

Schedule “A”

APPLICATION – Bahram Jam v. the College of Physiotherapists of Ontario et al.

A. OVERVIEW

1. The applicant, Bahram Jam, is a leading Canadian physiotherapist with 29 years of experience as a practitioner and educator. He is also a racialized person who immigrated to Canada from Iran in 1979.
2. Mr. Jam makes this application under sections 6 and 8 of the *Human Rights Code* (“Code”), having experienced discriminatory harassment and reprisal by his professional regulator – the College of Physiotherapists of Ontario (“CPO”) – and by related parties.
3. Mr. Jam has been a public critic of the CPO and other Canadian physiotherapy regulators for their treatment of internationally trained physiotherapists. After successfully bringing attention to the human rights violations and unequal treatment of this vulnerable segment of the profession, Mr. Jam became a target. Although Mr. Jam was far from the only prominent physiotherapist to voice such concerns, Mr. Jam was the only racialized person among the group. And he was singled out.
4. On April 20, 2021 Mr. Jam received a letter from the Registrar of the CPO, Rod Hamilton, which threatened Mr. Jam with a complaint if he did not retract his public statements and apologize. Mr. Hamilton alluded to the possibility of a formal complaint against Mr. Jam, due to concerns having been raised by the Registrars of the British Columbia and Québec regulators.
5. While the CPO eventually abandoned the threat, Mr. Jam was warned that he may nonetheless face a complaint investigation in the future: “At this time, I will not be appointing an investigator to make further inquiries regarding this matter however should

the College continue to receive concerns regarding your conduct I may be required to revisit my decision in this regard.”

6. Professional regulators hold enormous power over the careers and livelihoods of their subject professionals. It is disturbing that Mr. Jam became the target of threats and intimidation because of comments about the human rights of other professionals. This behaviour, by a professional regulator, chills speech and discourages advocacy aimed at equity issues within the profession. As such, the respondents’ conduct violated the *Code*.

B. FACTS

I. The Parties

7. The applicant, Mr. Jam, has been practicing as a physiotherapist in Ontario for 29 years. Born in Iran, he is an immigrant and a racialized person. He holds a clinical master’s degree and a doctorate in physiotherapy. In addition to working at a private practice, Mr. Jam is deeply involved in continuing education for physiotherapists, having taught over 1,000 post-graduate clinical courses. Recently, he received a medal of distinction for his impact on physiotherapy. The Registrar of the CPO described Mr. Jam as “a leader in the profession.”

8. The respondents – the CPO, the College of Physical Therapists of British Columbia (“CPTBC”), and l’Ordre professionnel de la physiothérapie du Québec (“OPPQ”) – are the governing bodies for physiotherapists in Ontario, British Columbia, and Quebec, respectively. Mr. Jam is a registrant-member of the CPO, as is required to practice physiotherapy in Ontario. Together with the remaining provincial and territorial physiotherapy regulators, the CPO, CPTBC, and OPPQ form “the Colleges” referred to in this Schedule.

9. The respondent, Canadian Alliance of Physiotherapy Regulators (“CAPR”), is a credentialing and assessment agency created by its members, which are the Canadian

provincial and territorial physiotherapy regulators, including the CPO, CPTBC, and OPPQ. CAPR administers a Physiotherapy Competency Exam ("PCE") for both Canadian physiotherapists and internationally-trained physiotherapists.

10. The respondent, Dianne Millette, is the Registrar of CPTBC. She is also Vice President of CAPR, and is additionally the chair of the governance & nominations committee of CAPR.

11. The respondent, Denis Pelletier, is the Registrar of OPPQ. He is also a director of CAPR, and an ex-officio member of the governance & nominations committee of CAPR.

II. The Current State of the Physiotherapy Profession

The Profession Faces a Crisis of Legitimacy

12. The physiotherapy profession in Canada has been in a state of crisis for several years. While communities face a shortage of therapeutic care, a growing pool of physiotherapists is being prevented from practicing due to their Colleges' mismanagement of the licensing process.

13. As a self-governing profession, it is the Colleges' responsibility to regulate physiotherapy, including providing pathways to licensing. In Ontario, the CPO oversees physiotherapists practicing within the province. Its authority derives from the *Physiotherapy Act*, 1991, SO 1991, c. 37 and the *Regulated Health Professions Act*, 1991, S.O. 1991, c. 18. As part of its mandate to protect the public, the CPO is authorized to set and approve examinations required to become a registered physiotherapist in the province. The same is true for the other provincial and territorial physiotherapy Colleges, including CPTBC and OPPQ.

The Colleges Mismanaged Their Own Licensing Process

14. The CPO has misgoverned the registration process for physiotherapy candidates. Though the legislative framework makes examinations mandatory, nothing in the legislation explains what form the exam should take. It is left open to the CPO to set or approve competency examinations and procedures. The Colleges have decided that CAPR's written and practical exams adequately test competency.

15. The Colleges chose to authorize CAPR to administer the mandatory examinations, and chose to stand by and leave physiotherapy candidates waiting. The practical exam continues to create barriers to licensing. Each attempt at the PCE costs a candidate \$2,800 (\$1,000 for the written component and \$1,800 for the practical exam). Among countries that regulate physiotherapy, Canada is the only one to require a practical examination on top of degree requirements to complete clinical work. Physiotherapists in Canada licensed before 1995 were not required to complete a practical exam. Indeed, physiotherapists in Quebec still are not required to take the practical exam.

16. Recent studies have also questioned the ability of CAPR's practical exam to assess competency in physiotherapy candidates. Mr. Jam is among the thousands of experienced, celebrated physiotherapists who were licensed before the College implemented the practical exam. Indeed, Mr. Jam himself later acted as an examiner for the PCE. There is nothing to suggest that pre-PCE licensees are less capable or competent. Like Mr. Jam, physiotherapists trained in Canada today complete many hours of clinical work as part of their post-secondary education. Unlike Mr. Jam, they are now required to additionally take an expensive – and likely irrelevant – exam.

The Discriminatory Mismanagement Disproportionately Affects Internationally-trained Candidates

17. The mismanagement and costs of the PCE primarily affect marginalized candidates. The last time CAPR had administered the practical component of the PCE

was in November 2019. CAPR then cancelled the next scheduled exams that were planned for June and November 2020. CAPR cancelled the virtual iteration of the exam in March 2021 and again in September 2021, and no other dates have been set for future exams at that time.

18. This means that candidates wishing to register are unable to do so. The Colleges have not come up with any alternatives that would address the immediate concerns of candidates and the public. The requirement for a practical exam has discriminatory side effects. Without alternative pathways to licensing, candidates are unable to work.

19. The most serious impact of the additional requirement of the practical exam is felt by internationally-trained physiotherapists:

- They are required to have their foreign degrees assessed when applying to register in Canada, causing delay;
- The mandatory credentialing assessment costs \$1,088;
- They must pay at least \$2,800 for the PCE, if they take it only once;
- If they fail, they must pay this fee again; and
- Since 2019, taking the exam again has not been an option.

20. Now, internationally trained physiotherapists have no pathway to registration. They are unable to work and become members of their profession despite their years of hard work and growing expenses. Since the Colleges have not implemented a solution, many internationally-trained physiotherapists are additionally at risk of having their immigration status revoked.

The Applicant Spoke Out on Behalf of his Internationally-Trained Colleagues

21. Earlier this year, Mr. Jam spoke out about the Colleges' mistreatment of internationally-trained physiotherapists. On March 31, 2021 he sent an email to his newsletter subscribers in which he was critical of CAPR for cancelling a key aspect of the

licensing process – the PCE – and effectively stranding hundreds of physiotherapy candidates who could not complete their licensing or earn a living.

22. One of Mr. Jam's main concerns was the impact on internationally-trained physiotherapists, many of whom are racialized and face serious immigration consequences as a result of being unable to complete the registration process. Numerous internationally-trained candidates have contacted Mr. Jam, seeking help with their increasingly dire financial, mental health, and immigration situations. Desperate candidates reached out to him as a leader in the profession, and one who shares the experience of racialized immigrants to Canada.

23. In Mr. Jam's sincere view, the Colleges had abandoned their responsibilities and over a thousand physiotherapy candidates across the country. Internationally-trained physiotherapists have had no options to become registered since the end of 2019 – almost two years. This situation is caused by the failure of the Colleges and CAPR to provide a pathway to licensing.

24. In his email to his subscribers, Mr. Jam shared his concerns about the administration of the practical component of the PCE, and a link to a petition to cancel the PCE altogether.

III. Discrimination and Reprisal

The Respondents Targeted Mr. Jam

25. Among all prominent physiotherapists who have spoken up about these issues, Mr. Jam was singled out for his advocacy. On April 20, 2021, the Registrar of the CPO, Rod Hamilton, sent a letter to Mr. Jam. He warned Mr. Jam that the Registrars of the British Columbia and Quebec Colleges had concerns about his statements being unprofessional. He was told that he must publicly apologize or "they will proceed with a formal complaint and the College will be required to investigate these concerns."

26. Many other established physiotherapists spoke out about the issue, without reprisal. Mr. Jam is far from the only one publicly commenting on the licensing crisis. However, Mr. Jam is racialized and an immigrant. And only Mr. Jam noted the severity of the impact on internationally-trained physiotherapists, in particular.

27. Although Mr. Jam has not wavered in his commitment to speaking out against the injustices faced by physiotherapy candidates, he now fears that acting with integrity may risk his career and his membership in his profession.

The Colleges Continue to Fail to Protect the Public

28. Meanwhile, internationally trained physiotherapists remain in a precarious situation. The need for registered physiotherapists continues to grow. The status of the PCE remains unclear. As regulatory bodies charged with protecting the public, the respondents should welcome efforts by its registrant-members to improve physiotherapy accreditation and registration.

29. Instead of addressing their urgent and live issues, the Colleges instead focused their efforts on silencing Mr. Jam. This was a clear abdication of their duties to ensure, as a matter of public interest, that the public has access to enough qualified physiotherapists.

C. BREACHES OF THE CODE

30. The respondents breached s. 6 of the *Code*, which protects members of self-regulating professions from discrimination in the context of membership in that profession. Physiotherapy is a self-governing profession, and membership in the CPO is a requirement for any physiotherapist who wants to practice in Ontario.

31. The CPO, together with the British Columbia and Quebec Registrars, discriminated against Mr. Jam on the basis of his race, ancestry, place of origin, colour, and ethnic origin, by targeting him for speaking out about the PCE. The respondents singled out Mr. Jam and threatened his membership in the profession if he did not publicly apologize. This was a discriminatory attempt to silence and discredit a well-respected and outspoken professional.

32. The respondents also breached s. 8 of the *Code* in that they retaliated against Mr. Jam for speaking up about the discriminatory treatment of his colleagues. The respondents retaliated against Mr. Jam by threatening him with a formal investigation, and it was an act of reprisal and intimidation to make the retraction of the complaint contingent on a public apology from him.

33. The conduct of the respondents has caused Mr. Jam severe distress and anguish. The decision to advance this complaint was not made lightly, as Mr. Jam understandably fears further reprisal for speaking out.

34. However, for Mr. Jam, the worst consequence of the respondents' actions is that other, less fortunate physiotherapists and physiotherapy candidates are now terrified of speaking about their experiences, fearing reprisal.

D. RELIEF SOUGHT

35. Mr. Jam respectfully requests:

- a. a public apology from the CPO and CAPR;
- b. compensation for mental distress and injury to dignity in the amount of \$25,000, donated by the CPO and CAPR to the Physiotherapy Foundation of Canada, to promote research;

- c. an order mandating unconscious bias training for staff of the CPO and of CAPR;
- d. an order for a third-party, independent audit into the CPO's compliance with the *Code* generally;
- e. an order that the CPO set aside a portion of the CPO's funds to create an independent peer support network for physiotherapy candidates, with a special branch for internationally trained students;
- f. for an external auditor to review the relationship between the CPO and CAPR for issues of transparency, impartiality, and fairness.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.