

INVESTIGATION COMMITTEE

of the
COLLEGE OF REGISTERED NURSES OF SASKATCHEWAN

-and-

LEAH MCINNES

DECISION of the DISCIPLINE COMMITTEE

Legal Counsel for the Investigation Committee:	Titli Datta and Roger Lepage
Legal Counsel for Leah McInnes:	Andre Memauri and Glenn Blackett
Legal Counsel for the Discipline Committee:	Darcia Schirr, K.C.
Chairperson for the Discipline Committee:	Christine Barlow

Date of Hearing: **October 10 through 12, 2023 inclusive**

Submissions Heard: November 9, 2023 and November 28, 2023

Location: By Video Conference

Date of Decision: **January 12, 2024**

I. INTRODUCTION

1. The Discipline Committee of the College of Registered Nurses of Saskatchewan (the “College”) convened to hear and determine allegations of professional misconduct against Leah McInnes, Registered Nurse #0042301. The Discipline Committee is established pursuant to section 30 of *The Registered Nurses Act*, 1988 (the Act).

2. The allegations against Ms. McInnes are outlined in a Notice of Hearing dated March 28, 2023, charging her with professional misconduct contrary to sections 26(2)(l) and (q) of the Act. The Notice also alleges a breach of numerous provisions of the *Code of Ethics for Registered Nurses* (2017), *Registered Nurse Practice Standards* (2019) and *Registered Nurse Entry-Level Competencies* (2019).

3. The Notice of Hearing sets out the following charges:

1. You have committed an act of professional misconduct as per section 26(2)(l) and (q) of *The Registered Nurses Act*, 1988, in that you identified yourself as a Registered Nurse (RN) on social media while posting disinformation and/or misleading information surrounding vaccine mandates and vaccine passports, and therefore failed to comply with the Code of Ethics of the Association, and contravened provisions of *The Registered Nurses Act*, 1988, and the SRNA bylaws.

(a) On September 1, 2021, you participated in an anti-vaccine mandate and anti-vaccine passport protest outside a public hospital in Northern Saskatchewan. You carried a sign that said, “RN against Mandates and Vax Passports”. A photograph was shared on your social media pages and on the Global Media Facebook page.

(b) On multiple occasions, you posted and re-posted others’ posts on your social media pages against COVID-19 vaccination mandates, and posted and re-posted anti-vaccination messages while publicly promoting yourself as an [sic] RN. You admitted to the postings and re-postings.

a. Some of your posts stated:

i. “People are seeing the damage already happening far and wide from medical coercion.”

ii. “I will continue to advocate for the removal of these insanely unjust mandates and invasion of private medical information papers, and the division it is causing.”

iii. "I often wonder if our country had had a different approach than what it's had over the past 19 months, if we could have perhaps avoided all the collateral damage and death that has occurred due to the non scientifically proven measures this country has implemented."

iv. "If your boss tells you that you must submit to them and be penetrated in a number of ways in their authoritative way,,[sic] coerced through threat, manipulation, ultimatum, shaming etc, what do we normally call this?"

v. "Yesterday, contrary to what the local news put out in their paper and on social media, a peaceful rally took place because citizens are not wanting C V's mandated nor having C passports (note that I have to short hand the words so I don't get censored)."

vi. "For those against covid vaccine mandates or covid vaccine passports, come stand with us."

vii. "There are many many nurses across this beautiful country who are standing up against having a jab mandated to continue with life as we know it. We are Standing up for freedom to chose what goes into the body or what one doesn't want in their body. Not just for ourselves, but to advocate for our patients to have choice for their medical freedom and bodily autonomy without facing coercion no matter the circumstance."

viii. "We must have choice without coercion. Coercion of any medication or treatment goes against the Nuremburg Code among other things."

ix. "It doesn't matter whether you've had a jab or not, you all have a voice and the freedom to chose what's best for you [sic] health."

b. Some of the posts re-posted and shared by you on social media are:

i. A social media post making the following statements inter alia (in sharing the post, you prefaced it with the words "This. All of this"):

(a) "For those oppose [sic] to vaccination mandates and vaccine passports – I implore you to write to your MLAs."

(b) "Vaccinated or unvaccinated – we all know deep down this is wrong and coercive."

(c) "Vaccinated or unvaccinated - both are showing to carry equal viral loads and as such can both easily transmit virus (I can provide references for same per request). So this idea of "protecting others" and the vulnerable people we care for from transmission by getting vaccinated as argument for mandates simply does not logically or scientifically make sense".

- ii. An article with the headline “Freedom prevails: COVID data shows ‘public health’ mandates only harm people”

II. RELEVANT LEGISLATION

4. Section 26 of the Act deals with professional misconduct. Section 26(1) is a general description of professional misconduct. Section 26(2) provides non-exhaustive examples of professional misconduct. The Notice of Hearing does not specifically refer to section 26(1) as it only refers to specific provisions of section 26(2). However, section 26(1) and (2) have to be read together and the Discipline Committee will assess the evidence and the appropriate legal principles within the parameters of both sections.

5. Section 26(1) is as follows:

Professional misconduct

26(1) For the purpose of this Act, professional misconduct is a question of fact but any matter, conduct or thing, whether or not disgraceful or dishonourable, that is contrary to the best interests of the public or nurses or tends to harm the standing of the profession of nursing is professional misconduct within the meaning of this Act.

6. The Notice of Hearing relies on section 26(2)(l) and (q), which is as follows:

26(2) Without restricting the generality of subsection (1), the discipline committee may find a nurse guilty of professional misconduct if the nurse has:

(l) failed to comply with the code of ethics of the association;

(q) contravened any provision of this Act or the bylaws.

7. The Notice also alleges that certain provisions of the *Code of Ethics, Practice Standards and Entry Level Competencies* have been breached. Those provisions are set out at Appendix A.

III. HEARING

8. Ms. McInnes contested the charges.

9. Based on a Verification of Registration Status document dated December 22, 2022 (P1, Tab 3), Ms. McInnes first registered with the College on April 29, 2013. From that date through to November 30, 2021, she was a practicing member. As of December 1, 2021 through to

December 22, 2022, she was an inactive member. No evidence was presented to the Discipline Committee about her current registration status. If Ms. McInnes' current registration status remains inactive, she is still a member of the College subject to investigation and discipline. In any event, there was no objection taken by Ms. McInnes' counsel to the jurisdiction of the Discipline Committee.

10. Over the course of three days, the Discipline Committee heard from a total of four witnesses. The Investigation Committee called two witnesses and Ms. McInnes also called two witnesses. Ms. McInnes did not testify. Each party filed an Exhibit Book and extensive Briefs of Law.

11. The Investigation Committee called the following witnesses:

(a) [REDACTED]

(b) [REDACTED]

12. Ms. McInnes called the following witnesses:

(a) [REDACTED]

(b) [REDACTED]

13. [REDACTED] filed a complaint with the College which resulted in the charges. [REDACTED] and [REDACTED] were qualified to give opinion evidence in areas set out in Statements Re Expertise filed regarding all three expert witnesses.

A. Backdrop to the Charges

14. Charge 1(a) alleges that Ms. McInnes participated in a protest on September 1, 2021. Charge 1(b) does not specify the dates in which Ms. McInnes made her Facebook posts or when she re-posted posts made by others.

15. The Brief filed by the Investigation Committee states that the posts and re-posts were made in September and October 2021. In the Brief filed by Ms. McInnes, Ms. McInnes admits that she made a series of social media posts "between approximately August 2021 and October 11, 2021"

which Ms. McInnes characterizes as “the time frame”. There is no significant dispute between the parties regarding the time frame and the Discipline Committee will accept Ms. McInnes’ characterization of the time frame as August 2021 to October 11, 2021.

16. During the time frame, Canada was dealing with the Delta variant of COVID. As stated in the Investigation Committee Brief, “the Delta variant of COVID was raging”. This was the fourth wave of the pandemic. The health care system in Saskatchewan and across the country was strained with high hospitalization rates, over-run intensive care units and exhausted health care professionals.

17. The Saskatchewan government, like other provincial governments developed and implemented Public Health Orders. The Exhibit Book filed by the Investigation Committee included six Public Health Orders but given the time frame, the Public Health Order dated September 30, 2021 entitled “Public Health Order Proof of COVID 19 Vaccination or Negative Test” would be the only relevant one. The Saskatchewan Government also introduced two sets of regulations passed under *The Saskatchewan Employment Act*. Those were *The Employers’ COVID-19 Emergency Regulations* (P1, Tab 10) and *The Public Employers’ COVID-19 Emergency Regulations* (P1, Tab 11). The Saskatchewan Health Authority, the Universities and the private sector in Saskatchewan developed and implemented policies and protocols (D1, Tabs 5, 7, 8, 9, 13 and 14). The Government of Canada introduced policies requiring COVID vaccination for employees in the federally regulated sector and for travellers on air, rail and marine (D1, Tab 15 and 16). Regarding the federal government, federally regulated employees had to be vaccinated as did travellers on flights and trains and this was the requirement effective October 30, 2021.

18. The lives of individuals in Saskatchewan and across Canada were affected as government policies impacted those attending school, earning a livelihood, operating businesses and seeking to travel. Emotions were running high. Many citizens had different and strong opinions about the utility and impact of government policies and public health measures.

19. It is against that backdrop that Ms. McInnes shared her opinions on social media.

B. Complaint to the College Leading to Investigation and Discipline

20. These proceedings arose as the result of a complaint brought by [REDACTED] who is a registered nurse in [REDACTED]. [REDACTED] testified on behalf of the Investigation Committee.

21. [REDACTED] submitted an on-line complaint to the College on September 16, 2021 (P1, Tab 4). She completed and submitted an on-line complaint form which contained the following statements:

Incident Details

Details of the Complaint/Report

Leah is promoting anti-vaccination, mostly anti mandatory vaccination, and has attended protests outside of Saskatoon City Hospital.

Witnesses

She posts it on her public facebook page.

22. [REDACTED] supplemented the complaint form with a series of screen shots from Ms. McInnes' Facebook page. [REDACTED] confirmed that she sent an email addressed to the College on October 11, 2021 with the subject line "Leah aka anti-vaxxer". The email has a Facebook cover page which says at the top "Leah McInnes". There is a picture of Ms. McInnes with a circle drawn around it and in the circle are the words "We do not consent. Say no to vaccine passports."

23. [REDACTED] has been a registered nurse since 2014. She met Ms. McInnes while they both worked at the [REDACTED] in [REDACTED]. Her time working with Ms. McInnes was brief and she estimated it was less than five shifts. She recalls that Ms. McInnes left [REDACTED] shortly after [REDACTED] started her employment there.

24. [REDACTED] heard her fellow nurses discussing Ms. McInnes' Facebook posts. She was curious so she looked at Ms. McInnes' posts. She did not like and was disturbed by what she read. In her view, it was inappropriate for a registered nurse to make the comments Ms. McInnes made which is why she brought the complaint. P1 Tab 5 pages 84 through pages 102 inclusive contains 18 pages of Ms. McInnes' Facebook posts, re-posts and photographs. [REDACTED] provided those to the College.

25. [REDACTED] recalled that there was a rally outside of a public health building and she saw that rally. She was not asked in either direct or cross-examination what she meant by “a public health building” or when she observed this rally. In direct evidence, [REDACTED] fairly admitted that she did not see Ms. McInnes at any rally but she assumed she participated because of the Facebook posts which Ms. McInnes made where she is holding a sign that reads “RN Against Mandates Vax Passports”. She pointed to a photograph on Ms. McInnes’ Facebook page where she is holding the sign next to an image that reads “Nation Wide Rally September 1, 2021 1 PM” (P1, Tab 5, page 86). She concluded that the Facebook posts were made in September 2021. In her view, the posts showed a distrust in the “mandates” and a registered nurse who is against vaccines caught her attention.

26. In cross-examination, [REDACTED] was asked to identify any reference in the posts where Ms. McInnes said, in effect, “Don’t get vaccinated - it is not safe”. [REDACTED] admitted that there was nothing like that “in so many words” but asking questions about the scientific evidence about vaccines for children to her showed that Ms. McInnes was “sowing doubt about the vaccine and sharing her distrust”. [REDACTED] was asked whether posing questions meant that someone is an anti-vaxxer. She did not directly answer that question but instead responded “she switched the narrative”. She did not agree that the term “anti-vaxxer” is derogatory or disrespectful. She agreed that there is a right to protest and acknowledged that the Code of Ethics allows nurses to protest.

C. Terms used in the charges

27. The Notice of Hearing uses the following terms:

- (a) Disinformation;
- (b) Misleading information;
- (c) Vaccine mandates;
- (d) Vaccine passports.

28. The terms “vaccine mandates” and “vaccine passports” are not defined in any legislation, Public Health Order, government policy or public sector policy. These terms along with the term

“disinformation” have become part of the lexicon of the pandemic. A determination as to what these terms mean is integral to this case.

(a) Disinformation:

29. The Discipline Committee accepts the Oxford Dictionary meanings set out at paragraphs 160 and 161 of the Investigation Committee Brief:

160. The Oxford dictionary meaning of the term ‘disinformation’ is ‘A form of propaganda involving the dissemination of false information with the deliberate intent to deceive or mislead.’

161. The term ‘misinformation’ means ‘the act of giving wrong information about something; the wrong information that is given.’ It is also defined as ‘incorrect and/ or misleading information.’

30. As stated simply in Ms. McInnes’ Brief:

379. Disinformation is intentional misinformation.

(b) Misleading Information:

31. Similarly, the Discipline Committee accepts the Oxford Dictionary meaning set out at paragraph 162 of the Investigation Committee Brief:

‘Misleading information’ refers to ‘giving the wrong idea or impression and making you believe something that is not true.’

(c) Vaccine Mandate:

32. As indicated, “vaccine mandate” is not defined in any legislation, Public Health Order, or policy.

33. The Discipline Committee heard from three experts in this case. Ms. McInnes called [REDACTED] to give opinion evidence. [REDACTED] was qualified to give opinion evidence on, among other things, the meaning of the term “vaccine mandate”. Neither [REDACTED] or [REDACTED] gave evidence on this topic.

34. ██████ stated that “vaccine mandate” is not a term of art in public health or medicine nor is there any single technically correct definition. At page 6 of ██████’ report:

...there are many definitions of the term ‘vaccine mandate’ in use. Most define ‘vaccine mandate’ to mean a policy that requires, either, immunization or an imposed negative consequence such as testing requirements, loss of liberty to engage in various activities like employment, travel, or social gathering, or loss of access to services like restaurants, gyms, and theatres. ‘Vaccine mandate’ does not refer only to a policy whereby irresistible physical or psychological force is applied to vaccinate a person ... Several ‘vaccine mandates’ include exemptions.

35. The Investigation Committee argues that the Discipline Committee should accept the analysis of a legal scholar named Paul Daly who has described the term “vaccine mandate” as a misnomer. At paragraphs 177 and 178 of the Investigation Committee Brief:

177. The lawyer and legal author Daly spoke to the term in the context of the COVID-19 vaccines introduced in Canada in his legal analysis titled *COVID-19 and Canada: The Legal Framework*, 2022 CanLIIDocs 561 (*‘COVID-19 and Canada’*). Daly notes that though the term ‘mandates’ has often been used to describe vaccine policies enacted by Provincial and Federal Governments in Canada, the use of this term is actually incorrect and flawed. Daly notes as follows:

Most recently, governments both federally and provincially have introduced general so-called vaccine mandates, which restrict unvaccinated individuals’ ability to engage in communal activities. Despite their name, these mandates do not compel individuals to become vaccinated and, as such, qualify as suasion rather than imperium (albeit, as I write, the province of Quebec is threatening to impose a ‘tax’ on the unvaccinated, which would be much more coercive).

178. Daly again speaks to the error in using the term ‘vaccine mandates’ to describe policies enacted by the Governments to slow the spread of Covid in *COVID-19 and Canada*, and also linked it to the concept of coercion:

In the Fall of 2021, several provinces and the federal government imposed what have been described as vaccine mandates. However, the term is a misnomer, as these measures did not generally involve the use of the coercive force of law to achieve governmental objectives.

36. The Investigation Committee relies on those comments to argue that Ms. McInnes' social media posts amounted to misinformation and disinformation because her use of the word "mandate" was factually incorrect. The argument is that no one was compelled to undergo mandatory vaccination as there was always a choice and the choice was to show a negative COVID test.

37. The Discipline Committee agrees with Ms. McInnes' counsel that words can have meaning based on common usage. Ms. McInnes' use of the term "vaccine mandate" and/or "vaccine passport" was the one commonly used by media, governments, Saskatchewan universities and employers. While Mr. Daly may be correct in his 2022 article in stating that people have mischaracterized the term, common usage at the material time has to be the guide in this case.

38. As such, the Discipline Committee does not accept the narrow characterization of vaccine mandate provided by the Investigation Committee. The Discipline Committee agrees with this statement from Ms. McInnes' Brief:

32. Nowhere in Canada or, for that matter, anywhere in the world, did any Authority adopt a policy of forcefully vaccinating people against their will. Rather, Vaccine Mandates all deployed less draconian 'incentives' including: the denial of access to employment, education, services, or travel; or the imposition of quarantine, isolation, or testing.

(d) Vaccine Passport

39. This term refers to the requirement to produce proof of vaccination. This is a component of vaccine mandates.

D. An Examination of Ms. McInnes' Posts and Re-posts

40. The Notice of Hearing broadly sets out two charges:

(a) Ms. McInnes' alleged attendance at a "anti-vaccine mandate and anti-vaccine passport protest outside a public hospital in northern Saskatchewan" on September 1, 2021.

- (b) Her posts and re-posts of comments about vaccination mandates and anti-vaccination messages.

The Discipline Committee will address the social media posts first.

41. Charge 1(b) alleges that Ms. McInnes posted and re-posted comments about vaccination mandates and “anti-vaccination messages”. The allegation is that the comments amounted to “disinformation and/or misleading information”.

(i) “Anti-vaccination messages”:

42. Addressing “anti-vaccination messages” first, the only comments identified in the Notice of Hearing that might amount to anti-vaccination messages are these:

I often wonder if our country had had a different approach than what it’s had over the past 19 months, if we could have perhaps avoided all the collateral damage and death that has occurred due to the non scientifically proven measures this country has implemented.

Vaccinated or unvaccinated - both are showing to carry equal viral loads and as such can both easily transmit virus (I can provide references for same per request). So this idea of ‘protecting others’ and the vulnerable people we care for from transmission by getting vaccinated as argument for mandates simply does not logically or scientifically make sense.

43. Read carefully and read in context, the other comments listed in charge 1(b) reflect Ms. McInnes’ opposition to vaccine mandates and vaccine passports.

44. Addressing the comments that might be characterized as anti-vaccination:

I often wonder if our country had had a different approach than what it’s had over the past 19 months, if we could have perhaps avoided all the collateral damage and death that has occurred due to the non scientifically proven measures this country has implemented.

45. There is more to the statement than what is reflected in the Notice of Hearing. After the word “implemented” the post continues “What would .. See More”. What was behind “See More”

was not provided. Further and under the statement is a picture of four women holding Swedish flags. Under the picture is the statement “Freedom Prevails: COVID data shows public health mandates only harm people”. This last comment appears to come with a link to an article. The article was not provided.

46. The Investigation Committee appeared to characterize these comments to mean that “non-scientifically proven measures” referred to the vaccine and that the vaccine itself caused death. Read in context, the Discipline Committee cannot jump to that conclusion. Given the title under the photograph and the reference to “public health mandates” one cannot jump to the conclusion that the suggestion is the vaccine itself was a “non-scientifically proven measure”. The “approach” may mean a number of things including mandatory masks, gathering limits, restricted access to long-term care facilities, etc.

Vaccinated or unvaccinated - both are showing to carry equal viral loads and as such can both easily transmit virus (I can provide references for same per request). So this idea of ‘protecting others’ and the vulnerable people we care for from transmission by getting vaccinated as argument for mandates simply does not logically or scientifically make sense.

47. These comments are the end result of a long stream of comments by Ms. McInnes about sterilizing or sterile immunity of vaccines. She starts that discussion at P1, Tab 5, page 90:

Many people have a preconceived notion that the COVID 19 vaccines provide sterile immunity like some vaccines historically offer ...

48. In his report, [REDACTED] described what sterile immunity means:

Sterile immunity refers to vaccinations (or other therapeutics) that reduce the risk of infection to nearly zero after being vaccinated and being subsequently exposed.

49. Both [REDACTED] and [REDACTED] stated that the COVID vaccines did not produce sterilizing immunity. [REDACTED] testified that even if the vaccine is non-sterile, it has significant benefits. This is exactly what Ms. McInnes said. Ms. McInnes’ comments on this topic were not false or incorrect.

50. [REDACTED] was asked the direct question “Is it true that a person who has received a COVID 19 vaccination will have the same viral load as a person who has not been vaccinated for COVID 19?” [REDACTED] report and his testimony provided the answer which was essentially “yes ... but”. He referred to a study in August 2021 from Provincetown, Massachusetts which showed that there was the same viral load between the vaccinated and the unvaccinated. He went on to say that it is better to look at long-term studies which showed that a decline in viral load happens much quicker in vaccinated individuals. Put another way, a vaccinated person clears the infection faster. Ms. McInnes’ comments about equal viral loads was not false or incorrect.

51. Ms. McInnes’ statement also refers to the effect of vaccines on transmission to others.

52. [REDACTED], in his report and in his testimony, stated that the vaccine showed reduction in transmission in closed settings such as long-term care homes and jails. In his report, he wrote “These data would suggest, while not 100% effective, even in close contact settings with a high risk of transmission, COVID 19 vaccines still had impacts on disease spread.” [REDACTED] was asked two questions about the role of COVID vaccines in stopping infection and transmission. In his report and his testimony, he stated that COVID vaccines did not necessarily stop infection and transmission, and that any effect of the vaccine on transmissibility was small and short lived.

53. Both [REDACTED] and [REDACTED] were eminently qualified and both gave objective helpful evidence. Ms. McInnes’ comments about viral loads and transmissibility were not demonstrably false or incorrect. Ms. McInnes, like all three expert witnesses referred to the role of COVID vaccines in decreasing disease severity.

54. Further a review of all of the posts and re-posts Ms. McInnes made shows that she made positive comments about vaccination. At P1, Tab 5, pages 90 and 91:

While vaccination should most certainly be promoted by our profession, the bottom line is that many people are not actually being presented with a CHOICE ..

That does not mean they don’t have significant merit and have benefits. They just fall short of the ultimate goal of sterile immunity. Vaccination is still a vital part in the fight against this pandemic and should be promoted.

At P1, Tab 5, page 91, Ms. McInnes wrote:

So, ultimately means that the current Covid 19 vaccines greatest job at this time is decreasing disease severity in individuals once they are infected with SARS, CoV2. Not decreasing transmissibility.

55. In considering all of the evidence, the Discipline Committee finds that none of Ms. McInnes' posts and re-posts as listed in the Notice of Hearing amounted to disinformation, misleading information or "anti-vaccination messages". Notwithstanding [REDACTED] characterization of Ms. McInnes as a "anti-vaxxer", a thorough review of her Facebook posts does not bear that out.

(ii) Vaccine mandates:

56. The majority of the posts and re-posts identified in the Notice of Hearing reflect Ms. McInnes' opposition to vaccine mandates and vaccination passports.

57. In reviewing the posts and re-posts set out in the Notice of Hearing and reviewing all 18 pages of her social media posts in the Exhibit Book, Ms. McInnes made clear her opposition to the mandates. She did not encourage or suggest that people should breach the "rules". She said that if people were opposed "come stand with us". She re-posted an entry from someone which encouraged writing to your MLA, the Premier and the Health Minister. The Investigation Committee argued that Ms. McInnes' posts propagated the view that the public should reject any guidance from the government and to view the government and public health authorities as "inherently untrustworthy". There is nothing in the posts either as described in the Notice of Hearing or in their entirety that support that characterization. There is nothing in the posts that would amount to an encouragement that the public should reject vaccines.

58. The Discipline Committee concludes that her statements about vaccine mandates did not amount to disinformation. She expressed her opinion about public health measures and government policy and did so without using conspiratorial language or promoting the public to ignore the mandates. While the Discipline Committee may not agree with her criticisms or the language she used, that does not make her comments disinformation.

E. Participation in a Protest

59. Charge 1(a) states the following:

(a) On September 1, 2021, you participated in an anti-vaccine mandate and antivaccine passport protest outside a public hospital in Northern Saskatchewan. You carried a sign that said, 'RN against Mandates and Vax Passports'. A photograph was shared on your social media pages and on the Global Media Facebook page.

60. The onus is on the Investigation Committee to prove the alleged facts set out in this charge on a balance of probabilities. The Discipline Committee cannot act on assumptions. [REDACTED] fairly admitted that she did not see Ms. McInnes at any rally but she made assumptions based on some of the Facebook posts.

61. The first page of the Facebook posts is a photograph of Ms. McInnes in an office or in a home holding a sign that reads "RN Against Mandates and Vax Passports" (P1, Tab 5, pages 84 and 85). The same photograph is at page 85 and adjacent to the photograph is what appears to be a poster which reads "Nationwide Rally September 1, 2021 1 PM". Above that, Ms. McInnes has posted "Rain or shine see you all there soon ❤️ all are welcome ❤️ for those against COVID vaccine mandates or COVID vaccine passports come stand with us". At page 86 is another photograph of Ms. McInnes holding the same sign and she is outside with trees in the background. Also at page 85 are these statements from Ms. McInnes: "Yesterday contrary to what the local news put out in their paper and on social media, a peaceful rally took place because citizens are not wanting CVs mandated nor having C passports..". This entry does not have a date nor is there information as to where the "peaceful rally" took place.

62. At page 101, Ms. McInnes posted "Nutrien Head Office, Saskatoon 🧡 We stand together, vaccinated and unvaccinated in unity, not division". There are three pictures beneath that post of people standing in lines and most of them appear to be wearing yellow shirts. There is no indication as to where the pictures were taken or whether Ms. McInnes was present.

63. With respect, the only thing that has been proven in charge 1(a) is that Ms. McInnes carried a sign that read "RN Against Mandates and Vax Passports". The content of the sign cannot be characterized as either disinformation and/or misleading information.

64. Even if there was evidence that the facts set out in charge 1(a) were proven, that is not the end of the matter. Participating in a rally would be considered off job conduct. Put another way, participating in a rally is not part of a nurse's job duties. In the recent Saskatchewan Court of Appeal decision in *The College of Physicians and Surgeons of Saskatchewan v. Jesse Leontowicz*, 2023 SKCA 110, the court wrote:

[86] ... As clarified in *Strom*, off-duty conduct may be professional misconduct 'if there is a sufficient nexus or relationship of the appropriate kind between the personal conduct and the profession to engage the regulator's obligation to promote and protect the public interest' (at para 89). The test is whether the impugned conduct was such that it would have a 'sufficiently negative impact on the ability of the professional to carry out their professional duties or on the profession to constitute misconduct' (at para 89): see also *Klop v College of Naturopathic Physicians of British Columbia*, 2022 BCSC 2086 at para 110, leave to appeal to BCCA refused, 2023 BCCA 125.

65. Does attendance at a rally with a sign "RN Against Mandates and Vax Passports" harm the standing or the reputation of the profession? Does such conduct impair the public's trust in the profession of nursing? It is not uncommon to see nurses protesting in front of the legislature with signs criticizing government policy. It is not uncommon to see teachers protesting in front of the legislature with signs critical of government policy and legislation. Participating in a rally with the simple statement of opposition to government policies would not amount to misconduct let alone meet the high standard required to prove professional misconduct. Charge 1(a) is dismissed.

66. It was alleged that Ms. McInnes was guilty of professional misconduct because she failed to comply with the Code of Ethics (section 26(2)(1) of the Act). A review of the Code provisions at Appendix A shows the disconnect between the Code provisions and the facts of this case. None of those Code provisions would apply.

F. Adverse Inference

67. As indicated, Ms. McInnes did not testify. The Discipline Committee invited counsel to address whether an adverse inference should be drawn against Ms. McInnes because of that. The Discipline Committee thanks counsel for their submissions.

68. The Investigation Committee argued that the Discipline Committee should draw an adverse inference. At paragraph 92 of the Investigation Committee Brief:

92. As such, based on Ms. McInnes' failure to testify, the IC asks the DC to draw the inference that her testimony, if received, would not have assisted to refute the Charges and in fact, would have been detrimental to her defence [sic] regarding the charges of professional misconduct for violating the RN Act and the Bylaws, notably the Code.

69. Fundamentally, this case is about Facebook posts made and re-posted. Ms. McInnes did not require the Investigation Committee to prove that she made the Facebook posts or that she re-posted certain comments. Although there was no Agreed Statement of Facts to this effect, Ms. McInnes' counsel admitted that the posts were hers and "in plain view". The case has been conducted on the basis (which is disputed) that the posts and re-posts amounted to "disinformation and/or misleading information surrounding vaccine mandates and vaccine passports". As the charges have been dismissed, the issue of adverse inference is moot. However, the Discipline Committee had the discretion to draw an adverse inference, the Discipline Committee would not have drawn an adverse inference because of Ms. McInnes' failure to testify.

70. Public comments by regulated health professionals made during the pandemic can be a challenging area for regulatory bodies. There are multiple competing interests to balance. However, the Discipline Committee is struck by the public comments made by two Ontario nurses named Kristal Pitter and Liubov Alviano. Ms. Pitter was a nurse practitioner. Ms. Alviano was a registered nurse working in a hospital. Their public comments about COVID attracted the attention the Ontario College of Nurses.

71. In *Pitter v College of Nurses of Ontario and Alviano v College of Nurses of Ontario*, 2022 ONSC 5513, the Facebook posts made by Ms. Pitter were described as follows:

- a. **On June 12, 2020, Ms. Pitter posted an article titled "Bill Gates Explains that the COVID Vaccine Will Use Experimental Technology and Permanently Alter Your DNA".**
- b. **On July 12, 2020, Ms. Pitter made a public post on Facebook in which she provided a link to a YouTube video and authored the following commentary:**

Please listen to this very important audio recording by the President of

Ghana on the evil that is going on in the name of COVID-19, masterminded by Bill Gates, Anthony Fauci, together with WHO and the Rockefeller Foundation. The document he is reading from was written 10 years ago. It was “predicted” (PLANNED) that humanity would be subjected to a global pandemic and lethal vaccines with identification capabilities, which can track and manipulate the thoughts, movements and the whereabouts of every human being.

- c. On July 16, 2020, Ms. Pitter posted a link to an article titled “Masks are Neither Effective Nor Safe: A Summary of the Science.” Alongside the article, Ms. Pitter wrote: “Please read the research shared here. Great information.”**
- d. On or around July 19, 2020, Ms. Pitter shared a link to a YouTube video titled “Masks Exposed and the Health Risks Involved”. Alongside the video, she posted the comment: “Mandating masks is irresponsible, negligent, and dangerous.”**

72. Ms. Alviano made a speech at a rally while wearing her scrubs and stethoscope. Four comments she made raised the attention of the Ontario College of Nurses:

- a. “Cancer came, actually start to come, after they start vaccinate [sic] our children”;**
- b. “Big pharma doesn’t want doctors to treat with Hydroxychloroquine”;**
- c. “They want to give our kids, prophylactically...DNA of abortion materials”; and**
- d. “This current vaccine is just a RNA vaccine, see and educate yourself what does that mean, how it will change our body, our kids’ body. Our kids will not have kids, therefore the main agenda, Bill Gates...to decrease population, with his wicked rich wife”.**

73. The College’s screening committee directed that each nurse appear to be cautioned and that each attend remedial education programs. The nurses brought judicial review applications seeking to set aside those dispositions. Their application was dismissed as the court found the decisions of the screening committee were reasonable and proportionate.

74. The comments made by Ms. McInnes in no way compare to those made by Ms. Pitter and Ms. Alviano. The Investigation Committee suggested that it had no alternative but to refer these matters to the Discipline Committee, having concluded that a *prima facie* case was met. Given

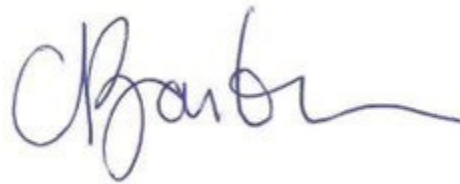
the high emotions during the “time frame”, perhaps that assessment was understandable. However, a contextual and careful review before proceeding with a discipline charge should have resulted in a different outcome.

75. The College should look at other mechanisms for the disposition of complaints such as letters of guidance and cautionary letters, appreciating that may require changes to the legislation.

IV. CONCLUSION

76. The charges are dismissed.

Dated this 12th day of January, 2024.

A handwritten signature in blue ink, appearing to read "C Barlow", with a long horizontal flourish extending to the right.

Chris Barlow, RN Chairperson
On behalf of Members of the Discipline Committee:
Russ Marchuk, Public Representative
Chris Etcheverry, RN
Joann Blazieko, RN
Kristin Dutchak, RN

Appendix A

Code of Ethics for Registered Nurses (2017)

A. Promoting Safe, Compassionate, Competent and Ethical Care

Nurses have a responsibility to conduct themselves according to the ethical responsibilities outlined in this document and in practice standards in what they do and how they interact with persons receiving care and other member of the health-care team.

Ethical Responsibilities:

9. During a natural or human-made disaster, including a communicable disease outbreak, nurses provide care using appropriate safety precautions in accordance with legislation, regulations and guidelines provided by government, regulatory bodies, employers, unions and professional associations.

C. Promoting and Respecting Informed Decision Making

Nurses recognize, respect and promote a person's right to be informed and make decisions.

Ethical Responsibilities:

4. Nurses are sensitive to the inherent power differentials between care providers and persons receiving care. They do not misuse that power to influence decision making.

G. Being Accountable

Nurses are accountable for their actions and answerable for their practice.

Ethical Responsibilities:

1. Nurses, as members of a self-regulating profession, practise according to the values and responsibilities in the *Code* and in keeping with the professional standards, laws and regulation supporting ethical practice.

SRNA Registered Nurse Practice Standards (2019)

Standard 1: Professional Responsibility and Accountability

The registered nurse is responsible for practicing safely, competently and ethically, and is accountable to the client, public, employer and profession.

The registered nurse upholds this standard by:

1. Being accountable and accepting responsibility for their own actions and decisions.

Standard 3: Ethical Practice

The registered nurse applies the principles in the current *CNA Code of Ethics for Registered Nurses* when making practice decisions and using professional judgment.

The registered nurse engages in critical inquiry to inform clinical decision-making and establishes therapeutic caring and culturally-safe relationships with clients and the health care team.

The registered nurse upholds this standard by:

- 26. Practicing in accordance with the current *CNA Code of Ethics for Registered Nurses*.

Standard 4: Service to the Public

The registered nurse demonstrates leadership in quality and ethical nursing practice, delivery of health care services and establishing professional relationships.

The registered nurse upholds this standard by:

- 35. Demonstrating professional presence and modelling professional behavior.
- 44. Supporting professional efforts in registered nursing to promote health and prevent disease to achieve a healthier society.

Standard 5: Self-Regulation

The registered nurse demonstrates an accountability to regulate themselves in accordance with their legislated scope of practice.

The registered nurse upholds this standard by:

- 49. Practicing in accordance with *The Registered Nurses Act, 1988*, other current relevant legislation, bylaws, scope of practice, standards, entry-level competencies, guidelines and employer policies.

SRNA Registered Nurse Entry-Level Competencies (2019)

2. Professional

Registered nurses are professionals who are committed to the health and well-being of clients. Registered nurses uphold the profession's practice standards and ethics and are accountable to the public and the profession. Registered nurses demonstrate accountability, accept responsibility and seek assistance as necessary for decisions and actions within the legislated scope of practice.

2.1 Demonstrates accountability, accepts responsibility and seeks assistance as necessary for decisions and actions within the legislated scope of practice.

2.2 Demonstrates a professional presence, and confidence, honesty, integrity and respect in all interactions.

Professional presence is the demonstration of respect, confidence, integrity, optimism, passion and empathy in accordance with professional standards, guidelines and codes of ethics. It includes a nurse's verbal and nonverbal communications and the ability to articulate a positive role and professional image, including the use of full name and title. The demonstration of professional presence leads to trusting relationships with clients, families, communities and other health care team members. (College of Nurses of Nova Scotia, 2018, p. 2)

2.5 Identifies the influence of personal values, beliefs and positional power on clients and the health care team and acts to reduce bias and influences.

2.8 Demonstrates professional judgment to ensure social media and information and communication technologies (ICTs) are used in a way that maintains public trust in the profession.

Information and communication technologies “Encompasses all those digital and analogue technologies that facilitate the capturing, processing, storage, and exchange of information via electronic communication” (Canadian Association of Schools of Nursing, Canada Health Infoway, 2012, p. 13).