

**IN THE MATTER OF:**                      *The Medical Act, S.N.S. 2011, c. 38*

**and**

**IN THE MATTER OF:**                      *The College of Physicians and Surgeons of Nova Scotia*

**and**

**IN THE MATTER OF:**                      *Dr. Enyinnaya Ezema*

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**Hearing Committee Decision**

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**Date Heard:**                      February 6<sup>th</sup>, 2017

**Location:**                      Halifax, Nova Scotia

**Hearing Committee:** Mr. Raymond F. Larkin, Q.C  
Dr. Brian Moses  
Dr. P. Scott Theriault  
Dr. Ethel Cooper-Rosen  
Ms. Gwen Haliburton

**Counsel:**                      Ms. Loretta M. Manning, Q.C. and Amy E. MacGregor, Counsel to  
Dr. Enyinnaya Ezema

Ms. Jane O'Neill, Q.C., Counsel for the College of Physicians and Surgeons  
of Nova Scotia

1. On December 21<sup>st</sup>, 2016 the College of Physicians and Surgeons of Nova Scotia gave notice to Dr. Enyinnaya Ezema that it would conduct a hearing to consider allegations regarding his professional conduct and capacity pursuant to the *Medical Act*. The notice indicated that the hearing will consider the following matters:

That being registered under the *Medical Act* and being a physician in the Province of Nova Scotia, it is alleged that:

1. You are guilty of profession misconduct, conduct unbecoming, or both by having breached profession and/or sexual boundaries arising from one or more of the following:
  - a. On a number of occasions in 2013, you made inappropriate comments to Colleague A. More particularly, you invited her for coffee at your home and told her that your wife would not be at home, invited her to go on a trip to Scotland with you, and made inappropriate comments about her appearance.
  - b. On or around January 6, 2014, after asking questions about her personal relationship status, you told Colleague B that you would be taking her out for a drink.
  - c. On or about December 16, 2014, while discussing a mutual patient with Colleague C, you put your arms around her and ran your tongue along her bottom lip and held on to her.

2. Dr. Ezema has brought a motion seeking an order requiring the College to produce a complete copy of the College's Investigation Committee meeting minutes with no redactions. The hearing was held by the Hearing Committee on February 6<sup>th</sup>, 2017 and the Committee reserved its decision on the motion.

3. In support of the motion, Dr. Ezema provided an affidavit of his solicitor, Loretta M. Manning. Ms. Manning's affidavit deposes to correspondence between her and counsel for the College leading up to this motion.

4. On March 9<sup>th</sup>, 2016, Ms. Manning wrote to the College requesting a copy of the Investigation Committee's complete file from Dr. Ezema to that date. She wrote again on March 10<sup>th</sup>, 2016 requesting disclosure in advance of a meeting on the Investigation Committee set for March 21<sup>st</sup>, 2016. In response, the College disclosed file materials but did not include in the disclosure the minutes of meetings of the Investigation Committee.

5. Ms. Manning wrote to counsel for the College on March 11<sup>th</sup>, 2016, again requesting a copy of the Investigation Committees meetings. She wrote:

We have concerns with the possibility of cultural bias against Dr. Ezema by the Investigation Committee. Our concerns arise from the conduct of the interviews of Dr. Ezema and the two witnesses interviewed on November 17, 2015, as well as the reasons given for the imposition of the restriction on Dr. Ezema's license. We therefore request a full copy, with no redactions, of the minutes of the Investigation Committee's meetings.

6. On March 29<sup>th</sup>, 2016, following up on a meeting between the Investigation Committee and Dr. Ezema again requesting the minutes of the Investigation Committee meetings in connection with its investigation of Dr. Ezema, Ms. Manning wrote as follows:

One of the most concerning aspects of the interview with Dr. Vienneau is the allegation by one committee member that Dr. Ezema made a sexualized comment about a patient's breast. The statement of concern is as follows:

And there was an inappropriate comment made about her breasts that concerned you initially but then you had a conversation with Dr. Ezema and he explained it away.

There is no evidence Dr. Ezema made a sexualized comment about a patient's breast. He did not explain it away. But rather, as noted by Dr. Vienneau, he explained the indications of his diagnosis of Body Dysmorphic Disorder. It is clear from a careful review of the relevant chart material that the patient had not alleged that Dr. Ezema had made a sexualized comment. The alleged comment was related to breast implants and it is important to note that the patient later denied even making the statement. Therefore, the comment by the Committee member, as with questions identified in my letter of March 18, is extremely concerning in the context of an interview of a witness during an investigation of a complaint.

We also note the following concerning statement by a Committee member:

Okay. We were ... we were sort of alarmed when we read these complaints. About these patients being assessed as suicidal and being given medication and sent unaccompanied to the ER to request admission to the hospital. And in both situations, he seemed to put a high-risk patient at further risk of self-harm. And so it gives the Committee some concern about, you know, what risk, if any, he poses to the patient population. Not even from a sexually inappropriate way but from, you know, the way he ... he sort of gave some medication to a

suicidal lady who, in fact took some of this medication while she was waiting in the ER to be admitted ...

It is important to note that these statements were made by a Committee member before Dr. Ezema had an opportunity to respond to the complaints and when only two of the three patient charts were actually available to the Committee. The tone of the interview with Dr. Vienneau is also concerning given the lack of evidence of any inappropriate interactions with patients, and given the supportive evidence the Committee has received from Dr. Maguire and colleagues in Amherst.

Upon reviewing this transcript, it appears by March 1, 2016, the Committee had made assumptions and had already made up their minds to criticize Dr. Ezema of the actual evidence (as detailed in my letter of March 18). We remain concerned that there may be bias against Dr. Ezema. In the context of these statements and questions during interviews, we once again request minutes of the Committee meetings/deliberations, without redactions, in order to test whether there has been bias against Dr. Ezema.

7. On August 19<sup>th</sup>, 2016 counsel for the College delivered to Ms. Manning copies of the transcripts of interviews of witnesses, the College files materials and "Minutes of Complaints Committee/Redacted". The redacted minutes including the following information:

i. July 28, 2015 Meeting

4.1 Complaint of Ms. Susan Fraser against Dr. Enyinnaya Ezema (004199) (Boundary-Sexual) Lead: Bryan

Complaint Category: Boundary-sexual

Actions to date: Nil

Interview: Nil

Discussion: REDACTED

Decision: Deferred

Interview Physician and complainant

ii. September 22, 2015 Meeting

3.3 Complaint of Ms. Susan Fraser against Dr. Enyinnaya Ezema (004199) (Boundary-Sexual) Lead Bryan [see minutes of July 28, 2015]

Complaint Category: Boundary-sexual

Actions to date: Nil

Interview: Ms. Susan Fraser

Audio Recording: Transcript appended

Interview: Dr. Enyinnaya Ezema

Audio Recording: Transcript appended

Discussion: REDACTED

Decision: Defer  
Interview two other complainants from the hospital  
Ask hospital for all investigation reports regarding Dr. Ezema

- iii. November 17, 2015 Meeting  
3.2 Complaint of Ms. Susan Fraser against Dr. Enyinnaya Ezema (004199) (Boundary-Sexual) Lead: Bryan [see minutes of July 28, September 22, 2015]

Complaint Category: Boundary-sexual  
Actions to date: Nil  
Interview: Ms. Bethany MacDonald  
Interview: Ms. Michelle McKean  
Discussion: REDACTED  
Decision: Deferred  
REDACTED

- iv. January 19, 2016 Meeting  
3.5 Complaint of Ms. Susan Fraser against Dr. Enyinnaya Ezema (004199) (Boundary-sexual) Lead: Bryan [ see minutes of July 28, September 22, November 17, 2015]

Complaint Category: Boundary-sexual  
Actions to date: Interview Dr. Ezema  
Interview of Ms. Bethany MacDonald  
Interview of Ms. Michelle McKean  
Interview: Nil  
Discussion: REDACTED  
Decision: Deferred  
REDACTED

- v. March 1, 2016 Meeting  
3.4 Complaint of Ms. Susan Fraser against Dr. Enyinnaya Ezema (004199) (Boundary-sexual) Lead Bryan [see minutes of July 28, September 22, November 17, 2015, January 19, 2016]

Complaint Category: Boundary-sexual  
Actions to date: Interview Dr. Ezema  
Interview of Ms. Bethany MacDonald

Interview: Interview of Ms. Michelle McKean  
Dr. Theresa Vienneau  
Discussion: REDACTED  
Motion: Defer and wait patient charts (Bryan)  
Consensual undertaking-re: another health care  
professional in the room during his interaction with  
patients.  
Seconded: (Marier)  
All in favor  
Decision: BLANK

vi. March 21, 2016 Meeting

3.1 Complaint of Ms. Susan Frase against Dr. Enyinnaya Ezema  
(004199) (Boundary-sexual) Lead Bryan [see minutes of July 28,  
September 22, November 17, 2015, January 19, 2016, March 1, 2016]

Complaint Category: Boundary-sexual  
Actions to date: Interview Dr. Ezema  
Interview of Ms. Bethany MacDonald  
Interview of Ms. Michelle McKean  
Interview Dr. Theresa Vienneau  
Interim Restriction (Chaperone)  
Interview: Dr. Enyinnaya Ezema (L. Manning)  
Discussion: REDACTED  
Decision: Deferred – until comments received from Dr.  
Ezema regarding Dr. Vienneau’s interview. Decision  
on Interim Restriction will be made at that time.

vii. April 5, 2016 Meeting

3.2 Complaint of Ms. Susan Fraser against Dr. Enyinnaya Ezema  
(004199) (Boundary-sexual) Lead Bryan [see minutes of July 28,  
September 22, November 17, 2015, January 19, 2016, March 1, 2016]

Complaint Category: Boundary-sexual  
Actions to date: Interview Dr. Ezema (twice)  
Interview of Ms. Bethany MacDonald  
Interview of Ms. Michelle McKean  
Interview Dr. Theresa Vienneau  
Hospital Incident Reports  
Expert Opinion  
Interview: BLANK  
Discussion: REDACTED  
Motion: Watson: Interim Restriction Lifted

Clinical Audit (whether current practice of his New Glasgow charts)

Seconded Marier

All in favor

viii. May 31, 2016 Meeting

3.7 Complaint of Ms. Susan Fraser against Dr. Enyinnaya Ezema (004199) (Boundary-sexual) Lead Bryan [see minutes of July 28, September 22, November 17, 2015, January 19, 2016, March 1, 2016, March 21, 2016, April 5, 2016]

Complaint Category: Boundary-sexual

Actions to date: Interview Dr. Ezema (twice)  
Interview of Ms. Bethany MacDonald  
Interview of Ms. Michelle McKean  
Interview Dr. Theresa Vienneau  
Hospital Incident Reports  
Expert Opinion – Dr. Curt Peters, Halifax, NS  
Audit: Dr. Sonia Chehil, Halifax, NS

Interview: BLANK

Discussion: BLANK

Motion: Deferred – Audit to take place June 16, 2016

Seconded

All in favor

ix. July 12, 2016 Meeting (draft version-not approved by Committee yet)

3.7 Complaint of Ms. Susan Fraser against Dr. Enyinnaya Ezema (004199) (Boundary-sexual) Lead Bryan [see minutes of July 28, September 22, November 17, 2015, January 19, 2016, March 1, 2016, March 21, 2016, April 5, 2016, May 31, 2016]

Complaint Category: Boundary-sexual

Actions to date: Interview Dr. Ezema (twice)  
Interview of Ms. Bethany MacDonald  
Interview of Ms. Michelle McKean  
Interview Dr. Theresa Vienneau  
Hospital Incident Reports  
Expert Opinion – Dr. Curt Peters, Halifax, NS  
Audit: Dr. Sonia Chehil, Halifax, NS

Interview: BLANK

Discussion: REDACTED

Motion: Consensual Reprimand with Conditions (Marier)

Seconded Watson

All in favor

**Decision:** Dr. Ezema is reprimanded for breaching profession boundaries with the workplace. Dr. Ezema is required to attend the next offering of the proBE course in Toronto Ontario.

8. The complaint against Dr. Ezema was referred to the Hearing Committee on December 21<sup>st</sup>, 2016. On January 9<sup>th</sup>, 2017, Ms. Manning wrote to counsel for the College saying, among other things, " ... we are requesting a complete copy of the Investigation Committee meeting minutes, with no redactions".

9. The parties did not agree on the disclosure of the Investigation Committee Minutes without redactions.

#### **Statutory Framework**

10. The hearing of this matter concerning Dr. Ezema is governed by Section 53 of the *Medical Act*, which provides in part as follows:

- 53 (1) **A Proceeding held by a hearing committee shall be conducted in accordance with the regulations and otherwise as the hearing committee deems fit.**
- (2) In a proceeding before a hearing committee, the parties have the right to:
- (a) **natural justice;**
  - (b) **be represented by legal counsel at the parties' own expense;**
  - (c) **present evidence and make submissions, including the right to cross-examine witnesses;**
  - (d) **know all the evidence considered by the committee; and**
  - (e) **receive written reasons for a decision within a reasonable time**
- (3) **Evidence is not admissible before a hearing committee unless the opposing party has been given, at least ten days before a hearing,**
- (a) **in the case of written or documentary evidence, an opportunity to examine the evidence;**
  - (b) **in the case of evidence of an expert, a copy of the expert's written report or, where there is no written report, a written summary of the evidence; and**
  - (c) **in the case of evidence of any other witness, the identity of the witness.**



- (4) Notwithstanding subsection (3), a hearing committee may, in its discretion, allow the introduction of evidence that is otherwise inadmissible by reason of subsection (3) and may make directions it considers necessary to ensure that a party is not prejudiced.

11. The powers of the Committee include those set out in Section 52, which provides as follows:

- 52 (1) Subject to subsection (2), a hearing committee, the Registrar and each member of a hearing committee has all rights, powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*, with the exception of the powers of contempt, arrest and imprisonment.
- (2) The Registrar and each member of a hearing committee may only exercise any of the powers and privileges pursuant to subsection (1) if authorized by the chair of the committee.

12. The Medical Practitioners Regulations made under Section 11 of the *Medical Act* expand upon the procedures for considering matters raised in a notice of hearing in Regulations 106 – 121. Regulation 110(2) provides as follows:

- 110 (2) A hearing committee may determine any additional rules of procedure for hearings that are not covered by the Act or these regulations.

13. Regulation 113(2) provides:

- 113 (2) Evidence may be presented at a hearing in any manner that a hearing committee considers appropriate, and the committee is not bound by the rules of law respecting evidence applicable to judicial proceedings, but must consider what evidence to receive in a fair manner.

14. The Hearing Committee notes that although these provisions of the *Medical Act* and the Medical Practitioners Regulations give the Hearing Committee broad powers to conduct a hearing in the manner it considers fit, those powers are expressly subject to the right of the College and the physician to “natural justice” by subsection 53(2)(a). It may also be noted that advance notice of documentary evidence is required to an opposing party at least 10 days before the hearing for the purposes of determining the admissibility of evidence before a hearing committee, as provided for in subsections 3 and 4 of Section 53, but these requirements do not exhaust the requirements of natural justice in considering whether disclosure should be made by the College to the physician involved at an earlier time.

## Issues

15. The issue raised by the motion is whether Dr. Ezema is entitled to receive a complete copy of the Investigation Committee Meeting Minutes with no redactions.

16. This raises a very narrow issue. As set out above, the College has disclosed much of the content of the minutes of the Investigation Committee.

17. As disclosed, the Committee minutes indicate the actions taken by the Committee in conducting its investigation and record any decisions made by the Committee in the course of its investigation. What is at issue here is whether or not the College must, in addition, disclose the portion of the minutes which record the discussion between the members of the Committee leading up to the decisions that are recorded in the minutes.

18. In considering this issue, the Hearing Committee has been asked to determine whether or not the content of the discussions between members of the Committee leading up to its decisions are relevant to the hearing which will be conducted in this matter and whether, if the content of the discussions in the Committee are immune from disclosure on the basis of the principle of deliberative secrecy.

## Discussion

19. In our view, in principle, all relevant documents in the possession of the Investigation Committee should be provided to Dr. Ezema unless those documents are protected by a legal privilege from disclosure. The matters which have been referred to hearing reflect on Dr. Ezema's character and professional reputation. Hearings under the *Medical Act* can lead to serious sanctions or limitations on a physician's practice of medicine. These considerations and the express requirement of natural justice in Section 53 of the *Medical Act* entitle Dr. Ezema to the highest level of procedural fairness.

20. This is consistent with the purposes of the *Medical Act* which are set out in Section 5 of the *Act*. Section 5 provides in part as follows:

5 In order to:

- (a) serve and protect the public interest in the practice of medicine; and
- (b) subject to clause (a), preserve the integrity of the medical profession and maintain the confidence of the public and the profession in the ability of the College to regulate the practice of medicine.

...

21. In our view, there is a substantial public interest in the fair treatment of physicians who are accused of professional misconduct. By providing a high level of procedural fairness to those accused of misconduct we strive to preserve the integrity of the medical profession and maintain the confidence of the public and the profession in the ability of the College to regulate the practice of medicine.

22. As a hearing committee, we are prepared to accept a generous interpretation of which documents are relevant for the purpose of disclosure. In our view, a document is relevant for the purpose of pre-hearing disclosure if it would be useful to the physician in defending against the allegations listed in the Notice of Hearing.

23. In this matter, the allegations set out in the Notice of Hearing do not allege any misconduct related to Dr. Ezema's meetings with the Investigation Committee. All of the allegations relate to matters which took place by the end of December, 2014. The discussions among members of the Investigation Committee did not have any direct relationship to the allegations in the Notice of Hearing.

24. Correspondence from Ms. Manning to the College in March, 2016 indicated a concern about the possibility of cultural bias against Dr. Ezema by members of the Investigation Committee or, more broadly, bias from making assumptions about Dr. Ezema's conduct without any evidence.

25. In Dr. Ezema's brief he argues as follows:

[23] The information contained in the Committee minutes may pertain to a number of relevant issues, including the manner of the investigation and possible bias against Dr. Ezema, the potential penalty to be proposed by the College at the Hearing, and the strength of the evidence of various witnesses. As noted in Loretta Manning's March 29, 2016 letter to Jane O'Neill (Exhibit D of the Manning Affidavit), we have significant concerns that there may have been bias against Dr. Ezema during the Committee's investigation. These concerns stem from the manner various witnesses were questioned as well as the Committee's decision to restrict Dr. Ezema's license, which we have argued was unfounded.

...

[25] AS in *Ibrahim*, supra, credibility will be a key issue in this hearing. Accordingly, we submit that any notes prepared by the Committee in the course of its investigation are relevant and must be disclosed.

26. Members of the Investigation Committee should conduct their investigation with an open mind and should not predetermine the issues under investigation. However, it is difficult to see how the manner of investigation or even bias of members of the Investigation Committee will have any impact on the hearing of the allegations against Dr. Ezema by the

Hearing Committee. Under the statutory scheme in the *Medical Act*, the Hearing Committee will hear witnesses presented by the College and Dr. Ezema; they will be subject to cross-examination. The parties are entitled to know all of the evidence considered by the Committee. The Hearing Committee will make its decision on the basis of the evidence presented at the hearing and the submissions of the College and Dr. Ezema. If the Hearing Committee finds professional misconduct, it will consider the appropriate penalty based on the evidence and submissions of the parties.

27. The Hearing Committee operates entirely independently from the Investigation Committee and the College itself. There is no overlap in the membership of the Hearing Committee and the Investigation Committee.

28. It is conceivable that a witness interviewed by the Investigation Committee could be misled by questions or comments from members of the Committee and that a misconception by the witness could affect their testimony before the Hearing Committee. However, the transcripts of the witnesses interviewed by the Investigation Committee have been provided to Dr. Ezema. If those witnesses testify for the Hearing Committee they will be subject to cross-examination. The hearing process should ensure fairness to Dr. Ezema.

29. Here, however, Dr. Ezema is seeking to have disclosure of the discussions among Committee members as they decided how to proceed with the investigation. Those discussions cannot have influenced a possible witness.

30. The Hearing Committee does not see how the disclosure of those discussions would be useful to Dr. Ezema in addressing the strength of the evidence of various witnesses or on their credibility. The strength of the evidence of various witnesses and the credibility of their testimony will be tested in cross-examination and, with the disclosure of the transcript of their evidence during the investigation, Dr. Ezema will be able to prepare to demonstrate on cross-examination that the witnesses' testimony was influenced by biased questioning during their interview.

31. A similar issue was considered by the Nova Scotia Court of Appeal in *Nova Scotia Barristers' Society v. Harris*, 2004 NSCA 143. Ms. Harris requested the Court of Appeal to order the Nova Scotia Barristers' Society to disclose the minutes of the Trust Accounts Committee and the meetings of the Investigative Subcommittee, where issues relating to her were raised. Ms. Harris sought this material to support an argument that senior Society staff were biased against her and influenced the committees to find something against her. She also sought disclosure of this material to support an argument that the committees made decisions based on mistaken information.

32. The Nova Scotia Court of Appeal considered whether the Nova Scotia Barristers' Society had breached its duty of disclosure by not disclosing to Ms. Harris in advance of the hearing before a hearing panel these materials. For the purposes of this case, the Court of Appeal accepted the approach to disclosure taken in criminal cases where a reviewing judge must

determine that "production of the information can reasonably be used by the accused either in making the case for the Crown, advancing a defence or otherwise in making a decision which may affect the conduct of defence such as, for example, whether to call evidence".

Reference: *Nova Scotia Barristers' Society v. Harris*, 2004 NSCA 143, paragraph 82 quoting *R v. Taillefer* [2003] 3 SCR 307 at page 82

33. In rejecting the request for disclosure of the Committees minutes, the Court of Appeal made the following comments:

[84] In considering whether this material is plainly irrelevant, the charges against Ms. Harris and her possible defences have to be kept in mind...

[85] It must also be remembered that the Society's discipline process is a bifurcated one where one subcommittee investigates whether a barrister may be guilty of professional misconduct and if it determine that to be the case, lays a formal complaint. The formal complaint is then heard by an independent adjudicative subcommittee that holds a hearing at which the barrister and the Society are given the opportunity to present evidence and argument. The adjudicative subcommittee then makes its decision considering only the evidence before it.

[86] Ms. Harris sought the committee minutes and Society notes and memoranda to support her arguments that senior Society staff were biased against her and abused their power by doing everything they could to encourage the TAC and the Investigative Subcommittee to find against her and that these committees made decisions on mistaken information.

...

[92] Ms. Harris' argument that these minutes and notes would support her argument that the TAC and the Investigating Subcommittee made decisions on mistaken information again does not satisfy me they should have been disclosed. Given that the Society's discipline process is a bifurcated one, the basis on which the TAC and the Investigating Subcommittee reached their decisions was plainly irrelevant to the Panel's decision, whether made on mistaken information or not. The Panel made its decision only on information put before it by Ms. Harris and the Society. Ms. Harris had the opportunity at the Panel hearing to correct any information she believed was wrong by cross examining the Society's witnesses and presenting her own evidence if she wished to do so. The effectiveness of this opportunity is apparent when considering the Panel's decision to dismiss the charge set out in 1(e) of the formal complaint

against Ms. Harris submitted to the Panel that she did not have a trust account in May 1998 and therefore could not file a reconciliation for that month.

...

[95] In case I am wrong in my conclusion that the existing material that Ms. Harris sought was plainly irrelevant to the charges against her and to her reasonable possible defences, which would mean the Society was in breach of its duty to disclose, I consider the material Ms. Harris sought to have disclosed in light of the two step test set out in *Dixon*, supra, to determine whether the failure to disclose denied Ms. Harris natural justice or procedural fairness with respect to the Panel's decision itself or the overall fairness of the hearing before the Panel.

...

[97] Applying this two step test I am not satisfied the material sought by Ms. Harris should be ordered disclosed at this stage and admitted as evidence. **The material sought all relates to the investigation stage of the Society's bifurcated discipline process. This material is immaterial at the adjudicative stage before the Panel.** What those involved at the investigation stage thought about Ms. Harris' action was ultimately of no interest. Their decisions had no affect on Ms. Harris except to the extent a formal complaint was laid and her actions would be considered by an independent adjudicative body. The Panel did not make its decision on the facts as determined by the TAC or the Investigative Subcommittee. It did not make its decision based on conclusions drawn by those committees. The Panel made its decision on the facts it found from the evidence before it and the conclusions it drew from those facts. The opinions of those who investigated Ms. Harris, whether staff or volunteers on the committees, were not taken into account by the Panel except to the extent they gave evidence at the hearing. Ms. Harris was given the opportunity to cross examine and present her own evidence. The responsibility for not taking advantage of that opportunity rests with her. Any mistaken facts that the TAC and the Investigative Subcommittee considered in reaching their decisions could have been corrected at the hearing before the Panel by cross-examination and by Ms. Harris presenting her own evidence as she did with respect to the charge in 1(e) of the formal complaint.

[Emphasis Added]

34. While the *Harris* case dealt with disclosure in admission of evidence on appeal from a decision of a hearing panel rather than disclosure in advance of a hearing by this hearing committee, there is no relevant distinction between the statutory scheme in that case and the statutory scheme in the *Medical Act*. As in the *Harris* case, the minutes of the Investigation Committee are not directly relevant to the charges. The discipline process under the *Medical*

Act is a bifurcated one where the Investigation Committee investigates whether a physician may be guilty of professional misconduct and if it determines that to be the case, refer the allegations against the physician to hearing. The hearing is conducted by an independent committee who hold a hearing at which the physician and the College are given the opportunity to present evidence and argument. The hearing committee then makes its decision considering only the evidence before it.

35. In this case, the discussion among members of the Investigation Committee before making any of the decisions noted in the minutes are not relevant to the disposition of the allegations against Dr. Ezema in this hearing. In our view, the disclosure of these discussions on the Committee would have no effect on the Hearing Committee's decision or on the overall fairness of the hearing before us. In our view the materials sought by Dr. Ezema are irrelevant both to the allegations in the Notice of Hearing and to any reasonably probable defence to those allegations available to Dr. Ezema.

36. In view of our finding on the relevance of the materials sought in this motion, it is unnecessary for us to deal with the question of deliberative secrecy.

37. The Hearing Committee denies the motion of Dr. Ezema.

Decision Issued this 10<sup>th</sup> day of May, 2017.

  
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Dr. Brian Moses

  
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Raymond F. Larkin, Q.C., Chair

  
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Dr. P. Scott Theriault

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Dr. Ethel Cooper-Rosen

  
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Ms. Gwen Haliburton