship between the BCVMA and its members.

[687] The Respondents said that the Complainants are complaining about the services offered to them and not those services available to the general public. In considering whether an institution provides its services to the public, the entirety of the services must be considered. To focus on only the Complainants does not, in my view, assist in determining the services provided by the BCVMA and the public its serves and the relationship between them. This necessarily narrows that focus and ultimately serves to shield those within the BCVMA, who may be offering services to its public, from the application of the *Code*.

[688] In this case, the examination of the services at issue reveals a public relationship is created between the service provider, the Respondents, and the service users, the Complainants.

4. Conclusion

[689] In conclusion, I find that the services at issue in this Complaint are customarily available to the public such that s. 8 of the *Code* is engaged in this complaint.

Section 14 of the Code

[690] There is no dispute that s. 14 of the *Code* applies to this Complaint and that it captures the actions of the BCVMA.

[691] Section 14 contains no defence similar to that contained in s. 8 of the *Code*. However, the Tribunal has "read-in" such a defence into s. 14. (see *Bitonti*, para. 192; *Gichuru*, paras. 435-436; *Fossum* at para. 290)

[692] The parties agree that such a defence is available to the Respondents and I see no reason to depart from the prevailing decisions on this issue.

Prima facie case of Discrimination

1. Discrimination Defined

[693] In *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, the Supreme Court of Canada provided the following description of discrimination:

> … I would say then that discrimination may be described as a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely escape the charge of discrimination, while those based on an individual's merits and capacities will rarely be so classed. (para. 37; see also *Ontario Human Rights Commission and O'Malley v. Simpson-Sears Limited*, [1985] 2 S.C.R. 526, p. 546-547; *R. v. Kapp*, [2008] 2 S.C.R. 483, paras. 18-24; *McGill University Health Care Centre (Montreal General Hospital) v. Syndicat des employés de l'Hôpital general de Montréal*, 2007 SCC 40 ("*McGill*"))

[694] In the *McGill*, the minority, in discussing the definition of discrimination, said:

> At the heart of these definitions is the understanding that a workplace practice, standard, or requirement cannot disadvantage an individual by attributing stereotypical or arbitrary characteristics. The goal of preventing discriminatory barriers is inclusion. It is achieved by preventing the exclusion of individuals from opportunities and amenities that are based not on their actual abilities, but on attributed ones. The essence of discrimination is in the arbitrariness of its negative impact, that is, the arbitrariness of the barriers imposed, whether intentionally or unwittingly.
>
> What flows from this is that there is a difference between discrimination and a distinction. Not every distinction is discriminatory. It is not enough to impugn an employer's conduct on the basis that what was done had a negative impact on an individual in a protected group. Such membership alone does not, without more, guarantee access to a human rights remedy. It is the link between that group membership and the arbitrariness of the disadvantaging criterion or conduct, either on its face or in its impact, that triggers the possibility of a remedy. And it is the claimant who bears this threshold burden. (paras. 48 and 49)

[695] It is clear that not every distinction is discriminatory. It is the impact of the action on the individual or group captured by the *Code* that must be examined and whether the personal characteristic of the individual, or group, is a factor in any adverse impact.

2. *Prima Facie* Case of Discrimination-Test

[696] As noted *O'Malley*, the Complainants must establish a *prima facie* case of discrimination, one which covers the allegations made and which, if believed, is sufficient to justify a finding in the complainants favour absent an answer from the Respondents. (p. 558; see also *Ontario (Director, Disability Support Program) v. Tranchemontagne*, 2010 ONCA 593 ("*Tranchemontagne*"), para. 119)

[697] The burden lies with the Complainants to establish both an individual and a systemic complaint of discrimination. The Complainants must establish, on a balance of probabilities:

1. that they are members of a group protected by the *Code*, or perceived to be a member of such a group;

2. that they have received differential treatment or were adversely treated; and

3. that the protected ground(s) of discrimination was a factor in the adverse or differential treatment. (*Gichuru*, para. 430; *Armstrong v. British Columbia (Ministry of Health)*, 2010 BCCA 56, leave to appeal refused, [2010] S.C.C.A. No. 128 ("*Armstrong*"); *Peel Law Assn. v. Pieters*, 2013 ONCA 369 ("*Peel Law Assn.*"), paras. 58-60; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Centre)*, 2015 SCC 39 ("*Bombardier*"), para. 56)

3. Proof of Discrimination

[698] The determination of whether a case of discrimination has been established must be done in a contextual and purposive manner. Further, the alleged discriminatory treatment must be of the sort that the *Code* is intended to protect against. In this respect, the purposes of the *Code*, set out in s. 3, must be considered when assessing if discrimination has occurred. (see *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624 ("*Eldridge*"), para. 53; *Hutchinson v. British Columbia (Ministry of Health)*, 2004 BCHRT 25, para. 84; *Gichuru*, para. 431; *Kelly v. University of British Columbia (No. 3)*, 2012 BCHRT 32 ("*Kelly (No. 3*"), petition dismissed 2015 BCSC 1731, para. 456 and 457; *Bombardier*, para. 31)

[699] It is not necessary to establish that the alleged discrimination was intentional. (s. 2 of the *Code*; *Radek v. Henderson Development (Canada and Securiguard Services (No. 3)*, 2005 BCHRT 302 ("*Radek*"), para. 474; *Kalyn v. Vancouver Island Health Authority (No. 3)*, 2008 BCHRT 377 ("*Kalyn*"), paras. 402-403; *Bombardier*, para. 41)

[700] It is clear that the ground of discrimination alleged need not be the only factor in the adverse treatment nor does it need to be the primary factor: *Lee v. British Columbia Hydro and Power Authority*, 2004 BCCA 457, para. 24. (see also *Kemess Mines Ltd. v. International Union of Operating Engineers, Local 115*, 2006 BCCA 58 ("*Kemess Mines Ltd.*") at para. 30; *Armstrong*; *Moore v. British Columbia (Education)*, 2012 SCC 61, para. 33)

[701] It is clear that not everyone within the protected group must experience discrimination for some of them to have done so. As the Supreme Court of Canada concluded in *Battlefords and District Co-operative Ltd. v. Gibbs*, [1996] 3 S.C.R. 566 it is not necessary that all those with a disability to be treated differently to find

discrimination. (see also *Brooks v. Canada Safeway Ltd.*, [1989] 1 S.C.R. 1219 ("*Brooks*"), p. 30-33; *Janzen v. Platy Enterprises Ltd.*, [1989] 1 S.C.R. 1252 ("*Janzen*") , para. 62; *Radek*, paras. 539-540) A similar conclusion has been reached by this Tribunal. (see *J. and J. obo R. v. B.C. (Min. of Children and Family Development) and Havens (No. 2)*, 2009 BCHRT 61, para. 275; *Bitonti*, para. 152)

[702] The Complainants represent a small number of Indo-Canadian veterinarians, working in low-cost clinics, who allege that the BCVMA has treated them differently and adversely contrary to the *Code*. There were Indo-Canadian veterinarians who testified that the Respondents did not discriminate against them. However, this does not lead to the conclusion that some Indo-Canadians veterinarians, who made such allegations, were not subjected to discriminatory treatment. Individuals may not allege discrimination for a variety of reasons; because they fail to do so, does not lead to the conclusion that others, sharing the same characteristics, did not face such treatment.

[703] In *Basi v. Canadian National Railway Company*, [1989] C.H.R.D. No. 2 ("*Basi*"), the Canadian Human Rights Tribunal agreed with B. Vizkelety in *Proving Discrimination in Canada* that an inference of discrimination may be drawn where the evidence, including circumstantial evidence, renders the inference more probable than other possible inferences or explanations. The standard of proof remains the same, namely the civil standard of the balance of probabilities. (see also *McKay*, paras. 115 and 117; *Guay v. Justice Institute of British Columbia*, 2006 BCHRT 88, para. 29; *Kennedy v. British Columbia (Ministry of Energy and Mines)(No. 4)*, 2000 BCHRT 60 ("*Kennedy (No. 4)*"), para. 59; *Johal v. Lake Cowichan (Village)*, [1984] B.C.C.H.R.D. No. 3, para. 17; *Kalyn*, paras. 405-407; *Bombardier*, paras. 3, 56 and 59)

[704] Further, the conduct alleged to be discriminatory must be considered in context, including any historical disadvantage experienced by the group. (*Mezghrani v. Canada Youth Orange Network Inc.*, 2006 BCHRT 60, para. 28; *Morady*, para. 79 and 85; *Torres v. Langtry Industries Ltd.*, 2009 BCHRT 3 (aff'd *Langtry Industries Ltd. v. British Columbia (Human Rights Tribunal)*, 2009 BCSC 1091) ("*Torres*"); *Gichuru*, para. 473)

[705] In *Kennedy (No. 4)*, the Tribunal looked at each of Mr. Kennedy's allegations which he suggested indicated discrimination. In finding that each of the impugned acts, in

isolation, was not sufficient to find a contravention of the *Code*, the Tribunal then looked at the whether the pattern of events was sufficient to establish discrimination. The Tribunal said it was necessary to look at all the circumstances to identify the "subtle scent of discrimination". The Tribunal also noted that in examining all the circumstances, it was important to understand the discriminatory barriers faced by visible minorities. (paras. 147 and 148; see also *Cousens v. The Canadian Nurses Association*, (1981) 2 C.H.R.R. D/365 (Ont. Bd. of Inq.) ("*Cousens*"), para. 3320; *Morady*, para. 97)

[706] In *Akiyama v. Judo B.C.*, 2002 BCHRT 27, the complainant alleged, on behalf of her children, that Judo B.C.'s requirement that her children bow, prior to the commencement of a judo competition, discriminated against her children based on their religion beliefs contrary to s. 8 of the *Code*. In dismissing the complaint, the Tribunal noted that subjective evidence will not be accorded the same deference as objective evidence in the context of determining whether the ground of religion is engaged in the complaint. (paras. 64-69)

[707] The Tribunal in *Kennedy (No. 4)* also noted that:

> Nevertheless, a complainant needs to establish more than merely an unhappy relationship to establish discrimination based on a pattern of conduct. There must be some evidence connecting the pattern to a ground on which the complaint was filed. There are a number of ways that a Complainant can make such a connection including: evidence of statements indicating an awareness of or concern about characteristics related to the Complainant's group; evidence of a hostile environment related to those characteristics; evidence that employees who are not members of the Complainant's group are treated better in similar circumstances; evidence of neutral practices that have an adverse effect on members of the Complainant's group; evidence that there is a pattern of adverse treatment of members of the Complainant's group; or a combination of such evidence that would create the "scent of discrimination". As discussed previously, this burden is not an onerous one. (para. 168)

[708] In *Radek*, the Tribunal provided a useful summary of what is necessary to establish a complaint of discrimination:

> a) The prohibited ground or grounds of discrimination need not be the sole or the major factor leading to the discriminatory conduct; it is sufficient if they are a factor;

b) There is no need to establish an intention or motivation to discriminate; the focus of the enquiry is on the effect of the respondent's actions on the complainant;

c) The prohibited ground or grounds need not be the cause of the respondent's discriminatory conduct; it is sufficient if they are a factor or operative element;

d) There need be no direct evidence of discrimination; discrimination will more often be proven by circumstantial evidence and inference; and

e) Racial stereotyping will usually be the result of subtle unconscious beliefs, biases and prejudices. (para. 482; see also *Sinclair v. London (City)*, 2008 HRTO 48, para. 53-54)

4. Proving Race Discrimination

[709] When considering whether the Complainants were adversely or treated differently by the Respondents based on race, it is important to consider how racism is exhibited in our society. Racism is not generally expressed overtly but is subtle; often a person is unaware that he or she has engaged in racist behaviour as racism in embedded in our society.

[710] The Ontario Human Rights Commission developed the Policy and Guidelines on Racism and Racial Discrimination ("*Guidelines on Racism*"), which was the culmination of research and a consultation process. Pursuant to s. 45.5 of the Ontario *Human Rights Code*, the Human Rights Tribunal of Ontario may consider this policy to guide it in its interpretation of the Ontario *Code*. As such, the *Guidelines on Racism* are seen as important and informative part of the human rights processes in Ontario.

[711] I have referred to the policies developed in Ontario as I view them as a useful interpretative guide for discussing race-based discrimination and whether the actions of the Respondents had an adverse or differential impact on the Complainants based on their race. These policies are also reflected in human rights cases, both provincially and federally, which I will also set out throughout this discussion.

[712] The Ontario Commission found that several common themes arose when discussing race and racism, including that:

- Race is a socially constructed way of judging, categorizing and creating differences among people. Despite the fact that there are no biological "races," the social construction of race is a powerful force with real consequences for individuals.

- Racism operates at several levels, including individual, systemic or institutional and societal.

…

- Racial discrimination can occur through stereotyping and overt prejudice or in more subconscious, subtle and subversive ways.

- … Policies, practices, decision-making processes and organizational culture can create or perpetuate a position of relative disadvantage for racialized persons.

- Organizations have a responsibility to take proactive steps to ensure that they are not engaging in, condoning or allowing racial discrimination or harassment to occur. Obligations in this regard range from collecting numerical data in appropriate circumstances, accounting for historical disadvantage, reviewing policies, practices and decision-making processes for adverse impact and having in place and enforcing anti-discrimination and anti-harassment policies and education programs, to name just a few. (*Guidelines on Racism* p. 5-6)

[713] Further:

> Definitions of racism all agree that it is an ideology that either explicitly or implicitly asserts that one racialized group is inherently superior to others. Racist ideology can be openly manifested in racial slurs, jokes or hate crimes. However, it can be more deeply rooted in attitudes, values and stereotypical beliefs. In some cases, these beliefs are unconsciously maintained by individuals and have become deeply embedded in systems and institutions that have evolved over time.
>
> …
>
> Racism often manifests in negative beliefs, assumptions and actions. However, it is not just perpetuated by individuals. It may be evident in organizational or institutional structures and programs as well as in individual thought or behaviour patterns. Racism oppresses and subordinates people because of racialized characteristics. It has a profound impact on social, economic, political and cultural life.
>
> …

> At the individual level, racism may be expressed in an overt manner but also through everyday behaviour that involves many small events in the interaction between people. This is often described as "everyday racism" and is often very subtle in nature. Despite being plain to the person experiencing it, everyday racism by itself may be so subtle as to be difficult to address through human rights complaints. However, at other times, where it falls within a social area covered by the *Code*, there may be circumstances where everyday racism, as part of a broader context, may be sufficient to be considered racial discrimination… Either way, the cumulative effect of these everyday experiences is profound.
>
> …
>
> It is important to emphasize that racism in its more entrenched forms is often unconsciously applied and its operation is often unrecognized by even those practising it. In addition, as noted earlier in the Policy, while Canada has made much progress, racism remains a reality. It should not be treated as aberrant behaviour or a set of deviant attitudes on the part of a deviant individual - a so-called "rotten apple" within the system. Failing to recognize the complex, subtle and systemic nature of racism impedes effective action against it. (*Guidelines on Racism,* p. 12-14)

[714] The Ontario Commission also noted that in most cases, race discrimination is subtle and:

> … can often only be detected upon examining all of the circumstances. Individual acts themselves may be ambiguous or explained away, but when viewed as part of the larger picture and with an appropriate understanding of how racial discrimination takes place, may lead to an inference that racial discrimination was a factor in the treatment an individual received.
>
> …
>
> It is not necessary for language or comments related to race to be present in the interactions between the parties to demonstrate that racial discrimination has occurred. However, where such comments are made, they can be further evidence that race has been a factor in an individual's treatment. Similarly, negative comments made about an individual advocating for human rights or equitable practices will tend to support an inference that race is a factor in an individual's or organization's interaction with that individual. (*Guidelines on Racism*, p. 21, 23)

[715] As the Tribunal has noted, discrimination on the basis of race is often subtle and direct evidence is rarely available; it must be inferred from the conduct at issue: *Walcott v. Christianson*, 2006 BCHRT 260 para. 95.

[716] In *Toronto (City) Police Service v. Phipps*, 2010 ONSC 3884, affirmed 2012 ONCA 155 ("*Toronto (City) Police Service*"), the Ontario Divisional Court discussed drawing inferences from the evidence in race discrimination cases and noted:

> In cases where the discrimination must be proven by circumstantial evidence, there are no bright lines. The Tribunal must determine what reasonable inferences can be drawn from proven facts. These are difficult, nuanced cases that are important to both the parties, to society and the neighbourhoods in which we live... (para. 77; see also *Mezghrani v. Canada Youth Orange Network Inc.*, 2006 BCHRT 60, para. 28))

[717] As noted in *Bageya*, evidence that is speculative and which is uncorroborated by other evidence will not be sufficient to establish a *prima facie* case of discrimination.

[718] The Respondents allege that the Complainants' allegations of discrimination are based on mere speculation. In this respect they referred to the Ontario Divisional Court's decision in *Peel Law Assn. v. Pieters*, 2012 ONSC 1048 (Div. Ct.). In *Peel Law Assn.*, the Ontario Divisional Court held that it was not sufficient for a complainant to point to the fact that he or she is a member of a racialized group and experienced an "unpleasant" interaction to establish a *prima facie* case of discrimination. An inference may be drawn from the evidence that the race of the individual was a factor in the conduct they were subjected to but this evidence must be more than speculation. There must be evidence from which an inference may be drawn in the circumstances. (paras. 44-47)

[719] The complainants in *Peel Law Assn.*, appealed the Ontario Divisional Court's decision; the Ontario Court of Appeal allowed the appeal and reinstated the decision of the Ontario Human Rights Tribunal: *Peel Law Assn. v. Pieters*, 2013 ONCA 396. The Ontario Court of Appeal noted that:

> In race cases, the outcome depends on the respondents' state of mind, which cannot be directly observed and must always be inferred from circumstantial evidence…
>
> Relatively "little affirmative evidence" is required before the inference of discrimination is permitted. And the standard of proof requires only that the inference be more probable then not… (paras. 72 and 73)

[720] Despite not having the intent to discriminate people often take actions based on a stereotypical view of the person. Stereotypes may take many forms and:

> One of the most obvious ways in which people experience racial discrimination is through stereotyping. Stereotyping can be described as a process by which people use social categories such as race, colour, ethnic origin, place of origin, religion, etc. in acquiring, processing and recalling information about others. Stereotyping typically involves attributing the same characteristics to all members of a group, regardless of their individual differences. It is often based on misconceptions, incomplete information and/or false generalizations. Practical experience and psychology both confirm that anyone can stereotype, even those who are well meaning and not overtly biased. While it may be somewhat natural for humans to engage in racial stereotyping it is nevertheless unacceptable.
>
> (*Guidelines on Racism*, p. 18; quoted with approval in *Bageya*, para. 130)

[721] As noted in *Radek*, the security guards were operating on the basis of "subtle stereotyping", which could be conscious or unconscious. The Tribunal concluded:

> … all three security guards were operating on the basis of subtle stereotyping. I need not determine if that stereotyping was conscious or unconscious; it is its effects which are of concern. Under the influence of that stereotyping, Ms. Radek's and Ms. Wolfe's race, ancestry, colour and disabilities rendered them suspicious. In my view, Ms. Radek has established, without need to resort to a shifting evidentiary burden, that her race, colour, ancestry and disability were factors in the adverse treatment she received that day. (para. 485)
>
> …
>
> The phrase "borderline suspicious" highlights the vague and subjective nature of the determination of whether a person is suspicious. That vagueness and room for interpretation makes the operation of unconscious stereotypes all the more significant, as in case of doubt they are likely to be referred to in order to determine if a person should be labelled as such. (para. 589)

[722] In *Toronto (City) Police Service*, the Divisional Court noted that racial stereotyping will "often stem from unconscious biases or belief" and is often the product of learned attitudes. (para. 78)

[723] In *Radek*, the Tribunal noted that the practice of using certain qualities to identify people may be a way of describing their undesirable qualities. (*Radek*, paras. 546-590)

[724] Similarly, the Ontario Commission found that there are a number of myths and misconceptions that come into play when race discrimination is alleged. These myths and

misconceptions "serve to silence persons who speak out against racism and racial discrimination, hamper efforts to combat racism and racial discrimination and even affect the ability of decision-makers to objectively deal with claims of racism and racial discrimination". I found that number of these myths and misconceptions came into play in this Complaint, including:

> - racism is exaggerated and that, except for exceptional cases or the actions of a "few bad apples" racism does not exist in Canada;
> - people in Canada are "colour blind" and do not even notice race;
> - mentioning the existence of racism or racial discrimination or taking proactive measures to address racism or racial discrimination constitutes reverse racism towards White people;
> - racialized people are less credible and their assertions must be more carefully scrutinized and investigated or must be corroborated;
> - racialized people play the "race card" to manipulate people or systems to get what they want;
> - racialized people are too sensitive, tend to overreact or have a "chip on their shoulder";
> - racialized people themselves, and not racism or racial discrimination, are at fault for their disadvantage or state of "otherness," commonly known as "blaming it on the victim";
> - immigration is bad for Canada as immigrants take jobs away, commit more crime, are a drain on the system or do not fit into our society; and
> - if a racialized person has been treated acceptably in the past, then discriminatory treatment cannot take place in the future.
>
> These responses create a climate that prevents any kind of effective response to racial inequality. (*Guidelines on Racism*, p. 17)

[725] In *Correia v. York Catholic District School Board*, 2011 HRTO 1733, Mr. Correia alleged that the School Board discriminated against him based on his race, colour, place of origin, ethnic origin and sex contrary to ss. 5(1) and 9 of the Ontario *Human Rights Code*, R.S.O. 1990, c. H. 19 when, after competing in two competitions, he was denied two Superintendent positions. Mr. Correia was born in India and immigrated to Canada was he was 21 years old and received a number of educational degrees while living in

Canada. The hiring panels were comprised of all Caucasian members. The Ontario Tribunal noted that:

> ... it is not this Tribunal's role or jurisdiction to interpret and apply a school board policy. This Tribunal's role and jurisdiction is to interpret and apply the *Code*. I certainly accept that a non-diverse interview panel may constitute one piece of circumstantial evidence in support of an allegation of racial discrimination. However, this piece of circumstantial evidence must be viewed in the context of the totally of the evidence in order to assess the credibility of the respondent's explanation. (para. 47)

[726] In discussing one of the panel member's view of Mr. Corriea as having a "top down" or authoritative leadership style, the Tribunal found that there was little evidence to support this view. In coming to this conclusion, the Ontario Tribunal noted that the Tribunal may take notice of well-known or common racial stereotypes. The Tribunal found that racial stereotypes operate subconsciously and become "part of the cultural fabric of society". The Tribunal referred to *Rakek*, and the allegation that a complainant was "playing the race card" and noted that it is "only individuals who are in a position to raise allegations of racial discrimination" are those who are themselves "members of racialized groups." Labelling a complainant's allegation as that person "playing the race card" "not only de-legitimizes the experience of the individual but suggests that the individual is being manipulative and untruthful". (paras. 61-70)

[727] In *McKay*, Mr. McKay, an Aboriginal man alleged that he was subjected to "racially biased policing" contrary to ss. 1 and 9 of the Ontario *Human Rights Code*, R.S.O. 1990, c. H. 19. Mr. McKay alleged discrimination on the grounds of race, colour, ancestry and ethnic origin. In finding that Mr. McKay had established a *prima facie* case of discrimination, the Ontario Human Rights Tribunal concluded that the police investigation of Mr. McKay proceeded based on a number of racial assumptions, including that the police officer was predisposed to assuming that Mr. McKay lacked credibility and was engaged in criminal behaviour, that Mr. McKay's explanation for why he was in the laneway, where he was apprehended, was a "good cover story" and the police officer's investigation was not impartial. The Tribunal noted that when an "irrelevant factor, such as race" contributes "to arousing or confirming suspicions,

decisions and actions arising out of such a hunch are susceptible to concerns of discrimination…". (paras. 133-148; 160-161)

[728] The Tribunal noted in *McKay*, that mainstream society operates under a common misconception that racialized people are less credible and the explanation they give for their actions must be more closely scrutinized and corroborated. (para. 156)

[729] In *McKay*, the Ontario Tribunal set out three important considerations that should inform the *prima facie* analysis the context of an allegation of race discrimination:

> … First, as numerous authorities have emphasized, the nature of this type of allegation requires the Tribunal to be attuned to the nuances of racial discrimination. Second, because racial profiling may be a product of systemic or unconscious influences, individual respondents may be "subjectively unaware" of having engaged in racial stereotyping…
>
> Lastly, because of these two points, namely the subtle and subconscious undercurrents of racial bias, racial profiling will seldom be proven by direct evidence and often must be established by inference drawn from circumstantial evidence… Numerous human rights cases have adopted and applied the preceding principles…(paras. 124-125)

[730] The Complainants suggest that human rights adjudicators have found targeting and/or profiling could be strong indicators of race-based discrimination.

[731] In *Torres*, the Tribunal discussed the issue of targeting in the context of a race-based complaint. In *Torres*, the complainants alleged that they had been the target of more onerous oversight by an employee of Langtry because of their race and family status. In concluding that this was the case, the Tribunal said:

> I find that the complainants were adversely affected in the workplace. First, they were the subject of Ms. Dakers' attention and were singled out, more than the other employees, for criticism by her. Their breaks were monitored and there were discussions about them between Ms. Dakers and others. Mr. Corscadden made negative comments about them, including some that were race-based. Although both Mr. Torres and Mr. Flores tried to address the situation, nothing was done. As a result, the adverse working conditions continued…
>
> …
>
> I find that Ms. Dakers targeted the Torres family and was critical of how they took their breaks. She did this even though she was not their direct

> supervisor and no one who was their direct supervisor raised any issues about how they took their breaks, much less any issue that required disciplinary action…
>
> …
>
> Langtry argued that since the complainants were not directly confronted by Ms. Dakers about their breaks but merely overheard others speaking about them and their breaks, this could not constitute discrimination against them. In *Pillai v. Lafarge Canada Inc.*, 2003 BCHRT 26, the Tribunal considered a similar argument and said:
>
> > The crux of this case, however, is whether the comments, which were not made directly to Mr. Pillai and were not heard by him at the time they were made, can give rise to a finding of discrimination… In my view, the answer to the question depends on the effect the behaviour had on Mr. Pillai and his work environment, as the atmosphere of the work-place constitutes a term or condition of employment for purpose of s. 13…(para. 68)
>
> …
>
> This reasoning applies in this case. Although some of the comments and discussions about the Torres family's breaks were made to others, and might not have been heard directly by them, it had an adverse and discriminatory effect on them which is evidenced by the steps they took to address them. (paras. 158, 178 and 182-183)

[732] This Tribunal has found that the lack of due process may be evidence of adverse treatment. Further, the Tribunal has found that heightened scrutiny and discipline that is disproportionate to the conduct at issue might also illustrate differential adverse treatment: *Kalyn*, para. 428-470.

[733] The Complainants suggest that it is important to consider whether the events at issue in this Complaint would have unfolded differently had the issues involved non-Indo-Canadian low-costs veterinarians. In this respect they refer to *Johnson v. Halifax Regional Police Service* (2003), 48 CHRR D/307 ("*Johnson*"). In *Johnson*, two black men were stopped by police and the Board of Inquiry concluded that their treatment by the attending police officer was informed by his view that black men engage in criminal behaviour to a greater extent than do Caucasians, which was a racial stereotype. The Board also concluded that the attending police officer was not appropriately supervised during the course of the incident. The Board noted that it was important to consider how

events would normally unfold in a given situation; if there are differences in the normal practice, this might provide evidence of differential treatment. In this case, the Board noted that, had the incident involved non-black individuals, the events might have unfolded differently. (paras. 51 and 57)

5. Direct and/or Intentional Discrimination

[734] Throughout their submissions, the Respondents argue that the Complainants had argued their case in terms of direct discrimination; the Complainants disagree and note that their complaint is one of adverse effect discrimination. As the Tribunal noted, in *C.S.W.U. Local 1611 v. SELI Canada and others (No. 8)*, 2008 BCHRT 436 ("*C.S.W.U. Local 1611 (No. 8)*"), the "distinction between direct and adverse effect discrimination is no longer one which need be made... The focus is on the effects of the respondent's actions, not the reasons they engaged in them. This principle is given statutory effect in s. 2 of the *Code*..." (para. 213-223; see also *Eldridge*, para. 62)

[735] As the Court recently confirmed in *Vancouver Area Network of Drug Users v. British Columbia Human Rights Tribunal*, 2015 BCSC 534 ("*VANDU*"), the *Code* does not require an intention to discriminate in order to establish a contravention of the *Code*; the focus is on the impact of the policy. (paras. 120-123)

[736] The Respondents argue that the Complainants allege intentional discriminatory treatment and, during their evidence, pointed to individuals within the BCVMA who allegedly engaged in such intentional discrimination and "targeted" the Complainants. As such, the Respondents argue that "the Complainants must establish that the discrimination was intentional and motivated by not only bad faith, but malice". I addressed this issue when I considered the application of the *DAPA* to this complaint and my analysis is set out above.

[737] Although the use of the word "targeting", in some cases, may suggest that an intention to discriminate has been imported into the *prima facie* analysis, I am of the view that this language has been used simply to illustrate that certain individuals or groups may be scrutinized and/or pursued more than others based on a protected ground of discrimination.

6. Systemic Discrimination

[738] The Complainants argued that the BCVMA's policies and processes served to discriminated against Indo-Canadian veterinarians in that the English Language Standard applied to only foreign-trained veterinarians, they were subject to unscheduled inspections more frequently than others, matters published on the website involved mainly Indo-Canadian veterinarians, and those disciplinary complaints referred to Inquiry, over a period of years, involved only Indo-Canadian veterinarians. The Complainants argued that this evidence illustrated that systemic discrimination was at play.

[739] In *CNR v. Canada (Human Rights Commission)*, [1987] 1 S.C.R. 1114 ("*Action Travail des Femmes"*), the Supreme Court of Canada considered the issue of systemic discrimination and quoting with approval that definition set out in the Abella Report:

> Discrimination… means practices or attitudes that have, whether by design or impact, the effect of limiting an individual's or a group's right to the opportunities generally available because of attributed rather than actual characteristics….
>
> It is not a question of whether this discrimination is motivated by an intentional desire to obstruct someone's potential, or whether it is the accidental by-product of innocently motivated practices or systems. If the barrier is affecting certain groups in a disproportionately negative way, it is a signal that the practices that lead to this adverse impact may be discriminatory.
>
> This is why it is important to look at the results of a system…(para. 34; see also *Brooks v. Canada Safeway Ltd.*, [1989] 1 S.C.R. 1219 para. 22; *Kennedy v. British Columbia (Ministry of Energy and Mines)*, 2000 BCHRT 60, para. 153; *Radek*, para. 501)

[740] In the *Guidelines on Racism*, the Commission defined systemic and/or institutional discrimination as consisting of:

> ... patterns of behaviour, policies or practices that are part of the social or administrative structures of an organization, and which create or perpetuate a position of relative disadvantage for racialized persons. These appear neutral on the surface but, nevertheless, have an exclusionary impact on racialized persons. However, systemic discrimination can overlap with other types of discrimination that are not neutral. For

example, a discriminatory policy can be compounded by the discriminatory attitudes of the person who is administering it.

…

One of the challenges in addressing systemic discrimination is that there may be little or no evidence of individual discrimination. In other words, it is a system, which may on its face appear completely neutral, that is conveying certain privileges for some groups and having an adverse impact on others. There may be nothing to suggest that the individual was singled out for adverse treatment. In fact, it may seem as though the individual was treated in a fair manner and failed due to his or her own shortcomings.

…

There may be some instances where a policy, practice or decision-making process is neutral on its face but leads to systemic discrimination against racialized persons or groups. The organization or institution may nevertheless seek to justify or maintain the policy, practice or decision-making process by demonstrating that it is reasonable and bona fide in the circumstances.

In the context of claims of racial discrimination, it is the OHRC's position that it will be rare that a policy, practice or decision-making process will be found to be bona fide. To date, this defence has been arisen primarily in three situations: (1) income requirements in housing accommodation, (2) language requirements (see section "3.6. Language- Related Discrimination"), and (3) access to professions and trades.

…

The issue of access to professions and trades is of significant concern to foreign- educated and trained persons who seek to practice their profession or trade after their arrival in Ontario. While it is an issue that is based primarily on the ground of "place of origin" it also has intersectional implications for racialized persons. The intersection of "place of origin" with race, colour or ethnic origin appears to compound the barriers to employment integration and intensify economic and social vulnerability for foreign educated and trained persons. (*Guidelines on Racism*, p. 30, 35-36)

[741] Further, it is important to look at the context in which the events arose. In this respect it is instructive to look at what factors might constitute a poisoned environment:

> ... even a single statement or incident, if sufficiently serious or substantial, can have an impact on a racialized person by creating a poisoned

> environment. A consequence of creating a poisoned environment is that certain individuals are subjected to terms and conditions of employment, tenancy, services, etc. that are quite different from those experienced by individuals who are not subjected to those comments or conduct. Such instances give rise to a denial of equality under the *Code*.
>
> … While the notion of a poisoned environment has predominantly arisen in an employment context, it can apply equally where it results in unequal terms and conditions in occupancy of accommodation, the provision of services, contracting or membership in a vocational association.
>
> …
>
> A poisoned environment is based on the nature of the comments or conduct and the impact of these on an individual rather than on the number of times the behaviour occurs. As mentioned earlier, even a single egregious incident can be sufficient to create a poisoned environment.
>
> A poisoned environment can be created by the comments or actions of any person, regardless of his or her position of authority or status in a given environment. Therefore, a co-worker, a supervisor, a co-tenant, a member of the Board of Directors, a service provider, etc. can all engage in conduct that poisons the environment of a racialized person.
>
> Behaviour need not be directed at any one individual in order to create a poisoned environment. Moreover, a person can experience a poisoned environment even if he or she is not a member of the racialized group that is the target. (p. 27)

[742] Finally, organizations have an obligation to ensure that they are free from discrimination. In this respect they have an obligation:

> ...to be aware of whether their practices, policies and programs are having an adverse impact or resulting in systemic discrimination *vis-à-vis* racialized persons or groups. It is not acceptable from a human rights perspective to choose to remain unaware of the potential existence of discrimination or harassment, to ignore or to fail to act to address human rights matters, whether or not a complaint has been made.
>
> An organization violates the *Code* where it directly or indirectly, intentionally or unintentionally infringes the *Code* or does not directly infringe the *Code* but rather authorizes, condones, adopts or ratifies behaviour that is contrary to the *Code*.
>
> In addition, there is a human rights duty not to condone or further a discriminatory act that has already occurred. To do so would extend or continue the life of the initial discriminatory act. The obligation extends to

> those who become involved in a situation that involves a discriminatory act, who, while not the main actors, are drawn into the matter nevertheless, through contractual relations or otherwise.
>
> …
>
> Failing to fulfill the duty to ensure that an organization is not engaging in or condoning discrimination or harassment has serious repercussions. Human rights decisions are full of findings of liability and assessments of damages that are based on, or aggravated by, an organization's failure to appropriately address discrimination and harassment.
>
> …
>
> The following factors have been suggested as considerations for determining whether an organization met its responsibilities to respond to a human rights claim:
>
> - procedures in place at the time to deal with discrimination and harassment;
> - the promptness of the institutional response to the claim;
> - the seriousness with which the claim was treated;
> - resources made available to deal with the claim;
> - whether the organization provided a healthy work environment for the person who complained; and
> - the degree to which the action taken was communicated to the person who complained. (p. 37-39)

[743] The Tribunal had noted that employers and service providers have a duty to ensure that their institutions are free from discrimination and that when there is an allegation of discrimination, they take the necessary steps to investigate the alleged discriminatory conduct; failure to do so leaves the *Code*'s provisions meaningless: *Bageya*, para. 152.

[744] In *Pivot Legal Society v. Downtown Vancouver Business Improvement Association and another (No. 6)*, 2012 BCHRT 23 ("*Pivot Legal Society*"), the Tribunal discussed the definition of systemic discrimination as it had developed in the case law and what is required to establish systemic discrimination. As noted above, the Tribunal dismissed the complaint finding that Pivot Legal Society had failed to establish the link

between the adverse treatment and the prohibited grounds of discrimination. This decision was reversed on judicial review: *VANDU*, para. 145. With respect to the definition of systemic discrimination, the Tribunal said (a point not challenged on judicial review):

> While the definition noted above refers to an adverse impact because of "attributed rather than actual characteristics", the definition must be viewed in the context of what was at issue in *Action Travail des Femmes* where the allegations were that the employer engaged in discriminatory hiring and promotion practices. It is, however, important to note that human rights law, including jurisprudence from the Supreme Court of Canada, has identified that some forms of discrimination can relate not only to stereotypes about a protected ground, but also to the real features of the protected ground itself. This has been explained most powerfully as it relates to those with disabilities, and was discussed in *Eaton v. Brant County Board of Education*, [1997] 1 S.C.R. 241, where Justice Sopinka made a distinction between two forms of discrimination: unfair treatment based on presumed characteristics of an individual, and unfair treatment based on the failure to take into account real characteristics. A unanimous Court held that both these forms of discrimination can be relevant:
>
> > The principal object of certain of the prohibited grounds is the elimination of discrimination by the attribution of untrue characteristics based on stereotypical attitudes relating to immutable characteristics such as race or sex. In the case of disability, this is one of the objectives. The other equally important objective seeks to take into account the true characteristics of this group which act as headwinds to the enjoyment of society's benefits and to accommodate them. (p. 272)
>
> Thus, systemic discrimination can be established both where a "system" operates on the basis of presumed, rather than actual, characteristics; and also where the "system" fails to take into account the actual characteristics or circumstances of a particular protected group. (paras. 572 and 573)

[745] The Respondents suggest that the Complainants did not expressly allege systemic discrimination in their Complaint. I disagree. First, in the initial human rights complaint filed by the Complainants, on August 23, 2004 (Exhibit 1), they alleged that they had been systemically discriminated against in areas of registration, inquiries made to the BCVMA, the English Language Standard, and in the resolution of disciplinary complaints filed against them. The Complainants filed further complaints and amended their complaint. (see Exhibits 2-15). In the Amended Complaint, which consolidated

some of the earlier complaints, the Complainants set out allegations of individual and systemic discrimination. (see Exhibit 12) Second, this issue was discussed in *Gichuru,* where the Law Society made a similar submission in that Mr. Gichuru had failed to allege systemic discrimination. In dismissing this argument, the Tribunal said:

> … the Law Society argued that the systemic aspect of the complaint must fail, in part, because it has not been pleaded. I do not accept this argument. As noted by the Tribunal in *Kennedy v. British Columbia (Min. of Energy and Mines) (No. 2)*, 2000 BCHRT 58, para. 5, an allegation of systemic discrimination need not be expressly pled in order to be part of a complaint. Rather, in determining the scope of a complaint, the Tribunal must review the particulars and determine, whether properly construed, they encompass allegations of a systemic nature: *British Columbia (Min. of Education) v. Moore*, 2001 BCSC 336, para. 11. Further, in determining the scope of a complaint, the Tribunal may take into account not only the particulars, but also the information that has passed between the parties: *Price v. Freightliner Ltd.*, 2003 BCHRT 21. Although *Price* refers to information that has passed between the parties in the investigation process that existed under a previous version of the *Code*, I find that it is also applicable to information that has passed between the parties during the Tribunal's pre-hearing processes: *Dunlop v. Find and Kutzner (No. 2)*, 2008 BCHRT 350, para. 11.
>
> In this case, the systemic aspect of the complaint has been apparent throughout. In a decision on an application for judicial review of a Tribunal decision relating to disclosure, *Gichuru v. the Law Society of British* Columbia, 2007 BCSC 1767, para. 22, the B.C. Supreme Court described Mr. Gichuru's complaint as follows:
>
> > Mr. Gichuru's complaint against the Law Society alleges individual and systemic discrimination on the ground of mental disability and perceived mental disability. It is his contention that question 30/32 [the "Question"] on the LSBC application for enrolment in the articling program is inherently discriminatory and that the treatment he underwent as a consequence of answering that question affirmatively perpetuated the discrimination.
>
> In addition, there was information that passed between counsel (when Mr. Gichuru was represented) relating to the nature of the systemic claim, and pre-hearing discussions relating to the systemic aspect of the complaint.
>
> There is no basis on which it can be argued that the Law Society was unaware, or taken by surprise, by the systemic aspect of the complaint, and the Law Society did not specifically argue this. The Law Society presented full evidence on the development of the Question, and provided an expert report from Dr. O'Shaughnessy that was specifically directed to the

> systemic aspect of the complaint. On the basis of all of the information before me, it is clear that at all relevant times the issue of whether the Question is a form of systemic discrimination was squarely at issue between the parties, and before the Tribunal. The Law Society has had ample opportunity to lead evidence and make legal argument on that issue, and has fully availed itself of that opportunity. (paras. 416-419)

7. Proof of Systemic Discrimination

[746] The difference between establishing an individual complaint and a complaint of systemic discrimination lies in the type of proof that is required to establish systemic discrimination. However, the burden continues to lie with the Complainants to establish systemic discrimination on a balance of probabilities. (see *Bombardier*, para. 34) As the Court noted in *British Columbia v. Crockford*, 2006 BCCA 360:

> Establishing systemic discrimination depends on showing that practices, attitudes, policies or procedures impact disproportionately on certain statutorily protected groups. ... A claim that there has been discrimination against an individual requires that an action alleged to be discriminatory be proven to have occurred and to have constituted discrimination for the purposes of the *Code*. The types of evidence required for each kind of claim are not necessarily the same. Whereas a systemic claim will require proof of patterns, showing trends of discrimination against a group, an individual claim will require proof of an instance or instances of discriminatory conduct. (para. 49)

[747] In *Gichuru*, the Tribunal referred to *Crockford* and *Radek*, and noted that the nature of the evidence necessary to "establish systemic discrimination will vary with the nature and context of the particular complaint in issue. (para. 425; *Radek* para. 510)

[748] In *Coast Mountain Bus Company Ltd. v. National Automobile, Aerospace, Transportation and General Workers of Canada (CAW-Canada), Local 111*, 2010 BCCA 447, the Court was asked to consider whether the Attendance Management Program developed by Coast Mountain was discriminatory on a systemic basis. The Court upheld the Tribunal's decision concluding that the program did discriminate on a systemic basis. The Court referred to *Crockford* with approval and concluded that:

> … In order to establish *prima facie* systemic discrimination, it is necessary to show that a group of persons sharing a protected characteristic has received adverse treatment and that there is a causal connection or link between the protected characteristic and the adverse treatment… (para. 61)

[749] However, in *Peel Law Assn.* (paras. 58-60) and more recently in *Bombardier* (paras. 44-52), the Courts have been clear that there needs be a link between the ground of discrimination and the adverse or differential treatment; there does not need to be proof of a "causal connection" as this term had been applied in the civil law context.

[750] In *Radek*, the Tribunal discussed whether statistical evidence was necessary in order to establish systemic discrimination:

> … As noted by the Council in *Bitonti*, depending on the nature of the discrimination alleged, statistical evidence may or may not be necessary or even useful: at paras. 116-129. A discriminatory effect can also be proven in other ways. If, for example, the effect of the respondents' policies and practices was that Aboriginal people tended to be wrongly viewed as suspicious, and thus discriminated against, then that would be sufficient to establish a negative or discriminatory effect, regardless of the proportion of Aboriginal people so viewed in relation to the population as a whole. If that was the effect of the respondents' practices, it would not matter how many Aboriginal people were affected, or what proportion they made up of the whole population of visitors to the mall. In this regard, the present case is more like the "disproportionate impact" cases discussed in *Bitonti* at para. 117, than a "disproportionate effect" case, in which statistics would be more likely to be useful.
>
> … I do not agree with the respondents' submission that statistical evidence of disproportionate effect is essential to a claim of systemic discrimination, either generally or in the present case. Rather, to return to first principles, what is necessary is evidence of "practices or attitudes that have, whether by design or impact, the effect of limiting an individual's or a group's right to the opportunities generally available because of attributed rather than actual characteristics ….": *Action Travail des Femmes* at para. 34. Statistics may be a "signal" of such effects, but they are not necessary in every case. The signal should not be confused with the thing signified. The evidence as a whole should be considered to determine if practices or attitudes are present which have the effect of limiting persons' opportunities due to their membership in one or more protected groups. In this regard, evidence about the attitudes of the respondents and their employees, evidence of the written and unwritten policies of the respondents, and evidence of the respondents' actual practices, both generally and in particular circumstances, may all be relevant to, and probative of, the question of whether systemic discrimination is present. (paras. 512-513)

8. Shifting Burden

[751] In some cases, as in this Complaint, it may be helpful to the analysis to consider the shifting *evidentiary* burden.

[752] Once a complainant has established a *prima facie* case of discrimination, the evidentiary burden shifts to a respondent to lead credible evidence of a non-discriminatory reason(s) for their conduct or that their conduct was justified: *Agduma-Silongan v. University of British Columbia*, 2003 BCHRT 22 para. 196. However, the *legal* burden to establish a *prima facie* case of discrimination always rests with the Complainants.

[753] The Tribunal in *Radek* provided some guidance on this issue:

> Once a complainant has established the first two elements, that is that she is a member of a protected group or groups and that she received differential treatment with respect to a service customarily available to the public, the evidentiary burden may shift to the respondent to show that membership in the protected group or groups was not a factor in the differential treatment... That is because, having established the first two elements, the inference may reasonably arise that membership in the protected group or groups was a factor in the differential treatment, leaving it to the respondent to rebut that inference by showing that it had a rational and credible justification for its conduct..... At all points, however, the legal burden remains on the complainant to establish a *prima facie* case of discrimination. If she does that, the legal burden shifts to the respondent to establish a defence by showing that it had a *bona fide* and reasonable justification for its *prima facie* discriminatory conduct. (para. 459; see also *McKay*, para. 116; *Ontario (Director, Disability Support program) v. Tranchemontagne*, 2010 ONCA 593, para. 109; *Peel Law Assn.*, paras. 70-74))

[754] If the respondent provides evidence that the protected ground was not a factor in the adverse treatment, the evidentiary burden may shift back to the complainant to show that the respondent's explanation was a mere pretext. Again the *legal* burden remains on the complainant to establish the respondent's actions were in fact discriminatory. (*McKay*, para. 117; *Johnson*; *Basi*; *Peel Law Assn.* para. 74)

[755] The Tribunal in *C.S.W.U. Local 1611 (No. 8)*, discussed the difficulty in determining when either the evidentiary burden and/or the legal burden shifts from a complainant to a respondent in the discrimination analysis. The Tribunal concluded:

Neither party really addressed the question of why these various issues should be addressed either as part of the third element of the *prima facie* discrimination analysis or as part of a BFOR analysis. Clearly, all of the potentially relevant issues raised by the parties must be considered; the question is at what stage of the analysis. As the split decision of the Supreme Court of Canada in *McGill* illustrates, it can be difficult to decide whether particular issues and arguments should be addressed as part of the *prima facie* case analysis, or as part of a BFOR analysis. As the *McGill* decision also demonstrates, the decision where to address issues and arguments, while analytically challenging, may have no effect on the ultimate outcome in a given case.

In considering the question of where the various issues raised by the parties before us should be placed in the analysis, we have found the *O'Malley* decision very helpful. In that case, the Court decided where the burden of proof falls in complaints of discrimination. The Court stated:

> …
>
> To begin with, experience has shown that in the resolution of disputes by the employment of the judicial process, the assignment of a burden of proof to one party or the other is an essential element. The burden need not in all cases be heavy – it will vary with particular cases – and it may not apply one party on all issues in the case; it may shift from one to the other. But as a practical expedient it has been found necessary, in order to ensure a clear result in any judicial proceeding, to have available as a "tie-breaker" the concept of onus of proof… To whom should it be assigned? Following the well-settled rule in civil cases, the plaintiff bears the burden. He who alleges must prove. Therefore, under the *Etobicoke* rule as to burden of proof, the showing of a *prima facie* case of discrimination, I see no reason why it should not apply in cases of adverse effect discrimination. The complainant in proceedings before human rights tribunals must show a *prima facie* case of discrimination: A *prima facie* case in this context is one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent-employer… It seems evident to me that in this kind of case the onus should again rest on the employer, for it is the employer who will be in possession of the necessary information to show undue hardship, and the employee will rarely, if ever, be in a position to show its absence. The onus will not be a heavy one in all cases…. (paras. 27 – 28) (emphasis added)

The passage from the concurring judgment in *McGill*, cited above at paragraph 216, is to the same effect: The burden is on the complainant to establish a link between group membership and the arbitrariness of the criterion or conduct, either on its face or in its disadvantaging impact.

> Once the complainant establishes that link, the burden shifts to the respondent to justify its *prima facie* discriminatory conduct. (paras. 342-344)

[756] I must determine based, on all the evidence, whether the Complainants have met the legal burden of establishing a *prima facie* case of discrimination; within this context, I also consider the evidence of the Respondents, where necessary, to this determination. (*Peel Law Assn.*, para. 87)

9. Comparator Group

[757] Discrimination is a comparative concept and in some, but not all cases, a comparator group is identified to aid in the analysis. I consider the issue here.

[758] As noted in *C.S.W.U. Local 1611 (No. 8)*, the starting point for considering the appropriate comparator group is the group identified by the Complainants. I note that in the Complainants' submissions, and throughout their evidence, the Complainants often compared the treatment they received, especially as it related to the investigation and prosecution of disciplinary complaints, with other Caucasian veterinarians or with those veterinarians who may share the characteristics of race, colour, ancestry and place of origin but who do not operate low-cost clinics.

[759] The Respondents argue that the Complainants suggest that they were being treated differently from all "other veterinarians", regardless of their background, race or business practices.

[760] In *Gichuru*, the Tribunal discussed the principles for determining a comparator group as discussed in *Hodge v. Canada (Minister of Human Resources Development)*, [2004] 3 S.C.R. 357 ("*Hodge*"). The Tribunal, in referring to *R. v. Kapp*, [2008] 2 S.C.R. 483 ("*Kapp*"), noted that the "strict application of a comparator group analysis may lead to a formalistic approach, solely focussed on treating likes alike, which is contrary to the notion of substantive equality embodied in the Charter and in the *Code*." As the cases have discussed, it is not always necessary to find a comparator group or to conduct a comparator group analysis to find discrimination. (paras. 438 and 441; see also *Kapp*, *para. 22*; *Kemess Mines Ltd.*, para. 30; *C.S.W.U. Local 1611 (No. 8)*, paras. 250;

Communications, Energy and Paperworkers' Union of Canada, Local 789 v. Domtar Inc., 2009 BCCA 52 para. 37; *Tranchmontagne*)

[761] In *Matuszewski v. British Columbia (Ministry of Competition, Science and Enterprise, Liquor Distribution Branch)*, 2007 BCHRT 30 at paras. 161-167, the Tribunal discussed and applied the comparator analysis set out in *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 475 ("*Law*").

[762] In *Kelly v. B.C. (Ministry of Public Safety and Solicitor General) (No. 3)*, 2011 BCHRT 183, the Tribunal provided a comprehensive review of the issues raised when considering adopting a comparator group analysis or the analysis set out in *Law*. A summary of the factors that may be considered is as follows:

- A formal comparator analysis is not always required;
- Not all cases that involve a challenge to government legislation, or policy, will engage a comparator group analysis;
- The traditional analysis of a *prima facie* case continues to be the "primary and appropriate test";
- An analysis of discrimination is different under the *Charter* and the *Code*, although each may inform the other;
- If the analysis in *Law* were adopted, it would impose a higher burden on a complainant to prove a *prima facie* case of discrimination. Complainants should not be required to prove they are worse off than others and that a 'race to the bottom' type analysis must be avoided;
- The Tribunal should not depart from the traditional *prima facie* analysis simply because a case could also give rise to a *Charter* issue;
- The purposes of the *Code* inform the analysis under it, namely that all are equal in dignity and rights and to eliminate persistent pattern of inequality;
- The traditional analysis for establishing a *prima fac*ie case of discrimination is flexible enough to capture all relevant factors, including the purpose or effect of a rule, policy or law, the impact on the impugned conduct on the human dignity of the complainant and that a consideration of whether there is differential treatment necessarily engage a comparative analysis, which is doing in a contextual manner;

- It is unnecessary to find a group that exactly mirrors the claimant group except for the personal or characteristics alleged to ground the discrimination. This allows for flexibility to deal with intersecting grounds of discrimination and ensures that a claim is not dismissed because no corresponding group can be found. (paras. 318-363; see also *Law*; *Rape Relief Society v. Nixon*, 2005 BCCA 601; *Armstrong*; *Hodge*; *Lovelace v. Ontario*, 2000 SCC 37; *Withler v. Canada (Attorney General)*, 2011 SCC 12; *Lavender Co-Op Housing Association v. Ford*, 2011 BCCA 114)

[763] In my view, although a comparator group analysis might be appropriate in some cases, it has not changed or replaced the traditional test for establishing a *prima facie* case of discrimination. Further, a comparator group analysis might not be appropriate when considering issues of systemic discrimination, as noted in *Gichuru*, as it could lead to a formalistic analysis of discrimination where if 'likes' are treated like other 'likes' there is no discrimination as the standard or program appears to be neutral and is applied to all those so affected.

Application of the *Prima Facie* Test Law to this Complaint

1. Introduction

[764] The issues in this Complaint are complex and overlapping. I approach the *prima facie* discrimination analysis as follows. First, I consider which grounds of discrimination are engaged. I then consider the evidence of systemic discrimination and, in particular, whether the evidence established a pattern of discrimination against the Complainants on that basis of race. Any findings in this respect provide the context for the following analysis of the adverse impact experienced on an individual basis and whether race was a factor in any such adverse treatment.

2. Grounds of Discrimination Alleged

[765] The Complainants allege discrimination based on a variety of grounds, including race, ancestry, colour, place of origin and political belief. I will deal with each ground, and its applicability to this case.

Race, Place of Origin, and Colour

[766] The Complainants assert that that they are all "identifiable as members of a racialized group on the basis of their birth in India and the Punjab, their race, their colour, the languages they speak, their English, the location of their secondary and post-secondary education in India, their status as immigrants in Canada, their culture, and their operation of, or association with, Indo Canadian low-cost veterinary clinics."

[767] The Respondents did not dispute that the Complainants were captured under the protected grounds of race, colour and place of origin.

[768] In *Bitonti*, the Tribunal concluded, for the purposes of the *Code's* protection, a person's place of origin includes his or her country of birth. The Tribunal concluded that those who are part of the group need not be homogenous, in that they must all have their place of birth in one country; it is sufficient if they share a place of origin that was not Canada. (para. 148-152, 161-162)

[769] All of the Complainants were born in the Punjab and/or India and immigrated to Canada. They were educated in the Punjab and worked in various areas before coming to British Columbia. They all came to Canada with intent of practising veterinary medicine. All of the Complainants are persons of colour.

[770] I find that the Complainants are captured under the grounds of race, colour and place of origin as set out in the *Code*.

Language and Race/Place of Origin

[771] The Complainants did not allege that the BCVMA was foreclosed from implementing an English language proficiency standard, but that the English Language Standard it did impose was sufficiently high to ensure that Indo-Canadian veterinarians would not be licensed in British Columbia as they would not be able to meet the Standard. Most, if not all, the Indo-Canadian veterinarians who appeared before me had not, or could not, obtain the necessary Standard, mainly because of their accent, although many of them had been licensed before the Standard had been implemented.

[772] In *Fletcher Challenge Canada Ltd. v. British Columbia (Council of Human Rights)*, [1992] B.C.J. No. 2293 ("*Fletcher Challenge*"), Mr. Grewal had applied a number of times for a position as a labourer/clean-up person with Fletcher Challenge but was unsuccessful. Mr. Grewal's native language was Punjabi; he spoke English as a second language. Dr. Grewal filed a complaint alleging that Fletcher Challenge discriminated against him based on his race, colour, ancestry and/or place of origin contrary to s. 8 of the *Human Rights Act*, now s. 13 of the *Code*. The Council concluded that Fletcher Challenge had contravened the *Human Rights Act* when it refused to employ Mr. Grewal because of his English language deficiency. The Council concluded that English proficiency was not a BFOR in that it was necessary for the safety of other workers. The Council noted that another employee could work alongside Mr. Grewal and at as an interpreter, when necessary. Fletcher Challenge sought judicial review of the Council's decision.

[773] In setting aside the Council's decision, the BC Supreme Court stated:

> One could hardly disagree with the member designate that language is directly related to race, colour, ancestry and/or place of origin. But it cannot be said that it is necessarily related. Apart from its capacity to convey culture, language is also a communication skill that may be learned, and the ability to learn any language is not dependent on race, colour or ancestry.
>
> So too in a work environment, language may simply be a means of communicating to accomplish a task. In that context the important aspect of language is not the expression of culture, but simply a means to communicate. Language is in this context a skill, not unlike the ability to operate a machine. It is the process by which job-related information is passed back and forth from employee to employee and/or from employee to anyone he or she meets in the course of performing his or her duties.
>
> Language then, has a dual aspect. It is inextricably bound with culture in one sense, but in another it is a means of communication unrelated to culture…
>
> …
>
> I am of the view, then, that because of the dual characteristics of language it is not included as a prohibited ground *per se* in s. 8 of the *Human Rights Act*…

> This is not to say however, that discrimination on the basis of language may not in some cases, when scrutinized, be found to actually be based on race, colour, ancestry or place of origin… Discrimination can and usually does, take on more subtle forms. Refusal to employ someone on the stated basis of a language deficiency, when the ability to communicate in a particular language is not necessary to perform the job, would obviously be a veiled attempt to discriminate on the basis of race, colour, ancestry or place of origin…(paras. 32-34, 36-37; see also *Bitonti v. College of Physicians & Surgeons of British Columbia*, [1999] B.C.H.R.T. D. No. 60 at para. 94-95)

[774] The Respondents say *Fletcher Challenge* stands for the proposition that language is a means to communicate and is a skill like other skills required to perform a job. Language is separate from race and will only amount to improper discrimination if it can be established that a language requirement is a "veiled attempt" to discriminate on the basis of a prohibited ground. In this respect, the Respondents relied on *Bao v. St. James Service Society*, 2011 BCHRT 337, where Tribunal referred to *Fletcher Challenge* and said that the *Code* does not prohibit discrimination based on language unless it is a "veiled or pretextual" attempt to discriminate. The Respondents say that English proficiency is essential to the practice of veterinary medicine and that it falls within the BCVMA's statutory duty to establish standard to assess proficiency. The Complainants do not dispute that language proficiency is legitimately and rationally connect to the practise of veterinary medicine. The Respondents say that unless the English Language Standard can be shown to have been imposed in bad faith it is not *prima facie* discrimination

[775] In *Clau v. Uniglobe Pacific Travel Limited*, [1995] B.C.C.H.R.D. No. 1, Mr. Clau filed a complaint against Uniglobe alleging that it discriminated against him based on his ancestry and/or his place of origin contrary to s. 8 of the *Human Rights Act*, now s. 13 of the *Code* when it refused to employ him because he spoke English with a French accent. Generally the Tribunal preferred Uniglobe's evidence, including that it had hired employees who spoke with an accent, noted that Mr. Clau often exaggerated his evidence and contradicted himself and ultimately dismissed the complaint. The Council, relying on *Fletcher Challenge*, concluded that discrimination based on language may actually be discrimination based on race. The evidence illustrated that it was important for the

employee to be able to communicate orally in English and this was a legitimate requirement for the position and rationally connected to it. (paras. 27-43)

[776] In *Bitonti*, the issue before the Tribunal was that the College, the Ministry of Heath, UBC and various individual hospitals, discriminated against graduates of medical schools of certain countries outside North America based on their race, colour, ancestry or place of origin contrary to ss. 3 and 9 of the *Human Rights Act*. Graduates from Category I schools, in Canada, United States, Great Britain, Ireland, Australia, New Zealand or South Africa had to comply with different requirements than those students from Category II schools, being all those medical schools anywhere else in the world. The Tribunal dismissed the complaint against all respondents except for that part of the complaint against College.

[777] With respect to UBC, in order to gain admission to UBC residency program, one of the requirements was that a graduate from a Category II school had to obtain a TOELF score of 600 whereas graduates from Category I school did not have to meet this requirement. The complainant alleged that the TOEFL test was not an accurate measure of English proficiency and that setting of a test score of 600 was to act as a barrier to foreign-trained medical school graduates. In dismissing this part of Dr. Bitonti's complaint against UBC, the Tribunal noted that:

> This requirement does distinguish between Category I and Category II applicants. Dr. Courtemanche was the Associate Dean of Postgraduate Medical Education at UBC at the material times. He testified that the TOEFL requirement was implemented because the practice of medicine requires the doctor to be able to communicate with patients, the majority of whom are English-speaking. The reason for the distinction between Category I and Category II is that the Category I schools were schools where the teaching and training were in English and the Category II schools were schools where the training, for the most part, was not conducted in English.
>
> In *Fletcher Challenge*, *supra*, Ryan J. held that a language requirement does not constitute direct discrimination based on place of origin. There is no evidence before me that the TOEFL requirement is a pretext for discrimination on a prohibited ground. Nor is there any evidence that this requirement has any adverse effect based on place of origin. Four of the Complainants scored more than 600 when they wrote the test. Dr.

> Goyengko scored less than 600 but testified that he had not studied for the test.
>
> UBC's reliance on the Category I and II distinction to determine who must write the test is cause for some concern. Not all graduates of Category I medical schools train in English; three Canadian medical schools are French-speaking. Conversely, some Category II medical schools have English as the language of instruction. However, in the absence of evidence that the requirement has an adverse effect, I am unable to conclude that the TOEFL requirement constitutes discrimination contrary to the *Act*. (para. 368-370)

[778] In *Kennedy (No. 4)*, Mr. Kennedy alleged, among other things, that he was discriminated against based on concerns related to his ability to communicate in English: Mr. Kennedy was of Italian/Jordanian ancestry and English was not his first language. In finding that Mr. Kennedy was not adversely affected in his employment based on his accent or English language abilities or that his English language abilities created a hostile environment, the Tribunal noted that:

> The *Code* does not prohibit discrimination on the basis of language. However, discrimination based on language ability may adversely effect those who, due to ancestry, do not speak English as a first language. Comments related to a person's race, colour or ancestry could constitute discrimination if they create a hostile environment or are connected to other adverse employment consequences. In this case, there is no evidence that, even if Ms. Churchill said to Mr. Kennedy that he had a "funny accent", that created a hostile work environment or had other adverse consequences. (para. 71))

[779] In *Berezoutskaia v. British Columbia Human Rights Tribunal*, 2005 BCSC 1170, appeal dismissed 2006 BCCA 95; leave to appeal denied [2006] S.C.C.A. No. 171, the Court reviewed a decision of the Tribunal, which had dismissed Ms. Berezoutskaia's complaint. Ms. Berezoutskaia made a number of allegations against her employer, including that it had discriminated against her, when it demoted her, based on her "terrible Russian accent" and because she had communication problems, among other allegations. In this respect, Ms. Berezoutskaia alleged discrimination based on the grounds of race, colour, ancestry or place of origin contrary to s. 13 of the *Code*. The Court referred to with approval the comments of Court in *Fletcher Challenge*. The Court agreed with the Tribunal that the employer's concerns were based on "the perceived lack

of communication skills which were necessary to perform the work assigned" to her and that this finding was not patently unreasonable based on the information before the Tribunal. (para. 26)

[780] In *C.S.W.U. Local 1611 (No. 8)*, the Tribunal discussed the interrelationship between language and the grounds of race, colour, ancestry and place of origin. In distinguishing the BC Supreme Court's decision in *Fletcher Challenge*, the Tribunal concluded that:

> *Grewal* does not stand for the proposition that language is not encompassed within the four grounds in issue. Rather, it recognizes both the cultural significance of language, and that discrimination on the basis of language may be encompassed within discrimination on the grounds of race, colour, ancestry or place of origin. The Board in *Espinoza* also recognized that language can be addressed as "one of the many identifying features of 'ethnicity'": para. 220. Here, as in *Espinoza*, the point is not that members of the Complainant Group were discriminated against because of their shared language, Spanish, but rather that their shared language is one of the factors which helps to define them as a distinct group, and that that shared language is related to their race, ancestry and place of origin. (para. 243)

[781] In *F v. B.C (Ministry of Children and Family Development) and SW*, 2009 BCHRT 122, F alleged that the Ministry discriminated against him based on his race and ancestry contrary to s. 8 of the *Code*. In considering a no evidence motion filed by the Ministry, the Tribunal concluded the fact that F had been born and raised in Ecuador and that his first language was Spanish was sufficient to establish membership in a protected group because of his race and ancestry. (para. 81)

[782] I find that the Complainants are all from India and speak Punjabi, among other languages. All the Complainants speak English as a second language, although much of their secondary and post-secondary education was conducted in English. For the purposes of this decision, I find that there is an intimate relationship between the Complainants' language ability and their race and place of origin.

[783] A person's accent also is related to their race and/or place or origin. I have no difficulty finding that those grounds of discrimination are engaged in this case. The

question that arises is whether the English language proficiency requirement imposed by the BCVMA was discriminatory on these grounds.

Ancestry

[784] The Complainants allege that the Respondents discriminated against them based on their ancestry.

[785] The Tribunal in *Wild v. Langara College and others*, 2009 BCHRT 259 adopted the definition of ancestry set out in *Cousens* in that ancestry means "family descent and is determined through parental lineage". (para. 41)

[786] The evidence established that the Complainants came from the Punjab and/or India. There was little evidence about their families, family descent or their parental lineage.

[787] I find that the Complainants did not establish that they were captured under the ground of ancestry and that part of their Complaint is dismissed.

Political Belief

A. Introduction

[788] The *Code* does not define political belief.

[789] The Complainants argued that many of them:

> believed strongly in being able to organize hospitals to provide services, often in lower income areas, to those who traditionally might not be able to afford such services. This approach was part of the ethical, philosophical and broadly political make-up of the Complainants. These beliefs were political in the sense that the Complainants believed they should be allowed to set up their hospitals to provide services to these communities, and in that the Complainants commitment to the style of practice they had developed and the community they were serving underpinned the Complainants' continued battle with their statutory governing body to provide such services, a battle which could reasonable be called a political fight".

[790] The Complainants argue that issues related to the services that are offered to low-income individuals is a "hotly debated political issue, along with such issues as

Aboriginal self-government, access to justice and the services provided by the medical profession, both in the public and private spheres". They suggest that all such debates are political in nature and are not dissimilar to those issues that exist between the BCVMA and the Indo-Canadian low-cost veterinarians. The Complainants point to their allegations that the clinics owned by such veterinarians have been targeted for unscheduled inspections and have been treated differently in advertising complaints.

[791] The Complainants suggest that the grounds of race, colour, ancestry, place of origin and political belief are "clearly all intersecting grounds of discrimination in this case."

[792] Generally, the Respondents argue that adopting a "low-cost" business model is not a political belief captured by the *Code*. The Respondents say that not all beliefs are captured under the ground of "political belief", even if it is a deeply held belief.

[793] In their submissions, the Respondents referred to the Complainants as the "Bhullar Business Associates", clearly identifying them as a group. However, they do not suggest that, by doing so, the Complainants share a common political belief such that they would be captured by the *Code* under this ground of discrimination.

B. Case Law

[794] The Complainants relied on *Jamieson v. Victoria Native Friendship Centre*, [1994] B.C.C.H.R.D. No. 42 ("*Jamieson*") for support that the operation of low-cost clinics is a political belief. Mr. Jamieson, a member of the Mohawk Nation and a member of the Mohawk Warrior Society, filed a complaint alleging that the Centre discriminated against him when it denied him employment contrary to s. 8 of the *Human Rights Act*, S.B.C. 1984, c. 22, now s.13 of the *Code* based on his political belief. The British Columbia Council of Human Rights found Mr. Jamieson's complaint justified and, in doing so, discussed the meaning of political belief; the Centre had conceded that, for the purposes of this complaint, Mr. Jamieson's beliefs were political.

[795] In considering Mr. Jamieson's description of his beliefs, and setting out the dictionary definitions of "political" and "belief", the Council then concluded:

> Considering these interpretative principles and the ordinary meaning of political belief, I have no hesitation in concluding that the beliefs at issue fall within the meaning of "political belief". They concern the way First Nations communities are organized and governed and how those communities relate to each other and to other levels of government. Indeed Aboriginal government is among the most discussed political issues of our time. I do not say that all of Jamieson's beliefs about First Nations people are political – some strike me as essentially cultural; however, I am satisfied that many are political.
>
> ... I will not attempt to define "political belief" except to say that political beliefs are not limited to beliefs about or involvement in recognized or registered political parties...(paras. 13-14)

[796] The Respondents referred to a number of cases to support their position that the ground of "political belief" is not engaged in this Complaint.

[797] In *Potter v. College of Physicians and Surgeons of British Columbia*, [1998] B.C.H.R.T.D. No. 3, the Tribunal dismissed Dr. Potter's complaint that the College had discriminated against her based on her political belief contrary to ss. 8 and 9 of the *Human Rights Act* now ss. 13 and 14 of the *Code*. Dr. Potter said her political belief was that, given that the College was a public body, which was engaged in a "specialized way in civil administration", she had the lawful right to express her views regarding the College and had the right to participate in a public debate on issues that affected the public's well-being. The Tribunal confirmed that the scope of political belief is to be determined on the facts and circumstances of each case but concluded that meaning of political belief could not "be stretched to include this belief". (paras. 8-13)

[798] In *Williams v. North Vancouver (City)*, 2004 BCHRT 441 ("Williams"), Mr. Williams described his political belief as being that the City would be better served if it used internal staff to perform certain duties rather than contracting the work out to others. The Tribunal concluded that Mr. Williams' view, in this respect, did not have a political component to it. The Tribunal said that "[w]hether the City hires permanent employees or contracts out the work are business decisions the City is entitled to make. Employees, like other citizens, may have opinions about those decisions and may choose to express them. Those opinions, however, are not "political beliefs" within the meaning of the *Code*." (paras. 10, 53-56)

[799] In *Nesdoly*, Mr. Nesdoly filed a complaint against his Union and Mr. Pugsley, the President of the Union at the relevant time, alleging that they discriminated against him based on his political belief with respect to his employment and his membership in a trade union contrary to ss. 13 and 14 of the *Code*. The issue was the Union's change to how strike pay would be paid to its members when another union is on strike at the University. Initially, a member of the Union was paid strike pay, when another Union went on strike and set up a picket line, even though that person did not have to engage in any picketing. The Union voted to change this provision to require a member to engage in any strike activity assigned to him or her in order to receive strike pay. Mr. Nesdoly alleged that this changed occurred because the Union wanted its members to picket against the government holding office at the time. The Tribunal dismissed that part of the complaint under s. 13. The Tribunal then considered whether the Union's action was contrary to s. 14. The Tribunal noted that "political belief" is not confined to "partisan politics" and, in relying on *Jamieson*, concluded that to establish a complaint based on political belief, it is not necessary to establish a connection between the alleged discriminatory act and a particular political party. However, the Tribunal dismissed Mr. Nesdoly's complaint. Although there might be some political overtone to the Union's decisions, intention is not a determinative factor. In this case, the Tribunal concluded that the effect of the Union's actions did not discriminate against Mr. Nesdoly because of his political beliefs. Mr. Nesdoly was, at all times, allowed to hold and express his own political beliefs and did so. The only issue was that he would not be paid strike pay if he did not picket, which the Tribunal determined was, at its core, a labour relations issue. (para. 45; 54-57)

[800] In *Prokopetz v. Burnaby Firefighters' Union, Local 323*, 2006 BCHRT 462 ("*Prokopetz*"), Ms. Prokopetz filed a complaint against the Union alleging that it discriminated against her based on her political belief. Ms. Prokopetz's political beliefs were that employees should be able to work in an environment free from harassment, that the harassment policy should work for all employees and that the Union had a duty to fairly represent all members, even if it did not like the member. The Tribunal referred to a number of cases, including *Jamieson* and *Williams*, and found that the beliefs identified by Ms. Prokopetz were similar to those beliefs described in *Williams*, in that they were

"beliefs about appropriate human resources and labour relations policies in the workplace and in the union". As in *Williams*, the Tribunal concluded that if such beliefs were included within the definition of "political belief" then "any individual who disagreed with a human resources or labour relations policy or decision of an employer or union could allege discrimination on this ground. This would be an overly expansive interpretation of the ground". The Tribunal confirmed that "political belief" does not capture business decisions. (paras. 24-32; see also *Smith v. Salt Spring Island parks and Recreation Commission and Gibbon*, 2009 BCHRT 89)

[801] In *Morady v. Coast Mountain Bus Co.*, 2008 BCHT 393 ("*Morady*"), Mr. Morady filed a complaint alleging that Coast Mountain discriminated against him when it terminated his employment on the basis of his political belief, among other grounds. Mr. Morady failed to lead evidence that his political beliefs were engaged in his complaint and this part of his complaint was dismissed for this reason. (para. 75)

[802] After submissions had closed with respect to this Complaint, the Tribunal released its decision in *Wali v. Jace Holdings*, 2012 BCHRT 389 ("*Wali*"). I reviewed this decision and concluded that I did not require further submissions from the parties on the applicability of *Wali* to this Complaint and the meaning of political belief. Mr. Wali was employed as a pharmacist at Thrifty's Port Moody location. The political belief at issue was Mr. Wali's "personal political position regarding the regulation of pharmacy technicians by the College of Pharmacists". Mr. Wali believed that if pharmacy technicians were given an increase in their scope of responsibility, without pharmacist supervision, it would put the public at risk. Mr. Wali actively pursued this issue with the profession and through the College. Thrifty's supported a more expansive role for pharmacy technicians because it would be less expensive overall to employ technicians and there was a shortage of pharmacy managers. Thrifty's was concerned that Mr. Wali's position on the issue would be interpreted as being Thrifty's position, when it was not. The Tribunal agreed with Mr. Wali that his concern, regarding the regulation of the profession, under specific legislation, was captured within the meaning of political belief for purposes of the *Code*. The Tribunal accepted that Mr. Wali's "belief was in respect of a system of "social cooperation", that being the social contract between the government,

the College and the public regarding the safe distribution of pharmaceutical medication." (paras. 106-118)

C. Analysis

[803] As the Respondents correctly point out, political belief is a ground of discrimination captured under s. 14 of the *Code* but not under s. 8 of the *Code*. I agree that if I were to conclude that political belief was an applicable ground of discrimination in this case, it would not be applicable to the actions of Ms. Osborne.

[804] The Respondents argue that the Complainants failed to lead evidence that the fees they charged were "low-cost". I disagree. There was sufficient evidence from the Complainants, including documentary evidence created by the Respondents, that the fees charged by the Complainants, in some areas, was lower that than those recommended by the BCVMA Fee Guidelines. That not all their fees were lower than the Guidelines, or similar fees for the same service charged by other veterinarians, did not undermine the fact that they charged low-fees and were seen to being do so. Further, because the Complainants did not provide a comprehensive list of the fees they charged does not undermine their evidence that they did so. As the Complainants correctly point out, the Complainants advertising, which was an issue for the BCVMA, set out their prices for certain services, which some witnesses described as being too low to provide such services in manner that meets the practice standards of the BCVMA. Other of the Respondents' witnesses testified about low-cost clinics and the fees they charged.

[805] The Respondents say that the Complainants were ordered to produce documentary evidence regarding the fees they charged: *Brar et al. v. BCVMA (No. 7)*, 2008 BCHRT 324 and *Brar et al. v. BCVMA (No. 8)*, 2008 BCHRT 396. In *Brar (No. 7)*, The Complainants were ordered to provide documents regarding the fees they charged to their clients during the period relevant to this Complaint. The Respondents say that they failed to do so and that this represents misconduct in these proceeding. This order was made in August 2008. The hearing continued for a period of approximately three and one-half years after this date. The Respondents did not raise any further concerns about the Complainants' failure to disclose such documents and proceeded to defend the Complaint

without having allegedly received such documents. In these circumstances, I am unable to conclude that the Complainants engaged in misconduct. I note that *Brar (No. 8*) is not relevant to the Respondents' argument as I made no order for the disclosure of the Complainants' price lists in that decision.

[806] For the following reasons, I agree with the Respondents, that in the circumstances of this case, the provision of low-cost services, within a low-cost business model of providing such services, is not captured with the meaning of "political belief".

[807] The Respondents suggest that the Complainants failed to lead evidence regarding their political beliefs and, on this basis alone, and in following *Morady*, the Complaint should be dismissed. I am not persuaded by this argument. The Complainants led evidence about why they chose to practice in low-cost clinics and how they were allegedly targeted as a group as a result. Nonetheless, the Complainants failed to establish that their practice in low-cost clinics was a political belief.

[808] I do not agree that *Jamieson* applies to the facts of this case or that it is analogous to it. *Jamieson* dealt with political belief in the context of Aboriginal peoples. This context encompasses many and varied issues and services including Aboriginal self-government, the respect for this type of government by others, financial, medical and educational issues and the historical treatment of First Nations peoples within Canada, to name but a few. In the Complaint before me, the Complainants' decision to operate "low-cost" veterinarian hospitals was a business decision; it was not a political struggle such as that faced by First Nations people.

[809] I agree with the Complainants that many issues within our society are the subject of public debate, such as income inequality, the method of providing health care services and access to justice, to name but a few. Although these issues, and the manner in which a person expresses their views regarding such issues, may be related to their "political belief", for example through their affiliation with a political party, the discussion of any particular issue does not necessarily relate to a separate political belief contemplated by the *Code.*

[810] I am not of the view that the particular business model chosen by the Complainants was the subject of political debate as described in *Jamieson*. It may be that

issues arose regarding the nature the Complainants' veterinary practices, including the low-cost fees that they charged for their services. Although these business practices might have led to commentary within the BCVMA membership, the executive and staff of the BCVMA, there was also a discussion about the fees charged and whether practice standards could be met within this context. To suggest that such "debate" about the fees charged by certain veterinarians rises to the level of debate described in *Jamieson* would be an overly expansive view of political belief.

[811] I am not persuaded that *Wali* is applicable in this case. The debate in *Wali* was about the regulation of pharmacy technicians. On this basis alone it is distinguishable from this Complaint, which deals with the provision of low-cost veterinarian services. The provision of low-cost services was a business decision, rather than a public debate regarding legislative changes within the profession and how such changes would affect the membership at large. The Complainants were entitled to, and did, charge fees and maintain business hours that they determined to be appropriate for them. They did not seek legislative change or engage in that process in order to do so, nor were they prevented from doing so by the BCVMA.

[812] The Complainants argue that the issues in *Prokopetz*, *Williams* and *Nesdoly*, all of which arose in the employment context, are distinguishable. They said that in those cases the employer must be able to order the workplace. As a result, these decisions will necessarily conflict with the views of some employees in the workplace and it is reasonable that the definition of political belief will be somewhat constrained in such circumstances. However, the Complainants suggest that such constraints do not apply to the businesses at issue in this Complaint. For the purposes of this Complaint, I agree that business owners should be granted the latitude to organize their businesses as they so choose. It is clear from the evidence before me that the Complainants have been allowed to do so. Because questions may have arisen about their business practices by the BCVMA, does not make the Complainants business practices, or discussions about them, into a political belief.

[813] The Complainants alleged that they have been targeted by the BCVMA because they operate low-costs hospitals. This may be the case, but this does not make their

business model a political belief. As the Complainants acknowledge, the Tribunal has concluded that a particular business model would not normally be considered a "political belief". (see *Prokopetz and Williams)* I find no basis to depart from these decisions in this Complaint.

[814] As noted above, the Complainants suggest that the grounds of race, colour, ancestry, place of origin and political belief are "clearly all intersecting grounds of discrimination in this case." In order for this analytical principle to apply, the alleged ground of discrimination must be engaged. Given that I have concluded that the Complainants' low-cost business practices are not "political beliefs", this principle does not apply with respect to this ground.

[815] Further, I am not persuaded that the low-cost business model is related to the protected grounds of race, colour, ancestry and place of origin such that the ground of political belief is triggered. The evidence did not establish that this was the case. There were many reasons why the Complainants worked in, or established low-cost clinics, including following the practice of Dr. Bhullar as it was a profitable business model, providing services to low-income clients and to humane societies. It may be that those who operate low-cost clinic are predominately Indo-Canadian but this does not then lead to the conclusion that the *Code* protections under political belief are triggered.

[816] The Complainants suggested that there was a strong correlation between the protected grounds of race, ancestry, colour and place of origin such that their business practices should fall under these grounds and subject to the Code's protections.

[817] In their submissions, the Complainants argued that:

> [a]s a consequence of their shared racial, economic, professional, linguistic, cultural and social circumstances, this group of veterinarians who were born and trained in India and then immigrated to and qualified in Canada, developed a tight network of hospitals which could fairly be described as "Indo-Canadian low-cost hospitals". In some cases, the designated members of these hospitals were even inter-related financially. Of necessity arising from their common circumstances, these Indo-Canadian veterinarians shared an approach to establishing themselves in the profession in the Lower Mainland. The fact that members of this group all operate or are associated with low-cost practices is not a co-incidence

but a direct consequence of their shared race, colour, place of origin, ancestry and history.

The term "Indo-Canadian low-cost" veterinarian or clinic is a short hand way of describing this group of veterinarians with common experiences, linkages and business strategies because of their race, colour, ancestry, place of origin, language, education, and history as immigrants.

Further, the evidence before the Tribunal shows a high statistical correlation between operating a clinic on the 'low-cost' model of long hours and low prices and being Indo-Canadian veterinarians born in India, educated in the Punjab at the PAU and requalified in Canada. There was evidence at the hearing of only one low-cost veterinarian who was not Indo-Canadian. There was no evidence about his style of practice aside from his pricing. A single exception does not undermine the tight relationship between the personal characteristics of the Complainants and their operation of, or connection to, Indo-Canadian low-cost clinics. Adverse treatment related to 'low-cost' practice is indirect discrimination on the prohibited ground of race, colour, ancestry and place of origin.

[818] The Respondents argued that:

Since *Brooks*, the test for determining if a particular activity or characteristic brings an individual or group within a protected ground has expanded beyond a requirement that only members of the protected group would have the particular characteristic or engage in the activity. However, there must be a causal connection or other sufficient nexus between the protected ground and the characteristic or activity in question in order to bring the claim within the *Code*.

The nature of this connection or nexus is often addressed in cases in religious discrimination cases in which the claimant asserts that interference with a particular practice amounts to religious discrimination. The complainant in such cases is required to establish that he sincerely believes that practice is connected to their religion, and that the complainant's religious practice is being adversely impacted in some way that is more than trivial...

... the practice must be more than simply a choice or preference on the part of the individual: the individual must demonstrate that the practice is required or directed by his or her religion. (see *Syndicat Northcrest v. Amselem*, 2004 SCC 47; *Balak v. Ellis*, 2009 BCHRT 84; *Akiyama v. Judo BC*, 2002 BCHRT 27)

[819] I have found, elsewhere in this Decision, that the Complainants share the common characterises of race, colour and place of origin. However, these common characteristics

are also shared by other Indo-Canadian veterinarians, for example Drs. Mann and Rana who testified before me, who did not work in and/or own low-cost clinics at the time they testified. The operation of a low-cost clinic is not a personal characteristic such as race; it is a business decision, which may or may not include individuals from a disadvantaged group(s). For example, there was evidence that in the mid-1990s one Caucasian veterinarian offered low-cost services and, there may have been others, as was suggested by Dr. Wetzstein. Further, a decision to operate a low-cost clinic can be altered at any time and did not relate to a sincerely held belief that could be characterized as political.

[820] In this case, most of the Complainants were able to, and did qualify, as veterinarians and were able to work in their profession, whether as an owner of or an employee in a low-cost clinic. Further, working in and/or owning a low-cost clinic is not an immutable characteristic as contemplated by the Supreme Court of Canada in *Brooks*; veterinarians can, and do, change the nature of their business practices.

[821] The Respondents suggest that there are other Indo-Canadian veterinarians in British Columbia who have, or currently, operate low-cost clinics outside the Complainant group and/or who offer low-cost services. This group includes Drs. Sekhon, PB, Ubi, Sran, Kaler and Sidhu. However, just because all those who may share the same personal characteristics of the Complainants do not allege discrimination does not mean that discrimination has not occurred on that prohibit ground. For example, in the workplace because all women might not be sexually harassed does not lead to the conclusion that the one woman bringing forth such allegations has not experienced discrimination based on the prohibited ground of sex: *Janzen*. If I had concluded that the "low-cost" business model was captured by the ground of political belief under the *Code*, the fact that not all members of the group had experienced discrimination would not lead to the conclusion that some others had not.

[822] The Complainants referred to *Radek*, where the Tribunal considered Ms. Radek's economic status even though economic status is not a protected ground of discrimination under the *Code*. The Tribunal found that Ms. Radek's economic circumstances were "integrally interrelated with [her] identity as an Aboriginal, disabled woman". (para. 467) In my view, *Radek* does not apply to the circumstances of this case. Ms. Radek's income

was limited; her source of income was disability benefits and she required subsidized housing. Although the Tribunal found Ms. Radek's financial circumstances were relevant considerations, it did not conclude that she had been discriminated against based on this ground nor did it conclude that it rose to the level of a ground of discrimination such that it was captured by the *Code*. (paras. 485-487)

[823] As noted above, the Respondents referred to the Complainants as the "Bhullar Business Associates". Although I have concluded that the Complainants' low-cost business practices are not captured under the ground of political belief contemplated by the *Code*, it is clear that the Respondents viewed the Complainants as a "group". This fact relates to whether, in such circumstances, the Complainants, as individuals or within this group, were differently and adversely treated in the decisions made by the various committees and employees of the BCVMA on the other grounds of discrimination, despite the fact that the alleged prohibited ground of discrimination, political belief, is not engaged by the business practises of the group. Further, were the Complainants, as a group, wwere subject to negative stereotyping, as a result of their decisions to offer low-cost veterinary services, which may engage other prohibited grounds of discrimination? This will be discussed elsewhere in this Decision.

Intersectionality

[824] As noted, the Complainants suggest that the grounds of race, colour, ancestry, place of origin and political belief are "clearly all intersecting grounds of discrimination in this case." As noted, I have dismissed those parts of the Complainants based on the grounds of ancestry and political belief.

[825] In *C.S.W.U. Local 161 (No. 8)*, the Tribunal canvassed the law with respect to the intersectionality with respect to the grounds of race, colour, ancestry and pace of origin. (paras. 229-236) The Tribunal concluded:

> The grounds of race, colour, ancestry and place of origin may be combined to define, in a comprehensive way, ethnic identity as a basis of discrimination. As stated by the Board in *Espinoza*, these four grounds "are often combined as a kind of wide net to get at certain complex discriminatory conduct". A similar point is made by Tarnopolsky and Pentney, when they state that attempts to define "race" or "colour" are

> somewhat irrelevant in human rights law, "as the real concern is not with the 'race' or 'colour' or other hereditary origin of the individual who has been discriminated against, but rather with what the respondent *perceives* the complainant to be": p. 5-19, and later, that while concepts such as "ancestry" and "place of origin" may be illusive of definition, "the drafters of Canadian human rights legislation have attempted to 'get at' many, if not all, of these types of pejorative reference by prohibiting discrimination based on them": p. 5-25.
>
> In other words, these grounds intersect in a complex way to describe a set of characteristics which may result in discrimination. The concept of "intersectionality" has been discussed in a number of human rights decisions, including *Radek v. Henderson Development (Canada) and Securiguard Services (No. 3)*, 2005 BCHRT 302. The concept recognizes the reality that a person may be subject to compound discrimination, as a result of the combined disadvantaging effect of a number of prohibited grounds: paras. 463 – 465. (C.S.W.U. Local 161, paras. 237-238)

[826] The Tribunal has, on a number of occasions discussed the intersection of various grounds of discrimination. In *Torres*, the Tribunal discussed this issue and concluded:

> All of the complainants were born in Nicaragua. They identify their race as being Hispanic and/or Nicaraguan. They describe themselves as "non-white" as compared to other "Caucasian" employees. They allege that were they were discriminated against based on the combination of their race, colour, ancestry and place of origin. As in *Espinoza v. Coldmatic Refrigeration of Canada Inc.* (1995), 29 C.H.R.R. D/35 (Oct. Bd. Inq.) upheld on judicial review, [1998] O.J. No. 4019 (Div. Ct.), the complainants allege "discrimination on a number of grounds which are often combined as a kind of wide net to get at certain complex discriminatory conduct". (para. 210). I find that the complainants share the common characteristics of race, colour, ancestry and place of origin and are entitled to the *Code* protections under these grounds. In the balance of the decision, these grounds will be referred to collectively under the ground of "race". (para. 153)

[827] I find that the Complainants have established that they are members of protected grounds under the *Code* based on their race, colour and place of origin. I also find that the Complainants' language and accent are closely related to these characteristics and are thus captured under these grounds of discrimination.

[828] In their submissions, the Complainants suggest that the term "Indo-Canadian low-cost" veterinarian or clinic "is a short-hand was of describing this group of veterinarians

with common experiences, linkages and business strategies because of their race, colour, ancestry, place of origin, language, education, and history as immigrants."

[829] The Respondents suggest that the Complainants submissions served to expand the pleadings in this case and they suggest that the Complainants had not pleaded or relied such intersectionality between the low-cost veterinarian services and their racial or ethnic heritage as the basis for their discrimination claim.

[830] In the Amended Complaint, the Complainants alleged that:

> ... the BCVMA has been discriminating against them on the basis of their race, colour, ancestry, place of origin and political belief as Indo-Canada, foreign trained, veterinary graduates working at low-cost community clinics who believe in helping to improve animal welfare, regardless of owner income, including for those who may not otherwise be able to afford such services, such as those on social assistance and/or immigrants.

[831] In their Further Amended Complaint, the Complainants stated:

> To clarify, the allegations that the BCVMA has been unfairly and unequally targeting many of the Complainants through the disciplinary process are not exclusively allegations of retaliation but are primarily allegations of discrimination on the basis of race, colour, ancestry, place of origin and political belief as the Complainants are being targeted because they are Indo-Canadian, foreign trained, veterinary graduates working at low-cost community clinics...

[832] The Complainants reiterated their position outlined in their pleading in their opening statements: see Opening Statement with respect to the English Language Standard dated September 30, 2007, para. 3 and the Opening Statement with respect to the Disciplinary Proceedings and Other Issues dated November 12, 2008, para. 65.

[833] In my view, the pleadings, the subsequent opening submissions of the Complainants, and the evidence led at the hearing, confirmed that it was the Complainants' position that there was an interrelationship between the Complainants' race and ethnic heritage and the low-cost veterinary services they provide. The Complainants neither changed, nor expanded, their position as suggested by the Respondents.

[834] While I concluded that the ground of political belief does not include "low-cost" veterinary services, I find that this was an aspect of how the Respondents identified the Complainants.

[835] I find that the Complainants worked together to address common issues, including issues raised by the implementation of the English Language Standard. The Complainants clearly saw themselves acting as a group as did the BCVMA. I accept that the term "low-cost", although not a political belief, was a method by which they identified themselves; the BCVMA described them as the "Bhullar Business Associates". In my view, this is a description without a difference.

[836] I find that the BCVMA staff, including Ms. Osborne and its volunteers viewed the Complainants as a group, often referred to them as such and, in some cases, treated them in a similar manner. In particular, they referred to them as "litigants", "low-cost", BC Veterinarians for Justice and the Foreign Veterinary Graduates Association. Some members of the Complainants' group were referred to by Ms. Osborne's as Dr. Bhullar's "lieutenants", suggesting a group of people acting together. The Complainants were, on occasion, referred to as the owners/operators of the "A" clinics.

[837] I accept that some of the Respondents' witnesses did not know the exact makeup of the Complainant group and that it changed over time. However, I am not persuaded that this lessened or undermined their view of the Complainants as a "group".

[838] The Complainants argued that they were targeted because of their race and their association though a group of low-cost veterinarians. They suggest that they were not targeted solely because of their business model but because of their race in combination with their association with others with a similar business model. Because "low-cost" may not be captured by the *Code*, this does not lead to the conclusion that those within this group are not protected by the *Code* under the intersecting grounds of race, colour and place of origin.

[839] Throughout this proceeding, Dr. Bhullar and some other Complainants referred to themselves as "classic outsiders". The Complainants come from India and the Punjab, speak English with an accent, were educated outside Canada and are of a different race from the majority of the veterinarians in British Columbia. They have not participated in

the BCVMA either as employees and/or volunteers. They referred to those who work for and/or volunteer for the BCVMA as "classic insiders". These "classic insiders" were mainly educated in Canada and speak English as their first language; some of the "classic insiders" are Indo-Canadians. Although the Complainants referred to this distinction as illustrating discrimination, I do not refer to this distinction in this Decision. The focus of the discrimination analysis is on the actions of the Respondents; labelling them as "classic insiders" does not advance or assist in this analysis.

[840] In summary, and for purposes of the Decision, I refer to the intersecting grounds of race, colour and place of origin as being encompassed in the single protected ground of race.

3. Adverse Treatment and Nexus

Introduction

[841] The Complainants argue that the entirety of the evidence, including the rumours that were circulating in and around the time of the events giving rise to this Complaint, illustrate that the BCVMA was targeting the Complainants. Further, the actions of the BCVMA in the implementation of a high English Language Standard, the number of advertising complaints pursued and then subsequently referred to hearing, unscheduled inspections of the Complainants' facilities, the increase in the number of disciplinary complaints involving the Complainants that were referred to Inquiry, and the Disclosure Policy all illustrate the fact that the Complainants were targeted by the BCVMA based on both its stereotypical views of the Indo-Canadian low-cost veterinarians and the risk to the profession they posed, both in terms of practice standards and business competition.

[842] The Respondents acknowledge that the Complainants allege "unintentional" adverse treatment by the BCVMA in its implementation of the English Language Standard. However, the Respondents assert that the Complainants failed to lead evidence that the policies, practices and procedures of the BCVMA had a differential impact on them because of their race. Further, the Respondents allege that the Complainants failed to lead evidence that, by virtue of being Indo-Canadian, they could not comply with the

usual rules, policies, requirements and standards of professional ethical behaviour imposed by the BCVMA on its members generally.

[843] The Complainants argue that the evidence of the adverse treatment and the nexus to a prohibited ground comes from all the evidence and the context in which decisions were made about the Complainants. For example, they point to the steps taken to implement the English Language Standard and the context in which that issue arose. In essence, the Complainants argue that "where there has been so much adverse treatment, it will not be relevant if in every case there is not a comparator".

[844] I now turn to the evidence of systemic discrimination.

Context and Systemic Discrimination

[845] The events giving rise to this Complaint generally occurred from late 2002 through to 2006. There was a substantial interrelationship of the events occurring during this period. Many of the events, on their own, do not give rise to an inference of discrimination. I have considered the entirety of the evidence to determine if it gives rise to proof of patterns or trends of race-based discrimination operating in the BCVMA *vis-à-vis* the Complainants.

[846] The BCVMA has an obligation to ensure that it does not engage in, or condone, race-based discrimination. I have considered how the BCVMA judged, discussed or categorized its Indo-Canadian members who practised in low-cost clinics. Racism may also be illustrated in stereotypes that are attributed to a group, in this case, the Complainant group. Stereotypes include attributing the same, or similar, negative characteristics, based on incomplete or false information or misconceptions.

[847] I accept that racism operates, in many cases, unconsciously and those who engage in such a practice are often unaware of doing so. Organizations such as the BCVMA must be alert to the possibility of race-based stereotyping and take proactive steps when racism appears to be operating, whether or not overtly expressed.

[848] Based on my assessment of the evidence, and for the reasons that follow, I have concluded that race-based stereotypes played a role and, in some cases, a significant role, in the BCVMA's dealings with the Complainants, including negative generalized views

about the credibility and ethics of Indo-Canadians in relation to their veterinary practices. I find there was clear evidence of such views held by persons of influence in the BCVMA, that the BCVMA was aware, or ought reasonably to have been aware of this, and that it largely ignored, and condoned, the expression of such views. The result was a poisoned relationship between the BCVMA and the Complainants, which the BCVMA then blamed entirely on those individuals claiming that they were "playing the race card".

A. Commentary

[849] The Complainants allege that racial stereotyping was evident in the significant negative commentary circulating within the BCVMA, at the relevant time, and the negative qualities which were attributed to them as a result. The Respondents dispute that this was the case. The Respondents deny that they were "inherently hostile and opposed" to the Complainants and their low-cost business model. They deny that they acted with racial stereotyping when dealing with the Complainants.

[850] The Respondents suggest that the evidence with respect to "racialized" "rumour-mongering" came from other Indo-Canadian veterinarians who had graduated from the PAU and from their "direct knowledge" of Dr. Bhullar's practices or those practices within his "sphere of influence".

[851] There were discussions within the Surrey Veterinary Association about the opening of a low-cost clinic in Surrey by Dr. Bhullar. The Respondents say that, even if it were true that Dr. Bhullar and others were discussed within this context, this is not a breach of the *Code*, as business people are entitled to protect their business interests. They are not required to welcome a new competitor even if that competitor is from a minority group.

[852] I agree that professionals are allowed to discuss competition within their profession and geographic areas, regardless of whether that person is a member of a minority group. However, such discussions should not be premised on racial stereotyping of the nature of the competition. I find that, in this case, the discussions were based on preconceived ideas of the nature and quality of those possible competitors, including Dr. Bhullar. While those discussions *per se* may fall outside of the *Code's* application, in this

case, the discussions included some members of the BCVMA who were active in its committees.

[853] Dr. O'Grady initiated discussions with Dr. Cruickshank at the Corbett Lake fishing trips which referred to Dr. Bhullar and others in a negative manner, including that Indo-Canadians were engaged in unlicensed practice and that the working conditions at Atlas-Vancouver were poor, among other assertions. Dr. Cruickshank relayed this information to Ms. Osborne. In August 2002, after the June 2002 Corbett Lake fishing trip, Dr. O'Grady arranged a meeting with Dr. Cruickshank and Ms. Osborne and Drs. Mann and Sekhon. During the course of this meeting, which was held outside the BCVMA's office, Drs. Sekhon and Mann made wide-ranging and race-based allegations about Dr. Bhullar and other Indo-Canadian veterinarians.

[854] The Complainants argue that Drs. O'Grady and Cruickshank and Ms. Osborne accepted that these rumours were true, based on their stereotypical and negative view of Indo-Canadians; the Respondents assert that there is no basis from which such an inference may be drawn. Further, both Dr. Cruickshank and Ms. Osborne denied that they believed these allegations about Dr. Bhullar, or others, to be true. Although, at this stage, Dr. Cruickshank and Ms. Osborne may not have believed these rumours to be true, they still engaged in the discussions and then facilitated a further meeting in August 2002 to hear similar and unsubstantiated negative rumours.

[855] Dr. O'Grady, who was part of these discussions, later was the Chair of the English Language Task Force and a member of Council. It is not unreasonable for the Complainants to assume that Dr. O'Grady's view of the Complainants would have been informed by this negative and race-based commentary, which he was repeating and facilitating.

[856] At the October 30, 2004 Council meeting, concerns were raised by certain Indo-Canadian veterinarians about the practices of Dr. Bhullar and other Indo-Canadian veterinarians, who are part of the Complainant group. The concerns can only be described as negative and raced-based commentary. Although these concerns were raised by Indo-Canadians, it does not undermine its negative content or the willingness of the Council to listen to it.

[857] Negative commentary, alone, may not be sufficient to establish systemic discrimination. The evidence in this case illustrates a willingness on the part of the BCVMA to tolerate such commentary. The BCVMA had an obligation to terminate discussions which contained raced-based commentary and racial stereotypes but it did not; it facilitated such discussions. I also note that at the October 2004 Council meeting, Dr. Twidale, the then President of Council, commented that there existed "sweatshop" type practices in British Columbia, a comment that was made in the context of discussing Dr. Bhullar and other Complainants.

[858] The Respondents say that it was appropriate for Ms. Osborne and others within the BCVMA to listen to, consider and investigate allegations of substandard practice, ethical problems or other matters of legitimate concern to the BCVMA. The Respondents allege that there is no evidence that those who raised these concerns with the BCVMA were racially motivated to do so. Even if the motivation for bringing the concern(s) to the BCVMA was not considered by it to be suspect, the BCVMA was still obligated to carefully evaluate the information before taking action with respect to it. The Respondents say that the BCVMA did not take any action against the Complainants based on the information it received. The Respondents say that they only took action when a formal complaint was received, which was then processed in accordance with its established procedures.

[859] Although racial slurs and commentary may have been made by Indo-Canadian veterinarians to the BCVMA, the BCVMA was under no obligation to listen to such negative commentary. It was obligated, as the regulatory body, to take proactive steps to stop such commentary, especially when it was initiated and/or repeated by members of its own committees.

[860] While the BCVMA is also obligated to consider allegations of substandard practice, the Respondents had little basis upon which to conclude that those Indo-Canadian veterinarians relaying the information had direct knowledge of Dr. Bhullar's veterinary practice or those within his "sphere of influence". They took no independent steps to determine if this alleged "direct knowledge" had any basis in fact. I find that they

did not do so as the rumours supported and/or confirmed their own negative views of Dr. Bhullar and some of the other Complainants, all of whom were Indo-Canadians.

[861] I accept that the BCVMA took no steps to directly investigate the allegations after hearing these rumours by pursing its own disciplinary complaint. I find that it strains credulity to assume that such rumours had no adverse impact on its views of Dr. Bhullar and the other Complainants. Further, it was clear that the BCVMA relied on unsubstantiated rumour to create a list of those facilities that would be subject to unscheduled inspections, which were predominately those of the Complainant group, discussed below.

[862] I note that none of those who engaged in making raced-based comments or relaying such comments were sanctioned for doing so. The BCVMA's Code of Ethics is clear that members should not engage in race-based negative commentary about their colleagues. Despite this clear provision, the BCVMA allowed such commentary to continue, thus suggesting that it believed such commentary or could reasonably be perceived as condoning such commentary.

B. Conduct

[863] During the relevant period, issues arose about Dr. Bhullar's conduct and the conduct of some of the other Complainants. The focus of the BCVMA's efforts became the conduct of the Complainants, not the basis for why they might have engaged in such conduct.

[864] The Respondents argue that, even accepting that the Complainants may have had a genuine concern about the implementation of the English Language Standard, this concern was quickly distorted and taken advantage of by Dr. Bhullar and his "Business Associates". The Respondents say that, had the Complainants had a genuine concern, they would have dealt with it through an appropriate process in a respectful and *bona fide* manner and not "engaged in the extraordinary campaign of attack" testified to by Ms. Osborne. Any hostility, which is denied, arose as a direct result of the actions of the "Bhullar Business Associates".

[865] I accept that Drs. Bhullar's and Johar's actions were aggressive and in some cases could be viewed as verbally abusive. However, their concerns were not without foundation. As I have found in this Decision, the implementation of the English Language Standard was discriminatory, and incorrect information to support its implementation was circulated to the membership, despite the BCVMA being advised by Dr. Bhullar, and others, that this was the case. Dr. Bhullar attempted to raise his concerns professionally and appropriately but they were ignored.

[866] Another example, discussed elsewhere, is the Ashburner Recording, which contained race-based commentary that was not investigated by the BCVMA because it assumed that Dr. Bhullar and the other Indo-Canadian veterinarians who raised such concerns were lying about the content of the Recording. This view was not based on a review of the Recording but the BCVMA's own raced-based view that these Indo-Canadians were untruthful.

[867] I find these two examples, and there are many others, illustrate that Drs. Bhullar and Johar had a basis for pursuing their concerns about racism. Had the BCVMA taken appropriate steps to investigate the concerns being raised by Dr. Bhullar and others, about the Ashburner Recording and the misinformation circulated about the English Language Standard, their conduct may not have risen to the negative levels it did.

[868] The Respondents deny that they, without foundation, alleged that Dr. Bhullar and others were "playing the race card". Within the context of all of the allegations made by the Complainants against the BCVMA, a few of the BCVMA's representatives came to view them as "playing the race card". The Respondents say that this in not reflective of discrimination but a reasonable assessment of what was occurring, at the time. However, I find that this was not a reasonable assessment of what was occurring as it only considered the views of the staff and volunteers of the BCVMA; the BCVMA ignored those concerns being raised by Dr. Bhullar and others. In my view, describing their concerns as them playing the race card served to minimize their concerns and, in particular, any of the actions taken by Dr. Bhullar in the pursuit of this Complaint. Although, as noted elsewhere in this Decision, I found some of Dr. Bhullar's conduct to be unacceptable, some of his allegations of discrimination and his concerns about the

fairness of the BCVMA's processes were not without foundation; the allegations were not made merely to avoid the disciplinary actions of the BCVMA. It is important to consider Dr. Bhullar's actions within the context in which they arose.

[869] In *Naraine v. Ford Motor Co. of Canada (No. 4)* (1996), 27 C.H.R.R. D/230, the Ontario Board of Inquiry considered the complaint of Mr. Naraine, who described himself as East Indian. Mr. Naraine alleged discrimination in the workplace based on his race, colour, place of origin and ethnic origin. In *Naraine*, the Board of Inquiry noted that, over time, Mr. Naraine became more likely to protest his treatment and became more confrontational. In addressing this issue and in finding Mr. Naraine's complaint justified, the Board of Inquiry discussed Mr. Naraine's conduct in the workplace:

> To an outside observer, Mr. Naraine's outbursts do not always seem to be clearly and directly linked to specific racist acts or individuals. However, within this highly racist working environment, Mr. Naraine had no way of separating out what was racist from what was not. He became suspicious of the motivation of most of the workers in the plant, whatever their intent or perspective might have been in fact. Furthermore, his suspicions appear to be reasonable, given the working conditions under which he was labouring. It is my view that all of the outbursts were provoked by the discriminatory environment that was taking its toll on Mr. Naraine's ability to function at work.
>
> Faced with these outbursts, management failed to examine the underlying basis for Mr. Naraine's behaviour, and disciplined him as if the events were stripped of any racial significance or meaning. Collectively, these workplace offences netted Mr. Naraine thirty-one days of suspension and a discharge. Some of these incidents ought not to have merited discipline at all, given the discriminatory working environment under which Mr. Naraine was labouring. The work refusals were minor, they were attended by extenuating circumstances, and neither seems to have caused the company any appreciable loss in production. The verbal altercation was a direct response to racially abusive language on the part of the guard.
>
> The only two occasions which did warrant discipline involve the threat or infliction of physical harm…(paras. 96-98, aff'd *Ford Motor Co. of Canada v. Ontario (Human Rights Commission)*, (1999) 34 C.H.R.R. D/405 (Ont. Div. Ct.), rev'd on other grounds *Ford Motor Co. of Canada v. Ontario (Human Rights Commission)*, [2001] O.J. No. 4937 (C.A.), leave to appeal to S.C.C. refused, [2002] S.C.C.A. No. 69; see also *Kalyn v. Vancouver Island Health Authority (No. 3)*, 2008 BCHRT 377, paras. 408-409)

[870] In *Radek*, the Tribunal found that Ms. Radek's reaction to how she was treated was a reaction to the discriminatory treatment she faced. (para. 484) As the Tribunal noted:

> A particularly revealing element of the attitudinal evidence led in this hearing related to the notion of "playing the race card" or "using the racist angle". Several witnesses in these proceedings referred to Ms. Radek and other members of minority ethnic groups as "playing the race card". This included Mr. Skead, Constable Bellia and Constable Gough. The use of this or similar language was, in my view, a clear attempt to discredit allegations of racism as manipulative ploys to gain collateral benefit. Once an individual's actions were labelled in this way, they could be discounted and ignored. Any possibility of consideration of the genuineness of an allegation of racial discrimination was foreclosed after the application of the label. The use of this language reflected, in my opinion, a mind closed to the possibility that a given act was racially motivated or that unconscious racial stereotyping could be at play. (para. 524)

[871] Similarly in this case, I find that the BCVMA's use of this type of language reflected that its mind was closed to the possibility that racial stereotyping (conscious or not) was at play.

[872] I find that many of the BCVMA's actions and/or its failure to take action(s) illustrated that its negative, race-based, views of Complainants. Although I accept that some of the actions of Dr. Bhullar, and others, were inappropriate and concerning to the BCVMA, this does not fully explain their views of him and others.

[873] The Respondents deny that the Complainants, as a group, were viewed as "trouble-makers". The Respondents say that it was the actions of Drs. Bhullar and Johar, who engaged in an abusive and aggressive campaign against the BCVMA in order to avoid regulatory oversight, which caused some of the Respondents' witnesses to come to the reasonable view that Drs. Bhullar and Johar were not credible and were advancing claims of discrimination to avoid the BCVMA's regulatory authority.

[874] I find that Dr. Bhullar and the other Complainants had a basis to allege racism was at play within the BCVMA's practices and processes. I was not persuaded that, generally, Dr. Bhullar's allegations of racism, and those similar allegations made by the other Complainants, were done simply to avoid the BCVMA's regulatory oversight. In my view the Respondents took no reasonable and appropriate steps to investigate the

concerns of the Complainants. That some of the Complainants reacted badly, while not to be condoned, is not surprising. A person subject to discriminatory oversight is not required to accept such oversight.

C. Recordings

General Comments

[875] I have considered those tape recordings involving Ms. Pendragon and Drs. Rana and Ashburner. I have also considered that part of the recording of Ms. Osborne that was admitted during these proceedings. I have not considered those recordings of members of the BCVMA who did not testify and who were not members of the BCVMA's committees.

[876] The Respondents argued that I should give no weight to the tape recordings made by Ms. Pendragon given the "surreptitious and malicious" way they were made. The Respondents submit that the statements made by Dr. Ashburner and/or Ms. Osborne do not support an inference of racial discrimination. The specific submissions with respect to Dr. Ashburner are dealt with elsewhere.

[877] The tape recordings were admitted into evidence during this hearing. Drs. Ashburner and Rana and Ms. Osborne testified about them. Generally, I found the issues regarding these recordings to be more about how the BCVMA reacted to the taped information and the steps that it took to address the Complainants' concerns in this respect, as opposed to the how they were made. It is true that the tape recordings were done surreptitiously; I am not persuaded that they were done maliciously. They were made so that the Complainants could obtain information that those involved in the BCVMA's regulatory and oversight processes were acting unfairly and discriminatorily.

Ashburner Recordings

[878] As I noted elsewhere, I did not find that Dr. Bhullar's conduct in facilitating the Ashburner Recording, and then disseminating it, is a sufficient basis for the BCVMA to refuse take immediate action with respect to it. I accept that, at times, Ms. Pendragon encouraged Dr. Ashburner to make negative comments about Dr. Bhullar and others.

However, I find that he went further than just simply responding to her questions and/or her comments. Dr. Ashburner could have, but did not, terminate the discussion. It was unclear to me why he failed to do so.

[879] I have concluded that Dr. Ashburner was engaged in negative and race-based stereotyping when he spoke with Ms. Pendragon. He specifically referred to those veterinarians from the Punjab and those with Indian sounding names, and their veterinary practices, including referring to alleged negative practices that may be occurring at Atlas-Vancouver. Dr. Ashburner was the Chair of the CRC and, as such, was intimately involved and influential in the regulatory processes of the BCVMA.

[880] Dr. Ashburner's comments were inappropriate and many were negative generalizations about unnamed Indo-Canadian veterinarians. The comments served to promote stereotypes based on race or could reasonably be perceived to be doing so, such as his comment about that only about half of the veterinarians from the Punjab are decent people, the negative commentary about the education system in the Punjab, and that Dr. Bhullar, even if not licensed, would hire other incompetents, which the evidence had shown were Indo-Canadian veterinarians. Although there was some evidence that Dr. Ashburner was simply commenting on the education received by certain veterinarians at unaccredited academic institutions, which would include those veterinarians education at the PAU, I did not accept that this was the case. His comments were broader than this and general in nature. For example, his comment that only about half of the Indo-Canadian veterinarians were decent people was unrelated to their education.

[881] Dr. Ashburner could not identify those Indo-Canadians who fell under Dr. Bhullar's influence. That Dr. Ashburner was prepared to generalize based on race calls into question his ability to assess disciplinary complaints involving those same veterinarians in a manner free from discrimination. Although I accept that Dr. Ashburner did not intend his comments and/or actions to be racist, I am persuaded that his views would have played a role in his assessment of the Complainants' disciplinary matters, or in the alternative, would reasonably be perceived as playing a role.

[882] I accept that Dr. Ashburner did not intend his comments to be racist, but viewed objectively and in context, a reasonable interpretation of the comments is that they are

founded on negative stereotypes based on race and that these comments might affect his ability to deal fairly, and without discrimination, with those disciplinary complaints involving the Complainants.

[883] Dr. Ashburner testified that the one comment, which was repeated extensively by the Complainants in various forums, about being able to "burn down" a facility, which would be "quicker", was not intended to be discriminatory but a way to explain to Ms. Pendragon that legal processes had to be followed and his comment was taken out of context. However, when the Ashburner Recording and the transcript of it are reviewed in their entirety, and given Dr. Ashburner's other inappropriate comments about Indo-Canadian veterinarians, throughout his meeting with Ms. Pendragon, I find that the Complainants would have reasonably perceived this comment to be race-based and that Dr. Ashburner was engaged in racial stereotyping.

[884] Dr. Ashburner continued to participate in the CRC's discussions of disciplinary complaints involving one or more of the Complainants. Dr. Craven and others testified that they did not see evidence that Dr. Ashburner acted on his alleged race-based views when considering disciplinary complaint involving the Complainants. As the cases make clear, there is often no direct evidence of race-based discrimination as it operates in subtle ways and may be inferred from all the circumstances.

[885] I agree that Dr. Ashburner's continued involvement in the processing of the disciplinary complaints involving the Complainants, all of whom were foreign graduates, mainly from the PAU, illustrates that the BCVMA gave little regard to the Complainants' concerns about Dr. Ashburner's taped comments. The evidence was that Dr. Ashburner did not participate in those discussions involving Dr. Bhullar, but remained in the meeting and did not formally recuse himself from the discussions. He did participate in those discussions involving the other Complainants, all of whom were Indo-Canadian, and educated outside Canada.

[886] The Respondents argue that the identification of a group by their ethnic origin is not itself evidence of racism. Further, many of Dr. Ashburner's comments have been taken out-of-context when repeated in the public domain. The Respondents deny that they "repressed" Dr. Ashburner's recording, that they failed to discipline Dr. Ashburner or that

they should have removed Dr. Ashburner from his position while the investigation into the recording was ongoing. The Respondents say that their response to the Ashburner Recording was measured and appropriate in all the circumstances.

[887] In my view, the BCVMA's reaction to the Ashburner Recording clearly illustrated that the actions of the BCVMA were linked to its race-based views of Indo-Canadian veterinarians and, in particular, those who were Complainants in this proceeding.

[888] The evidence was clear that the BCVMA initially denied that Dr. Ashburner had made the comments and then, when it became known that they had been recorded, they took the position that the recording and/or the transcript(s) had been manipulated. However, they took this view without listening to the recording or by having Dr. Ashburner review it with it. The BCVMA operated on the assumption that Dr. Bhullar, and others, had lied and/or manipulated the recording.

[889] I agree that Dr. Ashburner was entitled to due process in any investigation that was commenced by the BCVMA. However, the BCVMA took no steps to address the Complainants' concerns arising from the Ashburner Recording until forced to do so by the Complainants. The BCVMA finally took steps when Dr. Bhullar, and others, filed the s. 15(1) complaint approximately one year after the Recording had been made public. Despite receiving the s. 15(1) complaint, Council declined to act. It was not investigated. Council continue to disbelieve that the Ashburner Recording was true and/or reliable. Dr. Bhullar and others filed a judicial review compelling the BCVMA to act, which it then did to some limited extent. Although Dr. Kirby testified that the Complainants had not taken any steps in a "believable" way to address their concerns, this was clearly not the case. A s. 15(1) complaint pursuant to the *Act* and court proceedings cannot be anything but "believable" actions.

[890] There were no reasons for the failure of the BCVMA to investigate the s. 15(1) complaint. Dr. Kirby agreed that such a step could have been taken, as did Drs. Brocklebank, King-Harris and Roberts. If the BCVMA did not want those COs currently under contract with the BCVMA conducting an investigation into Dr. Ashburner's conduct, as they have suggested, given their ongoing role in the investigative process, including their dealings with the CRC, it could have retained an outside investigator.

[891] As I noted, I found it astonishing that many of the BCVMA's witnesses had not reviewed the complete Ashburner Recording and the transcript until preparing for this hearing. I did not find the explanations of why they failed to do so persuasive, except those provided by Drs. King-Harris, Roberts and Craven, who in any event were not in a position to direct that an investigation be undertaken. I concluded that many of the Respondents' witnesses gave Dr. Ashburner a significant benefit of the doubt, in that they believed that he could not have made the comments attributed to him by the Complainants, even in the face of transcript and the Ashburner Recording being available. In my view, this perpetuated the view that the BCVMA considered the Complainants' concerns not worthy of consideration.

[892] Dr. Ashburner was not asked to step down from the CRC, both as the Chair and a member of the committee, while the Ashburner Recording was considered and once the s. 15(1) complaint had been filed. In my view, this might have gone a long way to address the Complainants' concerns that Dr. Ashburner's role on the CRC had an adverse impact on the fairness of the investigative process, given his expressed views. I was not persuaded by the evidence that, had Dr. Ashburner been asked to step down pending an investigation, this would have required others in the BCVMA to step down as Dr. Bhullar, and other Complainants, had made allegations against them as well. I find that this evidence was proffered by the Respondents to justify their inaction and was mere speculation. I note that Dr. Bhullar and others filed numerous civil actions, and do not suggest that a person cannot continue to act merely by virtue of a claim being made against them. However, given the nature of this claim, based on the Recording, the BCVMA's inaction fueled the Complainants' concerns. If an independent third party had been brought in to address the Ashburner Recording and the Complainants' concerns, these ongoing and unnecessary legal actions might have been avoided.

[893] The BCVMA was entitled to continue to process disciplinary complaints involving the Complainants. I could find no legal impediment that foreclosed it from doing so, if it had asked Dr. Ashburner to step down during an investigative process.

[894] The Respondents' witnesses generally agreed that the Ashburner Recording raised concerns and they understood that the Complainants would be concerned. However, it

appears that this realization did not occur until this human rights hearing was well underway. I find that their lack of attention to the possible adverse impact on Indo-Canadian veterinarians while Dr. Ashburner remained Chair of the CRC was based on their race-based assumptions regarding Dr. Bhullar and those associated with him. Dr. Bhullar and others were not "playing the race card"; they had a reasonable basis upon which to be suspicious of the disciplinary process given, among other things, the Ashburner Recording.

[895] Despite Drs. Roberts, King-Harris and Brocklebank raising their questions and concerns about the Ashburner Recording with Ms. Osborne, Ms. Osborne took no steps to act on those concerns or to bring them to the attention of Council. This provides some evidence that it was not only the Complainants who were concerned about Dr. Ashburner's comments. Despite Ms. Osborne's position that she was the "guardian" of the disciplinary process, discussed elsewhere in the Decision, she failed to act to address concerns that may affect the fairness of that process.

[896] Ultimately, the BCVMA proceeded with a s. 15(1) complaint against Dr. Ashburner and entered into an Agreed Statement of Facts, which was given to the Inquiry Committee appointed pursuant to s. 15(1). In my view, the Inquiry Committee's acceptance of this agreement, which only contained one admission that Dr. Ashburner had said that Dr. Bhullar hired incompetents, and the subsequent penalty imposed on Dr. Ashburner by Council served to minimize Dr. Ashburner's actions.

[897] I conclude that the Dr. Ashburner's comments and the BCVMA's response to the Ashburner Recording, among other things, had an adverse impact on the CRC's processing of Complainants' disciplinary complaints. Given the delay and lack of action on the part of the BCVMA in dealing with the Ashburner Recording, I find that the Complainants had a reasonable basis to believe that they could not obtain a fair and discrimination-free assessment of their disciplinary complaints when those complaints were considered by the CRC. I find that this adverse impact was race-based and that race was a factor in the BCVMA's failure to address to address Dr. Ashburner's conduct.

Recording of Dr. Rana

[898] Dr. Rana was appointed to the Practice Accreditation Committee ("PAC") after he had been recorded. He was subsequently appointed to PAC. During the course of the recording, Dr. Rana made negative comments about Dr. Bhullar and others and referred Ms. Pendragon to the BCVMA's website, and advised her that those listed were giving all Indo-Canadian veterinarians a bad name. Dr. Rana testified that the website would let someone know who was a good veterinarian and who was a bad veterinarian. Dr. Rana told Ms. Pendragon that Dr. Bhullar was about to lose his licence; Dr. Rana testified that it was his assumption, given the number of charges against Dr. Bhullar, that he would lose his licence.

[899] Dr. Rana told Ms. Pendragon that these veterinarians were "really bad", that they did not practise quality work, did not care for the animals, and used cheap drugs. Dr. Rana said that these veterinarians were not fully trained as they did not spend a year in the US upgrading their skills. Dr. Rana testified that he was mainly referring to Dr. Bhullar's clinic or those that he set up. Dr. Rana advised Ms. Pendragon that he would not hire veterinarians from India unless they had North American training. Dr. Rana testified that Caucasian veterinarians are not employing Indo-Canadian veterinarians as they are concerned about their knowledge.

[900] Dr. Rana told Ms. Pendragon that these veterinarians were not providing good service, and do not have enough knowledge and, if the BCVMA does anything, they file a human rights complaint. Dr. Rana advised Ms. Pendragon that the BCVMA could take away the licences of these doctors but that a process needed to be followed. Dr. Rana said that the more complaints that are filed, the harsher the penalty might be. Dr. Rana denied that he meant to suggest that the BCVMA was working hard to get those veterinarians he was referring to. Dr. Rana testified that the race card was being played in order for these veterinarians to avoid the BCVMA.

[901] Dr. Rana made other numerous negative comments to Ms. Pendragon about Dr. Bhullar and some of the other Complainants and the quality of their veterinary practices.

[902] Dr. Rana testified that it was Dr. Bhullar and others who were hurting the reputation of Indo-Canadian veterinarian as they practise substandard medicine. Dr. Rana

testified that most of the Indo-Canadian veterinarians practise good medicine; those listed are the website did not want to admit their mistakes but want to fight back using the race card.

[903] Dr. Rana told Ms. Pendragon that he was the official spokesperson for the BCVMA and therefore, from his view, the issues involving the BCVMA were not race-based issues.

[904] Dr. Rana testified that the views he expressed to Ms. Pendragon were his own views; he could not say if his views were shared by others in the profession or within the BCVMA. Dr. Rana was aware of the bylaw requirement that members should not belittle or injure or make careless comment about another member. Dr. Rana testified that he was trying to explain to Ms. Pendragon that he was not one of the veterinarians that she was speaking about or that he had been referring to.

[905] Dr. Rana testified that he was tired during this discussion as it was the end of the day when he saw Ms. Pendragon. He was attempting to explain that not all Indo-Canadian veterinarians were bad veterinarians. Dr. Rana testified that he was trapped into saying what he did, he was a victim and that he was emotionally disturbed. Dr. Rana apologized for making numerous personal allegations against Dr. Bhullar suggesting that he was emotional and had been dragged into the discussion.

[906] The BCVMA did not take specific steps to review the recording of Dr. Rana or to investigate his negative and generalized comments about other members of the BCVMA. Despite Dr. Rana's comments about Dr. Bhullar and others, and his assertion that they engaged in substandard practice, he was appointed to PAC by Council. Given Dr. Rana's comments, I find that the Complainants had a reasonable basis to believe that they could not obtain a fair assessment of their facility inspections. Although Dr. Rana is Indo-Canadian, the BCVMA had an obligation, prior to his appointment, to ensure that he could deal with inspections involving Indo-Canadians free from racial stereotypes and generalizations. I find that the BCVMA's failure in this respect reflected its race-based view of the Complainants.

D. Registration

[907] The Complainants argue that all veterinarians licensed with the BCVMA, or seeking licensure, should be treated the same, subject to the BCVMA's obligation, in some cases, to accommodate the applicant to the point of undue hardship. The BCVMA's policies and standards should be developed and applied free from discrimination. Basically they say that it matters not who is included in the group as all should be treated equally and if any one person, or group, is treated differently, then this may amount to discrimination.

[908] I find that the steps taken by BCVMA in the registration process did not generally discriminate against the Complainants on a systemic basis.

[909] However, I note that there was some evidence that the BCVMA became more suspicious of the references provided to Indo-Canadian applicants, when those references were provided by some of the Complainants, including Dr. Bhullar. I find that there was no basis to be suspicious of such references. It is not unusual for references to be formulaic in their content, which appeared to have been one of the BCVMA's concerns.

[910] I took particular note of the references provided by Dr. Punia in support of his registration. The BCVMA preferred the reference provided by Dr. L over the three references provided by Drs. Sran, Hans and Bhullar. Dr. Punia then provided a number of other references from individuals or graduates from India and/or the Punjab. These were viewed suspiciously by the BCVMA, despite that they were provided by individuals in various practices and educational institutions, many of whom worked outside of British Columbia and/or Canada. There was little evidence that any of these referees knew each other and no evidence that they had discussed providing inaccurate and/or similar references. Despite all of Dr. Punia's positive references, Council was still concerned about Dr. Punia's ability to practise veterinary medicine based on one reference from a Caucasian veterinarian.

[911] I was also concerned about the BCVMA inquiry into Dr. Punia's test results with the CVMA/NEB despite the fact that Dr. Punia had received his CQ. There was no basis to question Dr. Punia's qualifications. I was also concerned about Council's questioning

Dr. Punia about his financial relationship with Dr. Bhullar. They had no basis to make such inquiries and they were irrelevant to Dr. Punia's application.

[912] Dr. Joshi's application for registration was denied. This is discussed further below, but I note here that the BCVMA did not believe Dr. Joshi when he denied performing unlicensed surgery. The BCVMA preferred the unsworn information provided by employees of Dr. Mrar, who were engaged in separate and ongoing employment issues with Dr. Mrar, over Dr. Joshi. Further, Council became suspicious of Dr. Joshi's truthfulness because Dr. Bhullar, who they considered to be untruthful, assisted him in his application process.

[913] In my view, these inquiries and beliefs were reflective of Council's views that Drs. Punia and Joshi, and others involved in their registration process, were less than truthful, a view, which I find, on the whole of the evidence, was based on racial stereotyping.

E. English Language Standard

[914] During the period between 2002 and late 2004 the BCVMA implemented the English Language Standard, which only applied to foreign-trained veterinarians from certain educational institutions including Indo-Canadian veterinarians from the PAU.

[915] The development and the implementation of the English Language Standard created a further hurdle for foreign-trained registrants. The Complainants were concerned about this and viewed the implementation of it as a veiled attempt to limit the registration of Indo-Canadian veterinarians. Further, the discussions surrounding its implementation served to polarize the parties and had an adverse and poisoning impact on their relationship.

[916] The BCVMA continually asserted that it was entitled to and required a high level of practice standards. That this was their obligation is not disputed. However, there is nothing to suggest that the issues respecting the alleged lower standards of practice, or communication issues, were directly related to English proficiency.

[917] All foreign-trained veterinarians from India are required to pass the national examinations, including the NBE/NAVLE and the CPE in order to obtain their CQ. The

evidence was clear that these examinations were all conducted in English, including the CPE, which is a hands-on oral clinical type of examination. I find it difficult to accept that a veterinarian, who was not sufficiently proficient in English, could pass these examinations. Although there was some evidence that a person could cheat on the NBE/NAVLE and/or the CPE, I did not find this evidence persuasive.

[918] Further, the CVMA had its own mechanism to establish English proficiency, which included requiring that the TOEFL suite of tests be taken, with a pass score in the TSE of 50. It also provided waivers to those applicants who had done at least three years of secondary school in English, with written proof from the institution confirming that this was the case.

[919] I agree with the Complainants that it was open to the BCVMA to accept the national examinations as evidence of English proficiency sufficient to enter veterinary practice, as it did for the period between April 2002, when Ms. Osborne became the Registrar and May 2004, when the English Language Standard was implemented, when no separate assessment of English proficiency was done by the BCVMA. During this period a number of foreign-trained veterinarians, including Indo-Canadian veterinarians, were registered with the BCVMA, legally and without adverse consequences to profession.

[920] The BCVMA suggests that it needed its own arms-length objective test to assess the English proficiency of its applicants. It suggests that the failure to have such an objective test was unfair to applicants. However, the evidence did not support this assertion. There was no evidence that any applicant had raised concerns about how their English proficiency was assessed prior to 2002; no one had suggested that the process was unfair, biased or discriminatory. I was also not persuaded that the method of how English had been assessed by the BCVMA was an illegal delegation to the Registrar and no such claim had been made by any applicant, the previous Registrar, Dr. Leung, and/or Council.

[921] The BCVMA relies on the fact that there were a number of disciplinary complaints, in the system, which raised concerns about the English proficiency of some Indo-Canadian foreign-trained veterinarians. I find that there was little credible evidence

to support this assertion. Most of the information was based on hearsay, rumour and unsubstantiated allegations. No thorough review of disciplinary complaints was undertaken by the BCVMA, although this information was always available to it. It was not a significant concern raised by the COs during their investigations or in their reports to the CRC.

[922] I have reviewed those disciplinary complaints entered into evidence before me, along with the evidence related to the communications that the BCVMA had with members and the public. This review confirmed the Complainants' assertion that there were few concerns raised about the English proficiency of Indo-Canadian veterinarians. In those disciplinary complaints involving the Complainants, there were few complaints that raised concerns about the English proficiency of the veterinarian. Although some files raised communications issues, this was not specific to the ability of the veterinarian to communicate in English but related to things such rudeness and/or the failure of the veterinarian to be sufficiently compassionate in the circumstances. Similarly, in the evidence related to general communications, there were very few concerns raised by the public about the English proficiency of Indo-Canadian veterinarians. The information available to the Respondents supports the Complainants' assertion that a high level of English proficiency was not necessary to meet its stated purpose of protection of the public.

[923] The BCVMA suggests that, even if the concerns about English proficiency of Indo-Canadians was not supported by the evidence, this does not result in a finding that the BCVMA's motivation for implementing the English proficiency requirements was discriminatory. The BCVMA suggests that concerns about communications are a concern related to ensuring that adequate levels of communication are maintained within the veterinary community. If the BCVMA was concerned about communications, on a general basis, it would have tested all veterinarians. It would not only test those foreign-trained veterinarians from certain schools, including Indo-Canadians who had attended the PAU.

[924] Dr. Forsyth was allowed to read a letter from a client at the AGM in 2002. As noted, those who resided in the Lower Mainland and, in particular, in the Surrey area

would have been able to identify this clinic. It matters not that it was not Dr. PB, the Designated Member, who the comments were about; it was another Indo-Canadian veterinarian practising in his clinic. I accept that Dr. Forsyth did not 'mimic' a Indo-Canadian accent but the letter was clearly about that group and in my view was read to enhance support for the implementation of an English language test, which was also discussed at this meeting.

[925] Dr. O'Grady was appointed to Chair the English Language Task Force despite his negative view of some Indo-Canadian veterinarians. His previous commentary was not considered before he was appointed to this role nor was there any discussion that he might be biased in relation to Indo-Canadians or that some might perceive him to be biased. I am not sure why this was not examined, as it would have been a simple and straightforward discussion.

[926] Initially, the BCVMA was going to implement the changes to the assessment of English proficiency through a Bylaw. It sent information to the membership, in advance of the September 2002 AGM, advising it that this would be case. It was clear that the membership was to be consulted on this change. Although I agree that it was open to the BCVMA to implement the change to the assessment of English proficiency by way of a policy change, it only pursued this process after the 2002 AGM where some concerns were raised by some BCVMA members. Dr. Cruickshank advised the membership that Council would not make the change on its own, leaving, in my view, the clear impression that the membership would be further consulted in a formal and open process such as at an AGM. This never occurred. The BCVMA's publication and its request that people provide their written input did not constitute a formal, open and full consultation process.

[927] I also note that a change to one of the BCVMA's bylaws required a two-thirds vote of the membership, thus ensuring its participation in the process and in the decision on whether to adopt English language testing at all. A change in policy allows the Council to circumvent this process. I can find no reason why, especially in the face of the opposition from some members, the BCVMA changed its process of how it would implement the changes to assessing English proficiency, other than it did not want a public and open debate on the issue. There was clearly no urgency to the matter as the

BCVMA had not conducted separate English proficiency testing or interviews since April 2002.

[928] When an organization decides to set its own TSE score, the ETS provides information on how this process should be undertaken. In many respects the process suggested was followed by the BCVMA. However, it is troubling that Council did not ensure that those participating in the Standard-Setting Workshop were reflective of the membership and its views. There was no general call for volunteers and there was no urgency which foreclosed this step from being taken. There was no call for participants outside the Lower Mainland who may have provided a more objective view of the English proficiency requirements, as they were not subject to the negative commentary about Indo-Canadian veterinarians and/or did not have regular and ongoing contact with their practices. The evidence was clear that those asked to participate in the Workshop all supported an English language test and that some of them had concerns about the practice standards of Indo-Canadian veterinarians. Some participants had made or had heard the negative commentary about Dr. Bhullar and those associated with him, including many of the Complainants, including Drs. O'Grady, Sekhon, Sran, Rana, Hurdal, Kahlon and Kaler. There was no attempt to ask these veterinarians, both Indo-Canadian and Caucasian, who opposed the implementation of an English language test, to participate in the Workshop. I am not persuaded that the BCVMA could not have asked these individuals or that it would have been inappropriate to do so.

[929] The Complainants suggest that those who participated in the Workshop were committed to a high standard of English proficiency and therefore would be inclined to set a high TSE score. In my view, the evidence does not directly establish this connection. However, the negative commentary about Indo-Canadian veterinarians made by those who participated in the Workshop leads to a reasonable inference that they may have been biased towards setting a higher TSE score. Further, Dr. O'Grady chose the Workshop participants; he was committed to a change in the method of testing English proficiency and, given the rumours that he spread and/or facilitated, it is a reasonable inference that he would prefer a high standard of English proficiency.

[930] The Complainants suggested that a majority of the participants in the Workshop were members of the SVA. Although there were a number of SVA members participating in the Workshop, along with a number of participants from the Surrey area, the real issue is the fact that those who opposed the implementation of the English proficiency or who resided outside the Lower Mainland were not asked to participate in the Workshop, thus giving the appearance the Workshop not representative of the British Columbia veterinary community.

[931] It was not clear that the participants in the Workshop clearly understood that in order to obtain a TSE score, an applicant would be required to obtain a TSE score of 60 from one rater. Only Dr. Kocheff recommended a TSE score of 60. All others recommended scores of 55 and, in a few cases, a score of 50. A fair scoring process would have been clearly explained and understood by all the participants. Although I accept that this information was contained in the material and may have been referred to by Ms. Kline, it was clear from the evidence that many of the participants did not understand this to be the case. See the evidence of Drs. O'Grady, Cruickshank, Biernacki, Kocheff, Craven, Sran. Although some participants testified that they understood this to the case, they were not certain when they came to this understanding. See the evidence of Dr. Kaler. Given these facts, it is uncertain whether, had all the participants understood the scoring process when they were making their recommendation to set the TSE score, it would have changed their final recommendation.

[932] The Workshop participants included those Indo-Canadian veterinarians who themselves had not been able to achieve TSE score of 55. The ETS was clear, and the evidence supported this to be the case, that the Workshop participants must have native or near-native English language skills. Clearly those individuals, who could not achieve a TSE score of 55 and/or 60, would not have met this threshold. This should have been addressed by the English Language Task Force but it was not. It also raises a question about the motives of some of those veterinarians, who could not achieve a TSE score of 55, and then chose this as the appropriate score. Further, the ETS Manual suggests that those who participated in the Workshop be familiar with the TSE by having taken it themselves; many of the participants had not done so.

[933] The BCVMA adopted the AVMA's scores for both the TOEFL and TWE tests and the CVMA's TOEFL score. However, the TSE score it implemented was higher than that established by both Associations. In my view, it provided no credible reasons for this difference. Although it was suggested by the Respondents' witnesses that the CVMA and others 'blindly' adopted the scores of the AVMA this was pure speculation. The BCVMA adopted a TSE score that was higher than any other veterinary association or licensing body in North America. It provided no credible reasons for why it did so. The only inference that can be drawn, in all of the circumstances, is that the BCVMA wanted to limit foreign-trained veterinarians, coming mainly from India, from practising in British Columbia. It is interesting to note that Dr. O'Grady had assumed that the BCVMA would adopt the same TSE score as that required by the CVMA and AVMA, suggesting that it was always open to the BCVMA to do so.

[934] Other licensing bodies in Canada have a similar mandate to protect the public interest. However, none of them require a TSE score of 55. I am not persuaded that the BCVMA's mandate was any greater and/or more important than any other licensing body such that a higher score was required.

[935] The BCVMA suggested that other professional bodies in British Columbia require a TSE score of 55. However, this was not born out by the evidence.

[936] The Respondents say that Dr. Rana's statement to Dr. Joshi that the implementation of an English proficiency requirement would serve to keep Indo-Canadians from the PAU from being registered with the BCVMA was not reflective of the BCVMA's position. The Respondents suggest that Dr. Rana's 'honest views' were expressed during this hearing. The Respondents say Dr. Rana only made the statements to Dr. Joshi about the English proficiency of Indo-Canadian veterinarians to befriend him. As noted elsewhere in this decision, I found Dr. Rana not to be a credible witness. I find that his statements to Dr. Joshi reflected his true views in that he supported a high level of English proficiency to reduce competition and to address his concerns about Dr. Bhullar and his associates. Given Dr. Rana's views, I find it was not appropriate for him to have participated in the Workshop.

[937] The ETS Manual suggests that those who are the decision-makers and who will ultimately decide what TSE score to adopt should consider impact data, among other factors. The BCVMA took the position that it adopted the TSE score of 55 because it had been set by an independent Workshop. However, the ETS noted that this alone was an insufficient basis to adopt a score. In this case, impact was not fully considered, which would include the following considerations:

- No one who had participated in the Workshop had achieved a TSE score of 55;
- The statistics provided by the ETS illustrated that, at minimum, 75% of those candidates taking the TSE, from India, would be unable to achieve a TSE score of 55;
- No other veterinary association or licensing body required a TSE score of 55. Although there was some information about this, I find that Council did not fully consider why the BCVMA required a different and higher standard;
- There was no testing of the Standard in British Columbia before it was implemented nor was consideration given as to whether it would adversely affect a specific group of applicants; and
- There was no statistical review of the communication issues that allegedly arose within the disciplinary system.

[938] Considering impact data was an ongoing and fluid process and given that the BCVMA decided to adopt its English proficiency requirements by policy, it was always open to the BCVMA to consider what was actually happening within the British Columbia context. Dr. Cruickshank acknowledged that this type of process and ongoing assessment was one of the bases for adopting the change through policy. I find that the BCVMA took no steps to consider this data.

[939] When it implemented the English Language Standard, the BCVMA referred to, and relied on, the TSE score adopted by the College of Pharmacists, which they suggested was 55. This was inaccurate. The English Language Task Force was aware that the College had a TSE score of 50 as this was referred to in its initial report dated January 15, 2004 and was based on the research done by Dr. O'Grady and perhaps Dr. Sekhon. After speaking to Ms. Kline, the BCVMA accepted her view that the College's TSE score

was 55 without actually taking any steps to determine why they had differing information. The BCVMA then repeatedly said that the College of Pharmacist had a TSE score of 55 and, therefore, it was not out-of-step with what other professions in BC were doing; it suggested that the College was an appropriate comparator. They repeated this incorrect information despite being advised that it was inaccurate by some Indo-Canadian veterinarians and members of the public. I find that this disregard for that information, because of its source, suggested that the BCVMA was unwilling to believe Indo-Canadians even about this simple issue, which was clearly wrong and easily verifiable. Although the BCVMA later apologized, I find that their apology was less than sincere.

[940] In 2009, with the implementation of the Canadian Agreement on Internal Trade, which included a mobility requirement, the BCVMA abandoned its requirement that all foreign-trained applicants would be required to meet its separate English language requirements, and noted that the CQ process established proficiency to the extent required by a newly licensed veterinarian. Despite having abandoned its own criteria as a result of this Agreement, it continued to lobby the CVMA to have it increase its English proficiency requirements to be in line with what the BCVMA had in place at the time. This change was never made. Since 2009, Indo-Canadian veterinarians who have met the CVMA English proficiency requirements, including its waivers, have been licensed by the BCVMA and no adverse consequences were noted or introduced into evidence, despite this hearing continuing through to mid-2012, when submissions were completed.

[941] I agree with the Complainants that there was a delay, once the Council had adopted the TOEFL suite of tests, to set out equivalent scores for other internationally recognized English proficiency tests that it would accept. Further, it delayed in completing the necessary CEAT interview questions and making this option available to applicants. It would have been fair and appropriate in the circumstances to delay implementation of the English Language Standard, in May 2004, until such alternate testing processes were available. Again this serves to illustrate that the BCVMA was in some hurry, for unexplained reasons, to have a new and higher requirement in place.

[942] I accept that the interview option was discussed as early as May 2004; it was also specifically referred to in the waivers set out in Council's May 2004 motion adopting the

English Language Standard. However, the development of an interview option was not started until August 2004. I do not accept that the interview option was implemented solely as a response to the filing of this Complaint as the Complainants have suggested; the interview was to be made available; what had yet to be concluded was the development of the actual interview questions and the process to be followed. Further, I agree that the waivers had been discussed by Council before this Complaint was filed.

[943] The Complainants suggest that the BCVMA "showed an interest in manipulating the eligibility criteria or waiver terms to ensure that applicants trained in India would not be exempt". Initially, the BCVMA adopted the language used by the AVMA which provided an exemption for foreign-trained veterinarians educated in India. It then changed its waiver language so that those veterinarians would not be exempt and, as noted in the evidence, imposed stricter criteria for exemption. It is difficult to conclude that this change was not done to ensure that Indo-Canadian veterinarians would not obtain an automatic waiver; I can find no other basis for the change.

[944] It is true that most Indo-Canadian applicants were able to be registered with the BCVMA by passing the IELTS and/or the interview. However, this does not suggest the its TSE score of 55 was appropriate; in fact it suggests the opposite as no one was able to meet the English Language Standard so pursued other options, except for one applicant. I note that the interview option was only available to those applicants who had come to British Columbia and applied to the BCVMA to be registered; they had to be present in the jurisdiction. It goes without saying that this was an expensive and uncertain option for many. Although many passed the interview, it is unknown how many did not take it because of the risk of failing as it was allegedly equivalent to a TSE score of 55, a standard they could not meet.

[945] A number of Complainants testified that they spoke to PAU graduates who advised them that they would not seek registration in British Columbia as they would not be able to meet the English Language Standard. I find that this provided some evidence, although hearsay, about the systemic adverse impact of the Standard on veterinarians from the PAU and their decision not to come to British Columbia.

[946] The Respondents suggested that if PAU graduates refrained from applying to the BCVMA, it was because of Dr. Bhullar's "public campaign" that the English Language Standard was impossible to obtain. The evidence was clear that the English Language Standard could not be achieved by most Indo-Canadian applicants. That Dr. Bhullar raised this as a concern, publically or otherwise, does not lead to the conclusion that that Standard did not have an adverse impact on prospective applicants from the PAU or elsewhere in India and/or the Punjab.

[947] The Respondents testified that they chose the TOEFL suite of tests, including the TSE, because it was widely used, including by those residing in India and/or the Punjab. I agree with the Complainants that those taking the test, for purposes of seeking registration with the BCVMA, would be aware of the scoring process and the difficulty in obtaining a TSE score of 55. The statistics provided by the testing service bear this out. This information was always available to the BCVMA but was not considered.

[948] The Respondents suggest that applicants continued to be registered after the implementation of the English Language Standard, including Indo-Canadian veterinarians and no one was denied licensure. It is of note that only one person was registered with a TSE score of 55, the Standard set by the BCVMA, between May 2004 and May 2008. This provides further support that the English Language Standard was unachievable for most applicants. This information was available to the BCVMA on an ongoing basis. There is nothing to suggest that it considered such evidence, at any time, to assess whether the English Language Standard had an adverse impact on foreign-trained applicants.

[949] I agree that many of these applicants were then registered because they were able to take an alternate test or elected to have an oral interview. It was evident that alternatives were achievable and were not as onerous as a TSE score of 55, which the evidence established was not achievable for most Indo-Canadian veterinarians. This addressed the adverse impact of the standard for some applicants, but did not lessen the impact for those who reasonably understood that the TSE score of 55 was unachievable and the alternatives were meant to be equivalent, such as Dr. Sidhu. Nor did this address

the discriminatory purpose of implementing the Standard or the impact of the imposition of the Standard on the relationship between the BCVMA and the Complainants.

[950] Determining the adverse effect on individual Indo-Canadian veterinarians, who might have applied to the BCVMA but for the English Language Standard, is a difficult, if not impossible task. This is similar to those situations where a building might not be accessible to those with mobility issues but no one can ascertain how many of those individuals were adversely affected by the lack of such accessibility as they pass the building by. There is clearly systemic discrimination at play but it is not easily quantifiable.

[951] The BCVMA is required, by its legislation, to assess the English proficiency of applicants. It required those foreign-trained veterinarians from the Punjab and/or India to pass the TOEFL suite of tests, including the TSE set at a score of 55, a score that the evidence illustrated was unachievable for most applicants. The purported purpose of the English Language Standard was to test English proficiency; however, given the high standard, the actual purpose, upon review of the evidence and seen in context, was to limit the registration of foreign-trained Indo-Canadian veterinarians.

[952] In *R v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, Big M challenged the validity of certain provisions of the *Lords Day Act*, R.S.C. 1970, c. L-13, which restricted its ability to sell goods on a Sunday. Big M had been charged under this *Act* but was acquitted at trial. The acquittal was upheld on appeal and subsequently by the Supreme Court of Canada. In dismissing the appeal, Mr. Justice Dickson, speaking for the majority of the Court considered both the purpose of the impugned legislation and its effects. The Court held that an unconstitutional purpose can invalidate legislation whether or not there as an unconstitutional effect. Similarly here, the purpose of the English Language Standard was not a good faith effort to assess the English proficiency of Indo-Canadian applicants but an attempt to create a barrier to registration. (paras. 78-93)

[953] As Dr. Bhullar correctly said, implementing the TSE score of 55 created a lot of disharmony between him, other Indo-Canadian veterinarians and the BCVMA. This may have been averted had the BCVMA fully considered the impact of a high TSE score on

those veterinarians from India and/or the Punjab, and confirmed its own information that it provided to the membership as being accurate.

[954] In summary, I find that the implementation English Language Standard served to create an environment in which Indo-Canadians applicants were at a disadvantage and concerns about this were ignored by the BCVMA. The BCVMA ignored the concerns raised by the Indo-Canadian veterinarians based on their stereotypical view of Dr. Bhullar and the other Complainants who raised such concerns that they were untruthful and that their concerns were without foundation. This created a poisoned relationship between the BCVMA and these Indo-Canadian Complainants. It informed the BCVMA's later views of Dr. Bhullar and others as being less than credible and the Complainants' views that the BCVMA was not treating them fairly based on their race.

F. Facility Inspections

[955] The Respondents suggested that the Complainants only formulated their allegations that they were targeted for unscheduled inspections, based on a prohibited ground of discrimination, after they received disclosure from the Respondents in this human rights proceeding. I do not find this unusual. Often after disclosure is completed, parties assess and reassess the allegations giving rise to their Complaint. The Complainants would not have had the ability to assess the steps taken by the BCVMA, in respect to facility inspections, until such disclosure was made; that they then further modified their allegations is neither surprising nor improper. Further, the Respondents were aware of the Complainants' position and were able to, and did, fully respond to the allegations.

[956] Dr. Rana was engaged in, or instigated, negative commentary about Dr. Bhullar and those associated with him. As noted elsewhere in this Decision, I find that this would have created the reasonable perception that Dr. Rana was biased against such facilities. However, Dr. Rana was not required to recuse himself from those PAC discussions involving those facilities owned and/or operated by Indo-Canadian veterinarians, including those facilities owned and operated by the Complainants.

[957] I agree with the Respondents that all facilities were subject to the same procedures and requirements during the inspection process, which were set out in some detail in the forms completed by the Practice Inspectors. However, when the decision was made about which facility would be inspected, those low-costs facilities owned and/or operated by Indo-Canadians were subject to unscheduled inspections; other facilities were not listed to have unscheduled inspections, except for one.

[958] The Respondents insist that the Complainants' argument that they were targeted through unscheduled inspection is 'in-and-of-itself... inherently nonsensical'. They argue that their position reflects the real issue which is that the Complainants had a disdain for the BCVMA's oversight functions and were unwilling to comply with the regulatory authority.

[959] The Respondents generated lists of those facilities that would be subject to unscheduled inspections. The evidence illustrated that all the facilities, except for one, listed for an unscheduled inspection were facilities owned and/or operated by Indo-Canadians. As a result, it is difficult to accept the Respondents' argument that the Complainants would be unnecessarily concerned about this process. I do not find that the Complainants' concerns are reflective of an alleged disdain for the BCVMA's oversight functions.

[960] I find that the selection of Indo-Canadian facilities for unscheduled inspections, some of which were carried out, was done based on unsubstantiated rumours and anecdotal complaints about their practices; some of these rumours were set out in an email sent by Ms. Edwards to Dr. Wetzstein. That some of these inspections proceeded by way of notice to the member, does not undermine the fact that they were listed as being unscheduled based on unsubstantiated information.

[961] The Respondents suggest that facilities, other than those operated and/or owned by the Complainants, were also subject to unscheduled inspections. However, as noted, only one other facility was listed to be subject to an unscheduled inspection. No other documentary evidence was provided by the Respondents to support their assertions. This documentary evidence was within the Respondents' knowledge and/or control; they were

at liberty to disclose it and chose not to do so. They cannot now rely on assertions, unsupported by credible evidence, to make such an argument.

[962] Generally, I find that the facilities owned by the Complainants operating low-cost facilities were targeted for unscheduled inspections.

G. Disclosure Policy

[963] The BCVMA had the authority to develop and pass the Disclosure Policy and Disclosure Rules. However, the timing of the publication had the effect of targeting those Indo-Canadian veterinarians so identified on the website, eight of the ten of whom were Complainants or former Complainants and nine of whom were Indo-Canadian veterinarians. I find that Council knew that the professional reputations of those who were subject to publication might be adversely affected but nonetheless proceeded with retrospective publication.

[964] There was evidence that a number of Notices of Inquiry were prepared in and around the time that the Disclosure Policy was coming into effect in September 2005. I agree that this process suggests that the BCVMA wanted to have these Notices prepared in time to be published on the website. There was no other reason for the timing of the preparation of the Notices, given that the hearings would not commence in the immediate future. Further, the BCVMA continually relied on its overwhelming workload to suggest that it could not deal with certain issues in a timely manner; however, it clearly had the ability to deal with matters, such as the publication of the Notices of Inquiry, in an expeditious manner.

[965] I find that those listed on the website would have been adversely affected by the referral of clients to the website by some members, as the members so listed would have been cast in a negative light. Both Drs. Ashburner and Rana dealt with only one person, who turned out not to be client; however, this provided some evidence that at least two members were referring clients to the website.

[966] The BCVMA was aware that other veterinary organizations did not publish charges. In this respect the Disclosure Policy was harsher than that applied by other organizations.

[967] The CRC and Council were aware that those subject to publication were mainly Indo-Canadian veterinarians. Dr. Craven testified that the CRC was concerned about the publication of the names on the website but understood that this was what other regulatory bodies were doing. Dr. Craven also said that given the applicants for anonymous publication provided no reason(s) to support their requests, the CRC felt it had no option but to deny them.

[968] The CRC was required to answer two questions when it determined whether to grant anonymous publication to a member subject to a Notice of Inquiry. First, the CRC had to consider if the charge(s) were sufficiently serious that it was in the public's and the BCVMA's interest to have the identity of the member published and, second, the CRC had to consider whether grievous harm would result to the member if publication occurred. Even if the CRC received only a bare request for anonymous publication it still had an obligation to consider whether the charges were sufficiently serious that publication was warranted and the protection of the public outweighed the harm to the member. This should have been considered by it but it was not.

[969] Dr. Ashburner testified that the CRC had no information before it when it made its decision to deny anonymous publication; Ms. Osborne understood they had the correspondence from the lawyer of those who would be affected. The evidence suggests that the CRC had such letters, which contained a bare request for anonymous publication but no information about the files or the charges at issue. For the CRC to make such an important decision without the supporting information about the files is surprising. As such, I find that the CRC did not fully consider this matter; in fact, it appears that it simply "rubber-stamped" those matters that would be subject to publication. Many of the charges contained in the Notices of Inquiry were minor. For example, the charges against Dr. Bajwa, which were referred to Inquiry, related only to the timeliness of when the medical records were delivered. This is not a serious public interest concern while the publication of this information would be harmful to Dr. Bajwa.

[970] The CRC had an obligation to ensure that it assessed the applications for anonymous publication fairly and without discrimination. Those seeking anonymous publication, for the most part, and those who were denied anonymous publication, except

for one veterinarian, were all Indo-Canadians. The CRC simply denied the applications, without a full consideration of the issue. In considering the steps taken by the CRC in this respect, and viewed in the larger context, it is not surprising that the CRC felt justified in its actions as it was assumed that these Indo-Canadians were engaged in sub-standard practice.

H. Advertising Complaints

[971] The Complainants refer to Dr. Morgan's discussion of the advertisements of Dr. Bajwa, a self-identified Indo-Canadian low-cost veterinarian, and to the discussions of the CRC at its meeting in November 2003, to suggest that the BCVMA had concerns about Indo-Canadian low-cost veterinarians, who were advertising fees below the reasonable costs of such services and questioned their ability to meet practice standards while doing so. Engaging in such practises would call into question the honour and dignity of the profession.

[972] The BCVMA maintained open advertisement files, without advising those Complainants who were the subject of such complaints, illustrating that the BCVMA was monitoring the Complainants' advertising. Although this did not come to the attention of the Complainants until disclosure occurred in this human rights proceeding, this would still be concerning to them. It reinforced the view that the Complainants were being adversely targeted, without their knowledge, based on some factors unknown to them. It is reasonable to infer that such scrutiny arose because of the BCVMA's unfounded, negative and generalized view of the low-cost services being provided by them.

[973] The Complainants argue that the BCVMA treated them differently than others who advertised in a similar manner. The Complainants also suggest that many of the advertising complaints filed by the Complainants, and in particular Dr. Johar, were ignored. The Respondents submit that the Complainants were not adversely treated as all the advertising complaints against them, except for the ones involving Dr. Bhullar, were closed. Although the advertising complaints involving the Complainants were eventually closed, there were pursued, investigated and subject to undertakings. Because a complaint

is closed does not, on its own, suggest that the Complainants were not adversely affected by the BCVMA's steps in this respect.

[974] As the evidence illustrates, many of the advertisements that were scrutinized by the BCVMA had been published before the new Marketing Guidelines came into effect: see those advertisements of Drs. Punia, Benipal, Parbhakar, Johar and Bhullar. Once the advertisements had been disseminated, they could not be changed, a fact that the BCVMA appears not to have considered in its review of them.

[975] The Respondents submit that there is no evidence upon which the Tribunal could conclude differential treatment. The Complainants provided only opinion evidence on whether the advertisements of non-Complainants violated Marketing Guidelines. The Respondents point to the fact that the Complainants failed to provide evidence of how the BCVMA might have received other advertising complaints, that other advertising complaints may or may not have been resolved with a deemed undertaking and/or what steps the BCVMA took with respect to them. The Respondents also suggest that the BCVMA did not pursue advertising complaints, absent a complaint.

[976] As the evidence illustrated, the Complainants' advertisements were reviewed despite the absence of a formal complaint and often on the basis of a person, who in some cases was not identified, sending a copy of the advertisement to the BCVMA without commentary. Further, there was ample evidence that many veterinarians used comparative language in their advertising. Despite this being brought to the attention of the BCVMA by Dr. Johar and others, there is little evidence that the BCVMA took steps to address those advertisements, regardless of whether they appeared in the SuperPages, Yellow Pages or elsewhere.

[977] The Complainants led evidence of what they viewed to be differential treatment in the receipt and processing of advertising complaints. The Respondents did not lead documentary evidence to refute the Complainants' allegations, except for the one complaint involving Drs. Johar and O. This information was in their possession; it was their decision not to disclose it and/or to introduce it at this hearing and through their witnesses. The only evidence that supports the Respondents' position is that of Ms. Edwards who testified that she processed all advertising complaint in a similar manner.

Although I have no reason to doubt Ms. Edwards' evidence on this point, I was not persuaded, considered in context, that it outweighed the evidence supporting that there was ongoing scrutiny of the Complainants' advertising.

[978] The Complainants agree that they agreed, as a "group", not to sign the letters seeking their undertaking. They were concerned that such an undertaking could be used in the future to raise further issues against them; they were correct in this assessment as this was confirmed by Ms. Edwards in her communication with Dr. Johar that the failure to abide by the undertaking could result in further sanctions.

[979] Dr. Bhullar testified that only one or two members of the Complainant group had been contacted by the BCVMA with respect to their advertising. There were at least five Complainants who were contacted by Ms. Edwards and who spoke to her about their advertising; Drs. Benipal, Bajwa, Hans Johar and Parbhakar. The Respondents argued that Dr. Bhullar provided false evidence in this respect. I find that Dr. Bhullar simply did not recall the number of Complainants who had spoken to the BCVMA; he clearly knew that some had and provided his best assessment of that number. I was not persuaded that this discrepancy undermined Dr. Bhullar's credibility in this respect.

[980] Dr. Bhullar also testified that that certain of those advertising complaints against Drs. Brar, Jagpal, Bajwa, Benipal, Hans, Mrar, Parbhakar, Bhatia and Sharma set out in Exhibit 283 went to Inquiry. The evidence illustrates that this was not the case. However, the CRC recommended that the following complaints be referred to Inquiry: Drs. Bhatia (A02-072), Bajwa (A02-054/A02-074), Hans (A03-080), Kamboj (A03-065), and Sharma (A02-027). Dr. Bhullar's evidence on this point was not accurate but again I am not persuaded that this discrepancy undermined Dr. Bhullar's credibility on this issue.

I. Disciplinary Complaints

[981] The Complainants do not take the position that they should be exempt from the BCVMA regulatory scrutiny but that the practices, policies and procedures that the BCVMA applies to its members, including Indo-Canadian veterinarians should be done neutrally and impartially. It is without question that the BCVMA has the authority and obligation to regulate the veterinary practice in the public interest. However, the

regulation must accord with the principles of procedural fairness and be free from discrimination.

[982] In some cases, the Complainants were not advised of the disciplinary complaints against them until the investigation had been ongoing and in some cases reports to the CRC had been completed (Dr. Bhullar). In one case, a Complainant's clients had been contacted without their knowledge. (Dr. Johar)

[983] In numerous cases, the BCVMA alleged that the medical records provided by the Complainants had been falsified. No such concerns were raised with respect to those file listed on Schedule Q. Further, in many cases, the medical records had been received by other veterinarians before the Complainants knew of the disciplinary complaints and were the same as those subsequently provided to the BCVMA. Although there may have been concerns regarding the completeness of the medical record, this is not an indication that there were falsified. Such allegations are serious and, in many cases, were without foundation. In my view, it was simply based on the stereotypical race-based premise that these Indo-Canadian veterinarians had a propensity to act unethically in relation to their practice standards, medical records and general truthfulness.

[984] Following from this, the Complainants' information was not believed. It was generally assumed that their information was less reliable than others, including that provided by POs, even when the POs had contradicted themselves throughout the investigative process. Further, although the COs testified that in most cases, the medical record was the best and most accurate information available, they did not apply this general principle to those records of the some of the Complainants such as Dr. Bajwa and Bhullar or to the information they provided.

[985] The investigators did not follow-up with some of the Complainants, such as Dr. Bajwa, during the course of the investigation. It is not clear why they failed to do so. They continually relied on the respondent veterinarians' ability to comment on the report to the CRC, after it had been written, to justify this failure. However, a balanced report would ensure that all avenues of inquiry would be completed before the investigators report was concluded. Further, as noted above, in many cases, no notice was given to the

Complainants that an issue would be raised to the CRC or that their response to the questions posed was inadequate.

[986] On many occasions, the issues raised by the PO and/or initially by the investigator were added to and expanded to when the report to the CRC was completed. This served to suggest that the issues raised by the initial complaint were more serious and required more scrutiny than was otherwise was appropriate in the circumstances. (04-049 Dr. Bajwa) (see also 04-118, 05-012, 05-035)

[987] Many of the issues referred to Inquiry were issues that did not engage a risk to the public, such as the failure to initial medical records and or a timely response to the BCVMA. The BCVMA spent significant resources pursuing minor issues against some of the Complainants. Although I accept that in some cases, the veterinarian did not engage in the ACR, a warning could have sufficed. This was especially evident in the Dr. Bajwa's case, where he was put the expense of two Inquiries at no fault of his own.

[988] In the complaints involving Drs. Johar and O, the BCVMA continually believed Dr. O, despite evidence to the contrary. It operated on its view that Dr. Johar, as an Indo-Canadian, was less credible than Dr. O, a Caucasian veterinarian. It was clear that the BCVMA used those complaints filed by Dr. O to pursue Dr. Johar, despite those complaints containing racist and unprofessional views of Dr. Johar.

[989] Generally, it appear that those individuals who had a close relationship with Dr. Bhullar, including Drs. Bajwa, Bhatia, Joshi, Benipal and Johar were subject to greater scrutiny that others, including others within the Complainant group. In my view, this served to suggest that the Complainants were not being treated as individuals and dealt with as such. Because they may have had a business relationship with Dr. Bhullar, joined him in his opposition to the English Language Standard, asked for his support (Dr. Joshi) or attended meetings and/or demonstrations to express their opposition to the BCVMA's policies, does not suggest that they were in "lockstep" with Dr. Bhullar. That the BCVMA viewed these Complainants based on these relationships, in a similar fashion, serves to illustrate that the BCVMA view that these individuals were fungible, based on their race-based view of them.

[990] Generally, Dr. King-Harris was suspicious of Dr. Bhullar and others and acknowledged that, in at least mid to late 2004, he had formed the view that Dr. Bhullar and others were dishonest and possibly ungovernable. Despite this view, he continued to investigate complaints involving those individuals. It is difficult to accept that in such cases and, given his strong views, which he repeatedly testified to, he did not step away from those investigations. It is not surprising that, having become aware of Dr. King-Harris' views, along with those views of Ms. Osborne, Dr. Ashburner and others, the Complainants formed the view that they would not receive a fair investigative process free from race-based discrimination.

[991] Further, although the Complainants cast the issue as the failure of the BCVMA to give them the benefit of the doubt when differences arose between them and/or their medical records and others, the Complainants were not believed but others were. I agree that the BCVMA is not required to give parties the "benefit of the doubt" but it is required to assess the credibility of those involved in the investigatory process free from preconceived notions about their credibility and general honesty based on the race-based stereotype that Indo-Canadians may be less honest than others.

J. Summary

[992] The entirety of the evidence reveals "patterns, showing trends of discrimination" against the Complainants (*Crockford*). Key persons in the BCVMA held, condoned and acted on discriminatory attitudes about this group of Indo-Canadian veterinarians, and were quick to believe any suggestion that their veterinary practices were substandard or that the veterinarians themselves were dishonest. Generally, there was greater scrutiny of the Complainants in the BCVMA's processes and there were instances of differential standards and treatment. The relationship between the Complainants and their regulatory body was significantly damaged, with suspicion on both sides. As I have said, I do not condone the conduct of some of the Complainants, but it is the Respondents' conduct which is at issue before me. I do not accept that the Respondents' conduct is fully explained as being their reasonable reaction to the Complainants' conduct. The Complainants' race was a factor in the adverse treatment, specifics of which are addressed below. The Complainants' race was a factor in the poisoned relationship that

developed between them and the BCVMA, and a reasonable perception was created that the BCVMA would not treat the Complainants fairly in its regulatory processes at the time relevant to this Complaint.

[993] In summary, I find that the BCVMA was engaged in race-based systemic discrimination. It is within this context that it considered the individual issues involving the Complainants.

Individual Discrimination and Nexus

A. Introduction

[994] I now turn to the specific and individual allegations of discrimination in each of the areas discussed under the systemic discrimination analysis. My finding regarding systemic discrimination does not mean that every negative interaction between the BCVMA and a Complainant was discriminatory. In this respect, I will consider both whether an individual Complainant was adversely affected by the steps taken by the BCVMA and whether race was a factor in the adverse or differential treatment.

[995] The Complainants argue that the policies of the BCVMA were not applied consistently among the Complainants and that this illustrates that the Respondents were focused on a few Complainants who instigated this human rights Complaint. As the Complainants correctly pointed out, the Respondents focused on Dr. Bhullar throughout their submissions and much of their evidence. Similarly, the Respondents argue that this Complaint, the evidence, and the Complainants' submissions were a mechanism for Drs. Bhullar, Johar and Bajwa to challenge the disciplinary proceedings involving them. They say that the inclusion of other Complainants in this Complaint was done to "disguise" this fact.

[996] It is without question that the Respondents held significant animosity towards Dr. Bhullar. However, the Complainants are still required to establish that Dr. Bhullar and the other Complainants, individually, were treated differently or that they were adversely affected by the policies, practices and procedures of the BCVMA and that there race was a factor in the adverse treatment.

[997] The Respondents suggest that they, at all times, treated the with Complainants fairly, professionally and accommodated them where appropriate. In this part of the analysis, I discuss the treatment of the Complainants, some of which may be described as 'unfair treatment'. However, the finding of *prima facie* discrimination only occurs if the adverse impact on the individual or group, or unfair treatment at issue, is connected to a prohibited ground of discrimination. As noted in the case law, there must be a nexus between the two or, stated differently, the person's race must be a factor in the adverse treatment received.

[998] In this part of the analysis, I discuss the individual parts of the Complaint and whether, in the particular circumstance, the Complainants suffered an adverse impact and/or were differently treated. I also discuss whether, in such circumstances, race was a factor in the differential treatment. I do so to avoid the further repetition of the evidence as it is significantly intertwined. I do this analysis with the context of my finding that systemic discrimination was at play in this Complaint.

B. Registration/Facility Naming

[999] I find that the Complainants were not, as individuals, directly adversely affected and/or treated differently in the registration process, except for those who have been separately identified, such as Drs. Sidhu, Punia and Joshi.

[1000] I find that, generally, the BCVMA registered the Complainants in a timely manner and they suffered no adverse impact in their ability to practise veterinary medicine as a result.

[1001] Dr. Punia testified about his registration process and then withdrew from the Complaint. I make no finding of whether Dr. Punia, individually, was adversely affected in the registration process.

[1002] I was not persuaded that the evidence established, on a balance of probabilities, that any of the individual Complainants were adversely treated in the facility naming process. They were permitted to open and operate their facilities within a timely manner. I did not find that Drs. Bajwa, Bhullar and/or Dr. Johar were adversely treated in this process. Although difficult and sometimes concerning issues were raised about the

processed followed by the BCVMA, I was not persuaded that, in any specific case, the BCVMA treated them different or adversely based on a prohibited ground of discrimination.

[1003] I find that Dr. Bhullar was not reimbursed for those expenses he incurred as a result of the BCVMA granting provisional approval of the facility name Mundy Austin Animal Hospital, which was then withdrawn. However, Dr. Bhullar was not reimbursed because he had failed to provide the necessary invoices to the BCVMA confirming the expenses he had incurred as a result of the BCVMA's error. I find that Dr. Bhullar cannot rely on his own failure to provide the invoices as illustrating that he was adversely affected by the BCVMA's failure to reimburse him.

[1004] The BCVMA accepts that the denial of registration to Dr. Joshi constitutes adverse treatment. However, it disputes that the subsequent proceedings before the BC Supreme Court and/or the BC Court of Appeal, the position taken by the BCVMA in those proceedings or any further delays in considering Dr. Joshi's application for registration constitutes adverse treatment.

[1005] I find that the BCVMA adversely treated Dr. Joshi when it denied him registration over a lengthy period of time. The entirety of the steps taken by the BCVMA in defending its decision to deny Dr. Joshi registration continued the adverse impact of its initial decision.

[1006] After considering all the evidence with respect to Dr. Joshi's registration, I find that Dr. Joshi's race was a factor in the BCVMA's decision to deny him licensure, a decision with a continuing impact. I base this finding on the following.

[1007] I agree that the *Act* requires the BCVMA to assess an applicant's experience, good professional conduct and good character before granting registration. It is also required to test conflicting information during this assessment process. This was not disputed by the Complainants. However, this requirement cannot be used to shield discriminatory conduct when race is a factor in the denial of registration.

[1008] Dr. Joshi denied that he did unlicensed surgery and I accepted his evidence in this respect. Despite this denial, which was supported by Dr. Mrar, where Dr. Joshi had

allegedly practised unlicensed surgery, Dr. Joshi's own affidavit and his continued denial that he did not perform unlicensed surgery, the BCVMA continued to be suspicious of Dr. Joshi based on the untested information of two of Dr. Mrar's employees, both of whom were Caucasian. The BCVMA continued to pressure Dr. Joshi to change his story because it believed that he was lying. I find this belief was based on the raced-based stereotype that those who are Indo-Canadian are dishonest.

[1009] I find that Dr. Joshi only changed his position when he appeared before Council because he believed that, in doing so, he would be registered with the BCVMA. I find that he was led to this belief by the information provided by the BCVMA to him directly and through his lawyer.

[1010] I find that Council operated under the misconception that Indo-Canadians were less credible and that Dr. Joshi's information must be fully examined. In this respect Dr. Joshi's race caused Council to be more suspicious and cautious of him; Dr. Joshi was not assessed based solely on his own merits but because he identified as Indo-Canadian; his race was a factor in this assessment. Council was not only suspicious of Dr. Joshi's actions it was also suspicious of him because Dr. Bhullar, another Indo-Canadian, assisted him. Although I found that some of Dr. Bhullar's actions *vis-à-vis* Dr. Joshi's application unfortunate, this was not a basis to be suspect of Dr. Joshi who was entitled to be assessed on his own merits. As the Respondents noted in their submission, this matter might have turned out "quite differently" had Dr. Bhullar not intervened to prevent Dr. Joshi from fulfilling his agreement between his lawyer and the lawyer for the BCVMA. I was not persuaded that Dr. Bhullar took such a step; even accepting that he did, this does not foreclose the BCVMA from fulfilling its own obligation to assess Dr. Joshi's application based on his own merits and capabilities nor does it justify its failure to do so.

[1011] Dr. Joshi subsequently obtained a contract and then full-time employment with the Canada Food Inspection Agency starting in September 2005. There was no evidence that he was dishonest and or had lied in his application process for that position or that he had otherwise engaged inappropriate conduct at that time or thereafter. Dr. Joshi was also registered with the Alberta Veterinary Medical Association without incident.

[1012] In summary, I find that the Complainants have established that Dr. Joshi was adversely treated in his registration process and that his race was a factor in this adverse treatment. I considered the Respondents' evidence about the steps they took during Dr. Joshi's registration process and found it did not justify their continued refusal to register Dr. Joshi.

C. English Language Standard

[1013] The Respondents argued that this is not a representative Complaint and the Complainants do not represent all veterinarians in British Columbia. As a result, they argue that the Complainants "cannot succeed in their complaint by establishing adverse effect on other Indo-Canadians who are not complainants". Dr. Bhullar did file a representative Complaint. Although, it appears that the Tribunal did not process this complaint in that manner, it was clear that the Complainants, and former Complainants, were raising systemic issues with respect to the implementation of the English Language Standard.

[1014] As the Respondents correctly point out, the Complainants, except for Dr. Parmajeet Sidhu, were registered with the BCVMA. They were registered prior to the implementation of the English Language Standard and therefore suffered no direct adverse impact as a result of its implementation.

[1015] However, I find that an individual does not have to be directly subject to a discriminatory policy to be adversely affected by it. In this case, the Complainants reasonably perceived the BCVMA was attempting to restrict the licensing of Indo-Canadian veterinarians, when it implemented the English Language Standard. I found above that the process and implementation of the Standard contributed to the poisoned relationship between the Complainants and the BCVMA. In the context of a required relationship between a veterinarian and their regulatory body, I find that this had an adverse impact on the Complainants.

[1016] I conclude that the English Language Standard applied to those foreign-trained veterinarians from certain schools including the PAU. The evidence established that the overwhelming majority of those who graduated from the PAU were from India and/or the

Punjab. I find that race was a factor in the adverse impact experienced by those Indo-Canadian veterinarians applying for, or considering whether to seek, registration with the BCVMA. While apart from Dr. Sidhu, those affected in this manner are not members of the Complainant group, this discriminatory impact is part of the context in which the English Language Standard operated. The Standard itself is *prima facie* discriminatory. The question that remains is whether the BCVMA has established that the *prima facie* discriminatory Standard is justified. I address that question below.

[1017] I agree that Dr. Sidhu, who was unable to obtain a TSE score of 55, abandoned his application as he did not want to have a record of being denied admission on his record. I find that this was a reasonable position for him to have taken. Not only does this illustrate adverse treatment based on race in Dr. Sidhu's case, it also provides a basis from which an inference may be drawn that the English Language Standard had an adverse impact on those applicants from the Punjab seeking registration with the BCVMA.

[1018] I find that Dr. Sidhu suffered an adverse impact as a result of the BCVMA's English Language Standard and that race was a factor in this adverse treatment.

D. Facility Inspections

[1019] The inspection process was an intrusive and stressful process for the Complainants. The failure to meet practice standards could result in the facility being restricted in its practice and/or closed. Beyond this, I found that all the Complainants' facilities remained open and they were able to continue their practices without restriction or interruption. As a result, I find that, individually, the Complainants were not directly adversely affected by the inspection process, except for Drs. Bajwa and Benipal.

[1020] The Respondents referred to the complaints against Dr. Bajwa (02-071, 03-103, 03-135) and one complaint against Dr. Benipal (03-081) that had been filed with the BCVMA prior to their unscheduled inspections taking place in April 2004. These complaints were either closed and/or dismissed by the CRC. I accept that these complaints had been filed, along with others involving the Complainants, by members of the public. However, the Respondents continually took the position that the disciplinary complaint process was separate from the facility inspection process. Although concerns

were raised by these disciplinary complaints about the facilities, there was little credible evidence that Drs. Bajwa's and/or Benipal's facilities were listed for unscheduled inspections because of these complaints.

[1021] Dr. Benipal testified about his inspection. Dr. Benipal was subject to two unscheduled inspections and one scheduled inspection within a three period. I accept that this process was stressful for him and I accept that he felt targeted in the process. I have addressed the issue of targeting above, which is equally applicable to Dr. Benipal.

[1022] At no time was Dr. Benipal prevented from practice and his facility remained opened. Although the processes were stressful for him, I was not persuaded based on all the evidence, including the evidence of Dr. Wetzstein, that there was not a basis for the repeat inspection. This included a number of deficiencies noted in the first inspection leading to the second inspection. With the introduction of the new Practice Standards, all facilities had to be inspected under the new Standards. Dr. Benipal fell within this requirement leading to his third inspection.

[1023] On balance, I was not persuaded that Dr. Benipal was adversely affected, based on his race, in the facility inspection process on an individual basis.

[1024] However, I find that Dr. Bajwa was subject to an unscheduled inspection based on a dated disciplinary complaint as he was preparing to give evidence before this Tribunal. This had an adverse impact on his ability to prepare for this hearing. I will deal with this further under s. 43 of the *Code*.

E. Advertising

[1025] I find that although the advertisements of many of the Complainants were unnecessarily scrutinized and they were cautioned about their advertising, they were not directly and individually adversely affected by the BCVMA's process, except for Dr. Bhullar.

[1026] It was clear that, given how the BCVMA treated the Complainants' advertising complaints, in that they were closed based on a deemed undertaking, without having responded, a response to its correspondence was not mandatory. Dr. Bhullar received the same letter as did the other Complainants. The Complainants as a group decided not to

respond. Other than with respect to Dr. Bhullar, the BCVMA did not pursue a complaint of failing to respond. Some of the Complainants received phone calls before the letter setting out the deemed undertaking were sent to them but no one called Dr. Bhullar.

[1027] Dr. Bhullar was not provided with the same process to resolve his advertising complaints, A04-040/04-67, as were provided to other Complainants and this was adverse and differential treatment. I accept that the BCVMA was intent on pursuing Dr. Bhullar and did so with respect to these advertising complaints to Inquiry.

[1028] I agree that the CRC should have been advised about how other advertising complaints were being processed before determining whether to send Dr. Bhullar's complaints forward. Although Dr. Bhullar's complaints had to be assessed on their own merits, it was important for the CRC to be aware of how other similar complaints had been dealt with. Further, complaints A04-040 and A04-067 raised different issues, but they were considered within the context of one report to the CRC. This served to provide support for these matters to be referred to Inquiry when had they been considered on their own, a referral might not have been warranted.

[1029] It is also of note that the issues raised by these advertisements and been addressed long before they were considered by the Inquiry.

[1030] In complaint A04-040, a PO had called Dr. Bhullar's clinic after hours and did not receive an answering machine advising what to do in an emergency, despite Dr. Bhullar advertising that he had 24-hour emergency service. After receiving the complaint, Ms. McLeod, at the direction of Dr. King-Harris, called Dr. Bhullar's clinic on October 27, 2004 at 5:30 am and received no answering machine and no one picked-up the phone. On November 4, 2004, Ms. McLeod again called Dr. Bhullar's clinic after hours, the answering machine picked-up and provided the necessary information about what to do in an emergency situation. Despite the problem having been rectified by Dr. Bhullar, this complaint was pursued to Inquiry. The issue became whether or not Dr. Bhullar's facility was an emergency facility, which it was not; in my view, everyone was fully aware of this fact.

[1031] In complaint A04-067, Dr. Bhullar had advertised in the SuperPages in 2002/2003, before the new Marketing Guidelines had come into effect. In the 2004

SuperPages publication, the advertisements had been changed in order to comply with the BCVMA's direction. Despite other files being closed based on an undertaking, this process was not afforded to Dr. Bhullar. Although Ms. Osborne suggested that this was fairer to Dr. Bhullar I found her explanation disingenuous.

[1032] I find that, despite Dr. Bhullar having addressed the BCVMA's concerns in both these complaints, they were still referred to Inquiry. I find that the BCVMA was targeting Dr. Bhullar when doing so. I agree with the Complainants that the BCVMA was pursing the advertising complaints against Dr. Bhullar because he had been vocal in raising his concerns about the English Language Standard, among other issues, and when the BCVMA was participating in negative commentary about Dr. Bhullar.

[1033] These two complaints were referred to Inquiry. They were part of the Inquiry Committee's decision that Council relied on when it decided to erase Dr. Bhullar from the register. I find that Dr. Bhullar experience an adverse impact and experienced differential treatment in the processing of these two advertising complaints; I find that, given the context, discussed above, race was a factor in the adverse treatment he experienced.

F. Disclosure Policy

[1034] I find that disclosure had an adverse impact on those whose names were disclosed in that it made public unproven allegations of misconduct. This would necessarily have an adverse impact on their professional reputation within the veterinary community and with those seeking veterinary services. In some case, those charges were dismissed or withdrawn through the Inquiry process; however, any damage to the professional reputation would have already occurred as a result of publication.

[1035] However, this is no evidence that any of the businesses and/or veterinary practices were adversely affected by the Disclosure Policy. There was no evidence that the Complainants lost money or clients as a result of the Disclosure Policy.

G. Communications

[1036] I find that the BCVMA did not adversely affect the Complainants when it requested that they communicate with it in writing.

[1037] There was significant and ongoing litigation between the BCVMA and the Complainants and it was reasonable to have a complete and accurate record of their communications. Although both parties did not always follow this requirement to communicate in writing, this did not undermine the reasonable basis for the BCVMA's requirement in this respect.

[1038] Although Dr. Bhullar was asked to communicate in writing with the BCVMA prior to the other Complainants, I find that this does not lead to the conclusions that Dr. Bhullar was treated differently from the other Complainants.

[1039] There was evidence that some of the Complainants were embarrassed by the BCVMA's request that they communicate in writing, especially when they sought assistance in the transfer of medical records. They were concerned about their clients' view of them as a result. I find that this does not, in the circumstances of this Complaint, and in the context of the ongoing litigation, amount to adverse treatment.

H. Disciplinary Complaints

Introduction

[1040] I agree with the Respondents that simply disagreeing with the BCVMA's disciplinary oversight and processes does not amount to adverse treatment. The questions I address here are whether the BCVMA's processes had a direct adverse impact on the individual Complainants and whether race was a factor in such adverse treatment. I have also considered the context in which the BCVMA was processing those disciplinary complaints involving the Complainants. Having concluded that systemic discrimination was at play within the BCVMA, this is an important contextual factor.

[1041] In addressing this part of the Complaint, I consider only those disciplinary complaints involving those Complainants that remain: Drs. Bhullar, Arminder Brar,

Johar, Parbhakar, Benipal, Bhatia, Jagpal, Manjinder Hans, Bajwa, and Sharma. Before doing so, I address some of the preliminary arguments made by the parties.

[1042] The Respondents say that a number of the Complainants, namely Drs. Benipal, Sharma, Hans, Parbhakar, Jagpal, and Bhatia, did not file individual complaints of discrimination as it relates to the processing of their disciplinary complaints and therefore those parts of the Complaint should be dismissed. In their initial Complaint filed on August 23, 2004 (Exhibit 1), the Complainants alleged that a different standard was applied to them in the resolution of disciplinary complaints and that they received different sanctions than other non-Indo-Canadian veterinarians. These Complainants were signatories to this initial Complaint. Further, the disciplinary complaints involving these Complainants, except for Drs. Benipal and Hans, were listed on Schedule "P" to the Amended Complaint filed on April 3, 2006 and on the Amended Schedule "P" attached to the Further Amended Complaint. The pleadings define the scope of the Complaint. The Respondents had the opportunity to address these complaints and led evidence with respect to them and did so. They did not object to them being introduced and, in fact, introduced further files involving the Complainants after the Complainants had closed their case. Within this context, I will consider whether one or more of these Complainants faced individual discrimination in the processing of those disciplinary complaints filed against them.

[1043] The Complainants raised issues about how the disciplinary complaints against them were investigated. They say that their concerns were highlighted in the manner in which the disciplinary complaint involving Dr. Johar and AR was processed and investigated; this disciplinary complaint is discussed elsewhere in this Decision. Among the issues raised in this disciplinary complaint, as well in other disciplinary complaints, was the BCVMA's failure to disclose all allegations, witness statements and documents to the Complainants when the investigation was ongoing. The Complainants allege that this lack of due process calls into question the fairness of the process and thus evidences discrimination in the individual circumstance.

[1044] The Complainants note that the BCVMA has an obligation to treat all its members fairly, impartially and in good faith. In respect of the disciplinary process, the BCVMA

was required to provide the Complainants with due process and procedural fairness; however, the BCVMA investigated disciplinary complaints against the Complainants more rigorously, with a closed-mind and based on negative stereotypes.

[1045] I have taken care to consider the evidence before me within the context of my jurisdiction set out in the *Code*. Some of the evidence led before me would more appropriately be consider under the concepts of fairness, due process and natural justice. I have considered whether such evidence leads to the conclusion that the Complainants were adversely affected by the steps taken by the Respondents, although such steps might not constitute discrimination on a prohibited ground of discrimination.

[1046] In *Sharma v. B.C. Veterinary Medical Assn.*, 2008 BCSC 240, Dr. Sharma appealed the decision of Council suspending him from practice, among other penalties, discussed elsewhere in this Decision. In *Sharma*, the BC Supreme Court discussed the duty of natural justice and procedural fairness and stated:

> The duty of procedural fairness is governed by a rigid set of requirements but adopts a "flexible and variable" approach to assessing what is required in the specific context of each case. See Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817 at 21. In Baker at 22, L'Heureux-Dubé underscored the purpose of the duty "is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker."
>
> The content of the duty of fairness is determined by an application of a non-exhaustive list of factors that were identified Baker (the "Baker" factors), and which include:
>
> (a) The nature of the decision being made and the process followed in making it;
>
> (b) The nature of the statutory scheme and the terms of the statute pursuant to which the body operates;
>
> (c) The importance of the decision to the individual or individuals affected;
>
> (d) The legitimate expectations of the person challenging the decision; and

(e) The choices of procedure made by the agency itself.

> Procedural fairness also requires that decisions be made free from a reasonable apprehension of bias and by an impartial decision-maker. The test to be applied is whether a reasonable and well-informed member of the community would conclude that the decision-maker(s) had approached the case with the impartiality appropriate to the decision being made. It also requires that the tribunal afford the member reasonable procedures at the hearing. (paras. 56-58)

[1047] The question before me is whether, when the BCVMA, among other things, failed to disclose certain information during the investigation and/or before the Inquiry stage, or subsequent to it, amounts to discrimination contrary to the *Code*.

[1048] The Respondents argue that the Complainants relied on the Q files to illustrate that they, as individuals, were treated differently and adversely in the processing of disciplinary complaints, both procedurally and substantively. The Respondents suggest that there is no evidence of the race or background of those veterinarians who are respondents in the disciplinary complaints identified in the Q files and, in fact, some of them are Indo-Canadians. The Respondents say that the individuals in the Q files do not mirror the characteristics of the Complainants. I agree with the Respondents that the Q files do not necessarily mirror the characteristics of the Complainants, although some do. The issue is whether the BCVMA processed those disciplinary complaints involving the Complainants differently than others. It may be that it did so; however, the question that then arises is whether it did so based on a protected ground of discrimination.

[1049] The Complainants argue that the Respondents' reference to their reliance on the Q files as the comparator group to establish discrimination was an "oversimplification" of the Complainants' position on how adverse treatment may be proven. The Q files provided one example of how the BCVMA applied its practices and standards; they were not the only examples. I agree with the Complainants that a comparator analysis is one method by which discrimination may be established. It is not necessary, but a useful analytical tool.

[1050] In this case was it was difficult to compare one disciplinary complaint to another. Each disciplinary complaint raised different concerns; the complaints were processed differently and by different COs. I decline to make any determinations as to the medical

treatment provided or to compare how the medical treatment issues were investigated and otherwise processed by the BCVMA. I have tried to focus only on the processing of the disciplinary complaints, apart from the medical issues. I will consider the Q files in the following analysis but note that comparison was a difficult task.

[1051] There was evidence given about whether or not the medical records had been initialled by the treating veterinarian, involving Complainants and non-Complainants. Generally, a veterinarian is required to initial medical records so that any subsequent veterinarian and/or staff person is able to identify the person making the notation and giving the treatment at issue. Both Complainants and other veterinarians involved in those files listed on Schedule Q did not initial their records. In some cases the Complainants were criticized for failing to do so but others were not. In most cases these concerns did not proceed beyond the CRC stage. I found the concerns raised by the Complainants about the failure to initial medical records to be minor; I was not persuaded that the Complainants, individually, experienced discrimination in this respect. As a result, I do not further address these issues within the context of the individual complaints. However, I note that, in some cases, the issue of the records not being initialled was raised despite it being clear who had performed the procedure and/or it was a simple matter to clarify and it was. This supports the conclusion that the Complainants' records were being overly scrutinized.

[1052] In a number of disciplinary complaints, involving these Complainants, the BCVMA alleged that the member had falsified their medical records. I found that, generally, this was not the case as discussed in my findings set out above. These allegations were raised, in my view, because the BCVMA generally viewed the Complainants with suspicion.

[1053] The Respondents note that many of the Complainants had an unremarkable disciplinary history with the BCVMA and suffered no adverse treatment. The Respondents argued that only a handful of Complainants had sanctions imposed upon them; this was done after the Inquiry process and as a result of those Complainants' refusal to engage in the ACR process. The Respondents argue that it was foreseeable that, if the Complainants refused to engage in the ACR process, the matter would be referred

to Inquiry, sanctions imposed if the allegations were proven, publication of the Inquires would result, and costs and delays in the process may result. As a result, they say that this does not constitute adverse treatment or differential treatment.

[1054] As the evidence illustrated, many of the disciplinary complaints, involving the Complainants, were processed without incident and were resolved. However, I note that, because a veterinarian does not engage in the ACR process, including some of the Complainants, this does not mean that all the resulting consequences should be borne by the Complainant so affected. No one is required to participate in a process that is unfair, lacks due process or is discriminatory, including an ACR process.

[1055] I now turn to the Complainants' allegations of discrimination in the processing of their individual complaints.

Dr. Bhullar

[1056] In their submissions regarding Dr. Bhullar's individual allegations of discrimination, the Respondents suggested that the Court of Appeal in *Bajwa* cannot expand the scope of the Tribunal's jurisdiction to inquire into matters beyond its legislative scope. I have addressed the Courts' decision above and the limits of my jurisdiction and will not repeat my discussion or decision in this respect. I am fully aware that I must act within my jurisdiction. I will leave it to the Courts to address what I view as conflicting submissions made by the Respondents in two forums.

[1057] The Respondents acknowledge that the erasure of Dr. Bhullar's licence constitutes adverse treatment. They make this admission as no other veterinarian in British Columbia has had his or her licence permanently revoked. However, they disagree that Dr. Bhullar's race was a factor in the adverse treatment; it was as a result of his unprofessional and improper conduct.

[1058] I have found that the BCVMA engaged in race-based conduct in relation to the Complainants and which they would have reasonably perceived as indicating discrimination. That Dr. Bhullar continually raised his concerns about this systemic discrimination was not without foundation. As I have noted elsewhere, had the BCVMA stepped back from the fact that these concerns were being raised by Dr. Bhullar and the

other Indo-Canadian veterinarians, and looked at its own processes and policies, Dr. Bhullar, and others, may not have engaged in the level of animosity and the number of attacks against the BCVMA.

[1059] The Respondents made a number of submissions regarding Dr. Bhullar and discussed, at length, his conduct. The BCVMA had little regard for Dr. Bhullar's honesty or governability, which was clearly evident before Council decided to erase him from the register in December 2009.

[1060] Further, it is clear that, at least by August 2004, Dr. King-Harris viewed Dr. Bhullar as dishonest. Given his view of Dr. Bhullar's credibility, which was evident throughout his investigations, he should have stepped-aside. Had the BCVMA appointed an outside investigator some of the issues raised in this Complaint may have been avoided. I was not persuaded that, overall, had they done so, Dr. Bhullar would have pursued what the Respondents have described as his "campaign of attack".

[1061] In essence, they say that Dr. Bhullar engaged in unconscionable conduct, was dishonest, engaged in ongoing attacks against the BCVMA, filed civil lawsuits which included unfounded allegations, made numerous and inappropriate allegations against the staff and volunteers of the BCVMA, among other allegations and comments.

[1062] I do not condone Dr. Bhullar's conduct, which in many respects was inappropriate and improper. However, it is my role to determine if discrimination was at play in the processing of Dr. Bhullar's disciplinary complaints. That Dr. Bhullar engaged in inappropriate conduct may go to the question of remedy and costs. Further, in those civil actions filed by Dr. Bhullar, many of them have been dismissed or discontinued with awards of costs being made by the Courts against him. His complaints to other institutions, such as the Law Society of British Columbia and the Ombudsman have also been dismissed. The complaints filed by Dr. Bhullar pursuant to s. 15 of the *Act* were generally ignored or dismissed, except when he took further action as in the case of the Ashburner Recording, when the BCVMA was forced to act.

[1063] The Respondents refer to the untested and unsubstantiated evidence of Dr. SP and H and FM to support its view that Dr. Bhullar was "unscrupulous and cavalier in his business and medical practices." They took this position despite the evidence of the

Complainants, and former Complainants, who testified before me that this was not the case. Further, because these allegations were not pursued does not, in my view, suggest that these allegations did not play a role in how Ms. Osborne and/or Dr. King-Harris viewed Dr. Bhullar. In my view, these views were reflected in the BCVMA's dealings with Dr. Bhullar based on its own race-based view of Dr. Bhullar's propensity to be unethical and untruthful.

[1064] Indeed this view of Dr. Bhullar formed the principled basis of the Respondents' defence to this Complaint. For instance, the BCVMA's submissions, with respect to Dr. Bhullar's disciplinary complaints focused, to a large extent, on Dr. Bhullar's conduct outside the disciplinary process, or focused on what I would consider to be minor issues, as opposed to the actions of the BCVMA's staff and volunteers within this process, which are at issue before me.

[1065] I agree that the BCVMA received many telephone complaints from POs about the treatment of their animals at Atlas-Vancouver. However, the telephone records before me were redacted and it was difficult to ascertain from the materials, including the summaries prepared by the BCVMA, whether Dr. Bhullar received more telephone complaints than others. In any event, because these complaints were not pursued does not suggest that the BCVMA was not engaged in discriminatory oversight *vis-à-vis* Dr. Bhullar.

[1066] The Respondents suggest that Dr. Bhullar had a history of alleging bias and/or discrimination in the processing of his disciplinary complaints. In his early complaints, the evidence illustrated that was not the case. Dr. Bhullar raised concerns about Dr. Sonnendrucker's investigation but his concerns were address by Dr. Leung; he did not pursue them further.

[1067] Dr. Bhullar raised concerns about the Inquiry process, including the scheduling of hearing dates on weekends, how members were appointed to his Inquiry Committees, that Ms. Osborne had interfered with a witness and that Council had failed to pass the appropriate motions when it referred matters to Inquiry. I will not address these issues, other than to say that I was not persuaded that Inquiry Committees were not properly constituted. The Inquiry Committee is the master of its own processes and concerns about

those processes are to be addressed by the Courts. It is not my role to sit in review of them. Further, I note that the Inquiry hearings were often delayed as a result of Dr. Bhullar's numerous applications.

[1068] The Respondents were critical of Dr. Bhullar for failing to engage in the ACR process. The ACR process is voluntary and Dr. Bhullar was not required to participate in that process. I address this issue in the context of each of the complaints, where relevant, discussed below.

[1069] Generally, I found that Dr. Bhullar was targeted by the BCVMA in the processing of his disciplinary complaints and that race was a factor in the adverse treatment he received as a result. That is not to say that, in some cases, Dr. Bhullar may have engaged in inappropriate conduct that required investigation. But in many cases, Dr. Bhullar was pursued when others involved in the complaint were not and issues were raised and pursued despite being minor infractions.

[1070] I will now deal with the specific disciplinary complaints involving Dr. Bhullar.

Early complaints

[1071] Dr. Bhullar was registered in June 1995. Up to 2003, his interactions with the BCVMA regarding his disciplinary complaints were investigated and resolved without incident, expect for the issues involving Dr. Sonnendrucker, discussed above. For eight years, although a number of complaints had been filed against Dr. Bhullar and Atlas-Vancouver, his interactions with the BCVMA were unremarkable and he was generally responsive.

Complaints initiated by the BCVMA

[1072] In a number of complaints investigated by the BCVMA, the original complaints filed by the PO and/or another member of the public did not identify Dr. Bhullar as the respondent veterinarian, nor did they raise concerns about Dr. Bhullar's alleged involvement in the treatment of the animal.

[1073] In a number of files, although the complaints were not filed against Dr. Bhullar or the issues were minor, Dr. Bhullar was nonetheless pursued through an investigation. Further, in many cases, the allegations made by the PO grew in number as a result of the

BCVMA's assessment to, in some cases, numerous charges. For example, in 04-007, the initial allegation was a failure to keep accurate medical records, which subsequently grew to include seven charges. I am of the view that this increase in charges would lead the CRC to view Dr. Bhullar's conduct within the complaint with suspicion.

[1074] In complaint 05-117, although the PO had filed a complaint, she subsequently advised the BCVMA that the matter had been resolved. This file involved the transferring of information to a pet insurance company and the second opinion veterinarian for the same purpose; there was no risk to the public and no apparent reason why it was in the public interest to be pursued by the BCCMA or that it was necessary to expend its limited resources in doing so.

[1075] In complaint 05-052, the Walkers filed a complaint against Dr. Mangat. The BCVMA subsequently opened and pursed a complaint against Dr. Bhullar.

[1076] I was not persuaded that the BCVMA was involved in initiating all those complaints involving Dr. Bhullar; the evidence was clear that it did not do so, although within the complaint filed by a PO, the charges often increased in number.

Charges pursued against Dr. Bhullar and not others

[1077] In complaint 03-078, involving the care of Wendy, a number of issues were pursued against Dr. Bhullar but not against Dr. Brar, who is not a Complainant, the other veterinarian involved in the file. For example, it was clear that it was Dr. Brar who had obtained the consent to surgery from the PO; the charge for failing to obtain informed consent was pursued against Dr. Bhullar and not Dr. Brar. I was not persuaded that a person can be charged about what is said after surgery and after informed consent had been clearly obtained. Further, Dr. Bhullar was charged for asking for the necropsy report for Wendy when it was clear that it was Dr. Brar who had made this request.

[1078] In complaint 03-111, the complaint was against Dr. Bajwa. The BCVMA pursued a charge against Dr. Bhullar because he allegedly could not retrieve and provide invoices to the BCVMA. The BCVMA pursued this complaint, despite its assertion that it was under extreme work pressures. Dr. Bhullar was not notified of the complaint until it had been outstanding with the BCVMA for almost one year. The BCVMA also pursued Dr.

Bhullar for failing to respond appropriately in the circumstances, when he was asked vague and non-specific questions. In any event, Dr. Bhullar responded.

[1079] Further, the issue in complaint 03-111 moved from being focused on one invoice, to a general concern that Dr. Bhullar did not have system for storing and retrieving invoices. This allegation was without foundation. As I found, had the BCVMA believed that this was a significant concern, and a risk to the public, it could have had the practice inspector look into this in December 2005, when Dr. Bhullar's facility was inspected, before sending it to Inquiry.

[1080] There was significant delay in the processing of this complaint. Despite the CO recommending the file be closed, it was ultimately dismissed by the Inquiry Committee, for delay, on application by Dr. Bhullar. However, Dr. Bhullar incurred the costs associated with defending this matter until the time it was dismissed.

[1081] The BCVMA suggested that Dr. Bhullar could have avoided the costs associated with this complaint had he engaged in the ACR process. Given that Dr. Bhullar did not view his conduct as raising any concerns, it was not surprising that he did not engage in the ACR process, which is a voluntary process.

[1082] In complaint 04-001, concerns were raised about the treatment of Snickers at Atlas-Vancouver. Although the complaint was against both Drs. Bhullar and Parbhakar, Dr. Parbhakar was given notice of the complaint; Dr. Bhullar was not. Dr. Bhullar was unaware that there were concerns about his treatment of Snickers until he received a copy of Dr. King-Harris' report to the CRC on May 25, 2004. Dr. King-Harris raised a number of issues regarding Dr. Bhullar's conduct, and recommended that they all be referred to Inquiry. Dr. Bhullar did not respond to the CRC report.

[1083] In complaint 05-116, although a number of veterinarians had provided care for Maxi at Atlas-Vancouver, the allegations against Dr. Bhullar were the only ones pursued.

Falsification of medical records

[1084] In almost every complaint, after 2002, where Dr. Bhullar was named a respondent, Dr. King-Harris raised the issue of falsification of medical records. On a

review of the materials before me, I found little basis to suggest that this was the case: see 03-078.

[1085] There was a general view that Dr. Bhullar was dishonest. This became particularly evident in that the BCVMA did not accept Dr. Bhullar's medical records as accurate or having been written contemporaneously with the event.

[1086] In some cases, it was alleged that Dr. Bhullar had failed to refer the animal to a specialist for treatment. This allegation was used to suggest that Dr. Bhullar's medical records were fabricated. I found no basis upon which Dr. Bhullar would have failed to refer an animal under his care to a specialist. Dr. Bhullar's conduct and credibility, at times, was questionable; however, the evidence did not give rise to any general concern about his commitment to caring for animals that were brought to his clinics and/or to refer them elsewhere in appropriate situations.

[1087] Dr. Roberts was suspicious of Dr. Bhullar's invoice in file 03-111, despite that the issue was simply that there had been a $2 addition error on it, which Dr. Bhullar admitted he corrected while speaking with the PO. In such circumstances, there was no basis to be suspicious of Dr. Bhullar.

[1088] In complaint 04-001, despite Dr. Bhullar not having been notified that the complaint was against him or given a copy of it and given the opportunity to respond, the CRC referred the charges of fabrication of medical records and the failure to provide a complete record to a colleague to Inquiry. There was an insufficient basis to allege that Dr. Bhullar had falsified his medical records in this case.

[1089] In Complaint 04-007, Dr. Bhullar acknowledged that there was an error in his medical records; despite this, it was alleged that he had falsified his records. This allegation was without foundation.

[1090] In complaint 05-044, it was alleged that Dr. Bhullar had falsified his medical records. Complaint 05-044 was a complicated complaint raising numerous issues regarding Dr. Bhullar's treatment of Kirby in difficult circumstances. I was not persuaded that Dr. Bhullar would have failed to refer Kirby to the ACCG given the nature and extent of his injuries or that he otherwise falsified his medical records.

Transfer of medical records

[1091] In some cases, there was a delay in Dr. Bhullar sending his medical records to other veterinarians. In some cases (05-117), Dr. Bhullar did not respond at all to the complaints.

[1092] In file 05-044, although there was confusion over when the medical records were transferred between Atlas-Vancouver and Capilano, they were transferred. Dr. King-Harris came to the conclusion that Dr. Bhullar was untruthful about when he sent the records, despite there being a conflict in the information before him suggesting that this was not the case. I also found that there was no basis to conclude that Dr. Bhullar failed to provide the invoice to the PO, or that he misled the BCVMA in this respect. Again, Dr. Bhullar would have no reason to do so.

[1093] In file 05-116, Dr. Bhullar sent the medical records within four to six hours of them being requested at some point after 8:30 pm. Clearly there was no delay.

Responding to the BCVMA

[1094] There was no question that Dr. Bhullar did not always respond to the BCCVMA in a timely fashion. (03-078; 03-111) In some cases, his responses contained inappropriate allegations against the CO and others. However, other than not generally responding to the allegations contained in the reports to the CRC, which he was not required to do, he did eventually respond. I accept this practice of responding only after a second or third request was frustrating for the BCVMA, and perhaps prolonged the investigations; it did not otherwise prevent the BCVMA from pursuing the matter against Dr. Bhullar. I was not persuaded that Dr. Bhullar's delay in responding to the complaints significantly, or at all, delayed the processing of these complaints against him.

[1095] In some cases, the BCVMA did not accept that Dr. Bhullar had provided an appropriate response, for example in complaint 04-109; however he had responded. In my view, because the BCVMA did not like the response does not lead to the conclusion that Dr. Bhullar failed to respond, or that he failed to respond appropriately.

[1096] In complaint 03-111, the BCVMA alleged that Dr. Bhullar was a obstructing the investigation when he allegedly had failed to provide an invoice that the BCVMA already had in its possession.

[1097] Dr. Bhullar was accused of being dishonest on a number of occasions. For example, in file 04-007, he was accused of lying to the BCVMA about the number of files that he had with similar names. A review of the evidence confirmed that he had two; which is what he advised the BCVMA on more than one occasion. Because there may have been inconsistencies in the information, it was unreasonable to assume, in this case, that Dr. Bhullar was being dishonest. Dr. Bhullar had acknowledged that he had made a mistake in his medical records; he did not lie about this, which was the issue before the BCVMA.

[1098] The BCVMA raised concerns about Dr. Bhullar's failure to disclose personal information about Dr. Kahlon to it. This information was obtainable from Dr. Kahlon. I found nothing inappropriate in Dr. Bhullar's failure to disclose this information.

Contacting POs

[1099] Dr. Bhullar did, on a number of occasions, contact individuals involved in the complaints, either against him, or others.

[1100] Generally, I find that there was nothing inappropriate in Dr. Bhullar trying to resolve disciplinary complaints. This is a normal and appropriate step to take with a client when issues arise. Although there was little evidence about the practice of other veterinarians, who were not Complainants, I think it would be a fair to conclude that many veterinarians engage in settlement discussions with their clients, including offering to refund monies, in order for the matter to be resolved and a complaint against them not made or pursued.

[1101] I accept Dr. Bhullar's evidence that he understood that despite his offering to resolve the complaint with a PO, including refunding the fees, the BCVMA still had jurisdiction to pursue the investigation and did so. That a PO, who may then be reluctant to participate, is simply a manifestation of their view that the matter had been resolved to their satisfaction.

[1102] In file 03-078 involving the care ofWendy, Dr. Bhullar was named as a respondent veterinarian. He did not contact the PO after the complaint had been filed. In file 04-001, although issues were subsequently raised about his conduct, he did not contact the PO. Similarly in files 05-044 and 05-117, Dr. Bhullar did not contact the PO.

[1103] In some cases, Dr. Bhullar contacted the PO because the information provided to him and/or to the BCVMA was confusing and/or inaccurate.

[1104] For example, in file 99-035, Dr. Bhullar contacted the PO to confirm who had treated the cat, given that there was some confusion about the issue. In my view, this was not an inappropriate enquiry, as it was only the PO who had this information.

[1105] In file 04-007, Dr. Bhullar was led to believe that Princess had been spayed, something that everyone knew was not the case when Dr. Bhullar was advised of the complaint, which had been filed by another veterinarian. Dr. Bhullar did not dispute that he contacted the PO to ascertain if he could re-examine Princess to determine if Princess had been spayed and offered the PO money to do so and/or that she provide a statement that Princess had not been spayed. That he became aggressive in his discussions with the PO was unfortunate. However, once he was told to refrain from contacting the PO he did not do so again. Further, although Dr. Bhullar had offered the PO compensation for the time to bring Princess to Atlas-Vancouver, there was nothing inappropriate in him having done so. Further, in this complaint, the PO had not filed the complaint and had no ability to withdraw the allegation against Dr. Bhullar. It was an overstatement to conclude that Dr. Bhullar had attempted to bribe a witness. He did not dispute that he made an error in his medical records.

[1106] In complaint 03-125, the treating veterinarian was Dr. Sharma and the PO filed a complaint against him. Dr. Bhullar spoke to the PO, at the request of Dr. Sharma, to discuss reimbursement of the fess she had paid to Dr. Sharma. Dr. Bhullar had a 50% interest in the clinic and the PO wanted Dr. Bhullar to pay to Dr. Sharma the funds needed to reimburse her. There was no complaint, at this stage, against Dr. Bhullar, and there would be no need for him to attempt to pressure her into dropping the complaint. I was not persuaded that he took such steps because he had an interest in the clinic. The PO never provided a written complaint about Dr. Bhullar's alleged behaviour. She was

focused on getting a refund. Further, the information from the PO changed over time and, in my view, was not sufficiently reliable to then pursue charges against Dr. Bhullar for attempting to bribe a witness and/or interfering with the BCVMA's investigation of the complaint against Dr. Sharma. Finally, the PO's daughter, who listened to one of the discussions, had the "impression" that Dr. Bhullar was seeking to have the PO drop her complaint and said the "overtones" were coercive. As noted above, the PO's daughter was not a disinterested witness. In my view, the evidence that Dr. Bhullar was attempting to bribe a witness and/or to otherwise interfere with the BCVMA's regulatory process was weak, yet it was pursued through to the CRC.

[1107] In complaint 04-109, the issue involved Dr. Bhullar contacting a member of the public, on one occasion, who had posted something negative on her website. Dr. Bhullar told her that if she did not remove the post, which he viewed as making negative comments about him and the training Indo-Canadian veterinarians, he would call his lawyer. Despite never receiving the original post that gave rise to Dr. Bhullar's telephone call, this matter was pursued by the BCVMA to Inquiry. Dr. Bhullar received notice of this complaint on April 18, 2005, one year after it had been received by the BCVMA. Dr. King-Harris completed his report to the CRC on October 13, 2005 and the CRC considered it on October 27, 2005 and referred the matter to Council on the issues of failing to respond and threatening. On November 5, 2005, Council referred the matter to Inquiry. The allegation that Dr. Bhullar had threatened the member of the public was withdrawn at the Inquiry; no post had been received. By this stage, Dr. Bhullar had incurred time and money defending against the complaint, which was adverse to him.

[1108] The more difficult issue, and the one that became the focus of the Respondents' assertion that the entirety of the human rights Complaint should be dismissed based on Dr. Bhullar's conduct, was his alleged conduct in complaint the Walkers' complaint, file 04-052. It was alleged that Dr. Bhullar contacted the PO and impersonated Mr. Singh with the intent of bribing a witness and to interfere with the BCVMA's regulatory process. The Walkers did not name Dr. Bhullar as a respondent veterinarian to their complaint, Dr. Bhullar had no involvement in the care of Joe, he was not Dr. Mangat's employer and had no financial or other interest in Killarney, where Joe was treated. The Walkers wanted a refund of the fees paid for the care of Joe and pursued Dr. Mangat in

this respect. They filed a complaint about Dr. Mangat's treatment of Joe, which the BCVMA investigated. The BCVMA pursued the investigation against Dr. Bhullar based on the phone number that had been recorded by Mrs. Walker in her calendar, which, it was not disputed, was Dr. Bhullar's cell phone number. It then engaged in an investigation, without advising Dr. Bhullar of its concerns, including meeting with the Walkers and attending Mr. Bains' office, but without speaking with Dr. GL, who also was present during the signing of the affidavit. They pursued the investigation despite Dr. Mangat maintaining that it was his friend, Mr. Singh, who was involved in the matter, not Dr. Bhullar. They did not pursue that Mr. Singh was Mr. Singh once they saw Dr. Bhullar's phone number, including not continuing to pursue this with Dr. Mangat, who gave them the information about Mr. Singh.

[1109] The Walkers received a refund and signed an affidavit which said that they would withdraw their complaint with the BCVMA, despite knowing that the BCVMA would not do so and would continue with its investigation. I did not find that the Walkers were coerced into signing the affidavit. They participated in a process voluntarily to get their money back. The Walkers were happy at having received the refund and wanted to put the matter behind them.

[1110] I make no finding as to whether Dr. Bhullar was indeed Mr. Singh. However, the BCVMA spent considerable resources in pursing the issue that he was, without notice to Dr. Bhullar and without providing him with full disclosure of the information that it had in its possession that suggested that Dr. Bhullar impersonated Mr. Singh and/or that he was not Mr. Singh. The BCVMA had an obligation to be open and transparent in it investigations and, in this case, it was not.

Processing of complaints involving Dr. Bhullar

[1111] In some cases. Dr. Bhullar was not given notice of the complaint until it had been set out in a report to the CRC involving the veterinarian named in the complaint. For example, Dr. Bhullar was unaware that there were concerns about his conduct being raised by the BCVMA in complaint 03-125; Dr. Roberts drew negative inferences from the information in her possession without giving Dr. Bhullar the opportunity to respond

before doing so. Almost one year after the complaint had been filed; the BCVMA notified Dr. Bhullar that there were concerns about his deportment.

[1112] In complaint 04-007, Dr. Bhullar did not receive the original complaint letter; had the original complaint letter been provided, which confirmed the fact that Princess was intact, Dr. Bhullar may not have taken the steps he did to contact the PO. As noted above, the BCVMA had an obligation to be open and transparent in it investigations and, in this case, it was not.

[1113] In many cases, Dr. Bhullar did not receive full disclosure of the information gathered during the investigation, either before the Inquiry, or at all, although in many cases this information was relied on by the investigator and the CRC, for example in file 04-052.

[1114] Despite Ms. Osborne and others asserting that the BCVMA was under significant work pressures, which allegedly delayed the processing of some complaints, this was not evident in many of those complaints involving Dr. Bhullar, although I note that in some complaints there was a lengthy delay.

[1115] In complaint 04-095, Ms. Osborne, Ms. Edwards and Dr. King-Harris met with the complainant despite there being no written complaint, and the expense of having Dr. King-Harris come to Vancouver to do so, to listen to wide-ranging allegation against Dr. Bhullar. In complaint 04-110, Dr. King-Harris met with a veterinarian and listened to his allegations, which I found to be fantastic and inflammatory. The complaint remained opened for two and one-half years without notice being given to Dr. Bhullar.

[1116] Similarly in complaint 05-010, a complaint was opened based on the allegation of veterinarians, which were not reduced to writing. Dr. King-Harris then contacted Central Laboratory to have them provide information about Dr. Bhullar, based on these unsubstantiated allegations, and unbeknownst to Dr. Bhullar. This was nothing more than a fishing expedition. If the veterinarians refused to put their concerns in writing, so that their allegations could properly be investigated, that should have been the end of the matter.

[1117] In complaint 03-078, although the investigation took approximately ten months to complete, Dr. King-Harris completed his report to the CRC on May 26, 2004, it was considered by the CRC on June 10 and Council referred the matter to Inquiry on June 12.

[1118] In complaint 03-125, Dr. Bhullar was notified of the BCVMA's allegations against him on September 21, 2004, he responded on November 2, 2004, the report to the CRC was completed on November 18, 2004 and considered by the CRC on December 2, 2004 and referred to Inquiry on January 13, 2005. Given that the original complaint was not against Dr. Bhullar, this complaint was processed quickly.

[1119] In complaint 04-001, which had been filed on January 7, 2004, Dr. Bhullar received notice of the complaint against him, contained in Dr. King-Harris' completed report to the CRC, and was asked for his comments. The complaint was considered by the CRC on June 10, 2004 and referred to Council. On June 12, 2004, Council referred this matter to Inquiry.

[1120] In complaint 04-007, the complaint had been filed on February 10, 2004, Dr. King-Harris completed his report to the CRC on May 25, 2004, the CRC considered it on June 10, 2004 and Council referred it to Inquiry on June 12, 2004.

[1121] In complaint 05-044, filed on May 19, 2005, Dr. King-Harris completed his report to the CRC on October 13, 2005, the CRC consider the complaint on October 27, 2005. The CRC referred the matter to Council asking that it cause an Inquiry and Council referred the matter to Inquiry on November 5, 2005.

[1122] In complaint 05-117, received by the BCVMA on November 22, 2005, Dr. Bhullar was advised of it on February 14, 2006, Dr. King-Harris concluded his report to the CRC on March 8, 2006. Dr. King-Harris recommended that the matter be referred to Inquiry. On March 30, 2006, the CRC considered this matter and referred it to Council and Dr. Bhullar was advised on August 29, 2006 that Council had referred the matter to Inquiry.

[1123] Dr. Bhullar was advised of complaint 04-052 on March 31, 2005, a complaint initiated by the BCVMA. On April 7, 2005, Dr. King-Harris completed his report to the CRC, which was considered by it on April 21, 2005. The CRC referred the matter to

Council requesting that it cause an Inquiry into the allegations involving Dr. Bhullar. On May 10, 2005, Council referred the matter to Inquiry.

[1124] The evidence was clear that the BCVMA spent considerable resources in the pursuant of complaints involving Dr. Bhullar.

Summary

[1125] I find that Dr. Bhullar was adversely treated in the processing of some of his disciplinary complaints and that his race was a factor in that process. This is not to say that Dr. Bhullar's did not engage in some questionable conduct. However, this is more appropriately addressed in my consideration of the remedies to be awarded to Dr. Bhullar for the discriminatory treatment.

Dr. Bajwa

[1126] The Respondents suggest that Dr. Bajwa had an "unremarkable" disciplinary history with the BCVMA; many of his complaints were dismissed, either at the investigation stage or by the CRC. Of the complaints that were referred to Inquiry, two focused on Dr. Bajwa's failure to respond in a timely and/or appropriate manner to the BCVMA.

[1127] Dr. Bajwa alleged that the COs were biased and otherwise conducted unfair and or prejudicial investigations. The Respondents assert that such arguments were "specious" and failed to consider the seriousness of the issues raised by the complaints: 04-118, 05-015 and 04-025. Ultimately complaints 04-118 and 05-015 were dismissed and Dr. Bajwa suffered no adverse treatment.

[1128] The Respondents say that it is not the role of the COs to give a member the benefit of doubt, but to "outline the evidence and to extrapolate the weight of the evidence". They say that it was always open to the Complainants, including Dr. Bajwa, to provide further information once they received a CO's report to the CRC.

[1129] I agree that the BCVMA conducted appropriate investigations into many of those complaints involving Dr. Bajwa and provided appropriate warnings and advice in the circumstances. A number of complaints were closed without being referred to the CRC and/or by the CRC to Council requesting an Inquiry Committee be appointed. These

complaints include: 02-024, 02-071, 03-103, 03-135, 04-023, 04-045, 04-091, 05-007, 05-091 and 06-083.

[1130] Although I agree with Dr. Bajwa that, in file 03-135, the veterinarian who filed the complaint and made negative and numerous comments about him and his practice should have been warned by the BCVMA about her conduct, given that the BCVMA raised such concerns with some of the Complainants, that it did not do so, did not directly adversely affect Dr. Bajwa.

[1131] However, I find that in some disciplinary complaints, Dr. Bajwa was adversely affected by the processing of them and that race was a factor in the adverse treatment.

04-024/04-049

[1132] I deal with complaints 04-024 and 04-049 together as they were heard together at Dr. Bajwa's initial Inquiry.

[1133] In complaint 04-024, the issue was Dr. Bajwa's failure to respond to the BCVMA in a timely manner, in providing responses to three question posed by Dr. Roberts. I accept that Dr. Bajwa's failure to respond was frustrating for the BCVMA but I find that the events that subsequently unfolded adversely affected Dr. Bajwa.

[1134] The last deadline set for Dr. Bajwa to provide the requested information was the day before the long weekend, which the BCVMA acknowledged would be a busy time for Dr. Bajwa; it nonetheless set this date to respond. This date had no bearing on the progress of the investigation. Dr. Bajwa's medical records were received the next business day and stamped received that morning. It was clear that, despite Dr. Bajwa having provided the information and Dr. Roberts' recommendation that the file be closed, it was pursued through to the CRC and then to Inquiry.

[1135] Dr. Bajwa was not advised that the BCVMA was pursuing a complaint against him, as the complaint was initially against Dr. Johar, until he received Dr. Roberts' report to the CRC on May 25, 2004. Serious allegations were raised including that Dr. Bajwa was deliberately trying to delay or obstruct an investigation and that he was ignoring the BCVMA. A fair process required that he be given notice of the complaint and an opportunity to respond before adverse findings were made. In my view, Dr. Bajwa's

ability to respond to the report to the CRC, which had already drawn adverse and negative conclusions about his conduct, and had made recommendations, are insufficient to address this lack of due process.

[1136] This complaint was considered on June 10, 2004. Despite the BCVMA asserting that it was under a significant workload, and this complaint raising what, in my view, was a minor infraction that did not put the public at risk, it was processed quickly. Further it was interesting that the CRC would consider this complaint, among others, on June 10, 2004 and then these same complaints were considered by Council two days later. Further, generally, a motion is drafted by the Registrar's office to send the matter to Inquiry, and it is included in Council's Agenda package. Although it was unclear when Council's Agenda was completed, but it is completed before its meeting, it was surprising that Council considered this matter, among others, so quickly and two day after the CRC's meeting.

[1137] This complaint was published on the website. As noted above there was little or no consideration of the seriousness of this complaint or the risk to the public, which was negligible, versus the harm to Dr. Baja's professional reputation that might result.

[1138] In complaint 04-049, the issue raised by the PO was the treatment of her cat Cleo by Dr. Bajwa and reimbursement of the fees. Despite this being a relatively straightforward complaint, raising two issues identified by Dr. Roberts, it expanded to six issues, including that Dr. Bajwa misled the BCVMA, was refusing to co-operate with it, and had fabricated his medical records, all of which were serious allegations supported by little, if any, information. The CRC subsequently dismissed these charges and only sent the issue of Dr. Bajwa's failure to respond appropriately to the BCVMA to Inquiry.

[1139] Complaints 04-025 and 04-049 were referred to Inquiry. The initial Inquiry Committee dismissed the charges. As noted elsewhere, the majority of the Inquiry Committee dismissed both complaints. Subsequent proceedings ensued and the BCVMA took the position that the Inquiry Committee did not have jurisdiction to dismiss the charges and adopted the minority decision. Despite Dr. Bajwa being advised by the lawyer for the BCVMA that it would accept a warning and not pursue the issue through to a second Inquiry, it did so, noting that the Inquiry Committee had made a significant

procedural error. The procedural error was not the fault of Dr. Bajwa. Dr. Bajwa was then put to a second Inquiry, despite the minor issues raised by both complaints and evidence that clearly illustrated that, by this time in 2007, Dr. Bajwa was responding to the BCVMA in a timely and appropriate manner. I find that Dr. Bajwa was adversely affected by the BCVMA's processes in this respect.

06-067

[1140] In complaint 06-067, a number of issues were raised by the PO and three issues were ultimately referred to the CRC. I accept that some of Dr. Bajwa's responses to this complaint, sent to the BCVMA, were not appropriate. Council caused an Inquiry on two issues: first, Dr. Bajwa's medical records failed to meet the standard expected of a member and second, his responses to the BCVMA failed to meet the professional standard required of member.

[1141] This complaint was joined with complaints 04-025 and 04-049, over Dr. Bajwa's objections, which were now proceeding to a second Inquiry.

[1142] At the second Inquiry, the charges, except for the allegation that Dr. Bajwa's responses in complaint 06-067 were misleading, were proven. I was not persuaded that Dr. Runnells should have recused himself from the Inquiry Committee based on information that he might have received from Ms. Osborne regarding her personal safety *vis-à-vis* Dr. Bhullar, his alleged negative view of the Complainants, which I did not find was supported by the totality of the evidence and in particular with respect to the Inquiry process, or the timing of his appointment. Council considered the matter and found Dr. Bajwa to have engaged in unprofessional conduct; it imposed a reprimand, the completion of an online training course and a fine of $10,000. I agree with Dr. Bajwa that Council failed to sufficiently take into consideration the costs that he had already incurred when the first Inquiry had to be repeated, despite no error in that process on his part.

[1143] The Respondents assert that there is no basis to the allegations that the Inquiry Committees and/or Council's decision on penalty were biased against Dr. Bajwa, or treated him adversely based on a prohibited ground of discrimination. However, this ignores the fact that the process leading to the CRC and/or Council decisions was discriminatory.

[1144] The Respondents say that it was Dr. Bajwa's own doing that he had to go through a second hearing, and incur the associated costs, with respect to files 04-025 and 04-049; it was always open to him to participate in the ACR process to resolve these complaints. Because Dr. Bajwa did not engage in such a process cannot been seen as adverse treatment by the Respondents.

[1145] I find it surprising that the BCVMA would take the position that Dr. Bajwa should have engaged in the ACR process, when he had gone through an Inquiry in good faith, but was then faced with a second Inquiry and the associated costs, despite there being no error on his part. It is difficult to understand how Dr. Bajwa would have viewed the processes of the BCVMA to be fair, when they were excessively punitive.

[1146] The ACR process is a voluntary one. It is not possible to know what the consequences would have been if that process were undertaken. Further, the BCVMA insisted that, in order to engage in the ACR process a veterinarian must make admissions that they did not meet the BCVMA standards. There were instances where this was not always required, at the conclusion of the process, but this does not mean that the Complainants would have understood that they may not have been required to do so. Further if the investigation process was discriminatory and/or otherwise unfair, a veterinarian is not required to participate in a process, which is controlled by the same individuals.

[1147] There is no question that, had Dr. Bajwa engaged in the ACR process, and assuming that that process was successful, he would have avoided the costs of the Inquiries, the publication of the charges on the website, the Council's decision and the subsequent costs for pursing the matters through the courts. In my view this goes to the issue of remedy and not adverse treatment.

Falsification of medical records

[1148] In some complaints, 04-049, 04-118, 05-015, it was alleged that Dr. Bajwa had altered, fabricated and/or falsified his medical records, when there was little or no basis upon which to draw such a conclusion. As I have noted elsewhere, this is a very serious allegation and one that may serve to adversely affect the professional reputation of that person.

[1149] I did not find that Dr. Bajwa fabricated his medical records. In my view, these charges were based on the BCVMA's view that the medical records of the Complainants were not to be believed in cases where there was some other contradictory information, regardless of the weight that could be given to such information. I was not persuaded that the BCVMA fully considered the issue of falsification of medical records before making such a charge. This is not to say that in some cases the records were missing information, confusing, or that they were different from the recollection of others involved in the complaint, but that does not make them false.

Failure to list all findings in the medical records

[1150] In many disciplinary complaint files, veterinarians do not list all their findings when conducting a physical examination and in their list of differentials and were not criticized for their failure to do so. In some files involving the Complainants, this was also the case, however, in others is was not.

[1151] In complaint 04-118, Dr. Bajwa was criticized by Dr. King-Harris because he failed to include all the findings of a physical examination in his medical records. However, at the time, when this was raised as a concern, the Code of Ethics did not require that such findings be listed; a veterinarian was only required to list abnormal findings. Similarly, Dr. Bajwa was criticized by Dr. Roberts for not including sufficient information in his medical records filed in complaints 05-015 and 06-067.

[1152] In file 04-062 involving Dr. O, he did not list his findings of a physical examination before a kitten was anesthetized; the BCVMA raised no issues. Dr. Roberts had noted that the absence of notations regarding a normal physical examination might not been considered a breach of the practice standards with respect to recording such findings. This same standard was not applied to Dr. Bajwa in file 04-118.

[1153] In another file, 05-064, involving Dr. Ashburner and investigated by Dr. King-Harris, no issues were raised when Dr. Ashburner failed to note in his medical records that he performed a complete physical examination, including noting that he had fully examined the cat. As a result, Dr. Ashburner had failed to identify a linear foreign body in the cat's mouth. Similarly in file 05-066, involving Dr. Ashburner and investigated by Dr. King-Harris, no entries were made in the medical records regarding a physical

examination having been done, except of the animal's eye, despite Dr. Ashburner performing surgery, and Dr. Ashburner was not criticized for this failure.

[1154] Dr. Bajwa was criticized for not including in his list of differentials all the specific medical issues that might be causing the medical problems for the animal in question. In some other files, for example, in files 05-053 (Dr. DL), 05-064 (Dr. Ashburner), it was assumed that the veterinarian was keeping an open mind; the same standard was not applied to Dr. Bajwa, who was subject to greater scrutiny by Dr. King-Harris. In some cases, where the list of differentials resulted in a missed diagnosis or an incorrect diagnosis, the veterinarian was not criticized but was given the benefit of the doubt and dealt with "generously" by the BCVMA: see files 05-053 and 05-066. The Complainants have been criticized for not keeping an open mind and listing a general category under the list of differentials.

[1155] In file 04-066, involving Dr. Sekhon, Dr. Roberts testified that Dr. Sekhon had more detail in his medical records than did Dr. Bajwa in file 06-067. Dr. Sekhon was not provided with a warning with respect to his medical records and the lack of information contained in them. Similarly, in file 05-064 involving Dr. Ashburner some information was missing from the medical records and he was not criticized. In file 04-062, Dr. Roberts agreed that Dr. O's medical records were missing some information but Dr. O was not cautioned. The Complainants allege that a different standard was applied to them, including Dr. Bajwa.

[1156] I agree that in some cases involving Dr. Bajwa, his medical records were subject to greater scrutiny. In my view, this was a continuation of the BCVMA's suspicious approach to the complaints, involving Dr. Bajwa, and the other Complainants, based on their preconceived and stereotypical view that Indo-Canadians were less trustworthy and unethical.

Standard of proof

[1157] The Complainants raised concerns about the basis upon which complaints were considered and referred to the CRC and/or to Inquiry.

[1158] I agree with the Complainants that, in many cases, Dr. Bajwa's information was not preferred over the information provide by others, including the POs. In some files, where there was competing information, which the BCVMA descried as a "he said/she said" situation, the matter was not referred to the CRC, for example in files 04-069 and 04-078. Generally, the BCVMA looks for corroborating information in cases of he said/she said situations However, in files 04-118 and 05-015, the issues based on conflicting information, were referred to the CRC, in reliance on the POs' information and in conjunction with questions being raised about the accuracy of the medical records. In complaint 04-118, Dr. Bajwa's medical records provided the necessary corroborating information. However, the BCVMA continued to prefer the PO's information. Although these charges did not proceed further, it nonetheless reflects the suspicion with which Dr. Bajwa's files were reviewed.

[1159] In some cases the BCVMA concluded that the veterinarian in question had made an isolated mistake and that this did not reflect an ongoing competency issue. The Complainants suggest that such a standard was not applied to them. As I have said throughout these proceedings, I am not going to make any findings with respect to the medical issues raised in the file. In assessing whether this standard should have been applied in any given case would require that I assess the medical issue at hand. I am not prepared to do so.

[1160] Similarly, the Complainants raised concerns that, in some cases, the matter involving other veterinarians was not pursued as it was not clear that no other competent or prudent veterinarian would have provided the treatment in question. The Complainants suggest that such a standard was not applied to the Complainants, generally or to Dr. Bajwa in the processing of disciplinary complaint 04-118. Again, and in my view, this raises a medial competency issue, and is something I have said I will not address, although it does suggest that the BCVMA was applying a different standard.

Summary

[1161] Generally, I found that, in complaints 04-025, 04-049, 06-067 and 04-118, the processing of these complaints had an adverse on Dr. Bajwa and that his race was a factor in the adverse and differential treatment he experienced.

Dr. Bhatia

Introduction

[1162] The Respondents say that Dr. Bhatia was not adversely treated within the disciplinary complaint system and his complaint should be dismissed on this basis. The Respondents say that, despite Dr. Bhatia's disciplinary complaints being terminated and/or dismissed, he took an "unreasonable, combative and defiant approach" to any and all of his dealings with the BCVMA.

[1163] Dr. Bhatia was not generally adversely affected in the processing of his disciplinary complaints before me. These include complaints 04-006, 04-101, 05-013, 07-015, and 07-059. Although he raised concerns about them, including the nature and source of the complaint, the BCVMA's processing of them and, in some cases, the delay in doing so, I was not persuaded that these concerns rose to the level of individual adverse impact. Further, although Dr. Bhatia raised some concerns, he generally agreed that the processing of some of these complaints was fair, see for example, complaints 04-006, 05-013, and 07-015.

Complaint 04-108

[1164] Dr. Bhatia was the named respondent in a complaint filed by Dr. Rana arising out of the 2003 Council elections, complaint file 04-108. However, he was never notified of the complaint until it was closed. It was investigated without his knowledge and remained open for a period of three and one-half years. Although the BCVMA may have the authority to delay notification of a complaint, I find no basis upon which it should have done so in this case. The election had concluded in September of 2003. The complaint was filed in November 2003. It was unreasonable and unfair that Dr. Bhatia did not receive notice after that time. I also found that the basis for the delay, which was that Dr. Rana was allegedly threatened by Dr. Bhullar, which had nothing to do with Dr. Bhatia, did not justify the delay. Drs. Bhatia and Bhullar were not one and the same person. Further, I agree with Dr. Bhatia that his involvement in the 2003 election was minimal and that this complaint remained open against him so that the BCVMA could investigate Dr. Bhullar's conduct.

[1165] I agree with Dr. Bhatia that this was not a fair process. I also agree that this complaint remained opened and was investigated despite Dr. Rana advising Dr. Roberts that he believed that it was Dr. Bhullar who was actually behind the issues raised during the Council election. Dr. Roberts drafted her closing letter, which was addressed to both Drs. Bhatia and Bhullar in November 2006 but it was not sent until May 2007, as it sat with Ms. Osborne during that period of time.

[1166] I agree with Dr. Bhatia that this complaint served to "lower" his reputation before members of Council. This was an extremely unfortunate and unfair process. Although there was little evidence that Dr. Bhatia's reputation was adversely affected by this complaint, given that it remained open for such a long, without notice to him, and the discussions about it, would suggest that was the case. Further, Dr. Bhatia was one of the Complainants who opposed the English Language Standard and was a signatory of, and approved those letters, which were critical of it and the members of the BCVMA.

Complaint 06-002

[1167] In complaint 06-002, regarding Dr. Bhatia's treatment of Madison, Dr. King-Harris suspected Dr. Bhatia of creating his medical records after Dr. Bhatia had received the complaint. As noted, I found no basis for this suspicion. Despite Dr. King-Harris' suspicions, and his lengthy report, the CRC ultimately dismissed the complaint, after directing Dr. King-Harris to conduct further investigation into the issues related to the treatment of Madison. Although Dr. Bhatia was unhappy with how this complaint was processed, he was happy that the complaint was eventually dismissed. I was not persuaded that he was adversely affected as a result. Generally, Dr. King-Harris was suspicious of the Complainants' medical records; this issue is canvassed above.

Complaint 07-059

[1168] In file 07-059, involving Dr. Bhatia's clinic cat, there was a significant delay in the processing of the complaint. Dr. Bhatia was notified of the complaint on October 26, 2007 but the file was not closed until March 23, 2009. I accept that Dr. Bhatia may have been adversely affected in that he testified that, during this period, he did not provide services to, or speak to, the person who had filed the complaint. However, Dr. Bhatia did

not provide evidence of this potential loss and as a result, I am unable to conclude that he was adversely affected by the processing of the complaint.

Summary

[1169] In summary, I was persuaded that Dr. Bhatia was, on an individual basis, adversely affected in the processing of complaint 04-108 and that his race was a factor in the adverse treatment such that the *Code*'s protections should be triggered.

Dr. Benipal

Introduction

[1170] Dr. Benipal was the subject of seven disciplinary complaints, 03-081, 03-016b, 05-059, 05-072, 05-088, 06-006, and 09-008. One complaint was filed by Dr. Snopek (03-081) and Dr. Snopek had some involvement in the filing of a second complaint, 05-059. Dr. O filed one complaint, 03-016b. Dr. Benipal's former employee filed complaint 05-072. A person who was an assistant to a breeder filed complaint 05-088. Two files were introduced after Dr. Benipal had testified, files 06-006 and 09-008.

[1171] I accept that Dr. Benipal was upset by the three complaints that were filed by other veterinarians; however, veterinarians are entitled to file complaints against each other.

[1172] Disciplinary complaint 05-088 was processed quickly and closed. The evidence did not illustrate that Dr. Benipal experienced an adverse impact or was treated differently in the processing of this complaint. As noted Dr. Benipal did not testify about complaints 06-006 and 09-008 and I make no finding as to whether the processing of those complaints had an adverse impact on him, although the evidence does not suggest any adverse impact.

[1173] In complaint 03-081, the BCVMA dismissed it after reviewing the suture material. Although Dr. Benipal may have felt insulted by this complaint, it was processed quickly by the BCVMA and closed by Dr. Roberts without a referral to the CRC. The second complaint involving Dr. Snopek was dismissed by the CRC. Although Dr. Benipal raised concerns about the processing of this complaint, the result was that it was

dismissed with Dr. Benipal having to meet certain conditions, which he delayed in doing and did not fully address.

[1174] It is unclear why, in file 03-016b, the identity of Dr. O was redacted before Dr. Benipal received the complaint; Dr. Benipal's subsequent request for the name of this person was reasonable but was ignored by the BCVMA. In any event, this complaint was processed quickly by the BCVMA and closed.

Complaint 05-059

[1175] In complaint 05-059, Dr. Benipal was criticized for raising his concerns about Dr. Snopek's involvement in this complaint. Many veterinarians, who appeared before me, filed complaints and/or met with the BCVMA made wide-ranging, outrageous and unsubstantiated allegations against a number of the Complainants; the BCVMA generally did not raise concerns about their conduct or their deportment toward a colleague but did so with respect to Dr. Benipal. It was unfortunate that it did so. It was also troubling that Dr. Snopek received a copy of the CRC's letter to Dr. Benipal when he was only the second opinion veterinarian and they are not usually advised of the progress of the complaint. This was also a breach of Dr. Benipal's privacy.

[1176] I found that the BCVMA had an insufficient basis to draw the inference that Dr. Benipal had misled the BCVMA in complaint 05-059. Again this issue goes to the general view that the Complainants were not generally credible and which is discussed above.

Complaint 05-072

[1177] The BCVMA closed complaint 05-072, which had been filed by Dr. Benipal's former employee. However, they did so without providing Dr. Benipal with a copy of the complaint and giving him the opportunity to respond. Nonetheless, in its closing letter, the BCVMA raised its concerns about Dr. Benipal's professionalism and his veterinary practice; it also referred the matter to PAC. A fair process required the BCVMA to provide notice to Dr. Benipal before drawing conclusions about his conduct and/or taking steps with respect to it. In my view, the elements of a fair process were not met in the circumstances of this complaint. Dr. Benipal was subject to an unscheduled inspection of

his facility in July 2007; Dr. Benipal did not know if this complaint was related to this inspection by PAC.

Summary

[1178] Ms. Osborne testified that she saw Dr. Benipal in "lockstep" with Dr. Bhullar. It is not clear to me how she could come to such a conclusion. It is true that Dr. Benipal opposed the English Language Standard as did many others. It is also true that he attended AGMs and SGM where concerns were raised about it and other issues. However, to suggest that he was therefore in "lockstep" with Dr. Bhullar, who she viewed as dishonest, or that he was not entitled to a fair process as a result, was extremely concerning. Dr. Benipal did not strike me as a person who would be in "lockstep" with Dr. Bhullar or anyone else.

[1179] I conclude that Dr. Benipal was adversely treated in the processing of complaints 05-059 and 05-072 based on his race and the general raced-based view that he was not credible.

Dr. Hans

[1180] Three disciplinary complaints, 00-040, 03-045 and 05-039, involving Dr. Hans were introduced before me. The issues in those complaints were dealt with quickly by the BCVMA and generally, Dr. Hans viewed the processes as fair.

[1181] I find that Dr. Hans did not suffer any direct and/or individual adverse consequence as a result of the BCVMA's processing of these complaints and that part of the Complaint is dismissed.

Dr. Parbhakar

[1182] There were three disciplinary complaints, 04-001, 04-003 and 06-047, involving Dr. Parbhakar introduced in evidence.

[1183] Although in disciplinary complaint 04-001, Dr. Parbhakar was the named respondent, the complaint proceeded against Dr. Bhullar. The complaint against Dr. Parbhakar was abandoned and he experienced no individual adverse impact as a result.

[1184] In complaint 04-003, Dr. King-Harris, in his closing letter to the PO, suggested that the PO's concerns about Dr. Parbhakar's English language ability had some validity; Dr. King-Harris did not speak to Dr. Parbhakar before closing the file and sending this letter to the PO. Dr. Parbhakar acknowledged that his English language proficiency would never been the same as those born in Canada but saw Dr. King-Harris as raising this as an issue because he was Indo-Canadian.

[1185] Dr. King-Harris' comments reflect his view of the English proficiency of some Indo-Canadians, including Dr. Parbhakar. In my view this adversely affected Dr. Parbhakar given that his English proficiency was questioned by his governing body and its concerns relayed to his client. In my view, this is adverse treatment based on Dr. Parbhakar's race. Further, if this letter became part of Dr. Parbhakar's disciplinary history, and subsequently referred to, it may also serve to raise this issue, in the future, although it was unsubstantiated.

[1186] In complaint, 06-047, although the BCVMA erred in providing information to Dr. Punia about Dr. Parbhakar, I was not persuaded that this adversely affected Dr. Parbhakar's professional reputation and he led no evidence that it did so.

[1187] I find that Dr. Parbhakar was adversely treated in the processing of complaint 04-003 and this adverse treatment was based on his race.

Dr. Jagpal

Introduction

[1188] There were three disciplinary complaint introduced involving Dr. Jagpal: 03-046, 03-104 and 03-131. As noted, Dr. Jagpal did not testify.

Complaint 03-046

[1189] In complaint 03-046, although this complaint was closed, there were questions raised about Dr. Jagpal's credibility. He advised the BCVMA about the error in the SuperPages, but it did not accept his explanation, despite him having no issues with the BCVMA prior to this date and that he was correct about the error.

Complaints 03-104 and 03-131

[1190] Complaints 03-104 and 03-131 raise more difficult issues. Both complaints raised concerns about the medical treatment provided by Dr. Jagpal. Dr. Jagpal was provided with notice of the complaints and given an opportunity to respond.

[1191] In both complaints, Dr. King-Harris referred to the unsubstantiated allegations of Dr. SP for support of his views that Dr. Jagpal was dishonest and had falsified his medical records. I find the reliance on this information extremely troubling and adverse to Dr. Jagpal as he had no ability to address Dr. SP's allegations. Dr. King-Harris found the POs' information to be more reliable than Dr. Jagpal's information. Despite the Inquiry Committee findings that the charges of falsification of medical records and misleading the BCVMA were not proven, Dr. King-Harris suggested that it was constrained due to the lack of evidence from Dr. SP suggesting that, had Dr. Sapra testified, the evidence would have been "incontrovertible". Dr. King-Harris had no basis to draw such a conclusion given that Dr. SP's information was unclear and, more importantly, untested when he made his assertions, as to the specifics concerns raised in these files.

[1192] Dr. Jagpal went through the Inquiry. At the Inquiry he raised his concerns about the institutional bias, which were dismissed by the Inquiry Committee. The Inquiry Committee found some of the charges proven. Council then considered the matter, dismissed Dr. Jagpal's concerns about the Inquiry Committee's decision and imposed sanctions, including a three-month suspension. I note that Dr. O'Grady participated in Council's decision. This was concerning given his views of Indo-Canadian practices, his ongoing involvement in bring such concerns to the BCVMA and his significant role in the implementation of the English Language Standard.

[1193] Dr. Jagpal appealed the Inquiry Committee's and Council's decision to the BC Supreme Court. However, he abandoned his appeals.

Summary

[1194] I find that some issues arose with respect to the processing of Dr. Jagpal's disciplinary complaints that had an adverse impact on him; I am of the view that race was

a factor in the decisions to pursue Dr. Jagpal on issues of falsification of medical records and misleading the BCVMA, which were based on the view that Dr. Jagpal, as an Indo-Canadian, was generally dishonest.

Dr. Sharma

Introduction

[1195] Dr. Sharma was subject to nine disciplinary complaints: 03-125a, 04-027, 04-048, 04-082, 05-029, 05-030, 05-052, 06-017, and 07-039. Complaints 05-052, 06-017, 07-039 were processed by the BCVMA without issue, although with some delay. Complaints 05-029 and 05-030 became part of the process involving complaint 04-082 and was considered within that context.

[1196] As noted, despite Dr. Sharma not testifying and the BCVMA initially seeking a stay with respect to the processing of these complaints, they led evidence about them, including introducing complaints that had not been introduced by the Complainants.

[1197] The Complainants argue that the evidence with respect to Dr. Sharma illustrates adverse treatment. In this respect, they point to the following:

- The BCVMA "fostered" a close relationship with one of his employees, Ms. LKH, in order to obtain information regarding Dr. Sharma's practice;
- A significant penalty was imposed on Dr. Sharma;
- The sequence of events leading to Dr. Sharma being unrepresented at his Inquiry; and
- The eventual resolution of Dr. Sharma's complaint as evidence of the latitude the BCVMA used to structure whom it will pursue to hearing.

[1198] Some of the disciplinary complaints involving Dr. Sharma raised difficult issues. It was clear that Dr. Sharma destroyed a medical record; this was clearly wrong and unprofessional. Further, he had performed a medical procedure which raised questions for the BCVMA about Dr. Sharma's competence to practise veterinary medicine.

Complaints 04-027, 04-082 and 03-125a

[1199] As with Dr. Johar, discussed below, the BCVMA met with Dr. Sharma's employee, who made numerous allegations against Dr. Sharma in both complaints 04-027 and 04-082. I was not persuaded, with respect to Dr. Sharma, that the BCVMA initially met with this employee in order to foster a close relationship with her to gain information about Dr. Sharma, although that was what eventually occurred. Based on this employee's information, the BCVMA interviewed one of Dr. Sharma's clients, who had not filed a complaint, which in my view was an inappropriate. Although it ultimately was determined that Dr. Sharma had engaged in unprofessional conduct, its actions in pursuing this complaint, based on the employee's allegations, without fully assessing her credibility, was troubling.

[1200] Dr. Sharma was not given full disclosure during the investigative process, including the notes of the discussions that had occurred between Ms. Osborne and the employee, the expert opinion that it had already received about his treatment of the Emma, or that the BCVMA had the torn medical record before the initial report was sent to the CRC. Further, it was the BCVMA who drafted the complaint letter not the POs. In my view, the process was adverse to Dr. Sharma.

[1201] Dr. King-Harris raised concerns about Dr. Sharma's English proficiency and mental capacity. I find that he little basis to raise such serious concerns. This was adverse to Dr. Sharma professional reputation and may have adversely affected the CRC's consideration of his disciplinary complaints.

[1202] Dr. Sharma engaged in the ACR process with respect to complaint 04-027, which eventually went to Inquiry long with complaint 03-125a, but his attempts to resolve the matter were unsuccessful. Dr. Sharma cannot be criticised for engaging in an ACR process that failed. It was difficult to assess whether the penalties offered to Dr. Sharma were more severe than in other cases. It is difficult to compare them or to conclude that those offered to Dr. Sharma were based on his race or that race was a factor in the BCVMA's proposals.

[1203] Dr. Sharma's Inquiry was adjourned at least once to accommodate his lawyer's schedule. The Inquiry Committee denied a second request for an adjournment, because

his lawyer was not present; Dr. Sharma then left the hearing. I did not view this process as discriminatory.

[1204] Dr. O'Grady participated in the Council's decisions with respect to this matter. As with other Council decisions, referred to above, this was very troubling. Nonetheless, the Council imposed certain penalties and I accept Council's evidence of why it did so. Although the penalties were significant, I was not persuaded that this was discrimination.

[1205] Dr. Sharma appealed the decisions of the Inquiry Committee and Council, which were dismissed.

[1206] File 04-082 was also instigated by Dr. Sharma's employee and then supported by Dr. Sharma's other employees, who had made separate allegations, which were joined with this complaint. Again, wide-ranging allegations were accepted by Dr. King-Harris without, in my view, an appropriate investigation into the allegations, an appropriate assessment of the employees' credibility, supporting evidence, and no assessment of whether one of the employees had removed the medical record for Kasper, which was one of the issues raised, from Dr. Sharma' clinic, before the matter was referred to the CRC with the recommendation that it refer all issues to Inquiry.

[1207] Dr. Sharma did not receive disclosure of the notes of the interviews with the employees when the matter was referred to the CRC. I do not agree that, given the seriousness of the allegations, Dr. Sharma was not entitled to disclosure of this information. Although the BCVMA provided a summary of these allegations to Dr. Sharma, and Ms. Osborne said it did so to protect the employees, I do not see it as the role of the BCVMA to protect employees of veterinarians and, I did not find her explanation, in the circumstacnes, to be persuasive.

[1208] Complaint 04-082 was eventually resolved through the ACR process, illustrating that Dr. Sharma's was prepared to engage in such a process contrary to the BCVMA's assertions that Complainants were not disposed to do so.

Summary

[1209] I find that, to some limited extent, the BCVMA treated Dr. Sharma adversely in the processing of disciplinary complaints and that his race was a factor. I have also

considered the processing of Dr. Sharma's complaints in the context of the issues of systemic discrimination at play during the same period that Dr. Sharma's complaints were considered.

Dr. Brar

[1210] The Respondents say that Dr. Brar did not experience any discriminatory treatment by the BCVMA and has alleged discrimination, as have other Complainants, in order to challenge the actions of the BCVMA and to take issue with any of its decisions with which they disagree.

[1211] There were eight disciplinary complaint introduced before me: 04-032, 04-047, 04-034, 04-068, 05-056, 05-071b, 05-078 and 07-004.

Complaints 04-032 and 04-037

[1212] Complaints 04-032 and 04-037 were both referred to Inquiry, charges were found to be proven and Council imposed sanctions.

[1213] Complaint 04-032 concerned the treatment of Timber. Numerous issues were raised by Dr. King-Harris in his report to the CRC, despite these not being of concern to the PO. This complaint, along with many others involving the Complainants, reflect that Dr. King-Harris and Ms. Osborne were intent on raising as many allegations in the complaint despite them not being of concern to the PO. This was also true in complaint 04-037.

[1214] Dr. King-Harris drew conclusions adverse to Dr. Brar, in his report to the CRC with respect to 04-032, without giving Dr. Brar the opportunity to respond. A fair process, when adverse finding are being made, is to give the respondent veterinarian the opportunity to address the issues; in this complaint, it would not have unduly lengthened the process nor was there any risk to the public. Further, Dr. King-Harris alleged that Dr. Brar had falsified his medical records, without affording him the opportunity to respond to this serious charge. Although Dr. Brar could respond to the report, the conclusion had already been drawn.

[1215] The Respondents assert that the Complainants made unfounded allegations with respect to complaint 04-037 and repeated those allegations in multiple forums. The Respondents assert that those allegations were "vexatious and inflammatory". The Respondents say that, since Dr. Brar did not testify, these allegations should be dismissed with costs for failure to "even attempt to substantiate" the allegation. I agree with the Respondents that the nature and extent of the public commentary about this complaint and Ms. Osborne's involvement in it was extremely unfortunate.

[1216] Complaint 04-037 dealt with a complaint filed by Ms. Dionela, a person who was Ms. Osborne's cleaning person. I found that Ms. Osborne did not instigate this complaint and the Complainants, including Dr. Brar, had little basis to suggest otherwise. I concluded that Dr. King-Harris again raised the concern that Dr. Brar had falsified his medical records, based on insufficient information. Although the wrong person received notice of this matter proceeding to Inquiry, the BCVMA did not take responsibility for the error. I found it surprising that it attempted to blame the Indo-Canadian veterinarian who received the notice, in error, for the mistake.

Other Complaints

[1217] Complaints 04-034, 04-068, 05-056, 05-071b, 05-078 were all investigated by Dr. King-Harris. Although concerns were raised about Dr. Brar's conduct in these complaints, including the accuracy of Dr. Brar's medical records (04-034 and 05-078) these complaints were eventually closed and or dismissed by the CRC. I accept that in some cases, Dr. Brar's responses to the BCVMA were inappropriate and not helpful to the investigations, see files 04-068 and 05-071.

Summary

[1218] As with Dr. Sharma, I find that, to some limited extent, the BCVMA treated Dr. Brar adversely in the processing of disciplinary complaints 04-032 and 04-037 and that his race was a factor. I have also considered the processing of Dr. Brar's complaints in the context of the issues of systemic discrimination at play during the same period.

Dr. Johar

Introduction

[1219] During the course of his evidence Dr. Johar failed to answer questions put to him and often raised other files that were not directly related to the answer that was required. At times, he was evasive and hostile and, many times, his evidence was repetitive and unclear. Dr. Johar gave opinion evidence about medical issues raised in his disciplinary files, and files involving veterinarians, which I generally ignored.

[1220] Dr. Johar sent a volume of correspondence to the BCVMA raising a number of concerns about the BCVMA's processes, its staff and volunteers. I agree with Ms. Osborne's assessment that Dr. Johar was an extremely difficult person to deal with. However, the delay in responding to some of Dr. Johar's communications and/or the BCVMA's failure to respond at all, to the volume of correspondence, which generally repeated Dr. Johar's concerns about not receiving a response, exacerbated Dr. Johar's concerns. However, the manner in which he responded was not always appropriate. Although I agree that many Dr. Johar's letters did not raise urgent issues, the BCVMA had an obligation to respond, even if it viewed the correspondence as extraordinary and/or inappropriate. In some cases, the BCVMA did respond "in bulk" and/or said that it would provide no further response on matters already addressed. It was clearly a difficult situation for everyone involved.

[1221] I also agree that, on many occasions, Dr. Johar was disrespectful of the BCVMA's staff, COs and others involved in the processing of the disciplinary complaints in which he was involved. I also find that he alleged that various staff and contractors of the BCVMA were racist and biased. I accept that such allegations were upsetting to the staff and others.

[1222] Before turning to the evidence regarding Dr. Johar's complaints, I first set out the evidence of Dr. Alexander Levin.

Dr. Alexander Levin

[1223] The Complainants introduced evidence from Dr. Alexander Levin who was asked to provide an independent psychiatric assessment of Dr. Johar. Dr. Levin was qualified as an expert in forensic psychiatry.

[1224] Dr. Levin was asked to assess Dr. Johar's psychological and/or emotional disturbances, his diagnosis, his treatment, recommendations and prognosis. Dr. Levin's report was tendered into evidence and the substance of his report will not be repeated.

[1225] Dr. Levin testified that Dr. Johar was under significant stress, with the major stress being related to the ongoing issues with the BCVMA. Dr. Johar appeared distracted, had a flat affect and showed signs of depression. He had no significant cognitive difficulties. Dr. Johar felt he was always under pressure and feared for his safety; as a result, he was often was suspicious and paranoid. In Dr. Levin's opinion, Dr. Johar was experiencing an adjustment reaction/disorder to the events that were unfolding with the BCVMA, but it was not a major depressive disorder, which is a disabling condition. However, Dr. Levin suggested that, given the ongoing litigation, Dr. Johar became more depressed and developed a major depressive disorder, exhibiting symptoms of paranoia and concerns about conspiracy. Dr. Levin testified that the disorder resulted from the cumulative effects of the stress of the litigation, as there were no other pre-existing conditions that might have led to Dr. Johar's condition. Dr. Levin agreed that, if Dr. Johar was filing multiple complaints against others, this would have added to his stress.

[1226] Dr. Levin agreed that Dr. Johar's treating psychiatrist did not diagnosis that Dr. Johar was suffering from a major depressive disorder but that some of the descriptors used by her on November 20, 2008, when she met with Dr. Johar, would suggest that he had slipped into such a disorder. Dr. Johar was able to continue to practise without difficulty. In January 2009, after a resolution with the BCVMA, Dr. Johar's mental health improved along with the fact that he had been taking antidepressants since November. Given Dr. Johar's relatively quick recovery, Dr. Levin agreed that, perhaps, the severity of Dr. Johar's symptoms was less than he had identified in his report. Dr. Levin agreed

that, if Dr. Johar was receiving counselling, along with taking medication, this would have helped him not to fall into a severe depression again.

The Complaints involving Drs. Johar and O

[1227] There were a number of disciplinary complaints involving Dr. Johar and Dr. O. Many of these files related to the interactions between them. As noted elsewhere, Dr. O is not a Complainant and is not Indo-Canadian. The issue that arises is whether the BCVMA processed those disciplinary complaints, in which Dr. Johar was named as a respondent veterinarian, differently than those where Dr. O was named as a respondent veterinarian.

[1228] Some of these complaints dealt with medical issues, about which I will make no determinations; however many did not. Suffice to say that the materials clearly illustrate a difficult and, I would suggest, an unprofessional relationship between them. Both veterinarians acted inappropriately, but the specific factual issue before me is whether there was differential treatment of these individuals by the BCVMA, when it dealt with the processing of these complaints, and its related interactions with each of them.

[1229] I accept that the BCVMA had difficulty dealing with Dr. Johar. I also accept that Dr. Johar sent numerous and, in many cases, inappropriate emails and letters to the BCVMA. However, the BCVMA, as the regulatory authority, had the obligation, even in the face of these communications, to treat its members fairly and without preference for one member over another.

[1230] I find that Dr. Johar was adversely treated in the processing of those complaints involving him and Dr. O and that race was factor in this differential treatment. The following is a summary of my findings:

- Generally, the BCVMA investigated those complaints filed by Dr. O against Dr. Johar but not those filed by Dr. Johar against Dr. O;
- Generally, Dr. Johar was not believed and Dr. O was, even when there was information to suggest that this should not have been the case;
- Dr. Johar was pursued and otherwise sanctioned for making disparaging comments about Dr. O but Dr. O was not sanctioned for making similar disparaging remarks about Dr. Johar;

- Dr. O had access to Ms. Osborne but Dr. Johar did not have a similar access. His communications were ignored and were, on many occasions, considered to be without merit; and

- The BCVMA delayed in processing those complaints filed by Dr. Johar but did not do so in with respect to those complaints filed by Dr. O.

Other complaints

[1231] There were a number of complaints filed against Dr. Johar, which were either not pursued and/or were closed. These include files 03-109, 05-105, 05-107, 06-005 and 08-071.

[1232] Complaint 04-100 was closed. However, I find that the BCVMA made comments about Dr. Johar's conduct, in the closing letter, which was adverse to him. The BCVMA did so without first giving him the opportunity to respond.

[1233] In complaints 05-012 and 05-035, Dr. King-Harris raised numerous issues in his reports to the CRC and, in some respects, issues that had not been raised in the initial complaint by the PO. As I noted above, this process reflected that Dr. King-Harris and Ms. Osborne were intent on raising as many allegations in complaints involving the Complainants.

[1234] Complaint 05-012 was a simple and straightforward complaint. The PO was not Dr. Johar's client and there was an error in the medical record receibed from the referring veterinarian. Dr. Johar ultimately dispensed the requested fluids. Nonetheless, the BCVMA pursued numerous charges against him. I was not persuaded that Dr. Johar misled the BCVMA.

[1235] Complaint 05-035 raised numerous medical issues and I do not propose to address those. I was concerned that Dr. King-Harris had alleged that Dr. Johar had threatened a colleague without first putting this issue to him. This was a serious charge and Dr. Johar was entitled to provide a response before the matter was sent to the CRC.

[1236] I found the processing of complaint 04-111 the most troubling. Throughout this process, the BCVMA accepted AR's allegations to be true without fully exploring her credibility. It was prepared to accept that Dr. Johar had engaged in the alleged conduct.

The BCVMA investigated this complaint for almost one year, including calling his clients, which was extremely inappropriate and adverse to Dr. Johar's professional reputation.

[1237] At all times, the BCVMA accepted that Dr. Johar was lying about not having the medical records. At no time, did the BCVMA consider that Dr. Johar might have been telling the truth. A full and fair investigation, one which was not tainted with race-based assumptions about the honesty of Indo-Canadians, would have ensured that the BCVMA took full and appropriate steps to investigate this issue. It also could have, and did not, send a person from the BCVMA to Dr. Johar's clinic to determine if he had the medical records. This failure is also illustrative that it was more focused on Dr. Johar's alleged untruthfulness than protecting the public interest.

[1238] In my view, this complaint added significantly to Dr. Johar's ongoing allegations that the BCVMA was biased against him and was treating him unfairly. In this case, along with those involving Dr. O, provided him with a reasonable basis to draw such conclusions.

Summary

[1239] I find that Dr. Johar was adversely treated in the processing of some of his disciplinary complaints and, most significantly, in complaint 04-111, and that race was a factor in how these complaints were processed.

Bona Fide **Occupational Requirement ("BFOR")**

1. Introduction

[1240] The BCVMA argued that the English Language Standard was *bona fide* occupational requirement (BFOR). They further argued that although most Indo-Canadian veterinarians could not meet the Standard, they were otherwise registered because they were accommodated through alternate testing means.

[1241] The issues with respect to Dr. Grewal and whether he establish a *prima facie* case of discrimination and, if so, whether the BCVMA accommodated him to the point of undue hardship is discussed elsewhere in this Decision.

2. Test

[1242] The test for establishing a BFOR is set out in *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Union (B.C.G.S.E.U.)* ("*Meiorin*"), [1999] 3 S.C.R. 3 (See also *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868 ("*Grismer*"):

> 1. that the Respondents adopted the standard for a purpose or goal that is rationally connected to the function being performed;
>
> 2. that the Respondents adopted the standard in an honest and good faith belief that it was necessary to the fulfillment the purpose or goal; and
>
> 3. that the standard is reasonably necessary to the accomplishment of its purpose or goals. To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individuals sharing the characteristics of the claimant without imposing undue hardship upon the employer or service provider. (para. 54; see *Grismer* at para. 20; *Kelly (No. 3)*, paras. 518-519)

[1243] The Complainant agreed that the three part test set out in *Grismer* is to be applied in this case.

3. Cases

[1244] The burden lies with the Respondents to establish, on a balance of probabilities, that the English Language Standard is a BFOR.

[1245] It is clear something more than impressionistic evidence is need to satisfy a respondent's burden under the BFOR analysis, which is a question of the weight given to the evidence. Further, the nature and quality of the objective evidence necessary will vary from case to case. Statistical or scientific evidence is not always necessary. *Ontario (Human Rights Commission) v. Etobicoke (Borough)*, [1982] 1 S.C.R. 202 ("*Etobicoke*"), p. 212; *Emrick Plastics v. Ontario (Human Rights Commission)*, [1992] O.J. No. 526 (Ont. Div. Ct.) p. 6.)

[1246] As the Tribunal noted in *Kelly (No. 3)*, the context, and the entire relationship between the parties, must be considered in the BFOR analysis. (para. 528; *Hydro-Québec v. Syndicat des employées de techniques professionnelles et de bureau d'Hydro-Québec,*

section locale 2000 (SCFP-FTQ), 2008 SCC 43 ("*Hydro-Québec*"), paras. 20-21; *McGill*, paras. 33-35)

[1247] In *McGill*, the Court noted that the factors that support a finding of undue hardship "are not entrenched and must be applied with common sense and flexibility". The Court noted things such as cost, morale, mobility, and/or the interference with another employee's rights are some factors that may be considered. (para. 15)

[1248] In *Central Alberta Dairy Pool v. Alberta (Human Rights Commission)*, [1990] 2 S.C.R. 489, the Court set out a number of factors that an employer and/or service provider may consider in determining if it can accommodate an individual to the point of undue hardship. (para. 62) As noted in *Council of Canadians with Disabilities v. VIA Rail,* 2007 SCC 15, the factors to be applied in the search for accommodation must be applied with flexibility and with common sense:

> Setting out the factors is Parliament's way of acknowledging that the considerations for weighing the reasonableness of a proposed accommodation vary with the context. It is an endorsement of, not a rebuke to the primacy of human rights principles, principles which anticipate, as this Court said in *Chambly* and *Meiorin*, that flexibility and common sense will not be disregarded. (para. 134)

[1249] In *Commission scoliare regionale de Chambly v. Bergevin* [1994] 2 S.C.R. 525, three Jewish teachers employed by the School Board asked for, and were granted, a day off to celebrate Yom Kippur, but without pay. The teachers grieved the School Board's decision seeking reimbursement of their pay. The Supreme Court of Canada found that the effect of the school calendar was to discriminate against these teachers and that the School Board must then take reasonable steps to accommodate them. In discussing those factors set out in *Central Dairy Pool*, the Court noted:

> These factors are not engraved in stone. They should be applied with common sense and flexibility in the context of the factual situation presented in each case. The situations presented will vary endlessly. For example, in a large concern, it may be a relatively easy matter to replace one employee with another. In a small operation replacement may place an unreasonable or unacceptable burden on the employer. The financial consequences of accommodation will also vary infinitely. What may be eminently reasonable in prosperous times may impose an unreasonable financial burden on an employer in times of economic restraint or

recession. However, the listed factors can provide a basis for considering what may constitute reasonable accommodation.

It is important to remember that the duty to accommodate is limited by the words "reasonable" and "short of undue hardship". Those words do not constitute independent criteria. Rather they are alternate methods of expressing the same concept. (see *Renaud*, *supra*, at p.984.) (paras. 32-33; see also *Meiorin*, paras. 43 and 44)

[1250] In *McGill*, the Court emphasized the importance of the individualized nature of the accommodation process. (para. 22)

[1251] In *Hydro Québec*, the Court clarified the meaning of "impossible":

... there is a problem of interpretation in the instant case that seems to arise from the use of the word "impossible". But it is clear from the way the approach was explained by McLachlin J. that this word relates to undue hardship (at para. 55):

> This approach is premised on the need to develop standards that accommodate the potential contributions of all employees in so far as this can be done without undue hardship to the employer. Standards may adversely affect members of a particular group, to be sure. But as Wilson J. noted in *Central Alberta Dairy Pool*, [[1990] 2 S.C.R. 489], at p. 518, "[i]f a reasonable alternative exists to burdening members of a group with a given rule, that rule will not be [a BFOR]". It follows that a rule or standard must accommodate individual differences to the point of undue hardship if it is to be found reasonably necessary. Unless no further accommodation is possible without imposing undue hardship, the standard is not a BFOR in its existing form and the *prima facie* case of discrimination stands. [Emphasis added.]
>
> What is really required is not proof that it is impossible to integrate an employee who does not meet a standard, but proof of undue hardship, which can take as many forms as there are circumstances.
>
> ...

The test is not whether it was impossible for the employer to accommodate the employee's characteristics. The employer does not have a duty to change working conditions in a fundamental way, but does have a duty, if it can do so without undue hardship, to arrange the employee's workplace or duties to enable the employee to do his or her work.

Because of the individualized nature of the duty to accommodate and the variety of circumstances that may arise, rigid rules must be avoided...

> Thus, the test for undue hardship is not total unfitness for work in the foreseeable future. If the characteristics of an illness are such that the proper operation of the business is hampered excessively or if an employee with such an illness remains unable to work for the reasonably foreseeable future even though the employer has tried to accommodate him or her, the employer will have satisfied the test. In these circumstances, the impact of the standard will be legitimate and the dismissal will be deemed to be non-discriminatory. I adopt the words of Thibault J.A. in the judgment quoted by the Court of Appeal, *Québec (Procureur général) v. Syndicat de professionnelles et professionnels du gouvernement du Québec (SPGQ)*, [2005] R.J.Q. 944, 2005 QCCA 311: [TRANSLATION] "[In such cases,] it is less the employee's handicap that forms the basis of the dismissal than his or her inability to fulfill the fundamental obligations arising from the employment relationship" (para. 76). (paras. 12 and 16-18)

[1252] As noted by the Court in *Hydro-Québec* it is not whether the accommodation is impossible but whether the accommodation is reasonably possible without imposing undue hardship. (pars. 12-14)

[1253] The Tribunal and Courts have considered issues of safety and/or risk in the accommodation analysis.

[1254] In *Etobicoke*, the issue before the Court was the decision of the Employer to require firefighters to retire at age 60. The Employer argued that the adequate performance of all members of the fire-fighting unit was essential to preserve public safety. The Court upheld the Board of Inquiry's decision that the evidence adduced by the Employer in this respect was "impressionistic" and did not satisfy the Employer's obligation to establish, on a balance of probabilities, a BFOQ. (p. 6-7) (QL) (see also *Kelly (No. 3)*, para. 541)

[1255] In *Grismer*, Madame Justice McLachlin, speaking for the Court said:

> This case is not about whether unsafe drivers must be allowed to drive. There is no suggestion that a visually impaired driver should be licensed unless she or he can compensate for the impairment and drive safely. Rather, this case is about whether, on the evidence before the Member, Mr. Grismer should have been given a chance to prove through an individual assessment that he could drive. It is also about combatting false assumptions regarding the effects of disabilities on individual capacities. All too often, persons with disabilities are assumed to be unable to accomplish certain tasks based on the experience of able-bodied individuals. The thrust of human rights legislation is to eliminate such

> assumptions and break down the barriers that stand in the way of equality for all.
>
> The Superintendent thus recognized that removing someone's licence may impose significant hardship. Striking a balance between the need for people to be licensed to drive and the need for safety of the public on the roads, he adopted a standard that tolerated a moderate degree of risk. The Superintendent did not aim for perfection, nor for absolute safety. The Superintendent rather accepted that a degree of disability and the associated increased risk to highway safety is a necessary trade-off for the policy objectives of permitting a wide range of people to drive and not discriminating against the disabled. The goal was not absolute safety, but reasonable safety.
>
> ... Under the *Meiorin* test, it was incumbent on the Superintendent to show that he had considered and reasonably rejected all viable forms of accommodation. The onus was on the Superintendent, having adopted a *prima facie* discriminatory standard, to prove that incorporating aspects of individual accommodation within the standard was impossible short of undue hardship. The Superintendent did not do so. On the facts of this case, the Superintendent's blanket refusal to issue a driver's licence was not justified. He fell into error in this case not because he refused to lower his safety standards (which would be contrary to the public interest), but because he abandoned his reasonable approach to licensing and adopted an absolute standard which was not supported by convincing evidence. The Superintendent was obliged to give Mr. Grismer the opportunity to prove whether or not he could drive safely, by assessing Mr. Grismer individually. It follows that the charge of discrimination under the *Human Rights Act* was established.
>
> This case deals with no more than the right to be accommodated... The discrimination here lies not in the refusal to give Mr. Grismer a driver's licence, but in the refusal to even permit him to attempt to demonstrate that his situation could be accommodated without jeopardizing the Superintendent's goal of reasonable road safety. This decision stands for the proposition that those who provide services subject to the *Human Rights Code* must adopt standards that accommodate people with disabilities where this can be done without sacrificing their legitimate objectives and without incurring undue hardship. It does not suggest that agencies like the Motor Vehicle Branch must lower their safety standards or engage in accommodation efforts that amount to undue hardship. (paras. 2, 27, 42, 44)

[1256] In *Kemess Mines Ltd.*, the employer terminated an employee for smoking marijuana; the employer had a zero tolerance policy on drug use. The issue that the policy was meant to address was safety in the workplace. The British Columbia Court of Appeal

quoted, with approval, the Supreme Court of Canada's comments in *Central Alberta Dairy Pool* that both the magnitude of the risk and who bears the risk are relevant considerations in determining if a person may be accommodated. The Court of Appeal confirmed that the "... concept of 'undue hardship' has to be considered with those safety concerns in mind." (para. 38)

[1257] The Respondents argue that the Tribunal must consider the reasonableness of the BCVMA's English Language Standard in the context of the BCVMA's oversight of veterinary practice in British Columbia. The Respondents say that in "this capacity, and with a limited ability to scrutinize individual interactions between registrants and members of the public, the standard adopted must be sufficiently robust to ensure that registrants provide adequate service to all British Columbians".

[1258] For support, the Respondents rely on *Canadians for Language Fairness v. Ottawa (City)* 2006, 26 M.P.L.R. (4th) 163, 146 C.R.R. (2d) 268, in which the Ontario Superior Court of Justice considered Ottawa's Bylaw and Bilingualism Policy, which stipulated that the citizens had the right to communicate in both English and French and that both official languages had the same rights and status, encouraged employees to work in the language of their choice, and provided for training in both languages. The City required that some positions be filled by employees who were bilingual. The applicant argued that the Bylaw and Policy was unreasonable, unfair, vague and discriminatory and as such was *ultra vires* the City's powers. The applicant also argued that the Bylaw and Policy violated s. 2(b) of the *Charter*. In dismissing the application, the Court was clear that there must be respect and protection of minority rights within Canada, in this case the rights of Francophones. It noted that minority rights "cannot be subject to a mathematical analysis". The Court noted that statistical evidence must be must interpreted carefully in such a context, especially when no expert is tendered to speak to it. It was clear that the City had tailored the Policy to accommodate the variety of speakers within a variety of worksites. The Court concluded that the City was "... using the Policy on a functional and practical basis where it [was] warranted and justified" and noted that "accommodating diversity usually does exact a cost to the majority, even if in some cases the cost is merely social adaption". (paras. 78, 82, 103)

4. The Standard

[1259] In *Grismer*, the Court was clear that a standard must be inclusive as possible and one cannot create standard that fails to consider the historical disadvantage of individuals and groups. The Court said:

> ...Employers and others governed by human rights legislation are now required in all cases to accommodate the characteristics of affected groups within their standards, rather than maintaining discriminatory standards supplemented by accommodation for those who cannot meet them. Incorporating accommodation into the standard itself ensures that each person is assessed according to her or his own personal abilities, instead of being judged against presumed group characteristics. Such characteristics are frequently based on bias and historical prejudice and cannot form the basis of reasonably necessary standards. While the *Meiorin* test was developed in the employment context, it applies to all claims for discrimination under the B.C. *Human Rights Code*.
>
> ...
>
> This test permits the employer or service provider to choose its purpose or goal, as long as that choice is made in good faith, or "legitimately". Having chosen and defined the purpose or goal – be it safety, efficiency, or any other valid object – the focus shifts to the means by which the employer or service provider seeks to achieve the purpose or goal. The means must be tailored to the ends. For example, if an employer's goal is workplace safety, then the employer is entitled to insist on hiring standards reasonably required to provide that workplace safety. However, the employer is not entitled to set standards that are either higher than necessary for workplace safety or irrelevant to the work required, and which arbitrarily exclude some classes of workers. On the other hand, if the policy or practice is reasonably necessary to an appropriate purpose or goal, and accommodation short of undue hardship has been incorporated into the standard, the fact that the standard excludes some classes of people does not amount to discrimination. Such a policy or practice has, in the words of s. 8 of the *Human Rights Code*, a "bona fide and reasonable justification". Exclusion is only justifiable where the employer or service provider has made every possible accommodation short of undue hardship. (paras. 19 and 21)

[1260] In *Gichuru*, Mr. Gichuru was a lawyer with a mental disability seeking to be licensed with the Law Society of British Columbia. The Tribunal discussed the standard and, following the decision in *Grismer*, disagreed with the Law Society that the standard was simply medical fitness to practice law. The Tribunal concluded that there "cannot be

an absolute guarantee of competence to practice law. Instead, the standard must be something lower, such as a reasonable assurance of competence to practice law". (paras. 493-498)

[1261] In *Gichuru*, the Law Society argued that since the standard at issue was determined by statute, the *Meiorin/Grismer* test should not be strictly applied. The Tribunal rejected this argument and concluded:

> ... I find that the Law Society's argument in this regard is contrary to the Supreme Court of Canada's approach in *Grismer*. That case involved a decision by the Office of the Superintendent of Motor Vehicles, denying Mr. Grismer a driver's license due to his visual impairment. The Superintendent was operating pursuant to its statutory responsibility to evaluate fitness to drive. In particular, at the time *Grismer* was heard by the B.C. Council of Human Rights, s. 24 of the Motor Vehicles Act, R.S.B.C. 1979, c. 288, prescribed that the Superintendent was responsible for ensuring that, before a licence is issued, the individual is fit and able to operate a motor vehicle safely: see *Grismer v. British Columbia (Ministry of Attorney General, Motor Vehicle Branch)*, [1994] B.C.C.H.R.D. No. 38, para. 39.
>
> I cannot meaningfully distinguish the situation in *Grismer*, where the Superintendent was operating pursuant to its statutory authority to determine fitness to operate a motor vehicle, and the present case, where the Law Society is operating pursuant to its statutory authority to satisfy itself as to competence and fitness to practice law. (paras. 489-490)

[1262] I agree with the Tribunal's conclusion in *Gichuru*, which is equally applicable in this case.

[1263] One of the BCVMA's purposes is protection of the public. In order to achieve this purpose, it must be reasonably assured that an applicant is fit to practise. Part of this assessment is to assess whether or not an applicant is sufficiently proficient in English to carry on the practice of veterinary medicine. In this respect, I accept that such a standard is rationally connected to the function of practising veterinary medicine.

[1264] It is clear that more than a minimal risk must be established when implementing a professional standard that must be met in order to practice. The appropriate goal is reasonable safety. In *Gichuru*, the standard was described to be "a reasonable assurance

of competence to practice law" and, as the Tribunal noted impressionistic evidence of risk will not suffice. (*Gichuru*, para. 496-498)

[1265] The Complainants agreed that the BCVMA was entitled to implement an English proficiency requirement and that the first step of the *Grismer*/*Meiorin* test had been met, in that the standard was adopted for a purpose or goal that was rationally connected to the function being performed. The concern was whether the standard implemented by the BCVMA was adopted in good faith.

5. Good Faith

[1266] The second part of the *Grismer* test is whether the standard was adopted in good faith. The Complainants argue that the English Language Standard was not adopted in good faith but was adopted for the ulterior purpose of limiting the number of Indo-Canadian veterinarians practising in British Columbia.

[1267] The Respondent disagree that the English Language Standard was implemented in bad faith. They say that they implemented the standard in good faith to ensure it was not administered by the Registrar, through a subjective process, and that the TSE score of 55 was appropriate.

[1268] The Complainants argued that the *Act* does not require a test or a "direct" assessment of English proficiency, only that the person's English be proficient enough to carry on the practice of veterinary medicine. Although, I agree that the *Act* does not specifically require, or mandate, the BCVMA to have an arms-length test of English proficiency, it leaves open how an assessment of English proficiency is to be done. The *Act* does not prohibit testing or the establishment of an arms-length test. However, I agree that the BCVMA relied on the *Act* for support that it was required to have an arms-length test, when in fact the *Act* is not clear in this respect. In my view, the English Language Task Force and then the Council mislead the membership when it took this position.

[1269] As set out above, in the discussion of systemic discrimination, the implementation of the English Language Standard was not done in good faith. I do not propose to repeat that evidence here. The English Language Standard served to limit the registration of foreign-trained Indo-Canadian veterinarians.

[1270] The BCVMA continually asserted that it was entitled, and required, to expect a high level of practice standards. That this was their obligation is not disputed. However, there is nothing to suggest that any issues with respect to the alleged lower standards of practice, or communication issues, were directly related to English proficiency.

[1271] The English Language Task Force, in its January 15, 2004 report, referred to a Supreme Court of Canada case, released in 1988, dealing with the proficiency of nurses to practice in the official language of Quebec.

[1272] In *Forget v. Quebec (Attorney General),* [1988], 2 S.C.R. 90, the issue was whether it was discriminatory to have different methods of establishing knowledge of French. A law required professional corporations to ensure that candidates had "knowledge of the official language ... appropriate to the practice of their profession". Regulations under that law created a presumption that a person who had "taken at least three years of full time instruction in French, at the secondary level or later" had such knowledge. Persons without this training had to establish their working knowledge of French based on an examination prescribed by the regulation. A majority of the Court found a distinction between those who benefit from the presumption and those who must submit to a test and that the distinction was based on "language" within the meaning of the *Charter of human rights and freedoms*, as most candidates who would benefit from the presumption would be francophones. The majority found, however, that the distinction did not nullify or impair the right of candidates to full equality in admission to a professional corporation, emphasizing that the law requiring knowledge of French "appropriate to the practice of their profession" was not challenged. The majority assumed that the knowledge of French required for all candidates was the same, whether it was demonstrated through the test or through the three years' instruction in French. This is significantly different from the facts in this case, where the requirement to demonstrate English proficiency was not universal, the evidence established the Standard was imposed for the discriminatory purpose of limiting registration of veterinarians from India or the Punjab, and the score set was unattainable for the targeted group and higher than that set by other veterinary associations in North America.

[1273] I find, based on all the evidence before me, that the BCVMA did not implement the English Language Standard in good faith.

[1274] Given this finding, it is not necessary to address the third element of the BFOR test.

6. Conclusion

[1275] In conclusion, I find that, although the BCVMA is required to assess the English proficiency of applicants, in this case, it implemented the English Language Standard in bad faith.

Section 43 of the *Code*

1. Introduction

[1276] At the time relevant to this Complaint, s. 43 of the *Code* provided:

> A person must not evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty on, deny a right or benefit to or otherwise discriminate against a person because that person complains or is named in a complaint, gives evidence or otherwise assists in a complaint or other proceeding under this Code.

[1277] As noted in *Bissonnette v. School District No. 62*, 2006 BCHRT 447, a complaint must establish:

> In order to establish a complaint under s. 43 of the *Code,* a complainant must establish:
>
> - That a previous complaint has been made under the *Code* and that the respondent was aware of the complaint: *Cariboo Chevrolet Pontiac Buick GMC Ltd.* v. *Becker*, 2006 BCSC 43, at paras. 47-55;
>
> - That the respondent engaged in or threatened to engage in retaliatory conduct; and
>
> - That the respondent intended to engage in that conduct or can reasonably have been perceived to have engaged in that conduct in retaliation, with the element of reasonable perception being assessed from the point of view of a reasonable complainant: *Talkkari* v. *City of Burnaby and others*, 2005 BCHRT 68, at paras. 42-49; *Mathison* v.

Musqueam Indian Band and Easton (No. 3), 2006 BCHRT 429, at para. 22.

The language in s. 43 is quite broad in this regard, and it does not require that the retaliation alleged relate to an area of discrimination under the *Code*: see *Verslype* v. *Onyx Industrial Services and Crowe (No. 2)*, 2005 BCHRT 152 at para. 18. The retaliation in question may take a number of forms. (paras. 19 and 20) (see also *Clarke v. Frenchies Montreal Smoked Meats and Blais (No. 2)*, 2007 BCHRT 153 para. 129; *C.S.W.U. Local 1611 v. SELI Canada and others (No. 3)*, 2007 BCHRT 423; *Swift v. B.C. (Ministry of Human Resources)*, 2007 BCHRT 67, paras. 17 and 38; *Smith v. Salt Spring Island Parks and Recreation Commission and Gibbon*, 2009 BCHRT 89, para. 48; *Parchment v. B.C. (Min. of Public Safety and Solicitor General)*, 2011 BCHRT 61)

[1278] After setting out what a complaint must establish pursuant s. 43 of the *Code*, the Tribunal in *C.S.W.U. Local 1611 v. SELI Canada and others (No. 3)*, 2007 BCHRT 423 said:

What amounts to retaliatory conduct will depend on the circumstances in each case. Retaliation will rarely be acknowledged as such by a respondent, and will most often need to be inferred from a review of all of the evidence. As set out above, the perspective from which the conduct must be examined is that of a reasonable complainant. In *Talkkari v. City of Burnaby and others*, 2005 BCHRT 68, paras. 45-47, the Tribunal adopted the description of the reasonableness standard from *Entrop v. Imperial Oil Ltd. (No. 7*) (1995), 23 C.H.R.R. D/213 (Ont. Bd. Inq.):

> Obviously, the matter of the "reasonableness" of the complainant's perception must also be addressed. Respondents must not be held accountable for unreasonable anxiety or undue overreaction on the part of the complainant. But great care must be taken in assessing the proper standard of "reasonableness" to apply to allegations under s. 8 of the *Code*.
>
> …
>
> The proper standard under s. 8 is the "reasonable human rights complainant." In assessing the reasonableness of the complainant's fears and perceptions, boards of inquiry must be sensitive to the particular difficulties that confront complainants, many of whom experience great fear and anxiety surrounding the lodging and pursuit of a human rights complaint. This is exacerbated where the complainant continues in an ongoing relationship with the respondent, especially where that relationship is complicated by a differential in power, such as is undeniably manifest in the employer-employee

> setting. In such a context, otherwise innocuous events, conversations and correspondence may take on an overly intimidating aura, with an impact out of all proportion to any original intent or understanding on the part of the respondent. The damage, however, may be enormous. Such actions may frighten complainants into dropping their allegations, submitting to otherwise unacceptable terms of settlement, or refusing to tender critical evidence. The overriding purpose of the *Code*, to ensure equality and eradicate discrimination, is completely frustrated when this occurs. Boards of inquiry must be vigilant to ensure that cases of reprisals are dealt with speedily, efficiently, thoroughly and seriously. (paras. 39-40) (para. 17)

2. Analysis

[1279] Generally the Complainants argue that once they had filed their human rights complaint, the BCVMA retaliated against them in a number of ways:

- The Complainants were required to communicate with the BCVMA only in writing;
- The negative view of the Complainants and the hostility towards them increased after the Complaint was filed; and
- Dr. Bajwa was targeted for an unscheduled inspection while he was preparing to give evidence before this Tribunal.

[1280] I find no basis to conclude that the BCVMA retaliated against the Complainants by asking that they communicate with the BCVMA in writing. I find that it was a reasonable request in the face of litigation. That the BCVMA did not always follow its own direction, in that it called the Complainants from time to time, or responded to the Complainants phone calls at different points, does not undermine the reasonableness of its initial request.

[1281] There is no question that the negative view and/or hostility increased on the part of the BCVMA after this Complaint was filed. Hostilities increased on the part both the Complainants and the Respondent, and their witnesses, as this matter progressed. I find that this was an unfortunate by-product of the litigation. (see *Ferland and Burochain v. City Edge Housing Co-Operative (No. 2)*, 2007 BCHRT 388) It was also the by-product of the BCVMA's failure to address the concerns raised by the Complainants and its general disregard of their concerns. I have addressed these issues elsewhere in this

Decision and do find that these issues give rise to a separate violation of s. 43 of the *Code* or that the Complainants should be entitled to a different remedy as a result of the BCVMA's actions.

[1282] With respect to Dr. Bajwa, he was subject to an unscheduled inspection while preparing to give evidence before this Tribunal, which was scheduled to start on December 2, 2008. Dr. Bajwa's evidence about what transpired is set out elsewhere in this Decision and will not be repeated.

[1283] In essence, Ms. Osborne requested PAC to conduct an immediate inspection of Dr. Bajwa's facility, based on a dated complaint, when she ought to have known that he was preparing to testify before the Tribunal. Dr. Bajwa was called in place of Dr. Bhullar. Dr. Bhullar had sought to adjourn his Inquiry, scheduled for the same dates in December that he was scheduled to testify before this Tribunal; the Inquiry Committee denied his request. Ms. Osborne would have known about the adjournment application becase, as she acknowledged, she instructs the Prosecutor on procedural matters before the Inquiry such as adjournments.

[1284] Dr. Bajwa had to leave his lawyer's office to attend at the facility while the inspection was proceeding.

[1285] In my view, it was a reasonable perception that the BCVMA was attempting to interfere with Dr. Bajwa's witness preparation and in retaliation for his participation in this Complaint.

[1286] I find that the BCVMA retaliated against Dr. Bajwa contrary to s. 43 of the *Code*. The remedy for this violation is considered together with the remedies generally being sought by the Complainants.

[1287] The remainder of the Complaint under s. 43 of the *Code* is dismissed.

X INDIVIDUAL COMPLAINT AGAINST VALERIE OSBORNE

Introduction

[1288] The Complainants made a number of allegations against Ms. Osborne, which have been set out elsewhere in this Decision. Having considered all the evidence related to Ms.

Osborne's involvement in the issues raised by these allegations, I find that there is an insufficient basis to conclude that Ms. Osborne, in her personal capacity, discriminated against the Complainants contrary to the *Code*. Further, I note that it is the BCVMA who engaged in systemic discrimination against the Complainants; it was its responsibility to address such discrimination.

[1289] As noted elsewhere in this Decision, in *Daley*, the Tribunal discussed considerations relevant to whether it would further the purposes of the *Code* to proceed with a complaint against an individual respondent, including "whether the person is alleged to have been the directing mind behind the discrimination alleged or to have had the ability to influence substantially the course of action taken". (para. 61) In *Daley*, the Tribunal declined to dismiss against an individual alleged to be the directing mind behind the discrimination because he had "the last word on discipline" and led the continued harassment. (pars. 71)

[1290] I accept that where an individual is the directing mind behind the discrimination or substantially influenced the course of the discriminatory conduct liability would flow. In this case, however, Ms. Osborne was answerable to Council and worked with Council in developing and applying certain polices, such as the English Language Standard and the Disclosure Policy. In each case, another member, or members of Council, were involved in the development and application of such polices. I accept that, as the Registrar, Ms. Osborne had a position of influence in the BCVMA, but many others did as well. I am unable to conclude that Ms. Osborne substantially influenced the course of the discriminatory conduct I have found. Further, although Ms. Osborne oversaw the Registrar's office and worked closely with the COs, she was not ultimately responsible for referring those disciplinary complaints to Inquiry and/or to have the Notices of Inquiry posted on the website. That responsibility rested with the CRC. Council was responsible for appointing members to the CRC, PAC and the Inquiry pool. Any concerns with respect to these processes rested with Council, not Ms. Osborne.

[1291] Ms. Osborne was an efficient and effective Registrar. However, she was rule-bound and showed little flexibility in dealing with many of the difficult issues that were raised by the Complainants. She was unable to stand-back from what was occurring

within the BCVMA in order to take an objective view of the Complainants' concerns. Although I accept this was not her ultimate responsibility, this may have helped to address the conflict between the parties. Further, she developed strong views of Dr. Bhullar and some of those Complainants associated with him and, as such, it would have been prudent to have stepped-away from dealing with matters involving them. I was not persuaded that, had she done so, this would have significantly interfered with her role as Registrar. I accept that Dr. Bhullar, and others, made numerous and unfounded allegations against her, which may have contributed to her concerns about them and their credibility; however, this provides further support for my view that she should have stepped-away.

[1292] I now turn to some of the specific allegations against Ms. Osborne.

English Language Standard

[1293] It is true that Ms. Osborne raised her concerns about the BCVMA's method of assessing the English proficiency of foreign-trained applicants. As the Registrar, she participated in the English Language Task Force and the Standard Setting Workshop. Dr. O'Grady, a member of Council, chaired the Task Force and organized the Workshop. The implementation of the English Language Standard was done by Council. Council disseminated incorrect information about the TSE score of the College of Pharmacists, failed to appropriately consider the impact on Indo-Canadian foreign-trained veterinarians of a high TSE score, and passed a TSE score that was inconsistent with every other veterinary association. This decision-making authority did not lie with Ms. Osborne.

[1294] Ms. Osborne was concerned, and raised those concerns with the CRC and Council about the methods used by the Complainants to address their concerns, such as the June 2004 demonstration at the BCVMA. Ultimately it was Council's obligation to address her concerns.

Registration

[1295] Ms. Osborne, in her capacity as Registrar, oversaw the collection of information with respect to the registration of new member. She raised concerns about certain applicants, including Drs. Punia and Joshi. However, it was Council's responsibility to register new members and to address any concerns arising within the registration process.

[1296] Although Ms. Osborne was involved in the timing of when an application may go forward to Council for its consideration, if Council was concerned about this process, it was obligated to raise those concerns. Ms. Osborne may have controlled the processing of applications for registration but it was Council's responsibility to raise any concerns if timing was an issue.

[1297] Although I concluded that the BCVMA was suspicious of the truthfulness of Drs. Joshi and Punia, and Ms. Osborne may have raised such concerns, Council was ultimately responsible for acting based on such suspicions.

Communications

[1298] I find that Ms. Osborne did not act contrary to the *Code* when she participated in the request to have the Complainants communicate with the BCVMA in writing. Given the litigation, the recordings and the allegations being made against her, this request was reasonable. Further, the decision to have such communications in writing rested with Council, and as the evidence illustrates, Dr. Twidale, also a member of Council, was involved in the initial request that this occur.

[1299] It is important to note that, although the Complainants were asked to communicate with the BCVMA in writing, the BCVMA, including Ms. Osborne, did not always follow this directive. It was unfortunate that the flow of communication was not always consistent as it caused the Complainants to raise their concerns of unfair treatment.

Advertising Complaints

[1300] It was clear from Ms. Osborn's evidence that she was concerned about the BCVMA's ability to regulate advertising within the profession. With the advent of the internet, regulation was difficult, if not impossible.

[1301] Despite Ms. Osborne's reluctance to regulate advertising complaints, it fell within her employment responsibilities. The Registrar's office received and processed a number of advertising complaints involving the Complainants. Many of these were resolved. The only ones that were not resolved were those involving Dr. Bhullar, which is discussed elsewhere in this Decision. However, it was the CRC's decision to pursue Dr. Bhullar's advertising complaints to Inquiry. Ms. Osborne did not substantially influence this process nor did she have the last word on referring them to Inquiry.

Facility Inspections

[1302] The Registrar's office provided administrative support to PAC. Ms. Osborne did not direct the work of PAC. PAC was its own committee, with its own chair and its members were appointed by Council. If PAC and/or the facility inspectors were not performing their responsibilities in manner free from discrimination, it was the responsibility of Council to address such concerns.

[1303] I accept that Ms. Osborne made negative comments to Dr. Runnells about Dr. Bhullar and those associated with him, including Drs. Johar and Bajwa. I also accept that Ms. Osborne had some involvement in creating the list of facilities to be inspected, including those facilities that should have an unscheduled inspection. I also accept that Ms. Osborne was engaged in some email discussions with Dr. Morgan about inspecting clinics that advertised low-cost services. However, if there were concerns about this process, or Ms. Osborne's involvement, it was up to PAC and/or Council to address these concerns. Ms. Osborne was not ultimately responsible for overseeing the inspections, whether they were scheduled or unscheduled.

[1304] I have found that Ms. Osborne was involved in asking that Dr. Bajwa be subject to an unscheduled inspection in November 2008. It was the Chair of PAC that directed that this inspection take place, although I accept that PAC did not do so on its own

initiative. However, I conclude that ultimately the responsibility lay with PAC and/or Council to ensure that any inspection, including this one involving Dr. Bajwa, was carried out without discrimination, which is discussed elsewhere in this Decision.

Recordings

[1305] Ms. Osborne became aware of the recordings done by Ms. Pendragon, as did members of Council. She, along with others on Council, took no steps to review the recordings and or the transcripts. Although others had raised concerns with her about these recordings, she did not take steps to advise Council of these concerns.

[1306] I find that Ms. Osborne's continued refusal to accept the Ashburner Recording as accurate, despite the fact Dr. Ashburner had reviewed it and adopted the comments as his, surprising. However, as I noted, I accept that she was focused on protecting Dr. Ashburner from what she viewed to be unfounded allegations that his comments were racist and/or that, because of these alleged views, he could not perform his duties fairly and without discrimination.

[1307] Ultimately, it was Council's responsibility to address the Complainants' concerns about the content of the various recording, including the Ashburner Recording. Because it delayed in doing so, and did not do so in a fulsome manner or at all, does lead to the conclusion that Ms. Osborne substantially influenced Council's decisions. Further, Council's inaction was part of the systemic discrimination at play within the BCVMA; it was not Ms. Osborne's obligation, nor did she have the ability to, address such discrimination.

Disclosure Policy

[1308] Ms. Osborne participated in the preparation of the reports supporting the development and implementation of the Disclosure Policy. Ms. Murray, the public member of Council, was instrumental in this process.

[1309] It was Council that adopted the Disclosure Policy and decided that this Policy would be retroactive, applying to those disciplinary complaint being referred to Inquiry

already in the system, which mainly involved Indo-Canadian veterinarians, who are Complainants.

[1310] It was the decision of the CRC to deny anonymous publication to those Complainants who would be subject to the Disclosure Policy; it was not Ms. Osborne's decision.

Disciplinary Complaints

[1311] There was no question that Ms. Osborne played an active role in the disciplinary complaint process. She participated in investigations, and in some cases, to a significant extent, along with Dr. King-Harris. She reviewed the COs' reports to the CRC and, in some cases, actively re-wrote and added sections and allegations to those reports. I did not find that Ms. Osborne solicited complaints from the public as the Complainants alleged.

[1312] Despite her views of Dr. Bhullar's credibility, she did not recuse herself from those investigations involving him but took a proactive role and, in particular, took an active and, I suggest, an inappropriate role in the investigation of Walkers' complaint. She participated to a significant extent in the AR complaint involving Dr. Johar. She met with POs, the Complainants' employees, and other veterinarians, outside the office and listened to numerous unsubstantiated allegations about the veterinary practices of Drs. Bhullar, Johar and others. Ms. Osborne engaged inappropriate discussions with Drs. O and Forsyth regarding those disciplinary complaints involving them.

[1313] Ms. Osborne was engaged in the Inquiry process through her role as Prosecutor, although this role was assumed by an outside lawyer. Ms. Osborne instructed the Prosecutor throughout the Inquiry process and through to the penalty phase of the process before Council. In my view, her role was greater than simply signing Notices of Inquiry and advising on procedural matters, such as adjournments. I was not persuaded that Ms. Osborne substantially influenced the decision of who would be appointed to the Inquiry pool and/or and subsequently to the Inquiry Committee. She did not participate in the decision of the Inquiry Committee and/or Council; each body had its own lawyer, who advised them on procedural and substantive matters.

[1314] Ms. Osborne's participation in the above, among many other issues, raised by the disciplinary complaint process, was extremely problematic. However, I am of the view that she believed that this was part of her role as the Registrar and the guardian of the regulatory processes. In all disciplinary complaint files, others were involved in the processing of them including Dr. King-Harris, the CRC and Council. Ms. Osborne did not have the final authority on the disposition of these complaints. Both Drs. Ashburner and Craven testified that Ms. Osborne did not have a role in the disposition of disciplinary complaints that came before the CRC.

[1315] Although I have found many of Ms. Osborne's actions problematic, and might suggest that she did not approach the review of some of the disciplinary complaints fairly and with an open mind, I am not persuaded that she, alone, substantially influenced the processing of such complaints, through to Inquiry, nor did she have the last word on the disposition of them. This rested with the CRC and/or Council.

Summary

[1316] In summary, the Complaint against Ms. Osborne, pursuant to ss. 8 and 43 of the *Code* and in her personal capacity is dismissed.

[1317] The Respondents asked that if I dismiss the individual complaint against Ms. Osborne, I make a finding that the Complainants filed the Complaint against her for improper motives and in bad faith. I decline to make such a finding.

XI DR. GREWAL

[1318] Dr. Grewal filed a complaint alleging that the Respondents discriminated against him based on his mental disability, among other grounds, contrary to ss. 8 and 14 of the *Code*. Dr. Grewal also alleged that the Respondents retaliated against him contrary to s. 43 of the *Code*.

[1319] The background to Dr. Grewal's complaint and my findings with respect to it are set in Appendix "U".

[1320] In summary, I concluded that the BCVMA discriminated against Dr. Grewal when it failed to accommodate him to the point of undue hardship contrary to ss. 8 and 14 of the *Code*. I dismissed Dr. Grewal's retaliation complaint.

XII REMEDY

Introduction

[1321] Section 37(2) provides the remedies available under the *Code*:

> (2) If the member or panel determines that the complaint is justified, the member or panel
>
> (a) must order the person that contravened this Code to cease the contravention and to refrain from committing the same or a similar contravention,
>
> (b) may make a declaratory order that the conduct complained of, or similar conduct, is discrimination contrary to this Code,
>
> (c) may order the person that contravened this Code to do one or both of the following:
>
> (i) take steps, specified in the order, to ameliorate the effects of the discriminatory practice;
>
> (ii) adopt and implement an employment equity program or other special program to ameliorate the conditions of disadvantaged individuals or groups if the evidence at the hearing indicates the person has engaged in a pattern or practice that contravenes this Code, and
>
> (d) if the person discriminated against is a party to the complaint, or is an identifiable member of a group or class on behalf of which a complaint is filed, may order the person that contravened this Code to do one or more of the following:
>
> (i) make available to the person discriminated against the right, opportunity or privilege that, in the opinion of the member or panel, the person was denied contrary to this Code;
>
> (ii) compensate the person discriminated against for all, or a part the member or panel determines, of any wages or salary lost, or expenses incurred, by the contravention;

(iii) pay to the person discriminated against an amount that the member or panel considers appropriate to compensate that person for injury to dignity, feelings and self respect or to any of them.

[1322] The Complainants filed a Joint Statement of Remedy (Exhibit 464) and an Amended Statement of Remedy (Exhibit 788).

[1323] The Complainants seek wide-ranging orders, both monetary and non-monetary.

[1324] As noted above, the BCVMA is now continued under the College of Veterinarians of British Columbia ("CVBC"). Given that I have referred only to the BCVMA in this Decision, I continue to use this reference here. However, my orders apply to the CVBC, the only body with the power to implement the remedies set out within.

Non-Monetary Remedies

1. Cease and Refrain

[1325] An order under s. 37(2)(a) is mandatory. I order the BCVMA to cease the contravention and to refrain from committing the same or a similar contravention.

2. Declaratory Order

[1326] The Complainants seek declaratory orders that the conduct complained of, or similar conduct, was discrimination contrary to ss. 7, 8, and 14 of the *Code* and retaliation contrary to s. 43 of the *Code*.

[1327] The Respondents agree that declaratory relief is appropriate respecting the English Language Standard. They do not otherwise address this request for relief.

[1328] I declare that the conduct complained of, and similar conduct, was discrimination pursuant to s. 8 and 14 of the *Code* on the grounds of race, colour, and place of origin, and retaliation contrary to s. 43 of the *Code* as set out in this Decision. I make no order respecting s. 7 of the *Code*, as I dismissed that part of the Complaint.

3. Disposition of Disciplinary Proceedings

[1329] The Complainants seek an order under s. 37(2)(c)(i) that disciplinary proceedings against Drs. Bhullar, Bajwa, Johar, Sharma, Brar, and Jagpal be stayed, irrespective of which stage of the BCVMA's proceedings the complaints are at, including whether they are before the Courts on judicial review. They further seek that information, in relation to those disciplinary proceedings, be removed from the BCVMA files and from all sections of the BCVMA website forthwith, and that the information not be retained or relied on by the BCVMA henceforth.

[1330] The Complainants also seek the cancellation of penalties imposed, as follows:

a) the penalties imposed by the BCVMA against Dr. Bhullar as a consequence of Inquiry 05-02 be cancelled, including the penalty of erasure and the penalty that Dr. Bhullar pay the costs of the BCVMA;

b) the penalties imposed by the BCVMA against Dr. Bajwa as a consequence of Inquiry 08-02 be cancelled, including any reprimand or fine imposed;

c) the penalties imposed by the BCVMA against Dr. Johar as a consequence of his Inquiry be cancelled, including any reprimand or fine imposed;

d) the penalties imposed by the BCVMA against Dr. Sharma as a consequence of his Inquiry be cancelled, together with all penalties, and that any penalties paid be refunded;

e) the penalties imposed by the BCVMA against Dr. Brar as a consequence of his Inquiry be cancelled, together with all penalties, and that any penalties paid be refunded; and

f) the penalties imposed by the BCVMA against Dr. Jagpal as a consequence of his Inquiry be cancelled, together with all penalties, and that any penalties paid be refunded.

[1331] The Complainants say that in *Matheson v. Presbytery of Prince Edward Island and others* (2007), 60 C.H.R.R. D/239 ("*Matheson*"), paras. 25, 30, the panel ordered the reinstatement ("release") of the complainant's ministerial licence; it described the decision to withhold the licence as an administrative function by a self-governing body.

These remedies are consistent with the Tribunal's practice of declaring processes which are tainted by discrimination void and making consequential orders. In *Kalyn*, para. 516, the Tribunal found a termination was discriminatory and ordered material removed from Ms. Kalyn's personnel file and ordered Ms. Kalyn reinstated. These remedies are required to put those affected, to the greatest extent possible, in the position they would have been in had the discrimination not occurred.

[1332] The Respondents say the Tribunal has repeatedly said it will not overturn decisions made by the Inquiry Committee. Its remedial actions are limited to addressing issues of process. The Respondents acknowledge that if a cease and refrain order is made with respect to the treatment of a certain Complainants, the BCVMA would have to respond and take whatever actions necessary to ensure the discrimination does not continue. It is not necessary to make specific orders regarding the discipline of specific individuals because a cease and refrain order would require the BCVMA to address the effects of any discrimination, including, depending on the finding, reviewing or revisiting some decisions. The Respondents also say that it is open to the Tribunal to find that some, but not all, actions were discriminatory, citing *Fossum*. As a result, even if the Tribunal finds some of the processes were discriminatory, "it is still open to find that the ultimate treatment or sanction was not".

[1333] In reply, the Complainants say that the Respondents do not address the impact of the BC Court of Appeal's decision in *Bajwa* on the remedial capacity of the Tribunal regarding individual disciplinary matters. Any constraint the Tribunal felt was clearly removed by the Court of Appeal's view that the Tribunal was dealing fully with the allegations before it, including the individual discriminatory matters, and therefore the Court did not have to deal with them and indeed ought not to deal with them. In any event, the Tribunal must provide an effective remedy and cannot permit disciplinary processes tainted by discrimination to stand. There is no basis in the evidence for confidence that the BCVMA will be able to reasonably determine what actions it should take to cease discriminating or be willing to amend its actions in any meaningful way on its own. There is a widespread and resistant institutional culture at the BCVMA in opposition to the Complainants, including that the Complainants are not acting in good faith and are improperly resisting the regulatory authority of the BCVMA. The

BCVMA/CVBC is incapable of dealing with the Complainants with neutrality. The Respondents have identified no steps they may take other than "reviewing or revisiting some decisions".

Analysis

[1334] The Tribunal's jurisdiction is found in the *Code*. My rulings on jurisdiction have not specifically addressed the Tribunal's remedial jurisdiction under s. 37(2) of the *Code*.

[1335] The Complainants seek this portion of the remedy under s. 37(2)(c)(i) of the *Code* which provides that the Tribunal may order the person that contravened the *Code* to "take steps, specified in the order, to ameliorate the effects of the discriminatory practice." Under s. 37(2)(d)(i), the Tribunal may order the person that contravened the *Code* to "make available to the person discriminated against the right, opportunity or privilege that, in the opinion of the member or panel, the person was denied contrary to the *Code*."

[1336] The Tribunal has reinstated a person to their employment: see, for example, *Kalyn*. In *Matheson*, relied on by the Complainants, the panel noted its remedial powers under the relevant human rights legislation are quite broad, permitting it to "take any other action the Panel considers proper to place the complainant … in the position the person would have been in but for the contravention." Under this provision, the panel ordered reinstatement of the complainant's ministerial licence. (paras. 24-30)

[1337] It is well-established that the purpose of the remedial provisions is to put the complainant in the position they would have been in but for the contravention. As stated in *Robichaud v. Canada (Treasury Board)*, [1987] 2 S.C.R. 84, "remedies must be effective, consistent with the 'almost constitutional' nature of the rights protected." (para. 13) In this case, the evidence established a discriminatory practice respecting the disciplinary processes at the BCVMA and it is therefore open to order the BCVMA to take specified steps to ameliorate the effects of the discriminatory practice. Those effects include, not only being subject to a process tainted by race discrimination, but also the penalties imposed.

[1338] I note that the Court of Appeal in *Bajwa* dismissed the petition. (para. 40) As a result, Dr. Bajwa's penalties stand, subject to orders made in the human rights

proceeding. The Court of Appeal in *Bhullar* set aside the decision of the chambers judge and restored the decision of the Council; however, the Court of Appeal also remitted the case to Supreme Court to await the decision of the Tribunal and to address the remaining grounds of appeal. The Court noted that the only distinguishing feature from *Bajwa* was that Dr. Bhullar had been expunged from the rolls of the College. It said that under the *Act*, only the Supreme Court, the Court of Appeal, and the Registrar can reinstate Dr. Bhullar. It said there is a live issue as to whether the Tribunal may be able to reinstate him, as a remedy, if it finds institutional bias. It said, "As counsel for the BCVMA suggests, however, it seems more likely that the Tribunal has the jurisdiction to simply set aside the entire disciplinary proceeding, including the penalties." (para. 68)

[1339] The Court of Appeal found it would be an abuse of process to allow the proceedings to continue at the Council concurrently with the Tribunal, on the basis of *Bajwa*. It said this does not leave Dr. Bhullar without a remedy, and further:

> … If the Tribunal finds in favour of Dr. Bhullar, and either does not have the jurisdiction to set aside the proceedings (an issue we are not deciding today) or the BCVMA chooses not to hold a new hearing in accordance with the findings of the Tribunal, this matter is returning to the Supreme Court in any event to address other issues raised as a result of this Court's conclusion that the appeal must be allowed. In this way, the Supreme Court will have the ability to address the issue of the reinstatement question if the Tribunal decision concludes there were problems in the disciplinary process. (para. 70)

[1340] The Court of Appeal concluded as follows:

> In conclusion, this Court's decision in *Bajwa* is dispositive of this issue; a hearing before the BCVMA's disciplinary panels on institutional bias would amount to an abuse of process. If the Tribunal decides in Dr. Bhullar's favour, he will have a remedy as counsel for the BCVMA concedes that the Tribunal has the ability to set aside the disciplinary process that struck him from the register. Alternatively, the matter is returning to the Supreme Court in any event, which has the jurisdiction to consider reinstatement if the Tribunal concludes there was institutional bias or discrimination, but that it cannot reinstate Dr. Bhullar. In addition, the Supreme Court has yet to consider the other grounds of appeal. (para. 75)

[1341] As set out, the BCVMA conceded the Tribunal has the ability to set aside the disciplinary process that struck Dr. Bhullar from the register. There was an open question

about the Tribunal's authority to reinstate Dr. Bhullar. I do not find it necessary to answer the latter question, since the Supreme Court has jurisdiction and the issue has been remitted to it. In my view, if the BCVMA does not reinstate Dr. Bhullar as a result of this Decision, the Supreme Court is the body that ought to address this issue.

[1342] This leaves the question of what orders are appropriate in relation to the disciplinary proceedings. The Respondents submit that a cease and refrain order would require the BCVMA to respond and take action to ensure the discrimination does not continue. It suggests that it could review or revisit some decisions. However, this does not address the effects of discrimination that has occurred with respect to disciplinary proceedings.

[1343] As noted above, I found that the BCVMA's processes, which led to the Inquiry Committees, involving Drs. Bhullar, Bajwa, Johar, Sharma, Brar and Jagpal were tainted with discrimination. This included elements of systemic discrimination, such as the general view that these Indo-Canadian veterinarians were generally dishonest and that their association with Dr. Bhullar necessarily made their veterinary practices suspect. On an individual basis, there were issues with respect to the processing of some of the disciplinary complaints involving them. That is not to say that in some cases, especially where issues of medical competence were raised, that the ultimate finding of the Inquiry Committee was not justified with respect to these medical findings, despite the process leading to such a finding being tainted by discrimination.

[1344] I accept that the cases confirm that a person, who has been the subject of discrimination, should be placed, to the greatest extent possible, in the position they would have been had the discrimination not occurred. However, I am concerned about my jurisdiction to directly interfere with the Inquiry Committees' findings and to, in effect, declare those processes void, which is what the Complainants seek when they ask that I cancel the consequences of the Inquiry and the penalties that have been imposed as a result.

[1345] The BCVMA is entitled, and required, to regulate the practice of veterinary medicine in the public interest. In the some of the disciplinary complaints, medical issues

were raised. Removing any information regarding these files may serve to undermine the regulatory mandate of the BCVMA.

[1346] One of the remedies open to me would be to have those Inquiries tainted by discrimination to be re-processed and the investigation started afresh, with the original complaint being the basis of the investigation. This would serve to put the Complainants in the position that they would have been but for the discriminatory conduct. However, this is an expensive and time consuming proposition for everyone and it may be that those members of the public involved in the original process would not be available and/or willing to be involved again. Some complaints were initiated by the BCVMA and it is difficult to address how they would be re-investigated, if that were even appropriate in light of this Decision. Further, the conduct giving rise to the disciplinary complaints occurred many years ago. As a result, I have found it difficult to fashion a perfect remedy in such circumstances.

[1347] This then leaves the difficult question of what remedy is appropriate.

Dr. Bhullar

[1348] The issues related to Dr. Bhullar's Inquiry, and the subsequent discipline imposed by the BCVMA, are before the Courts.

[1349] In light of my decision that those processes involving Dr. Bhullar were tainted by both systemic and individual discrimination, the Courts have jurisdiction to address any concerns in this respect and to rescind any penalties imposed on Dr. Bhullar, including the penalty of erasure and costs, should the BCVMA not take steps to address these matters in light of this Decision.

[1350] As a result, I do not propose to order that the BCVMA cancel Dr. Bhullar's penalties as he had requested.

[1351] I have set out my order with respect to how the complaints giving rise to the Inquires involving Drs. Bajwa, Sharma, Jagpal, Brar and Johar should be addressed below. This same process could be followed by the BCVMA with respect to Dr. Bhullar. Given that Dr. Bhullar's appeals are currently being held in abeyance pending the release

of this Decision, such a review could take place before those Court proceedings are restarted.

Dr. Bajwa (08-02), Sharma, Jagpal, Brar and Johar

[1352] Dr. Bajwa was subject to a first Inquiry, Inquiry 07-02; the Inquiry Committee found the charges not proven. Despite an error being made by the BCVMA and the matter having to re-heard, Dr. Bajwa was required to pay the cost of this Inquiry. The charges giving rise to Inquiry 07-02, set out in complaint 04-025 and 04-049, were then added to complaint 06-067 and proceeded together under Inquiry 08-02. The Inquiry Committee in 08-02 found the charges to be proven and Council imposed penalties. Dr. Bajwa was subject to a reprimand, a requirement that he take an online medical records course and to pay a fine of $10,000. Dr. Bajwa appealed the Inquiry Committee's and Council's decision through the Courts. The judicial process ended when the Supreme Court of Canada denied him leave to appeal in 2011.

[1353] In Dr. Sharma's case, the Inquiry Committee found the charges proven with respect to complaints 03-125a and 04-027. Council considered the matter and imposed certain penalties, including that Dr. Sharma be suspended from practice for one year. Dr. Sharma appealed the decisions; the BC Supreme Court dismissed the appeal in 2008 and Dr. Sharma did not pursue the matter further. Dr. Sharma served his suspension and was re-registered in July 2008.

[1354] Dr. Jagpal had two complaints referred to Inquiry, 03-104 and 03-131. The Inquiry Committee found the charges to be proven. Council imposed a number of penalties including a three-month suspension and restrictions on Dr. Jagpal's practice. Council released its decision in September 2007. Although Dr. Jagpal appealed these decisions to the BC Supreme Court, he later abandoned his appeal.

[1355] Dr. Brar had two disciplinary complaints referred to Inquiry, complaints 04-032 and 04-037. The Inquiry Committee found the charges proven. Council determined that Dr. Brar had engaged in unprofessional conduct. Council imposed a one-month suspension, among other orders. Dr. Brar complied with the decision of Council and served his suspension, although he did appeal those decisions to the BC Supreme Court.

As noted above, these two complaints were the subject of a stay. Despite this, the Respondents led evidence about them. As a result, I have considered them in this Decision.

[1356] Dr. Johar had four disciplinary complaints, 04-029, 04-111, 05-012 and 05-035, which were joined and were processed under Inquiry 08-01.

[1357] As I have said numerous times, I will not interfere with the Inquiry Committee findings. Some of the findings with respect to these Complainants involve medical issues, which the BCVMA is properly required to regulate.

[1358] In four cases, Drs. Bajwa, Sharma, Brar and Jagpal, the matters have concluded with appeals to the Courts. At the end of the hearing of this Complaint, Dr. Johar's Inquiry was continuing. It is unclear what the status of that matter is at this time.

[1359] There is no question that a cease and refrain order will ensure that the BCVMA processes future disciplinary complaints involving these Complainants, as well as others, free from discrimination. I am left with the question of how to address the discrimination occurring in the complaints that have already been processed and completed, except for Dr. Bhullar.

[1360] Having considered all the circumstances, it is my view that it would be appropriate for the BCVMA to review those complaints that have concluded and which led to penalties being imposed on Drs. Bajwa, Sharma, Jagpal, Brar and Johar.

[1361] To address the finding that the processes were tainted by discrimination, the BCVMA's concern that it be free to regulate the veterinary profession in the public interest and to put an end to the ongoing litigation and, hopefully, the distrust between the parties, I consider it appropriate to order that the BCVMA take specified steps regarding this review.

[1362] First, I order the BCVMA retain two independent people, one with expertise in veterinary medicine and one with expertise in human rights, with a focus on raced-based discrimination, to review the files leading to the Inquires of these five members (the "Review Panel"). I find it would be appropriate in the circumstances that the Complainants choose the person with human rights expertise and the BCVMA choose the

person with veterinary expertise, who are to be involved in the process. These individuals should not have been involved in the issues involving these parties, which would include the current and previous members of Council, the BCVMA staff and/or contractors and any lawyers involved in any proceedings involving these parties, regardless of the forum.

[1363] Second, I order the BCVMA to establish terms of reference for the Review Panel, which will include the following:

A. This review is to be done in light of the evidence, set out in the relevant Appendices and my findings and conclusions set out above in this Decision;
B. The parties will not be entitled to make submissions to the Review Panel with respect to what it should consider or how it should be undertaken, subject to the discretion of the Review Panel;
C. The Review Panel will determine what steps should be taken to remedy the discrimination, which may include modifications to the penalties; and
D. The BCVMA will set the budget for, and pay reasonable costs of, the review, including the costs associated with the respect to the human right expert.

[1364] Third, I order the BCVMA to take immediate steps to establish the Review Panel, to have drafted the terms of reference and selected its nominees and within three months from the date of this Decision.

[1365] Fourth, I order that the BCVMA to promptly act on the findings of the Review Panel.

[1366] I also order that this Decision, with respect to these members, including Dr. Bhullar, be placed their disciplinary complaint file(s) and noted on any documents that may serve to summarize their disciplinary complaints history. These references would be made available to any subsequent investigative or disciplinary proceedings.

4. Registration

Dr. Joshi

[1367] Dr. Joshi is now registered with the BCVMA; he was registered on June 15, 2012.

Dr. Grewal

[1368] The Complainants seek an order that Dr. Grewal be registered at once with the reasonable restrictions as recommended in Dr. Maria Corral's original psychiatric IME report of October 25, 2004.

[1369] I do not propose to order that the BCVMA immediately register Dr. Grewal. However, it must provide Dr. Grewal with a non-discriminatory review of his application, in light of the opinions of Drs. Corral and Sandhu, and to work with Dr. Grewal with the goal of eventually registering him as a full-member, without restrictions on his veterinary practice.

[1370] To the extent possible, it would be important for those who were involved in the assessment of Dr. Grewal's application, and then who participated in the final decision not to register Dr. Grewal, not be involved in the process of considering his application, afresh, in light of this Decision.

5. General Ameliorative and Systemic Remedies

Introduction

[1371] The Complainants say that a significant challenge in this case is that there is an ongoing relationship between them and their regulatory body, but it has been significantly undermined by the discrimination. They say the evidence suggests serious intransigence on the part of key personnel. They say comprehensive ameliorative remedies will be required to address the culture of discrimination and ensure that discrimination does not continue.

[1372] The Complainants rely on *Heintz v. Christian Horizons,* [2008] O.H.R.T.D. No. 21 (appealed allowed in part, *Heintz v. Christian Horizons*, 2010 ONSC 2105 (Ont. Div. Ct.)) ("*Heintz*"). The Ontario Human Rights Tribunal stated:

> Remedial orders must flow from the violations found by the Tribunal. They should be broad, creative and effective. They must be targeted at removing the discrimination found and preventing future violations. But for remedies to be truly effective in achieving the goals of human rights legislation, they must make sense in the circumstances. Remedies that simply make grand statements or impose requirements that cannot be

> achieved will not eradicate discrimination and remove barriers to equal access. This is not to say that only remedies that are easily achieved at little or no cost to a respondent are appropriate. To the contrary, where a remedy will be effective in achieving equality and the protection of human rights, human rights tribunals should not hesitate to make orders that require significant policy or operational changes, the adoption of particular programs, or measures that carry a heavy price tag. The object of the remedial order is to remove discrimination in a real, meaningful, effective and timely way. (para. 276)

[1373] The Respondents say may of the remedies sought are not within the Tribunal's jurisdiction, and many are aimed at being punitive rather than remedial.

[1374] The Complainants seek the following remedies.

Publication of Decision Summary

[1375] To ensure that the membership receives a clear view of this Decision, and to counteract the widespread negative commentary from the BCVMA about the Complainants, the Complainants request that the Tribunal prepare a summary of the Decision with information about how to find the full Decision, and order that the BCVMA circulate this summary as follows:

a) with a neutral covering letter to every CVBC member, every regulatory body that this been advised of these complaints or the disciplinary action taken against any of the Complainants;

b) in full in its regular publication for members;

c) to the same media distribution list that received notice of Dr. Bhullar's erasure in December 2009 and to any media outlines to whom the BCVMA has disclosed disciplinary information or information about the Complainants since then;

d) posting it on the CVBC website signalled by an "alert" on the home page, for one year, after which it would be retained in the Archive section.

[1376] The Complainants rely on *Kalyn*, para. 517, and *Abrams*, para. 89.

[1377] Given that this Complaint was the subject of significant commentary in the BCVMA's publications to its membership and discussed at various meetings, including

AGMs, SGMs and town hall meetings, it is appropriate that the membership be provided with a summary of this Decision. I have set out a Summary of the Decision above. I order the BCVMA to publish this Summary once in each of its publications sent to its membership.

[1378] I order that the BCVMA post on its website that this Decision is now available and to provide a link to the Tribunal website so that those who might be interested may read the full Decision.

[1379] I make no further orders with respect to publication.

Anti-Discrimination Policy

[1380] The Complainants seek an order that the BCVMA develop an anti-discrimination policy addressing prevention of discrimination or harassment in the delivery of regulatory services, confirming the BCVMA is committed to equal treatment of all registrants and that registrants have a right to be free from discrimination and harassment on the grounds set out in the *Code*, and addressing racism and discrimination on the basis of actual or perceived disability.

[1381] As a public institution, the BCVMA is subject to the *Code's* provisions and it would be prudent for them to have an anti-discrimination policy. I order it to develop, if it has not already done so, an anti-discrimination policy and to post it on its website. The BCVMA is to publish the policy, on its website, within six months from the date of this Decision.

Anti-Discrimination Training

[1382] The Complainants seek an order that the BCVMA retain an external specialist acceptable to the Complainants to institute a training program for all staff, contactors and Council and committee members, to provide sensitivity and anti-discrimination training, including anti-racism and disability awareness components, addressing the requirements of the *Code* and the policy set out above. The Complainants seek an order that this training be conducted within three months of this Decision and be repeated once per year

thereafter. The Complainants rely on *Radek*, para. 661(b) and *Heintz*, para. 278**.** (But see: *Ontario Human Rights Commission v. Christian Horizon*, 2010 ONSC 2105, para. 117.)

[1383] The Complainants also seek an order that all staff and contractors of the BCVMA receive intensive training in cross-cultural communication and conflict management and resolution, such as the multi-day courses offered at the BC Justice Institute.

[1384] I order that the BCVMA provide a one-day training program for its staff, contractors, volunteers and various committee members, including Council, within six months from the date of the release of this Decision, which will have specific components targeting race-based discrimination and those issues arising with respect to persons with disabilities, including the process for accommodating such disabilities. This will ensure that remedial purposes of the Code are achieved with respect to the discrimination that I have found and discussed in this Decision.

[1385] I decline to make an order that such training be provided into the future, although if the BCVMA decides to do so, it would be appropriate to provide such training after each Council election.

[1386] I decline to make an order that the Complainants be involved in the selection of the person(s) to provide the training and/or the content of the training.

Staff, Council, and Committees

[1387] The Complainants seek an order that the BCVMA discontinue the employment of both Ms. Osborne and Dr. King-Harris, arguing the culture at the BCVMA will not change while either holds important roles due to their extreme animosity toward a number of the Complainants. They rely on *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825.

[1388] The Complainants request an order that the BCVMA not be permitted to accept as members of Council or of committees, including Discipline Committees, individuals directly involved in the discriminatory conduct towards the Complainants.

[1389] In the alternative, the Complainants seek an order that no person found to have been involved in any discriminatory conduct towards the Complainants should be

involved in any way with future disciplinary or licensing matters involving any Complainant.

[1390] I decline to make this order.

[1391] Ms. Osborne is no longer employed by the BCVMA. However, had she been so employed, I would not have ordered her termination.

[1392] Dr. King-Harris provides contract services to the BCVMA and is involved in the investigation of many disciplinary complaints, which do not involve the Complainants and/or other Indo-Canadian veterinarians. Although it would be appropriate for Dr. King-Harris not to be involved in the future investigation of those matters involving the Complainants, I do not believe that an order is necessary to give this effect.

[1393] With respect to the balance of those individuals that the Complainants ask not to be involved in their future matters, I decline to make such an order. Some of these individuals are no longer participating in the committees of the BCVMA. Council members are elected from year-to-year and it is up to the BCVMA's membership to determine whether to re-elect those individuals involved in the issues giving rise to this Complaint. I do not intend to interfere with this process.

[1394] Although I make no orders in this respect, it goes without saying the BCVMA should take steps to ensure that those who have been intimately involved in the issues giving rise to this Complaint can deal with the Complainants on a non-discriminatory manner and without engaging the *Code's* protections under s. 43.

Disciplinary and Other Processes

General order regarding Process

[1395] In order to ensure that the disciplinary process is as transparent as possible, the Complainants seek orders in respect of the disciplinary process that:

a) All complaints be set out in writing by the person making the complaint before the BCVMA commences its investigation;

b) The actual complaint be provided in every case to the respondent veterinarian within 30 days of receipt, and before BCVMA commences its investigation;

c) Proper records be made and retained of every contact in respect of a complaint and its investigation, including with the person making the complaint and with any person spoken to by an investigator, that a record of every contact be retained on the complaint file;

d) The respondent veterinarians have an opportunity to respond to each allegation being considered before the investigation report is written;

e) The investigation report set out the position of each party on each allegation, and not include speculative evaluation of the information provided or references to other matters with are unproven;

f) All documents, including the records of every contact in an investigation or relating to a complaint, be listed and provided to the respondent veterinarian and the Investigation Committee with the Investigation report;

g) The Investigation Committee consider complaint matters on an anonymous basis;

h) Proceedings of the Investigation Committee be audio recorded and retained; and

i) Complaints proceed to a hearing in a timely way and not be joined to other complaints if this will lead to any delay in their processing.

[1396] I decline to make such orders. This would directly interfere with the BCVMA's investigative processes and procedures. These are questions raising issues of future due process concerns and it is up to the BCVMA to ensure that each of its members is subject to a fair process. How the BCVMA decides to ensure that this is the case, lies within their authority to address. Further, if they fail to do so, the courts are available to remedy these issues.

Order Specific to the Complainants

[1397] In respect of the complaints against the Complainants, the Complainants seek the following orders:

a) The person asked by the BCVMA to investigate a complaint involving any of the Complainants be acceptable to both parties;

b) Before any complaint involving the Complainants proceeds to hearing, it be approved by an external auditor, described below, who will determine if the charges merit a hearing, and whether all or part of the complaint is amendable to resolution by settlement. The external consultants may impose settlement terms on the BCVMA if they see fit. The auditor's report will be provided to the Complainant, the BCVMA, and the Minister of Agriculture and Lands.

[1398] The Complainants also seek an order that all Council meetings, or other meetings relating to discipline and licensing processes and decisions, be recorded and retained.

[1399] To increase the transparency of the complaints system and create external pressure for the consistent and timely resolution of disciplinary matters, the Complainants seek an order that once per year all complaint files be audited at the expense of the BCVMA by an external auditor acceptable to the Complainants and BCVMA to determine whether the complaint files are being dealt with in a timely way and are being dealt with consistently through all parts of the complaint process.

[1400] The Complainants seek an order that the BCVMA comply with its requirement under the new *Act* to publish matter resolved by consent resolution by publishing on the BCVMA website the resolution documents for each complaint together with the original complaint, both on an anonymous basis except for whether the person making the complaint was an owner, a veterinarian, the BCVMA, or another party.

[1401] To create a mechanism to deal with future allegations of discrimination before disciplinary matters proceed, the Complainants seek an order that the BCVMA implement a complaints process for complaints of discrimination from any registrant which is acceptable to the Complainants and to appoint an external investigator to do so. This person will have the power to make binding recommendations on the BCVMA to address the complaint. The process will provide that no disciplinary matter can proceed until this complaint has been investigated and resolved on the basis of the recommendations. The requested order has terms for the distribution of the consultant's reports, and the time frame for establishing this process.

[1402] The Complainants seek an order that before any committee is struck by any part of the BCVMA, it must give notice to the membership that the committee is being struck

and volunteers are being sought. They also seek an order that, if the Complainants volunteer, they should be appointed unless they lack essential qualifications for that committee. They also request an order that the BCVMA retain a facilitator to meet with the Complainants to determine steps that the BCVMA can take to better integrate them into the profession and regulatory body.

[1403] I decline to make the remedial orders being sought in this section and for the following reasons.

[1404] Given the significant animosity and distrust between the parties that was evident throughout the Tribunal hearing and the subsequent submissions, it would be inappropriate to have the Complainants involved in the future decision-making processes of the BCVMA with respect to the registration of new members and/or within the disciplinary complaint process.

[1405] I may only order such remedies that serve to ameliorate the effects of the discriminatory practice and/or to address any of the discriminatory practice giving rise to my findings in this Complaint.

[1406] I find no basis upon which the Complainants should be involved in the future regulation of their conduct. I agree with the Respondents that, in many respects, the Complainants are attempting to set up parallel disciplinary proceedings, in which they have control in overseeing. The request for an order appointing an auditor is one example of this. The Complainants are subject to the new *Act* and its provisions, as are all members.

[1407] What the BCVMA decides to publish on its website is within their jurisdiction to determine. I make no order in this respect other than to suggest that what is published by the BCVMA be consistent with what other bodies, which regulate the practise of veterinary medicine, publish.

[1408] I decline to order that there be a separate process for the resolution of complaints of discrimination within the BCVMA. The Tribunal has jurisdiction over such issues and should anyone experience discrimination in the processing of their disciplinary complaint and/or in the registration process, their remedy lies with the Tribunal. It goes without

saying that if a member, or a potential member, raises concerns about the possibility of discrimination, the BCVMA is at liberty to take steps to resolve those issues. However, I will not order that it set up a formal process to do so.

[1409] How the BCVMA chooses to record its proceedings and meetings is its decision, which decisions are generally premised on the cost to the institution, the meeting in question and/or the means by which a recording of the proceeding may be undertaken. Those are decisions within the sole purview of the BCVMA and are not steps, or programs, that would serve to ameliorate the effects of the discriminatory practice at issue in this Complaint.

[1410] Council determines who is appointed to committees of the BCVMA. Whether it decides to appoint one or more of the Complainants to participate in any of its committees will be made by it on a case-by-case basis. The discretion to appoint members to committees must be exercised free from discrimination. I will not fetter that discretion.

[1411] It would make sense to have a facilitator meet with the BCVMA and the Complainants to address their ongoing relationship; it is my view that this might go some distance to ameliorate the effects of the discriminatory conduct. The public commentary from both parties had been extremely unfortunate and has served to polarize them in manner that has prevented them from taking reasonable and appropriate steps to address many of the issues arising in this Complaint. As a result, who should participate in this process is a difficult, if not impossible, task to determine. Although, it is my view that a facilitator is appropriate and may assistant the parties to improve their relationship going forward, I make no such order, but leave this to the discretion of the parties.

6. Monetary Remedies

[1412] The Complainants seek compensation under ss. 37(2)(d)(ii) and (iii) of the *Code*.

[1413] The Respondents say the Tribunal cannot award any "damages" against them as this would constitute the imposition of liability contrary to the *DAPA* and s. 23 of the *Veterinary Act*. This issue is address above; my authority to award compensation for the

discriminatory conduct I have found in this Complaint is set out in s. 37 of the *Code* and is not otherwise circumscribed by the *DAPA* or s. 23 of the *Act*.

Expenses Incurred and Wages Lost

[1414] Under s. 37(2)(d)(ii) of the *Code*, the Complainants seek compensation for expenses incurred and wages lost by the contravention.

[1415] With respect to the claims for costs and expenses, the Respondents rely on their submissions in relation to costs.

A. Expenses Incurred – Establishing the Contravention (p. 13-15)

[1416] The Complainants seek compensation for expenses necessarily incurred as a result of having to establish a contravention, such as expert reports, photocopying of documents and legal authorities: *Senyk v. WFG Agency Network (No. 2)*, 2008 BCHRT 376 ("*Senyk*"), para. 500; *Gichuru v. The Law Society of British Columbia (No. 9)*, 2011 BCHRT 185 ("*Gichuru (No. (9)*"), paras. 241, 389, 390. The Complainants seek the following:

a) The cost of the expert report on English language testing (and for the Tribunal to retain jurisdiction if the parties cannot agree on an mount within 30 days of the publication of this decision);

b) The cost of the audio expert report, which the Complainants were obliged to obtain but which was not ultimately required (and for the Tribunal to retain jurisdiction if the parties cannot agree on an mount within 30 days of the publication of this decision);

c) The Complainants' portion of the cost of the court reporters and transcripts used in the second part of the hearing;

d) The cost of the professional transcripts the Complainants had prepared of the final days of the first part of the hearing (and for the Tribunal to retain jurisdiction if the parties cannot agree on an mount within 30 days of the publication of this decision)

[1417] I order the Respondents to pay to the Complainants the costs associated with obtaining the expert report of Dr. Marshall and the associated costs of having him attend to give evidence before the Tribunal. The Tribunal will retain jurisdiction in respect of this issue, if the parties are unable to agree to the amount of compensation to be paid.

[1418] I decline to make the balance of the orders requested in this section.

[1419] The decision to transcribe the Tribunal proceedings and/or to have a court reporter available to do so was a decision of the parties. Further, it was the decision of the Complainants to transcribe some of the days of the proceedings related to that part of the hearing process that dealt with the English Language Standard; there were audio recordings available and I am not persuaded that a transcript, although helpful, was necessary.

B. Expenses Incurred – Disciplinary Proceedings

[1420] The Complainants seek expenses incurred in relation to the disciplinary proceedings, including the cost of defending against the disciplinary proceedings, preparing for and attending at hearings and Council proceedings, and the cost of subsequent Court proceedings.

[1421] Generally, the Complainants failed to provide evidence about the actual costs incurred by each of them to attend such proceedings. I am not prepared to award an amount based on the information related to another veterinarian and their earnings.

[1422] With respect to Dr. Bhullar, the Complainants say that Dr. Bhullar's lost income while attending the Inquiry hearings, Council proceedings and Court proceedings, should be calculated by taking the number of days the proceeding took, adding the same number of days for preparation, dividing by five, and multiplying the resulting number of weeks by $1,300 per week, which amount comes from the evidence of what a veterinarian earns at Atlas-Vancouver.

[1423] The Complainants also seek Dr. Bhullar's lost incomce as a result of having his registration erased for more than one year, calculated by determining the length of erasure from December 4, 2009 to March 1, 2011, in weeks, and multiplying the resulting number of weeks by $1,300.

[1424] Given that Dr. Bhullar has not provided documentation with respect to his lost earnings, I am not prepared to order compensation in this respect. Dr. Bhullar testified that he was making no claim for his business losses and had resisted providing disclosure of his income and/or those amounts he either earns, or receives, from Atlas-Vancouver and the others clinics in which he has an interest. Dr. Bhullar must prove his losses, including those amounts he lost as a result of attending the Inquiry hearing and subsequent processes but he has not done so.

[1425] The Complainants say Dr. Bhullar should also be compensated for the actual amounts paid to Mr. Pyper in respect of disciplinary proceedings, appeals, and judicial reviews, and the amounts paid to the experts. Many invoices are in evidence. The Complainants' request that the parties be given an opportunity to exchange further information and attempt to agree on the amount, with the Tribunal remaining seized. They say the Tribunal has long compensated legal fees incurred because of the contravention provided they are not the costs of the human rights proceeding. The Complainants say the remedies sought here are in respect of disciplinary proceedings tainted by discrimination, including cancellation of proceedings and penalties and reimbursement of the funds expended defending those proceedings, and are consistent with the Court's comments in *Bajwa*, where the Court of Appeal plainly expected that the Tribunal would be able to provide effective remedies in respect of individual disciplinary matters which would otherwise be addressed through judicial review.

[1426] Dr. Bhullar provided invoices for his lawyer with respect to his disciplinary complaints. The first Inquiry, 05-02, lasted between 35 and 40 days, plus additional days for preparation. As at October 14, 2008, Dr. Bhullar had paid 176,814.08 in this respect. Dr. Bhullar also paid $21,000 for the submissions made to Council with respect to the penalty phase of the disciplinary proceedings. The penalty hearing was three days, plus time for preparation. Dr. Bhullar also incurred expenses for the BC Supreme Court proceeding. A second Inquiry, which started in 2008, had been scheduled for 12 days; to the time Dr. Bhullar testified it had proceeded for three and one-half days.

[1427] Dr. Bhullar also provided the following information:

- cheques totalling $14,368.08 for legal assistance in the preparation for this Complaint hearing;
- invoices totalling $11,090.52 (US) for the expert who testified at his Inquiry; and
- the Complainants were subject to three BC Supreme Court costs orders which totalled $56,147.49.

[1428] There is no question that Dr. Bhullar incurred expenses as a result of the disciplinary proceedings that he faced over a number of years. However, on a review of those proceedings, many of the expenses incurred by Dr. Bhullar with respect to the Inquiry and Council proceedings were as a result of the numerous applications he filed. It is difficult, if not impossible to separate out those fees and expenses incurred by Dr. Bhullar as a result of his appearances before the Inquiry Committees and Council. Without this specific information I am not prepared to make a general award that Dr. Bhullar be compensated for all of his legal fees and other expenses in this respect. However, should the BCVMA decide to have the Review Panel review those disciplinary complaints, leading to these Inquiries, in light of this Decision, it is open to them to consider the legal fees and associated costs incurred by Dr. Bhullar with respect to them.

[1429] With respect to Drs. Bajwa, Johar, Sharma, Brar, and Jagpal, the Complainants calculate the income lost due to disciplinary proceedings using the same calculation as proposed for Dr. Bhullar. With respect to the amounts paid to Mr. Pyper or any other lawyer and actual amounts paid to the experts, the order sought is again similar to that respecting Dr. Bhullar. In relation to Drs. Bajwa and Johar, some of Mr. Pyper's invoices and from the experts have been submitted in evidence.

[1430] Dr. Bajwa provided evidence about the legal expenses incurred with respect to the disciplinary complaints that went to Inquiry and the related judicial reviews. Dr. Bajwa incurred the expenses of $12,000 for an expert, who appeared as an expert at his second Inquiry. Dr. Bajwa incurred legal expenses of $5,388.18 and $1,279.30 for the judicial reviews. Dr. Bajwa paid $4,701.94 to the BCVMA for the court costs awarded against him for the judicial review. I make no award to compensate Dr. Bajwa for these expenses. These are expenses that the Review Panel could address.

[1431] Again, given that these Complainants have failed to provide documentation with respect to their lost earnings as a result of the disciplinary proceedings, I am not prepared to award them any compensation for the income loss they may have experienced.

[1432] Further, and with respect to those legal expenses, court costs and other related expenses, I am not persuaded that the entirety of those amounts relate to the discriminatory conduct I have found in this Decisions. As I noted, some issues raised by the disciplinary complaints involved medical issues, which would have had to have been addressed, although perhaps not through to an Inquiry. Again, this is a matter the Review Panel could address.

C. Expenses Incurred – Dr. Joshi

[1433] The Complainants seek compensation in favour of Dr. Joshi for his legal expenses, including legal fees and expenses for the registration process, in relation to Mr. McKendrick, in relation to the original appeal of the BCVMA's decision less any costs already received, in relation to the appeal of the BC Supreme Court's decision less any costs already received, in respect of the ongoing attempt to obtain licensure and until he was licensed by the BCVMA.

[1434] Dr. Joshi also seeks compensation for those legal fees paid to Mr. Price and Mr. Nundal, also in relation to his registration processes.

[1435] I find that the expenses incurred with respect to legal fees related to the registration process flow from the discrimination. I find that Dr. Joshi is entitled to be compensated as a result.

[1436] Dr. Joshi provided the invoices received from Mr. Price and Nundal. The amounts paid to Mr. Price totalled $2,087 and the amounts paid to Mr. Nundal totalled $1,700.00. I order the BCVMA to reimburse Dr. Joshi the sum of $3,787 as compensation for the legal expenses he incurred as a result of retaining Mr. Price and Mr. Nundal.

[1437] I also order the BCVMA to compensate Dr. Joshi for those amounts paid to Mr. McKendrick for those proceedings related to Dr. Joshi's registration process, including the judicial proceedings. As these proceedings had not completed before the evidentiary part of this hearing concluded, the invoices from Mr. McKendrick are not in evidence. I

order to BCVMA to reimburse Dr. Joshi those amounts paid to Mr. McKendrick, less any amounts already received. The Tribunal will retain jurisdiction in respect of this matter, if the parties are unable to agree to the amount to be paid to Dr. Joshi.

[1438] The Complainants also seek compensation in favour of Dr. Joshi for his travel costs to attend any of the proceedings after he moved to Dawson Creek, including the proceedings at the Tribunal. He testified he attended one day of court in 2007, on September 13, 2007. He came to Vancouver twice for the Human Rights proceedings. He estimated his expense to be approximately $800-900 per trip. As with other remedies, the Complainants ask the Tribunal to direct the parties to calculate the costs, with the Tribunal to remain seized of the question.

[1439] Dr. Joshi's evidence concluded in December 2009. Any expenses he had incurred for his attendance of any court proceedings prior to this date was within the knowledge of the Complainants. Other than a general submission, the Complainants did not specify, in their submissions, what other dates Dr. Joshi had attended proceedings in Vancouver and his related expenses. Given the lack of evidence, I am not prepared to order that Dr. Joshi be compensated generally for his travel, other than for the one day when he testified that his expenses were between $800 and $900. I order the BCVMA to pay to Dr. Joshi the sum of $850 for his one attendance at court on September 13, 2007.

D. Expenses Incurred

[1440] The Complainants seek an order reimbursing each Complainant who is a member of the BCVMA for all levies paid to the BCVMA for defence of the BCVMA against these complaints.

[1441] The Complainants seek an order reimbursing each Complainant who is a member of the BCVMA for all levies paid to the BCVMA for prosecution of BCVMA's disciplinary complaints against the Complainants.

[1442] The Complainants seek an order compensating them for expenses, including legal expenses, associated with commencing certain legal actions which flowed from the same underlying facts as this Complaint. They also seek an order compensating them for the basic costs ordered against them on the files they discontinued to avoid a duplication of

processes. They say it was reasonable for them to have commenced these actions, as it was not clear before the second part of this hearing that the Tribunal would be prepared to take full jurisdiction over the subject matters of the Complaint.

[1443] I decline to make any orders reimbursing the Complainants for the levies paid to the BCVMA and/or for their expenses incurred for the collateral litigation that they pursued.

[1444] The Complainants are members of the BCVMA and subject to the fees and levies imposed on them as a result. It would be a difficult task to separate out the levies as it related to the litigation, including the Inquiries involving a number of the Complainants and those matters involving other members of the BCVMA.

[1445] The Complainants chose to commence a number of actions. The Courts have dealt with those actions and the issue of costs. I do not propose to make an award that might suggest that I am interfering with the Courts' decisions in this respect.

E. Lost Earnings – Tribunal Hearing

[1446] The Complainants seek lost earnings in relation to the Tribunal hearing, relying on *Datt v. McDonalds Restaurants (No. 3)*, 2007 BCHRT 324 ("*Datt*"), para. 281.

[1447] With respect to Dr. Bhullar, the Complainants propose calculating these losses as follows: One day for each day during which Dr. Bhullar testified; one day of preparation for each day during which Dr. Bhullar testified in direct; a day to be valued on the basis of the annual earnings of a veterinarian at Atlas, which is about $1,300 per week. They say this is a very conservative calculation.

[1448] With respect to Drs. Bajwa, and Johar the Complainants propose the same calculation.

[1449] I decline to make such orders with respect to Drs. Bhullar, Johar and /or Bajwa. Each could have provided specific information as to their income and provided evidence about the loss they incurred while attending the hearing. Further, in some cases, I understand that locums were working at each of Drs. Bajwa's and Johar's clinics and, without any documentation, it is difficult to calculate the actual loss experienced by their

attendance at the hearing. As I noted in *Brar and others v. B.C. Veterinary Medical Association and Osborne*, 2008 BCHRT 324, if the Complainants intended to seek compensation for their expenses incurred for the attendance at the Tribunal's hearing, they would be required to provide evidence regarding their actual loss, with supporting documentation. (para. 22) They have failed to do so. Without this evidence, I am not prepared to make any such orders.

[1450] With respect to Dr. Joshi, the Complainants claim four days of attendance at the hearing, together with four days of preparation, calculated on the basis of an annual salary of $74,000, what Dr. Joshi testified he was earning at the time of the hearing.

[1451] I am prepared to award Dr. Joshi his expenses for four days attendance at the Tribunal in order to give evidence. Dr. Joshi testified that, at the time he appeared before me, he was earning $74,000. I accept his evidence that this was the case. I am not prepared to award Dr. Joshi any compensation for the expenses he incurred in order to prepare to give his evidence as this evidence was not clearly before me. I order that the BCVMA pay to Dr. Joshi the sum of $1,138.46 for compensation for the expenses incurred to attend to give evidence before this Tribunal. ($74,000÷52÷5x4)

F. Lost Wages – Dr. Joshi

[1452] The Complainants seek an order that Dr. Joshi be compensated for $71,500 in wages he lost due to the delay in licencing him from May 19, 2004, when Ms. Osborne wrote to Dr. Joshi raising concerns about his application, to September 5, 2005, when Dr. Joshi obtained full-time employment, calculated based on his starting wage at CFIA. The Complainants also seeks a tax gross up.

[1453] The BCVMA made its final decision to deny Dr. Joshi licensure in August 2005. Shortly thereafter Dr. Joshi found full-time employment at the CFIA.

[1454] Dr. Joshi testified that he had an oral job offer from Dr. Mrar effective May 25, 2004 with a starting salary of $50,000. In and around October 15, 2004, Dr. Joshi commenced working as a full-time veterinary assistant at Atlas-Vancouver earning $2,000 per month.

[1455] I find that Dr. Joshi is entitled to be compensated for the wages he lost as a result of the BCVMA's discriminatory conduct. I also find that, given the difficult circumstances faced by Dr. Joshi throughout his registration process, he took appropriate steps to mitigate his losses.

[1456] If Dr. Joshi had commenced full-time employment with Dr. Mrar and continued there until he obtained full-time employment with the CFIA, he would have earned $62,505 (15 months at $4,167 per month). Dr. Joshi earned $23,000 (eleven and one-half months at $2,000 per month).

[1457] I order the BCVMA to pay to Dr. Joshi the sum of $39,505 for lost wages. I order the BCVMA to pay to Dr. Joshi any tax gross-up that results due to the payment of these monies in one lump sum.

G. Lost Wages – Dr. Grewal

[1458] The Complainants seek an order that Dr. Grewal be compensated for lost wages. They say it should be paid at the rate of a lower starting salary at one of the Complainant's clinics where Dr. Grewal was at all times ready to commence practising under supervision and with appropriate restrictions. Dr. Bhullar confirmed he would have had no problem offering Dr. Grewal such a position and did offer him full-time position starting on January 1, 2004 at an annual salary of $60,000. Dr. Johar had also offered a starting salary, to another prospective Indo-Canadian low-cost veterinary graduate, at the time when Dr. Grewal had his strongest membership application and had a prolonged stable mental health condition. The Complainants say this would be an appropriate basis for the calculation. They therefore claim $60,000 per year from January 1, 2006 to the time of CVBC's future admission of Dr. Grewal into the profession. The Complainants also seek a tax gross up.

[1459] Dr. Grewal has had periods of stability. However, it is not certain that had Dr. Grewal had been licensed to practise he would have remained stable. Since testifying, he has had periods of relapse, which have involved the police, and he has been hospitalized.

[1460] Dr. Sandhu testified that he had come to the conclusion that Dr. Grewal should remain in supervised practice, given if he relapses, he may be unable to control his mood.

Dr. Grewal testified that he would practice under the conditions imposed by the BCVMA. Dr. Grewal has remained under Dr. Sandhu's care and takes his prescribed medication.

[1461] Dr. Grewal has volunteered at Atlas-Vancouver and Dr. Bhullar testified that he would supervise Dr. Grewal, if he were licensed. It is not clear why Dr. Grewal did not seek employment as a veterinary assistant, employment that did not require him to be licensed by the BCVMA.

[1462] On May 27, 2011, Dr. Grewal was granted a temporary licence from the Manitoba Veterinary Medical Association allowing him to practice in that jurisdiction. In August 2011, the Saskatchewan Veterinary Medical Association granted Dr. Grewal a temporary and restricted license to practice and under supervision, after which he would be granted full licensure. Although, Dr. Grewal sought licensure in those jurisdictions, it did not appear, from the evidence before me, that he had pursued those opportunities or why he had not pursued registration earlier.

[1463] The evidence establishes that, as a result, of the discrimination, Dr. Grewal lost the opportunity for employment as a veterinarian in British Columbia. However, there were a number of uncertainties about the wage loss, including the likelihood that another veterinarian would have agreed to all the conditions placed on Dr. Grewal's conditional licence, whether Dr. Grewal would have worked full-time, and, in particular, whether Dr. Grewal would have would have been able to practise, even with supervision, successfully. Added to this is the lack of evidence about steps taken by Dr. Grewal to mitigate his loss, whether in British Columbia or elsewhere.

[1464] Having considered all the evidence, I decline to award D. Grewal compensation for lost wages.

Injury to Dignity General

A. Introduction

[1465] The Complainants seek compensation for injury to dignity, feelings and self-respect under s. 37(d)(2)(iii).

[1466] In the Complainants' first Statement of Remedy, they sought $25,000 for each Complainant; in the Amended Statement of Remedy, this amount was increased to $50,000 for each Complainant. In their submissions, the Complainants sought different amounts for each of them.

[1467] Those who are entitled to an award for injury to dignity and self-respect are those who remain Complainants: Drs. Brar, Bhullar, Bhatia, Bajwa, Johar, Sharma, Benipal, Sidhu, Parbhakar, Hans, Jagpal, Joshi and Grewal.

B. Submissions

[1468] With respect to the English Language Standard, the Complainants seek an award of $10,000 per person, and an additional $15,000 in favour of Dr. Paramjeet Sidhu. The Complainants say the Standard was based on information being circulated that there were licenced veterinarians who could not speak English properly and the introduction of the Standard conveyed that some members were not up to the standards of the profession. The Standard impacted all Complainants through its powerful message that veterinarians from India did not deserve to be licenced in BC. They felt targeted by the adoption of the Standard, the high Standard chosen, the BCVMA's defense of the Standard, and its existence over a number of years. The Complainants also say the Standard diminished the supply of veterinarians, though they do not say how this impacted their dignity, feelings and self-respect. They say the Standard also drew the Complainants into open conflict with the BCVMA, and there was antipathy toward those who opposed the Standard.

[1469] The Complainants say that, although not all of them testified about the impact, it is reasonable to determine from the evidence that the Standard had a negative impact on them as a group and to award compensation on that basis, as in *C.S.W.U. Local 1611 (No. 8)*. With respect to the additional amount sought respecting Dr. Paramjeet Sidhu, the Complainants argue that the Standard had a direct impact on him, as he chose not to seek registration in BC because he believed he would not meet the necessary Standard. He had to forgo positions in the Lower Mainland and accept work in the United States. He was forced to be away from his family. The toll on him and his family is supported by his evidence and that of his daughter.

[1470] The Respondents say none of the Complainants were subject to the English Language Standard. There was no evidence of economic loss flowing from the alleged effect on the supply of veterinarians and abandoned such claims. The Complainants appear to argue that a finding of discrimination entitles any person who is a member of the group being discriminated against to an award for injury to dignity, but this is not supported by the case law.

[1471] The Respondents say the Complainants were not the persons discriminated against, so the Tribunal has no jurisdiction to make an award. The Respondents dispute that injury to dignity can be "imputed" to Complainants who did not testify with respect to their injury. *C.S.W.U. Local 1611 (No. 8)* is distinguishable because it involved an allegation of discrimination that directly affected the members of the group. On the Complainants' argument, compensation could be awarded to every Indo-Canadian or any person for whom English was not their first language. If the Tribunal does find injury to dignity to the Complainants, it is mitigated by the fact that the requirement was withdrawn. Any award must be modest, reflecting that the Complainants were not directly affected. The Respondents did not specifically address the circumstances of Dr. Paramjeet Sidhu.

[1472] In reply, the Complainants say they were affected by the English Language Standard in that:

(a) it prevented Dr. Paramjeet Sidhu from applying to become registered;

(b) it constrained their access to locums and new veterinarians and therefore their "confidence" in their ability to expand their hospitals and cover their vacancies;

(c) it carried the damaging and insulting message that some members could not speak or understand English properly, harming the Complainants' self-esteem and sense of belonging; and

(d) it drew them into open opposition with the BCVMA, prompting the Registrar to react very negatively and generating significant antipathy from the Registrar.

[1473] The Complainants do not seek remedies for other members of the group, which I assume to mean former Complainants, who would not be entitled to an award as they

withdrew from the Complaint. The withdrawal of the Standard did not mitigate the harm which occurred during the five years it was in place. In this regard, the BCVMA did not acknowledge the Standard was unnecessary so did not mitigate the harm from their position that the Complainants were "dead wrong".

[1474] With respect to the impact of other discriminatory conduct, the Complainants seek a minimum award of $20,000 in favour of each Complainant. They argue that there was a tremendous impact on every Complainant, regardless of the degree to which each was directly affected by discriminatory disciplinary proceedings, unscheduled inspections, or the denial or restriction of services from the BCVMA. The Complainants are professionals, dependent on their regulatory body for the right to practice in BC. They could not simply sever their relationship with the BCVMA. They were also effectively dependent on the BCVMA's view of them for the opportunity to be licenced anywhere in North America due to cross-reporting. Courts and tribunals have recognized the central importance of work in people's lives: *Toivanen v. Electronic Arts (Canada) (No. 2)*, 2006 BCHRT 396 ("*Toivanen*"), para. 131. They were particularly vulnerable to their regulatory body: *Gichuru (No. 9)*, para. 265.

[1475] The conduct was long-standing, from 2003. The conduct touched every facet of the relationship with the regulatory body and had a significant impact on the Complainants' relationships with their veterinary colleagues. This was exacerbated by the BCVMA's practice of telling the membership the allegations were vehemently denied and would be vigorously defended against and, by the levies placed, against each member, to prosecute the Complainants and defend the Complaint. The Complainants say they have been exposed to an ongoing fear that their work and businesses would be targeted for disciplinary scrutiny. For more than eight years, many Complainants were subjected to the stress, anxiety, expense and time of discriminatory disciplinary proceedings. Many saw their professional reputations publicly impugned through the display of unproven charges on the BCVMA website. The Complainants say they went to extraordinary lengths to attempt to address their concerns and, while some of the actions may not have been as measured as possible, they had their genesis in the discriminatory treatment. They say the BCVMA maintained its position, refused to deal with the issue of institutional bias, and carried on with disciplinary proceedings, resulting in suspensions

(Drs. Brar, Jagpal, Sharma) and erasure (Dr. Bhullar). The BCVMA failed to create any barriers between those involved in disputes with the Complainants or bring in anyone independent. While it was entitled to defend itself, the Complainants say the BCVMA's actions served to greatly increase the harm to the Complainants, including the email to the membership including an excerpt from Dr. Grewal's evidence. Not all Complainants testified but, as noted above, this is not necessary.

[1476] As outlined below, the Complainants sought amounts higher than $30,000 for some of them. They point out that there is no cap on the amount that may be ordered and that this case is not easily comparable to other cases where significant awards have been made such as *Toivanen* ($20,000), *Datt* ($25,000), *Cassidy v. Emergency Health Services Commission and others (No. 2)*, 2008 BCHRT 125 ($22,500) (remitted to Tribunal – see *Cassidy v. Emergency Health Services Commission and others,* 2013 BCHRT 116 ($22,500 confirmed)), *Senyk* ($35,000), and *Kerr v. Boehringer Ingelheim (Canada) (No. 4)*, 2009 BCHRT 196 ($30,000). The cases involving lengthy struggles over accommodation are similar respecting the protracted nature of the conduct and the predicament that the complainants were not realistically able to walk away. (*Cassidy*, *Kerr*) The cases address the importance of employment. (*Senyk*, *Datt*, *Kerr*)

[1477] The Respondents say it is not possible to give a "comprehensive position" on the amounts sought before knowing what conduct is found to be discriminatory. In any event, the amounts sought are unrealistic. The largest award to date is $35,000 in *Senyk*. While it is acknowledged that professionals are vulnerable to their regulatory bodies, the factors do not rise to the level of cases such as *Senyk* or *Ratzlaff*. Finally, the goal of the awards is remedial, not punitive.

C. Analysis

[1478] In *Gichuru (No. 9)*, the Tribunal identified a number of factors relevant to the determination of an award for injury to dignity, including the nature of the discrimination found, the time period and frequency of the discrimination, the vulnerability of the complainant, the impact of the discrimination on the complainant, and the totality of the relationship between the parties. (para. 260) Other factors may be relevant in any given

case, keeping in mind that the goal of an order under s. 37(2)(d)(iii) is to remedy the discrimination. As the Respondents noted, the remedial provision is not punitive. To the extent that the Complainants' submissions focus on the nature of the conduct (e.g. cruel and deliberate), what matters is the impact of the conduct on the individual's dignity, feelings and self-respect.

[1479] At the time of the submissions, the largest award made by the Tribunal was $35,000. In *Gichuru (No. 9)*, the Tribunal noted that there is no cap on injury to dignity awards under the *Code*. I agree that an award must be based on the evidence before the Tribunal and that the determination is highly contextual and fact-specific. I agree that, if the circumstances warrant it, the Tribunal may make an award exceeding the upper end of awards made to date.

[1480] In determining what I should award each of the Complainants for compensation for injury to their dignity, feelings and self-respect, I have considered the following factors, among others:

- The impact on the relationship between the BCVMA and the Complainants as a result of the Complainants' opposition to the English Language Standard;
- The requirement that, in order to practise veterinary medicine in British Columbia; the Complainants were required to be members of the BCVMA, which continued to have authority over them despite the ongoing conflict between them;
- The suspicious nature with which the BCVMA viewed the Complainants and how this related to the suggestion, in many disciplinary files, that the Complainants were intent on misleading the BCVMA and falsifying their medical records. This followed from their race-based view that the Complainants had a propensity to be dishonest;
- The failure of the BCVMA to act when concerns were raised with it; for example its failure to act with respect to the Ashburner Recording and the error with respect to the TSE score of the College of Pharmacists, because it assumed that the Complainants were misleading the BCVMA;
- The BCVMA saw the Complainants as a group and, in some cases, dealt with them as such;

- The impact of the BCVMA's actions, both in establishing the English Language Standard, and listening to and repeating unsubstantiated rumours regarding the Complainants' practices;

- The length of the time over which the discriminatory conduct occurred; and

- The evidence provided by the Complainants of the impact on them personally and professionally.

Injury to Dignity – Dr. Bhullar

[1481] The Complainants seek $60,000 in favour of Dr. Bhullar, due to the impact on him of being singled-out and targeted by the BCVMA, including being named in the run-up to the English Language demonstration, being vilified after the demonstration, being the first to be ordered to deal with the BCVMA in writing, being named as the ring-leader, and being a particular target of the discrimination in the disciplinary process, which culminated in his erasure on December 4, 2009. The Complainants refer to the energy the BCVMA devoted to pursuing disciplinary complaints against Dr. Bhullar, the animosity towards him, its publication of his erasure, and its position that Dr. Bhullar must not use the honorific title "Dr." He was without a license until March 1, 2011, and the order for erasure remains in place; it was simply stayed pending the outcome of judicial review proceedings. Dr. Bhullar was summarily suspended from veterinary practice in the State of Washington as a result of the BCVMA's decision to erase Dr. Bhullar from the register.

[1482] Dr. Bhullar testified that the targeting substantially altered his business plans; he seeks no monetary claim but says the impingement on his economic autonomy must be recognized in the injury to dignity award. Dr. Bhullar described all the steps that he had taken in pursuing his issues with the BCVMA and the impact on him and his business. Dr. Bhullar testified that this has been distracted and, as a result, he reduced the number of clinics that he was opening and focused more on his real estate business. He was concerned that the BCVMA would take his licence and he attempted to save money to cover his expenses, if this occurred. He has also missed numerous appointments with clients.

[1483] The personal toll over more than eight years was evidenced by Dr. Bhullar's disbelief that such things could happen in Canada and his emotion when testifying. This was out of character, evidencing the deep hurt caused to him. He testified about the toll of the discrimination on his family members and his ability to fully participate in their lives. The evidence is that Dr. Bhullar's work as a veterinarian is extremely important to him and central to his identity, and the discrimination, which resulted in erasure, has had a severe impact on him. The circumstances are cumulatively more serious than in *Gichuru (No. 9)*, ($25,000). The Complainants also rely on *Matheson* ($50,000).

[1484] Dr. Bhullar described the dealings with the BCVMA and having to pursue the issues through the human rights system as being a "nightmare". He noted that, although the BCVMA took the position that the English Language Standard was necessary, it dropped it in April 2009 and, in Dr. Bhullar's view, this illustrated that there was no need for the Standard. Dr. Bhullar also testified that the BCVMA set hearing dates for his disciplinary complaints when his lawyer was unavailable.

[1485] Dr. Bhullar testified that he has been under stress and his health has deteriorated having to deal with the lengthy disciplinary hearings, the human rights complaint and preparing for both. Dr. Bhullar testified that he takes anti-anxiety medication and has high blood pressure. He has had little time for his family and his children, given that he spends at hearings.

[1486] When Dr. Bhullar was ill and he asked to delay his submissions on penalty, before Council, Council accused him of lying and said that this was a delay tactic being used by him. Although the dates for submissions were adjourned, they were adjourned to dates when he was in attendance at the human rights hearing.

[1487] I have no doubt that Dr. Bhullar has been under an enormous stress as a result of the ongoing issues with the BCVMA. He ultimately lost his licence, paying the ultimate price as a result of his interactions with the BCVMA and its focus on him. I have found that Dr. Bhullar was targeted by the BCVMA and seen as the "ring-leader" and, in my view, someone that the BCVMA viewed as ungovernable. Losing one's licence to practise veterinary medicine is the ultimate penalty that can be imposed on a member.

This was a significant penalty and would, in my view, have a significant impact on Dr. Bhullar's dignity, self-respect and standing within his community.

[1488] I also have no doubt that Dr. Bhullar's family life was significantly disrupted and he has experienced health problems.

[1489] In assessing the award for injury to dignity, feelings and self-respect in Dr. Bhullar's circumstances was difficult. He pursued multiple actions in multiple forums. Had he not done so, the injury to his dignity, feelings and self-respect may have been reduced, as well as reducing the resulting conflict between him and the BCVMA.

[1490] Having considered all the evidence and the context in which the issues arose and evolved, I award Dr. Bhullar the sum of $30,000 for compensation for injury to his dignity, feelings and self-respect.

Injury to Dignity – Dr. Bajwa

[1491] The Complainants seek total $60,000 in favour of Dr. Bajwa. They say that the nature of the discrimination experienced by Dr. Bajwa was "at the higher end of the spectrum." It includes the initial disciplinary hearing based on a missed final deadline of mere hours and a purported missed question. After the stress of the hearing, at which the charges were dropped, Council rejected that decision on new grounds, and there was a second hearing. They say the impact on Dr. Bajwa has been severe. He is a stoic person and the fact that he was brought to tears speaks volumes about the toll this has taken on him. It has also affected his work and family. The prosecution of Dr. Bajwa continues to this day.

[1492] Dr. Bajwa testified that, throughout his interactions with the BCVMA, he feels that he has not been treated equally. He has felt targeted, humiliated and sometimes embarrassed in front of his relatives. He is always worried that the BCVMA might close his hospital. His son had asked him why he had had to spend a lot of time in hearings, and this question makes Dr. Bajwa feel guilty, given he does not have time to spend with his son or his family. He had been unable to take his son to India for a visit as he fears that there might be a surprise inspection of his facility. He does not make any decisions to buy or sell property as he is always concerned that he will lose his licence.

[1493] Dr. Bajwa testified that he is under a lot of stress and experiences headaches. In August 2007, Dr. Bajwa sought medical treatment for chest pains. Dr. Bajwa testified that he had not sought other types of medical treatment as going to the doctor is not something that his family does.

[1494] Dr. Bajwa testified that being called one of Dr. Bhullar's loyal lieutenants made him feel like he was in a war with the BCVMA, which was stressful.

[1495] Ms. Gill, Dr. Bajwa's wife, testified that she has observed Dr. Bajwa experiencing stress. He does not generally show his emotions, and is a quiet person, but she knows he is very stressed. Every time a letter is received from the BCVMA marked "confidential", they are afraid to open it; sometimes Ms. Gill will not give the letter to Dr. Bajwa until late in the day so his day is not ruined. Dr. Bajwa is now a more negative person and reluctant to do things, such as purchase property, as he worries that he is going to lose his licence. Ms. Gill testified that Dr. Bajwa does not sleep well or eat well and does not spend time with his children. Dr. Bajwa has no social life. When their son was ill, Dr. Bajwa was not with his wife and child at the hospital but involved in preparing for his evidence before this human rights proceeding. This was the same day that the unscheduled inspection occurred in November 2008 and Ms. Gill could not leave the hospital. It was a very stressful time for them. Ms. Gill testified that Dr. Bajwa has had chest pains and she has taken him to the hospital; Ms. Gill relates this medical issue to Dr. Bajwa's stresses as a result of this Complaint.

[1496] I accept the evidence of both Ms. Gill and Dr. Bajwa that Dr. Bajwa has been under an enormous amount of stress as a result of the processing of this Complaint and his interactions with the BCVMA. He did participate in some of the collateral litigation, along with Dr. Bhullar, but to a lesser extent. However, he was viewed by the BCVMA as being one of Dr. Bhullar's loyal lieutenants. I agree with Dr. Bajwa that this was an unfortunate characterization of his relationship with Dr. Bhullar and the BCVMA. The BCVMA questioned both his honesty and integrity, with what I would consider to be very little basis.

[1497] Having considered all the evidence, I award Dr. Bajwa $35,000 for compensation for injury to his dignity, feelings and self-respect, which includes compensation in respect of his s. 43 Complaint.

Injury to Dignity – Dr. Bhatia

[1498] Complainants seek a total of $30,000 in favour of Dr. Bhatia.

[1499] Dr. Bhatia testified that he joined the human rights complaint because he could not get 55 on the TSE and believed others from India also could not. He wanted to get "justice", which he acknowledged occurred when the English Language Standard was eliminated in 2009. Dr. Bhatia was placed into Dr. Bhullar's "group" and referred to as one of Dr. Bhullar's loyal lieutenants by Ms. Osborne. Dr. Bhatia testified that he was considered "notorious" without any reason and called a troublemaker. Dr. Bhatia felt that he received no respect from the BCVMA, his regulatory body.

[1500] Dr. Bhatia remained a respondent in complaint 04-108 regarding the Council's election in 2003; I agreed with Dr. Bhatia that the discussions within Council about his possible involvement, which was minor and he had no notice of, would have served to lower his professional reputation before it. I agree with Dr. Bhatia that he was seen as being part of Dr. Bhullar's group and treated as such.

[1501] Having considered all the evidence, I award Dr. Bhatia the sum of $15,000 for compensation for injury to his dignity, feelings and self-respect.

Injury to Dignity – Dr. Brar

[1502] The Complainants seek a total of $30,000 in favour of Dr. Brar.

[1503] Dr. Brar testified during the English language part of the hearing and the impact of the English Language Standard but did not testify about the impact of the processing of his disciplinary complaints, or his other interactions, with the BCVMA.

[1504] Dr. Brar testified that, given the English Language Standard, and that his clinic is open long hours, he could not hire any Indo-Canadian veterinarian to assist him and there was a small supply. It was generally only those from the Indo-Canadian community who

would work extended hours. The impact was that Dr. Brar worked long hours and had less time for his family.

[1505] Dr. Brar testified that he has been unable to take vacations and had not visited India and/or his parents, who live in Montreal, since opening his clinic.

[1506] Dr. Brar testified that he participated in the filing of this Complaint to get justice.

[1507] The BCVMA was suspicious of Dr. Brar's medical records, with little foundation, in disciplinary complaints 04-032, 04-037, 04-068 and 05-078. I have considered the BCVMA's view when assessing my award.

[1508] Having considered all the evidence, I award Dr. Brar $10,000 for compensation for injury to his dignity, feelings and self-respect.

Injury to Dignity – Dr. Jagpal

[1509] The Complainants seek a total of $30,000 in favour of Dr. Jagpal.

[1510] Dr. Jagpal testified during the first part of the hearing. Dr. Jagpal did not generally testify about the impact of the various disciplinary actions of the BCVMA.

[1511] Dr. Jagpal testified about running for Council in 2004, at the time the English Language Standard had been implemented, and there was an error in the publication of his vision statement. Dr. Jagpal testified that, because of the error, he was concerned that the membership would view his English proficiency as not very good. Dr. Jagpal was very upset by the error and the BCVMA, although it apologized to him, did not publish a correction. Ms. Osborne agreed that Dr. Jagpal was extremely upset by the error. Further, the vision statements were to be kept to 250 words; others who ran that same year were not kept to this limitation. Dr. Jagpal felt that he had been treated differently as a result.

[1512] In the processing of Dr. Jagpal's disciplinary complaint, the BCVMA questioned his honesty (file 03-046) and alleged that Dr. Jagpal had falsified his medical records (03-104 and 03-131) with little basis upon which to do so.

[1513] Having considered all the evidence, I award Dr. Jagpal $7,500 for compensation for the injury to his dignity, feelings and self-respect.

Injury to Dignity – Dr. Johar

[1514] The Complainants seek $70,000 in favour of Dr. Johar. The nature of the discrimination is most extreme in terms of its severity and its impact on Dr. Johar. It includes, with respect to the disciplinary cases, the repeated suppression of exculpatory evidence, blatantly misleading reports, directed secret copying of his files, contacting his clients, double-standards, absurd reasoning to forward charges, and a lack of basic procedural fairness. The discrimination also includes the BCVMA's processing of the complaints Dr. Johar made against others. The toll has been exceedingly difficult for Dr. Johar and he has, at times, acted emotionally in response. They say the discrimination had a profound effect on him, his mental health, his family (as he testified), and his finances (due primarily to legal expenses). The Complainants refer to Dr. Levin's evidence for support about the significant consequences to Dr. Johar as a result of his dealings with the BCVMA.

[1515] Dr. Johar testified that he was under a lot of stress as a result of his interactions with the BCVMA. Each time he received a confidential letter from it, his anxiety rose because he was never sure what he was going to face. Dr. Johar testified that he has suffered from panic attacks and insomnia. Dr. Johar testified that he is afraid to go out walking alone and felt targeted by Dr. O, which conduct was not sanctioned by the BCVMA. Dr. Johar takes medication for his insomnia as well as anti-depressant medication. As noted by Dr. Levin, Dr. Johar suffered from reactive depression in respect of his dealings with the BCVMA.

[1516] Dr. Johar testified that he was unable to give much attention to his family. He has felt guilty because he has been unable to give his children the life he thought they would have in Canada. He has been unable to travel with his family. Dr. Johar sent his children to India in 2006 as a result of the circumstances that he was experiencing at the time, in the hopes that things would be better for them there; his son became ill and his children then returned in 2008.

[1517] Dr. Johar felt insulted by the number of allegations that the BCVMA accepted as true with respect to the Angela complaint, many of which he said would be difficult to

disprove because they were vague. The BCVMA has accepted Dr. O's information to be true, but not his.

[1518] Dr. Johar testified that, although he has considered leaving British Columbia, he believes that he would get a bad reference from the BCVMA, which would have an adverse impact on his ability to be registered in another jurisdiction. Generally, Dr. Johar has been disappointed with being a veterinarian in Canada.

[1519] There is no question that Dr. Johar's interactions with the BCVMA have been difficult and has had a significant impact on his dignity and self-respect. The actions of the BCVMA had an adverse impact on him professionally and personally. Dr. Johar experienced overt differential treatment, which was clearly illustrated in the different treatment received by him and Dr. O in the processing of their disciplinary complaints against each other.

[1520] I accept the evidence that Dr. Johar suffered from panic attacks, insomnia and depression. I also accept that this has had a negative effect on his relationship with his family and children.

[1521] However, I note that Dr. Johar sent numerous and often repetitive letters to the BCVMA. He was also disrespectful of some of the BCVMA's its staff, contractors and committee members. Had he not engaged in such conduct, the impact on his dignity, feelings and self-respect might have been lessened and his relationship with the BCVMA may not have been so challenging. I have considered this in this award for compensation under this category.

[1522] Having considered all the evidence, I award Dr. Johar the sum of $30,000 for compensation for injury to his dignity, feelings and self-respect.

Injury to Dignity – Dr. Parbhakar

[1523] The Complainants seek a total of $30,000 in favour of Dr. Parbhakar.

[1524] Dr. Parbhakar testified that everyone became cautious as a result of the disciplinary complaints being file against the Indo-Canadian veterinarians, which had a negative effect on both him and his family members. When a letter was received from the BCVMA, he became more stressed. This also had an impact on his wife, who works with

him in the clinic. Dr. Parbhakar testified that he is now selective in the cases he takes and, if the case is very serious and/or the PO is unpredictable, he refers the PO to another clinic. Dr. Parbhakar testified that this has had an adverse impact on his business.

[1525] Dr. Parbhakar was involved in the civil actions filed by some of the Complainants. In one of the action, which was withdrawn, the plaintiffs were ordered to pay costs. Dr. Parbhakar's part of that obligation was $12,550. The BCVMA placed a lien on his house in order to secure the debt and Dr. Parbhakar was notified after this had occurred. Dr. Parbhakar testified that he always intended to pay that part of his obligation but it was difficult for the group to come-up with the entire sum at once; this is why it was not paid immediately. Dr. Parbhakar testified that he was very upset by the steps taken by the BCVMA, as was his wife. This was the first home that they had purchased in British Columbia.

[1526] Dr. Parbhakar testified that he has taken no steps to purchase the other 50% of the business that he owns and where he works, and remains uncertain if he will continue to reside in British Columbia. Given what has happened with the BCVMA, he remains uncertain that he would continue to be licensed; his practice has become so stressful and he has considered leaving the profession.

[1527] Dr. Parbhakar joined the Complaint, and remained part of it, because of the things that the BCVMA has done, including removing files from a veterinarian's office and allowing Dr. Ashburner to remain part of the CRC, even after he made the comments that were taped. Dr. Parbhakar agreed that he joined the Complaint partly because of his relationship with Dr. Bhullar, but his concerns remained about what was happening within the BCVMA and he was concerned that these types of things could happen in this part of the world. He was asking for justice through this Complaint.

[1528] Having considered all the evidence, I award Dr. Parbhakar $10,000 for compensation for injury to his dignity, feelings and self-respect.

Injury to Dignity – Dr. Benipal

[1529] The Complainants seek a total of $30,000 in favour of Dr. Benipal.

[1530] Dr. Benipal testified that he always wanted to be a veterinarian and had been a good veterinarian in India. He moved to Canada where he believed that everyone is respected and gets a chance. However, he said that his experience here as veterinarian has been different from what he thought it would be. His colleagues have been disrespectful of him. He testified that he has had to spend more time at his clinic, taking time away from his family, to ensure nothing went wrong as he was worried that someone would make a false allegation against him that would be investigated by the BCVMA or that he would be subject to another unscheduled inspection. He was upset at not being asked to participate in the new English Language Task Force, which he wanted to do.

[1531] Dr. Benipal agreed that he has two other veterinarians working in his two clinics, which he now owns with another veterinarian, who is not a Complainant. These clinics are open extended hours and Dr. Benipal works many of these hours, working six days a week. However, he agreed that he is able to take time for holidays, but hires a locum when he does so; he attends BCVMA meetings, which he views as his responsibility to do so.

[1532] Dr. Benipal testified that he feels like he has been treated as a second-class citizen. He is unable to talk to the BCVMA office, yet he pays his dues like everyone else. He was concerned about testifying in the human rights proceeding for fear that he may be targeted again.

[1533] Dr. Benipal was one of the veterinarians who was viewed by the BCVMA to be in lock-step with Dr. Bhullar. He was subject to three inspections in a relatively short period of time and, although I did not find he was adversely treated as a result, I accept that he would have been concerned to be away from the clinic should another inspection occur in his absence.

[1534] Having considered all the evidence, I award Dr. Benipal $10,000 for compensation for injury to his dignity, feelings and self-respect.

Injury to Dignity – Dr. Sharma

[1535] The Complainants seek $40,000 in favour of Dr. Sharma. Once Dr. Sharma was penalized with a very substantial suspension, he was particularly vulnerable, both

personally and financially, to further regulatory activity. The proceedings against him were very protracted, from 2002 to 2009. He served a one-year suspension, and lost his hospital in the process. His name was on the website for a very long time.

[1536] Dr. Sharma did not testify about the impact of the discrimination on him.

[1537] It may be that Dr. Sharma was vulnerable, both personally and financially, as a result of his relation with the BCVMA but I do not have his evidence in this respect. I have no evidence regarding the circumstances leading to the Dr. Sharma's loss of his hospital.

[1538] Dr. Sharma was subject to the same systemic discrimination as were the other Complainants. Although he did not testify, I find that he would have experienced an injury to his dignity, feelings and self-respect as a result of the hostility and suspicion with which the BCVMA viewed the Complainants, including Dr. Sharma.

[1539] I am prepared to award Dr. Sharma a modest amount for compensation for injury to his feelings, dignity and self-respect. As such, I award Dr. Sharma $2,000 for injury to his feelings, dignity and self-respect.

Injury to Dignity – Dr. Hans

[1540] The Complainants seek a total of $30,000 in favour of Dr. Hans.

[1541] Dr. Hans testified that he generally felt insecure and stressed by what he heard from others regarding the English Language Standard, the processing of disciplinary complaints and what he learned about Dr. Ashburner's comments. Dr. Hans testified that he works long hours and this had been stressful for his family.

[1542] Having considered all the evidence, I award Dr. Hans $5,000 for compensation for injury to his dignity, feelings and self-respect.

Injury to Dignity – Dr. Joshi

[1543] The Complainants seek $60,000 in favour of Dr. Joshi. They again say that the nature of the discrimination is at the most severe end of the spectrum. It includes a protracted campaign to obtain an admission from him to use against him and Dr. Mrar,

very protracted litigation, a failure to seek a timely resolution to his licensing issues and a failure, for two years, to provide dates for a rehearing of his licence.

[1544] Drs. Joshi and Bhullar testified about the impact on Dr. Joshi of the events of the October 8, 2004 meeting, which were humiliating for Dr. Joshi, and devastating to his self-esteem, his trust in the BCVMA, and his hope of getting licensed. This was the culmination of a process that was stressful and frustrating and, after this, the BCVMA process continued for ten months before Council determined it would not licence him. Dr. Joshi was unlicensed and unemployed as a veterinarian from March, 2004 until September, 2005.

[1545] Dr. Joshi testified that he felt frustrated with the BCVMA. It had continued to delay the process of his registration and it believed the one-sided story of two employees of Dr. Mrar. Dr. Joshi testified that the BCVMA had not treated him fairly.

[1546] Dr. Joshi left the Lower Mainland for Dawson Creek, where he obtained employment with CFIA. This move was difficult for both him and his wife. His wife was ultimately able to find part-time employment. Dr. Joshi remained in Dawson Creek until 2011.

[1547] The BCVMA continually took the positon that Dr. Joshi had lied to it and this called into question his honesty and integrity. As noted elsewhere, I found that this was not the case. Having your regulatory body continue to take such a position is injurious to one's professional reputation. In spite of this, Dr. Joshi pursued employment as a veterinary assistant and then was successful in obtaining full-time employment with the CFIA, although at both a personal and financial cost to him and his family.

[1548] Having considered al the circumstances, I award Dr. Joshi the sum of $25,000 for compensation for injury to his dignity feelings and self-respect.

Injury to Dignity – Dr. Paramjeet Sidhu

[1549] As set out above, the Complainants seek $25,000 in favour of Dr. Paramjeet Sidhu in relation to the English Language Standard.

[1550] Dr. Sidhu was not registered in British Columbia and sought registration elsewhere. This took a significant toll on him and his family, as he testified, and as did

his daughter. I accept that Dr. Sidhu did not pursue his application because he knew that he could not obtain the TSE score required, at the time, of 55. That he abandoned his application, so that it would not reflect badly on his record, was not surprising.

[1551] Based on all the evidence before me, I award Dr. Sidhu the sum of $10,000 for compensation to his dignity, feelings and self-respect.

Injury to Dignity – Dr. Grewal

[1552] The Complainants seek $60,000 in favour of Dr. Grewal. The nature of the discrimination is at the severe end of the spectrum, including the "dumping of a mass of highly sensitive, extremely private, and very confidential psychiatric records onto unsuspecting Council Members who were then agitated into a (*sic*) extremely negative and highly prejudicial discussion of Dr. Grewal that was recorded." It also includes inordinate delay in even considering Dr. Grewal's case for admission on more than one occasion, and the refusal to work with him to find a way that a restricted licence might be granted to him. There was an inordinate delay in producing a written decision that effectively penalized him for being associated with Drs. Bhullar and Bajwa. It includes speaking with Dr. Grewal at his most vulnerable point during his hospitalization when he had legal representation. The ongoing discrimination includes disseminating the brief, and out-of-context, excerpts from Dr. Grewal's testimony from this proceeding.

[1553] There is no question that Dr. Grewal was adversely treated in his application to be registered with the BCVMA, although Dr. Grewal's application was not straightforward and he was challenging to deal with. However, the BCVMA was disrespectful of Dr. Grewal's mental disability and his privacy. The BCVMA disclosed information to third parties, including other members of the BCVMA. Further, during the processing of his application, Dr. Grewal appeared before Council. On one such occasion, March 11, 2006, he was treated with suspicion and asked questions unrelated to his application, including his financial relationship with Dr. Bhullar. Despite advising Council that he was not recording the meeting, it searched his bag.

[1554] As the Supreme Court of Canada noted in *Eldridge v. British Columbia*, [1997] 3 S.C.R. 624, those who suffer from disabilities are often excluded from the labour market

and subject to invidious stereotyping. In *Battlefords and District Co-operative Ltd. v. Gibbs*, [1996] 3 S.C.R. 566, the Supreme Court of Canada discussed the impact on those with a mental disability and noted that the mentally ill have suffered from historical disadvantage in our society and subject to negative stereotyping. I found this to be the situation in this Complaint.

[1555] Having considered all the evidence with respect to Dr. Grewal and his particular vulnerability as a result of his mental disability, I award him $30,000 for compensation for injury to his dignity, feelings and self-respect.

Interest

[1556] The Complainants seek pre-judgment interest on all compensation ordered, except for the compensation for injury to dignity, at the banker's prime rate published by the British Columbia Supreme Court Registry, relying on *Fenton v. Rona Revy Inc.*, 2004 BCHRT 143, para. 76 and *Datt*, para. 297.

[1557] The Complainants seek post-judgment interest on all compensation ordered at the banker's prime rate published by the British Columbia Supreme Court Registry, relying on *Datt*, paras. 296-97, and *Senyk*, para. 507.

[1558] I order the BCVMA to pay pre-judgment interest on all amounts for expenses and lost wages, calculated from the date on which the expense was incurred and, in the case of lost wages, from the last date on which the award was made, at the banker's prime rate published by the British Columbia Supreme Court Registry.

[1559] I order the BCVMA to pay post-judgment interest on all compensation ordered at the banker's prime rate published by the British Columbia Supreme Court Registry.

XIII DISMISSAL APPLICATION – ABUSE OF PROCESS

Introduction

[1560] On October 13, 2011, the Respondents filed an application to dismiss this complaint pursuant to ss. 27(1)(d)(ii) of the *Code*. In essence, the Respondents alleged that the continuation of the hearing of this complaint would be an abuse of process. The

Respondents also sought a stay of the proceedings, which they confirmed was to be heard at the same time the dismissal application was heard. The Respondents sought to have their disclosure application, filed at the same time, determined before this application. (*Brar (No. 20)*)

[1561] In essence, the Respondents say that the Complainants engaged in a pattern of misconduct, both before and during the processing of this Complaint, and this Complaint should be dismissed. They say that this misconduct, includes:

- Deceptive and surreptitious recordings of members and the employees of the BCVMA and, in particular, the recording of Ms. Osborne in 2009, which were done with the intention to mislead the BCVMA's membership and/or Ms. Osborne;

- The Complainants' breach of their obligations to the Tribunal. In this respect, they say that the Complainants have improperly used evidence gathered in this proceeding in other litigation, including their disciplinary complaint Inquiries and thereby made them publicly available; and

- The Complainants engaged in ongoing fraud and dishonesty with respect to the Tribunal proceedings, which served to undermine the integrity of this proceeding. They say that this conduct includes:

    - the fraudulent identity of Mr. Singh, including Dr. Bhullar's unwillingness to attend the hearing while the Walkers were testifying about their interactions with Mr. Singh and, in this respect, Dr. Bhullar perjured himself and suborned perjury;

    - the Complainants engaging in theft of privileged and/or confidential information of the BCVMA's representatives and officials. In this respect, the Respondents rely on the evidence of Dr. Rana; and

    - attempts to intimidate a witness, namely Dr. Rana.

Timeliness of the Application

[1562] The Complainants say that this application is not timely and should be dismissed.

[1563] The Complainants say that Rule 26(2)(d) of the Tribunal's *Rules of Practice and Procedure* requires that, if a respondent applies to dismiss a complaint pursuant to s. 27 of the *Code*, it must do so within 30 days from when the information came to its

attention. This application was filed on October 13, 2011, but the Respondents did not pursue it until the conclusion of the oral evidence in December 2011.

[1564] Generally, the Complainants say the information forming the basis of this application has been known to the Respondents for more than 30 days and/or is not credible. For example:

- The surreptitious recordings relied on by the Respondents, to support their application to dismiss, have been known to them since 2005 and 2009. Further, the Respondents filed an application to have the 2009 recordings excluded, which was denied in part;

- The evidence gained in this proceeding has been used in other proceedings with the knowledge of the Respondents, and the Complainants suggest, on the consent of the parties, and occurred more than 30 days prior to the Respondents renewing their application to dismiss, at the end of the hearing in December 2011;

- Dr. Bhullar's credibility is an issue for the Tribunal to assess. Dr. Bhullar's alleged misconduct cannot form the basis to dismiss the entirety of this Complaint, involving a number of Complainants; and

- Dr. Rana's allegations that Dr. Bhullar had stolen privileged and/or confidential information are based on Dr. Rana's evidence which was not credible. This allegation is the only allegation that falls within the 30-day if October 13, 2011 is used as the date from which the 30 days is counted.

[1565] In response, the Respondents say:

- The alleged theft of privileged and/or confidential information occurred within 30 days of the filing of the application and reveals a pattern of conduct indicating that it would not further the purpose of the Code to deal with the Complaint on its merits;

- Dr. Rana's evidence, viewed in its entirety, is credible; and

- The cumulative conduct of the Complainants and their abuse of the Tribunal's processes suggest that this Complaint should be dismissed.

Analysis

[1566] The authorities relied on by the parties are set out in their submissions and will not be repeated here.

[1567] I have considered the authorities and the parties' submissions. I dismiss the Respondents' application, including those parts of it that were untimely, for the following reasons:

- Dr. Bhullar's credibility is assessed elsewhere in this decision. While I found Dr. Bhullar's evidence was not credible on some issues, I do not find this rose to the level of an abuse of the Tribunal's processes. Further, I do not find that any concerns with respect to his credibility was a sufficient basis upon which to dismiss the entirety of the Complaint;

- With respect to the issue of whether the Complainants, and in particular Dr. Bhullar, misled the Tribunal with respect to the identity of Mr. Singh, Mr. Gurdev Singh Somul gave evidence on April 26, 2010 and testified that he was Mr. Singh and the person who had dealt with the Walkers. Further, had the Respondents wanted to have the evidence of the Walkers tendered before they filed this application, they could have dealt with this issue when they started to lead their evidence in the fall of 2010. Instead, they waited until September 2011 to call the Walkers, who spoke to the identity of Mr. Singh;

- The Respondents were fully aware of the recordings made by Ms. Pendragon in 2005 and 2009. They had more than sufficient time to file an application to dismiss on this basis;

- I was not persuaded that Dr. Bhullar, or others, attempted to intimidate Dr. Rana either before, or while, he was giving his evidence (see *Brar (No. 20)*);

- The Respondents say that Dr. Bhullar stole privileged and/or private communications and this was an improper conduct. They rely mainly on the evidence of Dr. Rana to support their assertions. Although this part of the application may be timely, I did not find Dr. Rana's evidence credible. The Respondents' evidence was conflicting as to whether the documents in question were "stolen". Further, the Respondents failed to identify which documents they believed to be privileged and/or private. They had an obligation to do so if they intended to rely on this argument to support their application. (see *Brar (No. 20)* and Brar *(No. 21)*); and

- The conduct of the Complainants has been addressed throughout this decision, including issues of disclosure of information during the hearing. I am not persuaded that the alleged improper conduct, viewed collectively, provides a sufficient basis for this Complaint to be dismissed, in its entirety, without considering the merits of it.

[1568] The Respondents' application to dismiss the Complaint pursuant to s. 27(1)(d) of the *Code* is denied.

XIV COSTS

Introduction

[1569] Both the Complainants and Respondents seek costs pursuant to s. 37(4) of the *Code*. They both allege that the other engaged in improper conduct during the course of this human rights proceeding that would warrant an award of costs.

[1570] Section 37(4) of the *Code* provides:

> The member or panel may award costs
>
> (a) against a party who has engaged in improper conduct during the course of the complaint, and
>
> (b) without limiting paragraph (a), against a party who contravenes a rule under section 27.3(2) or an order under section 27.3(3).

Submissions

[1571] Generally, the Complainants assert that costs should be awarded as a result of the following improper conduct on behalf of the Respondents:

- The failure of the BCVMA to provide full, timely and accurate disclosure of documents and notes such as Council minutes and Ms. Osborne's notes;
- Ms. Osborne's diary of appointments was not disclosed in its entirety;
- The BCVMA did not engage in an electronic capture of the BCVMA computer hard drives until after the hearing had commenced, resulting in additional and unnecessary work for the Complainants, including emails being incomplete when first introduced;
- The BCVMA failed to disclose documents from Dr. King-Harris regarding the Walkers' file until he testified, which was after Dr. Bhullar had testified about this complaint;
- The BCVMA did not accommodate Dr. Bhullar's request for adjournments of his disciplinary proceedings despite the fact that he was testifying before the Tribunal and the charges giving rise to those

disciplinary proceedings were dated from 2003, 2004 and 2005 and not urgent;

- The BCVMA intimidated witnesses and punished them for testifying. First, while Dr. Bajwa was preparing to testify, his clinic was subject to an unscheduled inspection based on a complaint that was nine months old and Dr. Bajwa had been subject to an inspection in the interim. Second, when Mr. Bains was set to testify before this Tribunal, the BCVMA filed a complaint against him with his professional regulatory body;

- The BCVMA disclosed information that was provided to it in furtherance of settlement discussions, at the direction of the Tribunal, and which the Complainants alleged was privileged. This disclosure included parts of Dr. Grewal's evidence by Dr. Snopek, the President of Council at the time, and was done to further undermine Dr. Grewal's complaint and to make him the object of ridicule. The Complainants say that this disclosure was a form discrimination based on disability and was done in retaliation for Dr. Grewal having filed his human rights complaint;

- Ms. Osborne engaged in discussions with Dr. Grewal while he was hospitalized and was represented by a lawyer in these proceedings;

- Dr. Bhullar was advised that he could not use the title "Doctor" although this title relates to his education achievements not his registration with the BCVMA;

- Ms. Osborne misled the Tribunal during the course of her evidence, including her evidence with respect to Dr. Johar's complaint involving AR;

- Ms. Osborne's actions with respect to asking Dr. Johar's employee to surreptitiously copy Dr. Johar's client files, and his personal BCVMA file, for the BCVMA, was improper and her actions in calling Dr. Johar's clients without his knowledge about some of these files was also improper; and

- The BCVMA unnecessarily delayed the hearing of this Complaint by seeking adjournments in the face of its failure to address its funding issues in a timely manner.

[1572] The Respondents argue that costs should be awarded against the Complainants for the following reasons:

- Dr. Bhullar gave "recklessly false" evidence before the Tribunal, which was proven to be false. Other witnesses called by the

Complainants gave false testimony, for example Victor Bains and Mr. Somul;

- Dr. Bhullar claimed that many other witnesses had lied while giving their evidence;
- Dr. Johar gave "false and reckless" evidence and made various false allegations throughout this proceeding and his dealings with the BCVMA;
- The Complainants were allegedly in possession of "stolen emails", including Dr. Rana's emails;
- The Complainants used materials disclosed in this proceeding for purposes other than to pursue the Complaint;
- The Complainants failed to disclose all relevant documents and destroyed evidence that did not support their claim of discrimination, such as the videotapes made by Ms. Pendragon;
- The Complainants made malicious, false and irrelevant allegations and the motivation behind doing so was not based on a genuine belief that the BCVMA had engaged in discriminatory conduct;
- The Complainants made false and malicious allegations against individuals, including Ms. Osborne, Dr. King-Harris, Dr. Roberts and other staff and volunteers of the BCVMA; and
- The Complainants underestimated the time for the cross-examination of the Respondents' witnesses which unnecessarily prolonged the hearing of the Complaint.

Case Law

[1573] The Tribunal had noted that improper consult need not be intentional but intention may be relevant in determining if improper conduct has occurred: *McLean v. B.C. (Min. of Public Safety and Sol. Gen.) (No. 3)*, 2006 BCHRT 103, para. 8; *Dyson v. University of Victoria*, 2009 BCHRT 209, para. 97.

[1574] The Tribunal had determined that improper conduct included the following:

- repeated breach of a rule or order of the Tribunal and/or conduct that has a significant and negative impact on the integrity of the Tribunal's processes and/or the other participants: *Ghinis v. Crown Packaging Ltd. (No. 2)*, 2002 BCHRT 38; *McLean*, para. 8; *Neuls v. Ann Davis Transition Society*, 2007 BCHRT 5, para. 26-29; *Stone v. British*

Columbia (Ministry of Health), 2008 BCHRT 96 para. 56-57 and 59-61; *Azagrar v. Nicholas Shaw Ltd.*, 2007 BCHRT 269, paras. 23-24; *Peterson v. Kinsmen Retirement Centre Association and Kines (No. 4)*, 2008 BCHRT 149, paras. 26- 28; *Samuda v. Olympic Industries*, 2009 BCHRT 65, para. 47 and 55; *C.S.W.U. Local 1611 v. SELI Canada and others (No. 9)*, 2009 BCHRT 61; *Miller v. Treasure Cove Casino and others*, 2009 BCHRT 126, paras. 110-111; *Horn v. Norampac Burnaby, a Division of Cascades Canada Inc.*, 2009 243, para. 103; *Ford v. Peak Products Manufacturing Inc.*, 2010 BCHRT 155, para. 192;

- disruptive and disrespectful conduct during the hearing: *Stone*, para. 63-70;

- the removal and/or the destruction of Tribunal's and/or a respondents property: *Fougere v. Rallis and Kalamata Greek Tavern*, 2003 BCHRT 43; *Stone*, para. 73-77;

- providing untruthful evidence about central aspects of the complaint in order to mislead the Tribunal: *Hendricks v. Long & McQuade Ltd.*, [1999] B.C.H.R.T.D. No. 4, paras. 27-30; *Bains v. Metro College Inc. and others (No. 2)*, 2004 BCHRT 7, paras. 14-15; *Jiwany and Jiwany v. West Vancouver Municipal Transit*, 2005 BCHRT 172, para. 129; *Stone*, para. 81; *Horn*, para. 107-109;

- making disrespectful and inflammatory remarks about another participate and/or the Tribunal: *Stopps v. Just Ladies Fitness (Metrotown) and D. (No. 4)*, 2007 BCHRT 123; *Bakhtiyari v. British Columbia Institute of Technology*, 2007 BCHRT 320; *Azagrar*, para. 24; *Miller*, paras. 111; and

- unnecessary expenditure of resources by an opposing party: *Dyson v. University of Victoria*, 2009 BCHRT 209, para. 91-94.

[1575] The Tribunal may assess a party's actions separately or cumulatively to determine if an award of costs pursuant to s. 37(4) of the *Code* should be ordered: *Stone*, paras. 87.

[1576] The Tribunal does not have the authority to award legal costs pursuant to s. 37(4) of the *Code* to a successful party: *Kerr v. Boehringer Ingelheim (Canada) (No. 5)*, 2010 BCHRT 62, paras. 71; *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53; *C.S.W.U. Local 1611(No. 9)*, para. 29-30.

Analysis

[1577] I have decided not to award either party costs pursuant to s. 37(4) of the *Code*.

[1578] Both parties engaged in conduct during the course of the processing of this Complaint that the other considered to be improper. This was a long and difficult process for everyone involved and it was not surprising that distrust developed and each party saw the other as engaging in improper conduct, whether or not objectively this was the case. There was some conduct, which I viewed as improper, but both parties engaged in such conduct and, on balance, I find an award to either party would not further the purposes of the *Code*, or serve the purpose of s. 43, or lead to a more positive relationship between the parties.

[1579] I will now address the parties' submissions.

[1580] Both parties delayed in providing full and complete disclosure in this proceeding. This was not surprising, given the breadth of the arguably relevant documents, and the attempts to obtain such documents from various sources and to disclose them in a manner that was organized and beneficial to the parties and, subsequently, to this Tribunal. It was my view that the parties did their best to provide full and timely disclosure.

[1581] I did not find that the BCVMA engaged in improper conduct when it failed to initially produce all emails that were subsequently produced after it conducted an electronic capture.

[1582] I make no finding about the Inquiry Committee's decisions not to adjourn its proceedings because Dr. Bhullar was involved in this human rights processing. The events giving rise to the disciplinary complaints, which were the subject of Inquiry 05-02, had been outstanding for a significant period of time which was also true for this Complaint.

[1583] I found that the BCVMA conducted an unscheduled inspection of Dr. Bajwa's clinic when he was preparing to testify before this Tribunal, which constituted retaliation contrary to the *Code*. Despite the BCVMA's attempt to suggest that the unscheduled inspection was unrelated to Dr. Bajwa's preparation, I did not find this persuasive. Such conduct was improper. The BCVMA filed a complaint with Mr. Bains' regulatory body, regarding his evidence at Dr. Bhullar's Inquiry, before he testified before me. He only learned of the BCVMA's complaint when he called the regulatory body to discuss what he should do, having received an Order to Attend to give evidence before this Tribunal. I

found the BCVMA's steps in this respect problematic but, without further evidence about the processing of the BCVMA's complaint and the purpose for which it was filed, I make no finding that it was improper.

[1584] I find that the BCVMA's disclosure of a settlement proposal, discussions about Dr. Grewal and negative commentary made by Dr. Snopek about the Tribunal, and its processes, improper.

[1585] I agree that the BCVMA delayed this hearing as did the Complainants. This was a very long process and delays could be expected for a variety of reasons. Both parties underestimated the time that they required for the introduction of evidence in this proceeding.

[1586] The Respondents generally argued that some of the Complainants' witnesses lied when giving evidence before this Tribunal. I have dealt with this issue above, and for the most part, I have disagreed. I have found that both Drs. Bhullar and Johar engaged in inappropriate, improper and unnecessary conduct. However, I was not persuaded that there was no basis for their concerns. Although I agree that they could have addressed their concerns more appropriately, their concerns, when raised, were not addressed and, as a result, escalated. The BCVMA could have taken steps to have an outside and independent person deal with Drs. Johar and Bhullar but it chose not to do so. In any event, both Drs. Bhullar and Johar acted appropriately and respectfully before this Tribunal. In my view, the Complainants did not give untruthful evidence with respect to the central aspects of this Complaint.

[1587] I did not find Dr. Rana's evidence credible nor do I accept that Dr. Bhullar stole Dr. Rana's emails or the emails of anyone else.

[1588] I did not find that the Complainants failed to disclose all relevant documents or that they destroyed relevant documents. Given the documents disclosed in this proceeding, I would find it surprising if everything was not disclosed. I accept that they did not retain all of Ms. Pendragon's recordings but I was not persuaded that this was improper. I accept that some of the recordings were not helpful to them. However, it does not appear that those recordings were made with respect to individuals involved in the BCVMA, except for those discussed throughout this Decision.

[1589] I do not find that the Complainants made malicious, false and irrelevant allegations or that their motivation behind their allegations was based on anything other than a genuine belief that the BCVMA had engaged in discriminatory conduct.

[1590] Having considered all the evidence, including the issues that arose during the processing of this Complaint, I do not find that the conduct of either party, considered in its totality, was improper such that either party should be entitled to an award of costs pursuant to s. 37(4) of the *Code*.

XV SUMMARY OF ORDERS

[1591] The complaint under s. 7 of the *Code* is dismissed under s. 37(1) of the *Code*.

[1592] The complaint under ss. 8 and 14 of the *Code*, on the grounds of ancestry and political belief, is dismissed under s. 37(1) of the *Code*.

[1593] Under s. 37(2)(a) of the *Code,* I order the BCVMA to cease the contravention and to refrain from committing the same or a similar contravention.

[1594] Under s. 37(2)(b) of the *Code*, I declare that the conduct complained of, and similar conduct, was discrimination pursuant to s. 8 and 14 of the *Code* on the grounds of race, colour, and place of origin, and retaliation contrary to s. 43 of the *Code*, as set out in this Decision.

[1595] Under s. 37(2)(c)(i) of the *Code*, I order the BCVMA to:

a) take the steps outlined in paragraphs 1362 to 1365 to review the disciplinary complaint files that resulted in the imposition of penalties on the Complainants, specifically, Dr. Bajwa (04-025, 04-049, 06-067), Dr. Sharma (03-125a, 04-027), Dr. Jagpal (03-104, 03-131), Dr. Brar (04-032, 04-037), and Dr. Johar (04-111, 05-012, 05-035);

b) place this Decision on the disciplinary complaint files of Drs. Bajwa, Sharma, Jagpal, Brar, Johar and Bhullar;

c) publish the Summary of Decision once in each of its publications sent to its membership;

d) post on its website that this Decision is now available and to provide a link to the Tribunal website;

e) develop, if it has not already done so, an anti-discrimination policy and to post it on its website within six months from the date of the release of this Decision;

f) provide a one-day training program for its staff, contractors, volunteers and various committee members, including Council, within six months from the date of the release of this Decision, which will have specific components targeting race-based discrimination and those issues arising with respect to persons with disabilities, including the process for accommodating such disabilities;

[1596] Under s. 37(2)(d)(ii) of the *Code*, I order the BCVMA to pay compensation for wages or salary lost, and expenses incurred, by the contravention, to:

a) the Complainants, the costs associated with obtaining the expert report of Dr. Marshall and the associated costs of having him attend to give evidence before the Tribunal;

b) Dr. Joshi, $3,787 for expenses incurred as a result of retaining Mr. Price and Mr. Nundal;

c) Dr. Joshi, those amounts paid to Mr. McKendrick less any amounts already received;

d) Dr. Joshi, $850 as compensation for expenses for attendance at court on September 13, 2007;

e) Dr. Joshi, $1,138.46 for expenses incurred to attend to give evidence before this Tribunal;

f) Dr. Joshi, $39,505 for lost wages plus any tax gross-up that results due to the payment of these monies in one lump sum;

[1597] Under s. 37(2)(d)(iii), I order the BCVMA to pay compensation for injury to dignity feelings and self-respect, as follows:

a) Dr. Bhullar, $30,000;

b) Dr. Bajwa, $35,000;

c) Dr. Bhatia, $15,000;

d) Dr. Brar, $10,000;

e) Dr. Jagpal, $7,500;

f) Dr. Johar, $30,000;

g) Dr. Parbhakar, $10,000:

h) Dr. Benipal, $10,000;

i) Dr. Sharma, $2,000;

j) Dr. Hans, $5,000;

k) Dr. Joshi, 25,000;

l) Dr. Sidhu, $10,000; and

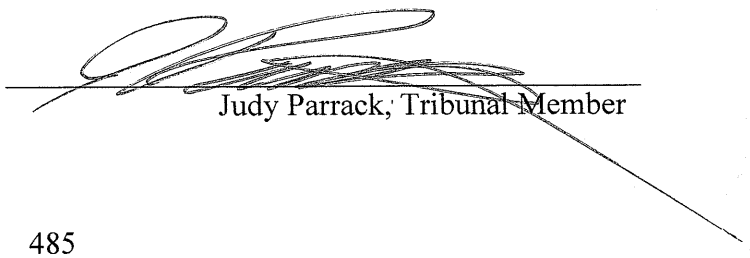
m) Dr. Grewal, $30,000.

[1598] I order the BCVMA to pay pre-judgment interest on all amounts for expenses and lost wages, calculated from the date on which the expense was incurred and, in the case of lost wages, from the last date on which the award was made, and post-judgment interest on all compensation, both at the banker's prime rate published by the British Columbia Supreme Court Registry.

[1599] The Tribunal will retain jurisdiction respecting the expenses related to the expert report of Dr. Marshall and the legal expenses paid by Dr. Joshi to Mr. McKendrick.

[1600] The parties' applications for costs are denied.

[1601] The Respondents' application to dismiss the complaint under s. 27(1) of the *Code* is denied.



Judy Parrack, Tribunal Member