

**THE DISCIPLINE COMMITTEE OF THE COLLEGE
OF DENTAL HYGIENISTS OF ONTARIO**

IN THE MATTER of the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18, as amended, and the regulations thereunder, as amended;

AND IN THE MATTER of the *Dental Hygiene Act, 1991*, S.O. 1991, c.22, as amended, and the regulations thereunder, as amended;

AND IN THE MATTER of allegations of professional misconduct/incompetence referred to the Discipline Committee of the College of Dental Hygienists of Ontario by the Inquiries, Complaints and Reports Committee;

BETWEEN:)	
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)	
THE COLLEGE OF DENTAL)	Anastasia-Maria Hountalas
HYGIENISTS OF ONTARIO)	for the College of Dental Hygienists of Ontario
)	
-and-)	
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)	
PATRICIA SINNOTT)	Andrew McKenna and Kaisha Thompson
)	for the Registrant, Patricia Sinnott
)	
)	
)	Josh Koziembrocki
)	Independent Legal Counsel
)	
)	Heard:
)	February 22, February 23, February 24, and
)	March 29, 2021
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Panel Members:

Vanessa Pereira, Chair, Professional Member of Council

Margaret Wade, Public Member of Council

Gillian Dunn, Non-Council Committee Member

Ilga St.Onge, Professional Member of Council

DECISION AND REASONS

- 1) A panel of the Discipline Committee of the College of Dental Hygienists of Ontario (the "Panel") heard this matter virtually by Zoom videoconference on February 22-24 and March 29, 2021.

THE ALLEGATIONS

- 2) The allegations of professional misconduct against Patricia Sinnott ("Ms. Sinnott") were stated in the Notice of Hearing, dated February 4, 2019, and are as follows:

The Registrant

1. At the material times, Patricia Sinnott ("Ms. Sinnott"), Patricia Blundon ("Ms. Blundon") and Trina Lewis ("Ms. Lewis") were duly registered members of the College of Dental Hygienists of Ontario (the "College").

Quality Assurance Examination

2. On or about September 29, 2017, Ms. Sinnott, Ms. Blundon and Ms. Lewis completed the College's online Quality Assurance Test (the "QA Test").
3. Prior to commencing the QA Test, Ms. Sinnott, Ms. Blundon and Ms. Lewis acknowledged as part of the "Registrant Statement of Understanding" that the QA Test must be taken individually and without help from any other person.
4. Notwithstanding this acknowledgment, Ms. Sinnott, Ms. Blundon and Ms. Lewis received assistance from and/or assisted each other, to complete the QA Test.

Professional Misconduct Alleged

5. It is alleged that the above conduct constitutes professional misconduct pursuant to:
 - (a) Clause 51(1)(b.0.1) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991* (the "Code") (failing to cooperate with the Quality Assurance Committee or any assessor appointed by the committee); and/or

(b) Clause 51(1)(c) of the Code and as defined in one or more of the following paragraphs of section 15 of Ontario Regulation 218/94 under the *Dental Hygiene Act, 1991*:

- i. Paragraph 2: contravening by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession; and/or
- ii. paragraph 30: signing or issuing, in the member's professional capacity, a document that the member knows or ought to know contains a false or misleading statement ; and/or
- iii. paragraph 42: failing to take reasonable steps to ensure that information provided by or on behalf of the member to the College is accurate
- iv. paragraph 52: engaging in conduct or performing an act, relevant to the practise of the profession, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

WITHDRAWAL OF ALLEGATION

- 3) The College of Dental Hygienists of Ontario (the "College") did not seek a finding that Ms. Sinnott contravened by act or omission, a standard of practice of the profession or failed to maintain the standard of practice of the profession pursuant to section 51(1)(c) of the Code (paragraph 2 of section 15 of Ontario Regulation 218/94 under the *Dental Hygiene Act, 1991*) as alleged in the Notice of Hearing. The College withdrew this allegation at the outset of the hearing.

REGISTRANT'S PLEA

- 4) Ms. Sinnott denied the allegations as set out in the Notice of Hearing in paragraphs 5(a) Clause 51(1)(b.0.1) and 5(b) Clause 51(1)(c) (paragraphs 30, 42, and 52) of the Health Professions Procedural Code.
- 5) College Counsel withdrew the allegation of paragraph 2 of Clause 51(1)(c) of the Health Professions Procedural Code.

THE EVIDENCE – AGREED STATEMENT OF FACTS

- 6) College Counsel advised the Panel that agreement had been reached on some facts and introduced an Agreed Statement of Facts ("ASF"), which reads as follows:

The Registrants

1. Patricia Blundon has been registered with the College of Dental Hygienists of Ontario (the “College”) since in 1992. Her registration number is 004858.
2. Patricia Sinnott has been registered with the College since 1997. Her registration number is 006733.
3. Trina Lewis has been registered with the College in 1997. Her registration number is 007903.

Quality Assurance Test

4. Up until 2018, the National Dental Hygiene Certification Board (“NDHCB”) administered a Quality Assurance Test (the “QA Test”) on behalf of the College. The QA Test was offered as part of the College’s Quality Assurance process.
5. The QA Test required that each registrant register with the NDHCB prior to writing. Once approved, a link was subsequently emailed to the registrant with information about the test; study materials including the ability to purchase practice tests; and a link to access the electronic QA Test when ready.
6. In order to commence the QA Test, registrants must agree to the “Registrant Statement of Understanding” (**Tab 12, Joint Book of Documents [“JBD”]**). The Statement of Understanding requires a registrant to agree to two (2) key concepts:
 - a. Registrants must complete the QA Test individually and without help from any other person; and
 - b. Registrants are strictly forbidden from copying, sharing, reproducing or saving any item or content of the QA Test. Registrants agree that they will maintain the confidentiality of the QA Test questions, even after taking the QA Test (including discussing the content with others).
7. The Statement of Understanding does not prohibit a Registrant from:
 - a. writing the QA Test from the same physical location as another Registrant;
 - b. writing the QA Test using the same IP address as another Registrant; or
 - c. writing the QA Test on the same day as another Registrant.
8. At the completion of the QA Test, a diagnostic report is generated. The report informs the registrant of his or her score. It also allows the registrant to review any questions that were answered incorrectly. The report provides the correct

answer and an explanation for it. The report can be viewed for thirty (30) minutes after the completion of the QA Test, after which time, the report is no longer accessible to the registrant.

9. In 2017, there were eight versions of the QA Test, which are referred to as “Forms”. The QA Test consisted of 75 multiple choice questions. The questions were generated from a pool of 110 questions, resulting in a 60% commonality between the various Forms.

Paid Practice Tests

10. The NDHCB sold practice tests to assist registrants in preparing for the QA Test. These practice tests allow registrants to complete a mock version of the QA Test without any time constraints. There was no prohibition on a registrant from relying upon the practice tests, including the questions and answers, when completing the QA Test.
11. The practice tests are generated from a pool of questions from previous QA Tests. Generally, when questions are used in a practice test, they are retired from the pool of questions for the current QA Test version.
12. Similar to the QA Test, there is a diagnostic report generated at the end of the practice test, which provides the correct answer and explanation to any question(s) answered incorrectly. There was no prohibition on a registrant from relying upon the report for further review or when completing the QA Test.
13. Prior to writing the QA Test on September 29, 2017, Mrs. Blundon purchased three (3) practice tests from the NDHCB which were completed on September 25, 26 and 28, 2017, respectively (**Tab 5, 6 & 7, JBD**). Her results of the practice tests were as follows:
 - a. Form 1: completed in 1 hour and 8 minutes and passed with a score of 84%;
 - b. Form 4: completed in 59 minutes and passed with a score of 68%; and
 - c. Form 3: completed in 1 hour and 50 minutes and passed with a score of 77.33%.
14. In 2017, it was intended that registrants would complete Version 3 of the QA Test, which had no overlap with the practice tests. During the investigation by the College, Doris Lavoie, the Executive Director of the NDHCB at the time reported that, due to an internal error by the NDHCB, Version 2 of the QA Test was used in 2015, 2016 and 2017. As a result, the pool of questions for Version 2 of the QA Test contained approximately 70 – 80 questions from the 2017 practice tests.

15. As of November 6, 2018, the NDHCB was no longer administering the QA Test for the College.

Data from the NDHCB

16. On September 29, 2017, Mrs. Blundon, Mrs. Sinnott and Ms. Lewis (collectively, “the Registrants”) each completed their respective QA Test at Ms. Lewis’ home at the following times:

- Mrs. Blundon wrote her QA Test from 9:50 AM until 10:50 AM **(Tab 16, JBD)**;
- Mrs. Sinnott wrote her QA Test from 11:56 AM to 12:27 PM **(Tab 17, JBD)**; and
- Ms. Lewis wrote her QA Test from 12:36 PM to 12:49 PM **(Tab 18, JBD)**.

17. On September 29, 2017 at 2:38 p.m., Mr. Lavoie, sent an email to the Registrar of the College stating, “[s]omething suspicious seems to have happened...” Mr. Lavoie advised that the Registrants had written the QA Test “at about the same time from the same IP address”. Mr. Lavoie listed the Registrants’ names, QA Test Forms, start times, completion times, total times, and scores, among other information **(Tab 28, JBD)**.

18. During the investigation by the College, the NDHCB (through Mr. Lavoie) provided a chart setting out a summary of the statistics with respect to the eight (8) forms of the QA Test it administered in the years 2015, 2016 and 2017. This chart provided an overview of the scores (highest, average and lowest) and times (fastest, average and slowest) along with the pass rate.

19. Following a third party records motion brought by the Registrants, the NDHCB disclosed further data with respect to the QA Tests it administered in 2015, 2016 and 2017, including times and scores achieved for every registrant who completed the QA Test in those years (with names redacted), as well as the year that each test writer had initially registered with the CDHO. The NDHCB also produced copies of the Forms completed by the Registrants **(Tabs 13, 14 & 15, JBD)**, the paid practice tests purchased by Ms. Blundon **(Tabs 5, 6 & 7, JBD)** and the metrics related to the Registrants’ QA Tests **(Tabs 19, 20 and 21, JBD)**.

20. There were discrepancies between the data set out in the summary chart provided by the NDHCB during the investigation (as referred to in paragraph 18 above) and the data disclosed by the NDHCB as a result of the third party records motion. Corrected productions were received from the NDHCB on January 15, 2021 **(Tabs 22, 23, and 24, JBD)**.

Mrs. Blundon’s QA Test

- 21. Mrs. Blundon registered for the QA Test on September 29, 2017, and received an email approving her to write the test at 9:42 AM that day **(Tab 9, JBD)**.
- 22. Mrs. Blundon wrote Form 2 of the QA Test **(Tab 13, JBD)**.
- 23. Mrs. Blundon wrote her QA Test from 9:50 AM until 10:50 AM, completing it in 1 hour. She received a score of 94.67%. She answered 71 out of 75 questions correctly.
- 24. In 2017, 45 registrants completed Form 2 of the QA Test **(Tab 22, JBD)**. The average time to complete it was 1 hour 43 minutes and 27 seconds. The average score was 87.14%. The highest score was 100%. The fastest completion time was 40 minutes and 8 seconds. The slowest completion time was the maximum of 2 hours 29 minutes and 59 seconds. Four individuals wrote Form 2 of the QA Test in a shorter amount of time than Mrs. Blundon. Of those four individuals, three scored higher than Mrs. Blundon with a score of 72 of 75 (96%).
- 25. There was a 52% overlap between the questions that appeared on the practice tests purchased by Mrs. Blundon and Form 2 of the QA Test, meaning that 39 of the 75 questions on Mrs. Blundon’s QA Test were identical or nearly identical to questions that appeared on the practice tests she had purchased or on the NDHCB sample test. Those overlapping questions are:

Form 2	Practice Tests
Q2	Form 1 Q49
Q3	Form 3 Q46
Q5	Form 4 Q56
Q10	Form 3 Q36
Q11	Form 3 Q11
Q12	Form 1 Q8
Q13	Form 1 Q39
Q14	Form 1 Q47
Q15	Form 4 Q34
Q18	Form 1 Q2
Q19	Form 1 Q50
Q20	Form 4 Q17
Q23	Form 3 Q15
Q25	Form 3 Q27
Q26	Form 1 Q1
Q28	Form 3 Q35
Q30	Form 1 Q10
Q31	Form 1 Q20

Q33	Form 3 Q49
Q34	Form 3 Q7
Q40	Form 4 Q57
Q41	Form 3 Q18
Q43	Form 3 Q3
Q45	Form 1 Q18
Q47	Form 3 Q5
Q49	Form 4 Q55
Q51	Form 1 Q23
Q52	Form 4 Q53
Q53	Form 4 Q35
Q54	Form 3 Q37
Q55	Form 1 Q13
Q58	Form 1 Q14
Q69	Form 3 Q61
Q70	Form 3 Q63
Q71	Form 3 Q62
Q72	Form 1 Q60
Q73	Form 1 Q62
Q74	Form 1 Q61
Q75	Form 1 Q59

(Tab 25, JBD)

Mrs. Sinnott's QA Test

26. Following Mrs. Blundon's QA Test, Mrs. Sinnott placed calls to the College at 11:11 AM and the NDHCB at 11:17 AM to register for her QA Test.
27. Mrs. Sinnott received approval to write the QA Test and the link to access it at 11:29 AM (Tab 10, JBD).
28. Mrs. Sinnott completed Form 7 of the QA Test between 11:56 AM to 12:27 PM (Tab 14, JBD). Mrs. Sinnott received a score of 98.67%. She answered 74 out of 75 questions correctly.
29. In 2017, 57 registrants completed Form 7 of the QA Test (Tab 23, JBD). The average time to complete Form 7 was 1 hour 49 minutes and 34 seconds. The average score was 85.40%. Two individuals received the highest score of 98.67% (one of which was Mrs. Sinnott). The fastest completion time was 30 minutes 36 seconds (which was Mrs. Sinnott). The second-fastest individual completed Form 7 in 52 minutes and 15 seconds. The slowest completion time was the maximum of 2 hours 30 minutes.

30. There were 50 questions on Form 7 of the QA Test (the Form completed by Mrs. Sinnott) that were also on Form 2 of the QA Test (the Form completed by Mrs. Blundon). Mrs. Sinnott correctly answered 2 questions that Mrs. Blundon answered incorrectly. The 1 question that Mrs. Sinnott answered incorrectly did not appear on Mrs. Blundon's QA Test. It also did not appear on the practice tests purchased by Mrs. Blundon or the NDHCB sample test.
31. There was a 52% overlap between the practice tests purchased by Mrs. Blundon and Form 7 of the QA Test, meaning that 39 of the 75 questions on Mrs. Sinnott's QA Test were identical or nearly identical to questions that appeared on the practice tests purchased by Mrs. Blundon or on the NDHCB sample test. Those questions are:

Form 7	Practice Tests
Q1	Form 1 Q33
Q4	Form 3 Q46
Q6	Form 4 Q56
Q10	Form 3 Q11
Q11	Form 1 Q8
Q12	Form 4 Q51
Q13	Form 1 Q47
Q15	Form 1 Q2
Q16	Form 1 Q7
Q17	Form 1 Q50
Q18	Form 4 Q17
Q21	Form 3 Q15
Q23	Form 3 Q27
Q24	Form 1 Q1
Q25	Form 1 Q19
Q26	Form 4 Q29
Q27	Form 4 Q43
Q28	Form 3 Q35
Q30	Form 1 Q57
Q31	Form 1 Q10
Q32	Form 1 Q9
Q34	Form 3 Q49
Q35	Form 3 Q7
Q37	Form 3 Q54
Q42	Form 4 Q57
Q44	Form 3 Q18
Q45	Form 1 Q26
Q46	Form 1 Q44
Q48	Form 3 Q3
Q52	Form 4 Q46
Q55	Form 1 Q23

Q57	Form 3 Q31
Q66	Form 1 Q72
Q67	Form 1 Q70
Q68	Form 1 Q69
Q69	Form 1 Q71
Q73	Form 3 Q61
Q74	Form 3 Q62
Q75	Form 3 Q63

(Tab 26, JBD)

Ms. Lewis' QA Test

32. Ms. Lewis wrote Form 8 of the QA Test between 12:36 PM to 12:49 PM (Tab 15, JBD). Ms. Lewis achieved a score of 98.67%, answering 74 of 75 questions correctly.
33. In 2017, 51 registrants completed Form 8 of the QA Test (Tab 24, JBD). The average time to complete Form 8 was 1 hour 47 minutes and 38 seconds. The average score was 88.26%. Three registrants received the highest score of 98.67% (including Ms. Lewis). The fastest completion time was Ms. Lewis' time of 13 minutes and 15 seconds. The second-fastest individual completed Form 8 in 28 minutes and 9 seconds. The slowest completion time was the maximum of 2 hours 29 minutes and 53 seconds.
34. Ms. Lewis's QA Test shared 48 of same questions as Mrs. Blundon's QA Test and 48 of the same questions as Mrs. Sinnott's QA Test. The 1 question that Ms. Lewis answered incorrectly did not appear on either Mrs. Blundon or Mrs. Sinnott's QA Test. It also did not appear on the practice tests purchased by Mrs. Blundon or the NDHCB sample test.
35. There was a 57.33% overlap between the questions on the practice tests purchased by Mrs. Blundon and Form 8 of the QA Test, meaning that 43 of the 75 questions on Ms. Lewis' QA Test were identical or nearly identical to questions that appeared on the practice tests purchased by Mrs. Blundon or the NDHCB sample test. Those questions are:

Form 8	Practice Tests
Q2	Form 1 Q49
Q3	Form 3 Q46
Q6	Form 4 Q6
Q11	Form 3 Q11
Q12	Form 4 Q21
Q13	Form 1 Q8
Q14	Form 4 Q51
Q15	Form 3 Q60

Q16	Form 1 Q47
Q17	Form 4 Q34
Q20	Form 1 Q7
Q21	Form 4 Q17
Q25	Form 3 Q27
Q26	Form 1 Q1
Q28	Form 1 Q19
Q29	Form 4 Q29
Q30	Form 4 Q43
Q31	Form 3 Q35
Q32	Form 1 Q57
Q33	Form 1 Q20
Q34	Form 1 Q9
Q41	Form 4 Q57
Q42	Form 1 Q26
Q43	Form 1 Q44
Q45	Form 4 Q31
Q46	Form 3 Q3
Q48	Form 1 Q18
Q49	Form 3 Q58
Q52	Form 4 Q46
Q55	Form 4 Q35
Q58	Form 3 Q37
Q59	Form 1 Q14
Q62	Form 1 Q70
Q63	Form 1 Q69
Q64	Form 1 Q71
Q65	Form 1 Q72
Q69	Form 3 Q63
Q70	Form 3 Q61
Q71	Form 3 Q62
Q72	Form 1 Q62
Q73	Form 1 Q60
Q74	Form 1 Q61
Q75	Form 3 Q48

(Tab 27, JBD)

Investigation by College

36. On October 31, 2017, Barker, Hutchison & Associates Ltd. (“Barker Hutchinson”) was appointed as an investigator by the Registrar of the College **(Tabs 29, 30 and**

31, JBD). Greg Hutchinson from Barker Hutchinson was the individual responsible for the investigation.

37. By letters dated November 20, 2017, Ms. Lewis, Mrs. Blundon and Mrs. Sinnott were notified by the College that they were under investigation with respect to their completion of the QA Test on September 29, 2017 (**Tabs 32, 33 and 34, JBD**).
38. On January 10, 2018, Bell Canada was served with a summons by Mr. Hutchinson requiring it to produce the subscriber information related to the IP address that was used by all three members when they wrote the QA Test on September 29, 2017 (**Tab 38, JBD**). That information was provided by Bell Canada on February 7, 2018 (**Tab 39, JBD**).
39. Mr. Lavoie was interviewed by telephone on March 2, 2018.
40. Ms. Lewis was interviewed by telephone by Mr. Hutchison on May 23, 2018.
41. Mrs. Sinnott was interviewed by telephone by Mr. Hutchison on May 23, 2018.
42. Mrs. Blundon was interviewed by telephone by Mr. Hutchison on May 30, 2018.
43. On June 12, 2018, Mrs. Sinnott and Mrs. Blundon provided their cell phone records for September 29, 2017 to Mr. Hutchinson (**Tabs 40 and 41, JBD**).
44. On June 21, 2018, Mr. Lavoie provided information about the practice tests sold by the NDHCB.
45. On June 22, 2018, Mr. Lavoie advised Mr. Hutchinson that there was an overlap between the questions on the practice tests sold by NDHCB and questions on some Forms of the QA Tests (further particulars of the information provided by Mr. Lavoie are set out in paragraph 14 above).
46. On July 9, 2018, Mr. Lavoie provided Mr. Hutchinson with a spreadsheet that identified the date each member had registered for the QA Test.
47. On September 26, 2018, Mr. Hutchinson served Rogers Communications with a summons to obtain the cell phone tower records for Mrs. Blundon's cell phone for September 29, 2017 (**Tab 42, JBD**). Rogers produced the records (**Tab 43, JBD**).
48. On September 26, 2018, Mr. Hutchinson served Bell Canada with a summons to obtain the cell phone tower records for Mrs. Sinnott's cell phone for September 29, 2017 (**Tab 44, JBD**). Bell produced the records on October 29, 2018 (**Tab 45, JBD**).

Cell Tower Records

49. Mrs. Blundon's cell tower records (**Tab 43, JBD**) demonstrate the following regarding the location of Mrs. Blundon's cell phone on September 29, 2017:
- a. Mrs. Blundon's cell phone pinged off a tower in Pembroke at 6:49 AM;
 - b. Mrs. Blundon's cell phone pinged off a tower in Cobden (31 kms south of Pembroke) at 6:55 AM;
 - c. Mrs. Blundon's cell phone pinged off a tower in Kemptville (15 kms from Ms. Lewis' house) at 8:22 AM;
 - d. Mrs. Blundon's phone pinged off a tower 4 kms from Ms. Lewis' home at 10:35 AM; and
 - e. Mrs. Blundon's phone was not used again until 2:17 PM, at which time it pinged off cell towers at the Bayshore Shopping Centre in Ottawa.
50. Mrs. Sinnott's cell tower records (**Tab 45, JBD**) demonstrate the following regarding the location of Mrs. Sinnott's cell phone on September 29, 2017:
- a. Mrs. Sinnott placed a phone call from Kemptville to the College at 11:11 AM;
 - b. Mrs. Sinnott placed a phone call to the NDHCB at 11:17 AM, between the time when Ms. Blundon and Ms. Sinnott wrote their QA Tests; and
 - c. Mrs. Sinnott's phone pinged off cell towers in Ottawa and Nepean between 3:05 PM and 3:52 PM.

WITNESSES

Ms. Patricia Blundon

- 7) Ms. Blundon testified that she did not receive assistance while she wrote her quality assurance test ("QA Test"), and that she did not provide assistance to Ms. Sinnott and Ms. Lewis when they wrote their QA Tests. In September 2017, Ms. Lewis posted on Facebook that she had been selected for the QA audit and Ms. Blundon responded saying she had also been selected. Ms. Lewis invited her to her house to study and to review the QA process and Ms. Blundon attended on September 22, 2017. Ms. Blundon knew Ms. Lewis from when Ms. Lewis covered her maternity leave in 2001-2002. They maintained a casual friendship over Facebook. Ms. Blundon did not know Ms. Sinnott before they met on September 22, 2017.

- 8) Ms. Blundon stated that they gathered at Ms. Lewis' house because she knew Ms. Lewis was not comfortable driving since she had been involved in a car accident. Ms. Blundon also testified that she wanted to go shopping near Ms. Lewis' house. She testified that Ms. Lewis lived about 1 hour 45 minutes away from her. She testified that when they got together on September 22, 2017, they reviewed the requirements of the new QA audit process, including the SMILE portal, since the process would be done on the computer. They also reviewed what they had done for their previous QA audits and looked at the free online NDHCB sample test. Ms. Blundon mentioned she would be purchasing the three practice tests that the NDHCB offered. Ms. Sinnott and Ms. Lewis agreed to split the cost of the practice tests. They planned to meet the following Friday to continue their studying as Ms. Sinnott was off from work on Fridays. Ms. Blundon said she was under the impression that both Ms. Sinnott and Ms. Lewis were undecided about which QA audit path they would choose. Ms. Blundon stated that she knew she would do the QA Test and not the portfolio. She did not know when she would do it, just that she would do it by the end of the year. She had previously been selected for the QA audit in 2008, when the QA Test was not an option, and said that submitting her portfolio had been a very long process. She was on medical leave as of April 2017 and started her preparation then. She stated that she probably spent a few hours preparing each day leading up to this meeting.
- 9) On September 25, 26 and 28, 2017, Ms. Blundon completed the three practice tests and made notes in short form and then again in long form. She said she did this over again until everything sunk in. She stated that she approached the practice tests as a learning opportunity and that she was not concerned with her scores because she was using the tests to study and learn. She also stated she was able to pause the practice tests.
- 10) Ms. Blundon said that the plan for Friday, September 29, 2017 was to review the QA audit requirements, to review the practice tests and study more. She stated these hours spent studying could also be used as continuing education ("CE") hours for the portfolio path, since Ms. Sinnott and Ms. Lewis were undecided about their path at this point. She testified that she did not go to Ms. Lewis' house with the intention of writing the QA Test. She stated that when she got there, they went to the dining table and she took out the notes she had made of the practice tests. She read aloud the questions and answer options and often Ms. Sinnott and Ms. Lewis would call out the answers in response before she even finished reading the answer options. She took payment from Ms. Sinnott for her share of the practice test notes. She did not accept any money from Ms. Lewis since she had prepared lunch the previous Friday and was preparing lunch again that day.
- 11) On the morning of September 29, 2017, Ms. Blundon committed to the path of writing the QA Test by logging onto the SMILE Portal. She stated that she had heard it could take up to a couple of days to receive the email with the QA Test link. They continued with their review in case Ms. Sinnott and Ms. Lewis decided to choose the QA Test path. She received authorization to write the QA Test at 9:42 AM. Ms. Blundon stated she was surprised at how quickly this email arrived and decided to write it right then since the material was fresh in her mind. She testified that she announced her decision, picked up her practice test notes

and her computer, and moved to the couch, where she reviewed and accepted the Statement of Understanding. She stated that she was not concerned about completing the test in their company since she was not even sure that they wanted to write the QA Test. She testified that neither Ms. Sinnott nor Ms. Lewis went over to her or spoke to her while she wrote the test. The living space was open concept and she said that Ms. Lewis was in the kitchen making lunch and Ms. Sinnott was sitting at the dining table while she wrote. She stated that when she finished, she saw her passing score, closed her laptop and went to the dining table for lunch, which was now ready. She testified that she did not review the diagnostic report and was unaware of the questions that she had answered incorrectly. She only told Ms. Sinnott and Ms. Lewis that she had passed but they did not discuss the QA Test during lunch. After their quick lunch, Ms. Blundon packed up quickly and headed out. She said that she could not remember whether she took her practice test notes with her when she left since this had taken place so long ago. She stated that when she left, she did not know whether Ms. Sinnott or Ms. Lewis planned on pursuing the QA Test or whether they had selected their paths yet.

- 12) Ms. Blundon received notice that the matter was being referred to the Discipline Committee in November 2017 and was interviewed May 30, 2018 by an investigator. When asked if she delayed or avoided the interview, Ms. Blundon said she did not. She said that she has cooperated throughout the entire process.
- 13) During cross-examination, College Counsel noted that it was unusual for them to be having lunch at such an early time since it would have been 10:50 AM that Ms. Blundon finished her QA Test. Ms. Blundon replied that she had been up early, had only had a coffee and wanted to do some shopping. College Counsel asked Ms. Blundon to confirm that if she reviewed all 225 practice test questions with Ms. Sinnott and Ms. Lewis before starting her QA Test at 9:50 AM, it would mean that they reviewed them in 1 hour 20 minutes, leaving them 21 seconds per question. Ms. Blundon said that she did not remember if they went through every question. Ms. Blundon agreed that it took almost 4 hours for her to complete the practice tests the first time and Ms. Blundon said that this length of time reflects pausing the test to write out the questions and answers. Ms. Blundon maintained that after she wrote her QA Test, they had lunch, which Ms. Lewis had been preparing since she started her test. She stated that she was surprised to learn that Ms. Sinnott and Ms. Lewis had written the QA Test on September 29, 2017 because as far as she knew, they were undecided about writing it and there was no mention over lunch that they were going to write it. Ms. Blundon stated that she was unaware that Ms. Sinnott had made phone calls to the College at 11:11 AM and to the NDHCB at 11:17 AM to register for the QA Test. She stated that she does not have the best hearing so she may not have heard the calls. College Counsel suggested to Ms. Blundon that she attended September 29, 2017 to write the QA Test with Ms. Sinnott and Ms. Lewis, that she stayed at Ms. Lewis' house until Ms. Lewis completed her QA Test, that she received assistance with her own QA Test and helped them, and that they were able to complete each successive test more quickly; Ms. Blundon disagreed with all these suggestions.

- 14) During re-examination, Ms. Blundon said that she had a quick lunch with Ms. Sinnott and Ms. Lewis, maybe 15 minutes long, and that she was in a hurry to leave to go shopping. Ms. Blundon explained that the reason she only included CE on her curriculum vitae (“CV”) from 2019, and not before her QA Test, was because this was the most recent and she had prepared her CV for the hearing. She said that she has a box of study materials, magazines and lots of courses that she did prior to writing the QA Test.

Ms. Patricia Sinnott

- 15) Ms. Sinnott testified that she did not receive assistance with her QA Test and did not aid Ms. Blundon or Ms. Lewis with their QA Tests. She met Ms. Lewis during their dental hygiene program and maintained a friendship through social media. She had not met Ms. Blundon prior to September 22, 2017.
- 16) When Ms. Sinnott was last selected for the QA audit in 2005, she submitted her portfolio. When she was selected for the QA audit in 2017, she did not know which path she would choose. Before she met with Ms. Blundon and Ms. Lewis on September 22, 2017, she had done some reading and studying, including studying out of a national board exam question and answer book, taken CE courses and collaborated with colleagues in study groups. When Ms. Lewis posted on Facebook that she had been selected for the QA audit, Ms. Sinnott sent her a message asking to get together to study. She lived 30 to 40 minutes away from Ms. Lewis’ house. She agreed to meet at Ms. Lewis’ house because she did not know Ms. Blundon and because her own home was under renovation.
- 17) She testified that on September 22, 2017, the three members gathered around the dining table, reviewed what they had studied to date, reviewed the practice profile, and reviewed the submission requirements for the portfolio and QA Test. She testified that they continued studying and completed the online NDHCB sample test. They concluded by deciding to meet again the following Friday at Ms. Lewis’ house. Ms. Sinnott stated that at that time, she was undecided on her path, and she believed that Ms. Lewis was also undecided. She believed that Ms. Blundon was going to write the QA Test but had not decided on a date. She said that she offered to split the cost of the practice tests that Ms. Blundon would be purchasing.
- 18) Ms. Sinnott testified that they planned to study again on September 29, 2017. She stated that there was no agreement about when they would write their QA Tests. She said that she arrived at about 8:00 AM and Ms. Blundon arrived shortly afterward. Ms. Blundon had her practice test notes with her and Ms. Sinnott paid for her share. They started studying right away, with Ms. Blundon reading out the questions and answers and placing them in front of them on the table as they went along. She said they went through all three practice tests very fast and did very well. Then at some point, Ms. Blundon announced that she was going to write the QA Test. Ms. Sinnott stated that she was not aware that Ms. Blundon had registered for the QA Test or how she had registered. When Ms. Blundon went to the couch to write the test, Ms. Lewis began moving back and forth between the dining table and the

kitchen, preparing lunch. She said that Ms. Blundon wrote the test facing them. When Ms. Blundon finished her test, she closed her computer and walked over to the table where she told them she was successful. She stated that Ms. Blundon did not discuss the QA Test. Ms. Sinnott testified that the lunch was partially ready and lasted about 15-20 minutes. She stated that Ms. Blundon left to go shopping and that she did not think Ms. Blundon had left the practice test notes behind.

- 19) When Ms. Sinnott found out that Ms. Blundon had been successful, she decided to commit to the QA Test path herself since she believed she had a good grasp on the material and being in the quiet house had influenced her. She called the College at 11:11 AM because she had recently changed her email address and wanted to make sure she would receive the test authorization link. She could not remember if Ms. Blundon was present when she called the College. Ms. Sinnott then called the NDHCB for clarification on the application process at 11:17 AM. She stated that she was surprised that the email with the QA Test authorization link arrived 12 minutes after her call to the NDHCB as she did not know when Ms. Blundon had registered for her QA Test. It was at this point that she decided to write it because the knowledge was fresh in her mind and as her home was under renovation she did not know when she would have another opportunity. She stated that she was not concerned about writing it at someone else's house because she was doing it on her own and there was no indication that she could not do it at someone else's house. She stated that she had not told Ms. Blundon that she was going to write the test and that Ms. Blundon had already left at this point. She told Ms. Lewis that she was going to write the test.
- 20) Ms. Sinnott testified that she proceeded to write the QA test on the dining table after reviewing and accepting the Statement of Understanding. She wrote with her iPad flat against the table and her back to Ms. Lewis who was in the kitchen. She testified that they did not speak to each other during the test and that she did not review the diagnostic report because she did not feel she needed to since she had passed. She testified that she found the test easy and that she was well-prepared for it. She stated that she recognized some of the questions very quickly and that some of them were simple. She completed the test in 31 minutes, told Ms. Lewis that she was done and gathered her things. When she left, she knew Ms. Lewis had committed to the QA Test path but did not know that she was going to write it the same day. She did not communicate with Ms. Lewis that day after she left. She said she did communicate with Ms. Lewis after September 29, 2017 prior to the investigation about other things but not the QA Test. She was surprised when she received a letter notifying her of an investigation and that it was being referred to the Discipline Committee. She said that she has cooperated with the investigation, by providing her phone records, by attending the pre-hearing and hearing, and by participating in the interview with the investigator.
- 21) During cross-examination, Ms. Sinnott maintained that 21 seconds was enough time to review, answer and digest each of the 225 practice test questions. College Counsel asked if Ms. Sinnott recalled telling the investigator that she had purchased practice tests. Ms. Sinnott explained that she meant that she had paid toward the tests Ms. Blundon had

purchased. Ms. Sinnott stated that while Ms. Blundon was writing the QA Test, she was studying from her national board question and answer book. College Counsel pointed out that Ms. Sinnott said that all three had lunch together on September 29, 2017 which is inconsistent with how she told the investigator that only she and Ms. Lewis had lunched together. Ms. Sinnott testified that September 29, 2017 and September 22, 2017 were blurring together in her mind. College Counsel pointed out that she had told the investigator that she had decided to write the QA Test after reviewing the practice tests, while saying now this decision was made around the time that she called the College. Ms. Sinnott maintained that she did not communicate with Ms. Lewis while she wrote her QA Test.

Ms. Trina Lewis

- 22) Ms. Lewis testified that she did not receive assistance during her QA Test and did not assist Ms. Blundon and Ms. Sinnott in completing their QA Tests. Ms. Lewis testified that she met Ms. Blundon when she covered her maternity leave (2001-2002) and maintained a relationship with her afterward through Facebook and that they did a couple of CE courses together. She stated that she met Ms. Sinnott at Algonquin College, where they graduated from the same class of 1997, and that they maintained a friendship through Facebook since about 2011.
- 23) Ms. Lewis was selected for the QA audit once before in 2013, when she submitted a portfolio that was 112 pages long. She said that she did not like the portfolio because she believed its evaluation was subjective as there was an assessor reviewing it. She mentioned she had concerns with the limited number of chances to write the QA Test, which she tried to address by calling the CDHO and NDHCB. She stated that she spoke to her psychotherapist during her weekly sessions about her anxiety regarding writing the QA Test. They discussed different strategies that could make her feel better and she said that it was suggested she complete a trial run of the QA Test.
- 24) Ms. Lewis posted on Facebook that she had been selected for the QA audit. Ms. Sinnott and Ms. Blundon replied saying they had also been selected. Ms. Lewis invited Ms. Sinnott and Ms. Blundon to her house. They met the morning of September 22, 2017 and Ms. Sinnott and Ms. Blundon stayed until the afternoon and left before Ms. Lewis' daughter got home. Ms. Lewis stated that they went through the question and answer sections in the textbooks they had with them and looked through the CDHO website. They also did the NDHCB sample test and decided to split the cost of the practice tests Ms. Blundon was going to purchase. Ms. Lewis stated that she had not yet decided on her QA path. They planned to get together for one more day the following week since Ms. Blundon would still be on leave, so that they could finish their research, review, and do more studying for the QA Test.
- 25) Ms. Lewis stated that Ms. Blundon and Ms. Sinnott arrived between 8:00 AM and 8:30 AM on September 29, 2017. The only material they had that was different from the week before were the practice test notes that Ms. Blundon had brought. They sat at the dining table and

Ms. Blundon read out the questions. She stated that she and Ms. Sinnott were doing very well answering the questions and that there were very few questions they needed to reference other material for the answer. She stated that they were able to go through all the questions so quickly because there was also overlap between the three practice tests. Ms. Lewis testified that at some point while they were reviewing, Ms. Blundon said that she had had enough studying and was going to write the test, which surprised Ms. Lewis. Ms. Blundon got up, picked up her stuff and went to the couch. Ms. Sinnott and Ms. Lewis remained at the table where Ms. Lewis studied a bit more before she started preparing lunch. When Ms. Blundon finished the QA Test, she returned to the table and told them she passed. Ms. Blundon said that the test was what they knew and if they had written it, they would have been fine. Ms. Lewis stated that she had no intention of writing it that day and that she had no idea when Ms. Blundon had registered for the QA Test path. When Ms. Blundon returned to the table, they had lunch. Ms. Lewis had prepared burgers with smoked brie, roasted cremini mushrooms, caramelized onions and Jack Astor's patties on brioche buns which she offered with a side of fries or salad. Although Ms. Blundon chose fries, she did not have time for them and left, even forgetting half her burger behind. After Ms. Blundon left, Ms. Lewis said that she and Ms. Sinnott laughed about what they were going to do now, considering Ms. Lewis had the whole day planned for studying. Then Ms. Sinnott said that she was going to write the test. Ms. Sinnott sat down at her seat at the table and started writing it. Ms. Lewis testified that she was in the kitchen and neither of them spoke to each other while she wrote the test. She said that Ms. Sinnott had mentioned that it was quiet at Ms. Lewis' house and that her own was under construction. Ms. Lewis knew when Ms. Sinnott had finished her test because she stood up and started packing up her things. Ms. Sinnott told her that she passed and that Ms. Blundon was right about how they knew the material. Ms. Lewis walked Ms. Sinnott to the door and then, knowing that her daughter would not be home for a couple hours and that her boyfriend would not be returning until Tuesday, she thought that she had time to do a trial run of the test. She had chosen her path that morning. She went immediately back upstairs and started her QA Test at the island where her iPad was. Ms. Lewis testified that she did the test standing up. She also testified that she wrote the test at this time to calm her nerves so she could see what the test was like before taking it again. She testified that she reviewed and accepted the Statement of Understanding prior to writing the test. She testified that neither Ms. Blundon nor Ms. Sinnott were present while she wrote. She stated that she thought that the investigation was occurring only because they did the QA Tests from the same IP address. She said that she told the investigator that she had recognized a lot of the questions from the practice tests. She said she has cooperated with the investigative and discipline processes.

- 26) During cross-examination, Ms. Lewis stated she was surprised Ms. Blundon had completed the practice tests since she thought they were going to do them together. She said she understood that Ms. Blundon wanted more time to study since she was returning to work soon and so had taken notes on the practice tests. Ms. Lewis acknowledged she thought that Ms. Blundon and Ms. Sinnott were leaving early on September 29, 2017 and that she had invited them to stay the night although no plans had been made. Ms. Lewis said that

she was unsure whether Ms. Blundon was present when Ms. Sinnott made calls to the College and NDHCB. College Counsel noted that Ms. Lewis spent roughly 10 seconds per question when she wrote the QA Test in 13 minutes. College Counsel asked if Ms. Lewis' injury affects her short-term memory, to which Ms. Lewis said that her short-term memory can "glitch" depending on her level of fatigue and stress. During re-examination, Ms. Lewis stated that she did not have any issues with her short-term memory on September 29, 2017.

MAJORITY OF THE PANEL'S DECISION AND REASONS

27) The College bears the onus of proving the allegations set in the Notice of Hearing. The standard of proof is on a balance of probabilities, whether it is more likely that the alleged conduct occurred. The majority of the Panel (the "Majority") found that the allegations have been proven by the College on a balance of probabilities by evidence that is clear, cogent and convincing. The Majority found that Ms. Sinnott's conduct constitutes the following acts of professional misconduct:

- (a) Signing or issuing, in the member's professional capacity, a document that the member knows or ought to know contains a false or misleading statement;
- (b) failing to take reasonable steps to ensure that information provided by or on behalf of the member to the College is accurate;
- (c) engaging in conduct or performing an act, relevant to the practise of the profession, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

28) The Panel found that the College did not provide convincing evidence to support a finding that Ms. Sinnott failed to cooperate with the Quality Assurance Committee or any assessor appointed to the committee. Although Ms. Sinnott reviewed and accepted the Statement of Understanding prior to commencing her QA Test, she did cooperate with the Quality Assurance Committee by participating in the phone interview with the investigator, by providing her phone records in a timely manner, and by being present at both the pre-hearing and all four days of the hearing.

29) The College's case relied largely on circumstantial evidence. This can be as reliable and as probative as direct evidence. A leading text on circumstantial evidence describes this as follows:

A fact in issue cannot always be proved by direct evidence. A witness cannot always be called to prove the facts from personal observation, nor can a document always be introduced which directly establishes the fact. The facts in issue must, in many cases, be established by proof of other facts. As many courts have noted, criminals are not likely to commit their crimes within the sight of witnesses, and it

would be a great blow to the administration of the criminal justice system if such evidence was not admitted. If sufficient other facts are proved, the court may “from the circumstances” infer that the fact in issue exists or does not exist. In such a case, proof is said to be circumstantial. (Sidney Lederman, Alan W Bryant & Michelle Fuerst, *The Law of Evidence*, 5th ed (Markham: LexisNexis, 2018)).

- 30) The Panel considered the ASF and the witness testimonies in their deliberation. The Majority found that the evidence present in this case is compelling and substantiates the findings of professional misconduct on a balance of probabilities. Given that Ms. Sinnott, Ms. Blundon and Ms. Lewis (collectively, the “Registrants”) wrote their QA Tests in close succession from the same IP address, wrote with increasing speeds, and achieved very high test scores, the Majority finds it is more likely that Ms. Sinnott completed the QA Test with assistance from Ms. Blundon and/or Ms. Lewis and/or assisted Ms. Blundon and/or Ms. Lewis with their QA Tests. By reviewing and accepting the Statement of Understanding prior to writing her QA Test, Ms. Sinnott knew she was supposed to complete the QA Test individually and keep its contents confidential.
- 31) The Registrants all wrote from Ms. Lewis’ house on the same date, in close succession. Ms. Blundon wrote from 9:50 AM to 10:50 AM, Ms. Sinnott wrote from 11:56 AM to 12:27 PM and Ms. Lewis wrote from 12:36 PM to 12:49 PM. By the Registrants’ testimonies, Ms. Blundon left before Ms. Sinnott chose her path and started writing her QA Test. Since Ms. Blundon finished writing at 10:50 AM, this would allow for very little time for her to have lunch with Ms. Lewis and Ms. Sinnott and leave before Ms. Sinnott placed calls with the College at 11:11 AM and the NDHCB at 11:17 AM to register for her path. The Majority do not believe that this timeline accords with common sense. The witnesses testified that the plan had been for the Registrants to meet on September 29, 2017 to continue to study together, but according to the Registrants, after Ms. Blundon finished her QA Test, she was in a hurry to leave and go shopping, even though Ms. Lewis had planned and prepared lunch for them. After Ms. Sinnott finished her QA Test at 12:27 PM, she also would have needed to pack up and leave right away for Ms. Lewis to start writing her test nine minutes later.
- 32) The Majority notes that with each successive QA Test, the completion time decreased by half the time. Ms. Blundon wrote in one hour, Ms. Sinnott wrote in 30 minutes 36 seconds, and Ms. Lewis wrote in 13 minutes 15 seconds. Ms. Sinnott was the fastest test-writer for Form 7 of the QA Test. Out of the three Forms, only two people wrote the QA Test faster than she, one of whom was Ms. Lewis who scored 98.67%, and the other of whom completed it in 28 minutes and scored 93.33%. The next fastest test-writer wrote in 34 minutes and scored 92%, followed by a registrant who wrote in 40 minutes and scored 86.67%. Although the QA Test is an open book test, Ms. Sinnott and Ms. Lewis did not mention whether they referenced any materials or looked up any information while completing their respective QA Tests.

- 33) There was a 52% to 57% overlap between the practice tests and the QA Tests which the Registrants claimed partially accounted for the speed and accuracy with which they answered the questions. The College did not submit data about who else, amongst all 2015, 2016 and 2017 QA Test-takers, had purchased and/or reviewed the practice tests in advance of taking the QA Test. However, out of the Registrants, Ms. Blundon was the only one who did the practice tests in the days preceding September 29, 2017. According to her testimony, she took notes and rewrote them, exposing herself to the questions and answers more than once and thus, out of the three, she had by far the most time to familiarize herself with them. Ms. Sinnott and Ms. Lewis only heard the questions and answers during their quick review on the morning of September 29, 2017 and neither had a chance to further review them once Ms. Blundon took the practice test notes to the couch to write her QA Test. By their accounts, and according to the cell tower data, Ms. Blundon arrived at Ms. Lewis' house at approximately 8:22 AM to 8:30 AM. If she started quizzing them right away and continued up until she started writing the QA Test at 9:50 AM, they had about 1 hour 20 minutes for Ms. Blundon to read out the 225 questions with the four answer options, and for them to respond. The Majority also noted that although some questions were short, some questions were based on client profiles and scenarios several sentences long, while other questions included photographs or radiographs. The Majority found that there was insufficient time for Ms. Sinnott and Ms. Lewis to hear and digest 225 questions to the point that they could quickly recognize and correctly answer them on their QA Tests two to three hours later.
- 34) The Majority notes that mistakes on questions made by earlier test-takers were not made by subsequent test-takers. Specifically:
- (a) Ms. Blundon made four mistakes. 39 questions were identical or nearly identical to practice test questions.
 - (i) One mistake she made was a question not on the practice tests.
 - (ii) Three mistakes she made were questions identical or nearly identical to questions on the practice tests.
 - (b) Ms. Sinnott made one mistake. 39 questions were identical or nearly identical to practice test questions. 50 questions were shared with Ms. Blundon's QA Test.
 - (i) She answered 34(a)(i) correctly.
 - (ii) One of 34(a)(ii) was on her QA Test and she answered it correctly.
 - (iii) The mistake she made was a question not on the practice tests and not on Ms. Blundon's QA Test.

- (c) Ms. Lewis made one mistake. 43 questions were identical or nearly identical to practice test questions. 48 questions were shared with Ms. Blundon's QA Test and 48 questions were shared with Ms. Sinnott's QA Test.
- (i) She answered 34(a)(i) correctly.
 - (ii) She answered 34(b)(iii) correctly.
 - (iii) The mistake she made was a question not on the practice tests and not on Ms. Blundon's QA Test and not on Ms. Sinnott's QA Test.
- 35) Counsel for the Registrants said that the Registrants' many years of experience in the dental hygiene profession, their history of academic excellence and the preparation they engaged in leading up to the QA Test also explains their high scores and fast completion times. Ms. Blundon graduated in 1992 and worked in clinical practice full time until March 2020. She stated that she did well in school and did not have any issues writing tests. Ms. Blundon stated she prepared a few hours every day during her medical leave which commenced in April 2017. She stated that during that time she would have reviewed the Esther Wilkins textbook, the Darby and Walsh textbook, the Compendium of Pharmaceuticals and Specialties book, and the resources that she had subscribed to like the CDHO Milestones, Oral Health, Oral Hygiene, Canadian Journal of Dental Hygiene, Dental Tribune and Dentistry Today. The Panel noted that although her testimony alluded to her having taken several CE courses, her CV only referenced five CE courses, all taken in 2019. Ms. Sinnott graduated in 1997 and worked in clinical practice until 2019, after which she became clinic manager. Her CV included 16 hours of CE in 2015, 13 hours of CE in 2016, and 27 hours of CE in the first half of 2017. In preparation for her QA audit, Ms. Sinnott borrowed a copy of Mosby's Review Questions for the National Board Dental Hygiene Examination. She stated that she reviewed this book along with journals and collaborated with others in study groups. Ms. Lewis graduated in 1997 and worked on a part-time basis from 1997 to 2015 and included multiple CE courses on her CV for the years 2010 to 2012. She stated that in preparation for the QA audit, she did a lot of reading from the ODHA and CDHA professional magazines, the Esther Wilkins textbook, the Darby and Walsh textbook, her radiology textbook and the Registrants' Handbook. No CE was noted since 2012 although she has remained an active registrant of the College. She has not worked since 2015 and expressed that she felt anxiety about the QA audit process and that she addressed this anxiety with her psychotherapist. However, no CE was done since 2012 in preparation for the possible submission of a portfolio. The lack of CE leading up to the 2018 QA audit selection on Ms. Blundon and Ms. Lewis' CVs suggests that it is possible that they may not have been as up to date on current standards.

- 36) Counsel for the Registrants said that the QA Tests were not challenging since the average scores for each Form were high. The average score for Form 2 was 87.14% and the average completion time was 1 hour 43 minutes. Ms. Blundon wrote the QA test in one hour. The average score for Form 7 was 85.40% and the average completion time was 1 hour 49 minutes. Ms. Sinnott wrote the QA test in 30 minutes 36 seconds. The average score for Form 8 was 88.26% and the average completion time was 1 hour 47 minutes. Ms. Lewis wrote the QA test in 13 minutes 15 seconds. The Majority observed that the time it took for the Registrants to complete their QA Tests was significantly less than the Forms' averages. The Majority found it highly improbable that the Registrants could have completed the QA Tests in these times with this degree of accuracy without having assisted one another. Ms. Sinnott and Ms. Lewis were undecided on their paths for months but then decided to write after a very fast oral review of the practice tests. The Majority finds that it is more likely that the Registrants wrote the tests together over the course of the morning and early afternoon.
- 37) The Panel reviewed the case law provided by College Counsel. In the case of *Ontario (College of Dental Hygienists of Ontario) v Coker*, 2019 ONCDHO 10 (CanLII), and in the case of *Ontario (College of Dental Hygienists of Ontario) v Istenes*, 2019 ONCDHO 9 (CanLII), a panel of the Discipline Committee determined that the College had not proven the similar allegations of professional misconduct on a balance of probabilities. Notable differences between their cases and Ms. Sinnott's are: Ms. Coker and Ms. Istenes wrote the same Form of the QA Test, they did not write particularly quickly, there was no evidence that they answered the same questions with the same answers, and there was an additional witness who testified that she saw, for some of the time, Ms. Istenes writing the QA Test independently, in a separate room of the house on another floor. Also, Ms. Istenes started her test 12 minutes after Ms. Coker.
- 38) The Majority found that Ms. Blundon was not a credible witness. The Majority found Ms. Blundon's version of events of September 29, 2017 to be improbable. In particular, the Majority found that it was improbable that she drove 1 hour 45 minutes with the intention of spending the day studying and lunching with Ms. Sinnott and Ms. Lewis but then decided to write the QA Test and leave in such a hurry to go shopping that she did not even finish the burger Ms. Lewis has prepared for her. The Majority found it unlikely that she did not discuss the QA Test during their lunch and that she left before Ms. Sinnott placed her call to the College at 11:11 AM, a mere 21 minutes after Ms. Blundon finished her QA Test. The Majority also found it unlikely that Ms. Blundon did not know that Ms. Sinnott and Ms. Lewis had decided to choose the QA Test path.
- 39) The Majority found that Ms. Sinnott was not a credible witness. Ms. Sinnott explained that her high score and fast completion time were due to her level of preparation and studying, however considering how much the combination of her timing and score varied from the averages and from other test-takers, the Majority found this unlikely. Also, Ms. Sinnott acknowledged that she had told the investigator that only she and Ms. Lewis ate lunch together on September 29, 2017, which contradicted her own evidence and Ms. Blundon's

evidence that all three ate lunch together. Ms. Sinnott tried to explain this contradiction by saying that September 22, 2017 and September 29, 2017 were blurring together in her mind, however this does not make sense as they stated that they ate lunch together on both days. Also, Ms. Sinnott acknowledged that she had told the investigator that she had purchased practice tests. She tried to clarify this inconsistency by saying that she paid toward the practice tests that Ms. Blundon had purchased.

- 40) The Majority found that Ms. Lewis was not a credible witness. Counsel for the Registrants said that Ms. Lewis treated her attempt of the QA Test as a trial run to reduce her anxiety about the QA Test. Ms. Lewis said that since her daughter would not be home for a couple hours and both Ms. Blundon and Ms. Sinnott had been successful writing the QA Test, she decided to write it as well. She walked to her kitchen island, and wrote it on her iPad standing up, knowing she had three attempts to succeed. She wrote in 13 minutes, scored 98.67%, and was by far the fastest test-writer of all three forms. Ms. Lewis said that she recognized the majority of the questions and stated that she was surprised there was only a 57% overlap between the practice tests and her form of the QA Test and that she was well-prepared for the questions that did not overlap with the practice tests. The Majority noted that the only exposure she had to the practice test questions, was when Ms. Blundon conducted an oral review from her notes on September 29, 2017 for 1 hour 20 minutes. The Majority found that her explanation for her fast completion of the QA Test and her high score did not accord with common sense and was improbable.
- 41) In conclusion, the Majority finds that Ms. Sinnott engaged in professional misconduct pursuant to the following paragraphs of Clause 51(1)(c) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991* and set out in section 5.(b) in the Notice of Hearing:
- ii. paragraph 30: signing or issuing, in the member's professional capacity, a document that the member knows or ought to know contains a false or misleading statement ; and/or
 - iii. paragraph 42: failing to take reasonable steps to ensure that information provided by or on behalf of the member to the College is accurate
 - iv. paragraph 52: engaging in conduct or performing an act, relevant to the practise of the profession, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.
- 42) The College did not seek a finding that Ms. Sinnott contravened by act or omission, a standard of practice of the profession or failed to maintain the standard of practice of the profession (paragraph 5.(b)i. in the Notice of Hearing).

- 43) The Majority found that the College did not provide convincing evidence to support a finding that Ms. Sinnott had failed to cooperate with the Quality Assurance Committee or any assessor appointed by the committee (paragraph 5.(a) in the Notice of Hearing).
- 44) Given the findings of misconduct, the Panel requests that a penalty hearing be scheduled at the earliest opportunity.

I, Vanessa Pereira, sign this decision and reasons for the decision as Chair of the Discipline panel and on behalf of the Majority as listed below.

Dated this 2 of September, 2021.



Vanessa Pereira, Chair, Professional Member of Council

Members of the Majority:

Gillian Dunn, Non-Council Member
Vanessa Pereira, Professional Member of Council, Chair
Ilga St. Onge, Professional Member of Council

DISSENTING REASONS OF THE MINORITY

- 45) This is a decision of a Disciplinary Committee following a hearing into the circumstances and activities of Mrs. P. Blundon, Mrs. P. Sinnott and Ms. T. Lewis, all CDHO Registrants, each of whom wrote and passed their QA Tests on September 29, 2017. My fellow Committee members were supplied and heard the same background information respecting the allegations of these three Registrants cheating on the QA Tests, as I did, but I am not convinced based on the evidence submitted by CDHO that there has been any proof of Professional Misconduct, nor has there been a sufficient or timely evidentiary record to arrive at findings of guilt, the penalty for which could result in the Registrants losing their reputations and their inability to earn a living.
- 46) In my respectful view, permanent termination of a career or any other penalties under these factual circumstances are an unjust result. I do not believe that it is appropriate that this Committee could set a standard of judgment which is premised on a finding of guilt of 'more likely than not', based on subjective judgement. Any finding of misconduct must be based on clear, logical, and convincing evidence. CDHO asked us to believe that the Registrants risked their reputations and long, unblemished careers assisting one another

with an open-book QA test.

- 47) The Registrants are experienced Dental Hygienists and have a track record of academic excellence.
- 48) The Registrants have decades-long experience in dental hygiene which prepared them for the QA test, which includes questions on sanitization and a review of x-rays that are standard in the industry.
- 49) Mrs. Blundon became a RDH in 1992 and had worked for 25 years at the time of writing her QA test. She testified that she regularly attended continuing education courses.
- 50) Mrs. Sinnott graduated as a dental assistant in 1991 in Charlottetown. She worked in Prince Edward Island before moving to Ottawa to complete the dental hygiene program in 1997. She taught dental hygiene at the local College in PEI and in writing the QA test in 2017, she brought 26 years of experience to answering the questions.
- 51) Ms. Lewis graduated with a diploma in dental assisting in 1991 and dental hygiene in 1997. Prior to her car accident, she had worked a combined 24 years in the industry. Between 2011 and 2013 alone, she completed more than 106 hours of Continuing Education. Her evidence shows that she was dedicated to self-improvement as a Registered Dental Hygienist.
- 52) All three Registrants had previously gone through the QA process with success. This is not the first occasion that the Discipline Committee has considered allegations of professional misconduct related to the completion of the QA Test in 2017. In the cases of *CDHO v. Coker* and *CDHO v. Istenes*, the CDHO made the same allegations as it has in this case against two other registrants. In both of those cases, the Committee concluded that the CDHO had not proven its allegations. Despite being advised by the Committee that registrants completing the QA Test on the same day, from the same location and using the same IP address did not give rise to an inference that the registrants assisted each other, the CDHO has continued to pursue its allegations against these Registrants.
- 53) Based on the evidence that has been presented to the Discipline Committee, the CDHO has failed to present clear, cogent and convincing evidence that on a balance of probabilities, the Registrants committed acts of professional misconduct. The Registrants state that the evidence does not support findings of professional misconduct for the following reasons:
 - a. Mrs. Blundon, Mrs. Sinnott and Ms. Lewis all testified that they each completed the QA Test without assistance and that they did not provide assistance to the others when they completed their QA Tests. They were credible, their evidence was consistent, withstood cross-examination and was reliable.

- b. There were no witnesses or other information (such as cell phone data) that would challenge the denials of Mrs. Blundon, Mrs. Sinnott and Ms. Lewis
 - c. There was no prohibition on registrants completing the QA Test with an open book, on the same date, from the same location and using the same IP address.
 - d. The evidence that the CDHO relied upon as “circumstantial evidence” did not give rise to the inferences that it asked this Committee to make and is therefore nothing more than speculation.
- 54) The Registrants were well-prepared to write the QA tests Sept. 29, 2017. There are numerous reasons to explain why the Registrants were able to complete the QA Test in the times that they did and achieve the marks that they did, including, but not limited to:
- i. They were all experienced dental hygienists with between 18 to 25 years of experience working in the profession.
 - ii. They had a track record of academic excellence.
 - iii. They all engaged in thorough preparation leading up to the QA Test.
 - iv. They purchased and reviewed multiple practice tests sold by the NDHCB.
 - v. The QA Tests were not challenging.
 - vi. They were all familiar with the material covered in each respective version of the QA Test.
 - vii. The NDHCB mistakenly permitted questions from the practice examinations it sold to registrants to appear on the QA Tests written in 2017, resulting in between 52% and 57% overlap between the questions that appeared on the practice examinations purchased and reviewed by all of the Registrants and the questions that appeared on their form of the QA Test.
- 55) Ms. Lewis treated her attempt of the QA Test on September 29, 2017 as a practice run. Achieving a mark higher than the average mark or completing the test in less time than the average time does not give rise to an inference that the registrants must have assisted each other.
- 56) All three Registrants achieved higher scores than the average for their form of the QA Test. In addition, they all completed the QA Test in less time than the average time for their form of the test. However, these facts did not give rise to an inference that the

Registrants must have assisted each other. One might conclude that when writing a test with familiar questions having one or two people hovering to assist would be a hinderance and time consuming.

- 57) There is an inherent risk in relying upon the statistics related to all registrants who wrote each form of the QA Test to support the theory that the Registrants must have assisted each other. Other than the statistics that are found in the charts (Tabs 22-24 of the JBD), there was no other information available that would inform the Committee as to the circumstances of each registrant who wrote the QA Test, such as:
 - i. How long they prepared
 - ii. What they reviewed
 - iii. Whether they purchased practice examinations.
- 58) As a result, while the statistical information was interesting with respect to each form of the QA Test, the fact that the Registrants did better and completed the examination more quickly than the average is not evidence that they assisted each other.
- 59) While all three Registrants did well on the QA Test, so did many other registrants:
 - i. There were nine registrants who achieved a better mark than Mrs. Blundon
 - ii. Another registrant achieved the same mark as Mrs. Sinnott (98.67%)
 - iii. There were two others who scored 97.33% (73/75) and three who achieved 96% (72/75)
 - iv. There were two other registrants who achieved the same mark as Ms. Lewis (98.67%)
 - v. Four registrants scored 96% (72/75)
- 60) In addition to the above, the average scores for each form of the QA Test were high, which suggests that many registrants did well on their form of the QA Test. The average score for Form 2 was 87.14%, the average score for Form 7 was 85.4% and the average score for Form 8 was 88.26%.
- 61) Given the above, it was not unusual for a registrant to achieve a high mark on the QA Test. As a result, no inference that the Registrants must have received assistance to achieve their marks can be made from the fact that they achieved a mark higher than the average.
- 62) Likewise, while the Registrants all completed the QA Test in less time than the average, so did many other registrants:
 - i. 21 of the 45 registrants who wrote Form 2 (the form completed by Mrs. Blundon) completed it in less time than the average. There were four

registrants who completed it in less time than Mrs. Blundon.

- ii. 25 of the 57 registrants who wrote Form 7 (the form completed by Mrs. Sinnott) completed it in less time than the average. While Mrs. Sinnott had the quickest time for Form 7, there was a registrant who completed Form 8 quicker than Mrs. Sinnott (in addition to Ms. Lewis) as well as another who took approximately four minutes longer than Mrs. Sinnott.
- iii. 26 of the 51 registrants who wrote Form 8 (the form completed by Ms. Lewis) completed it in less time than the average. Ms. Lewis had the quickest time for Form 8.

- 63) The Registrants concede that Mrs. Sinnott and Ms. Lewis has the quickest times for their respective forms of the QA Test but the fact that they had the quickest times does not give rise to the inference that they must have received assistance. If completing the QA Test faster than the average gives rise to an inference that the registrant received assistance, then half of the registrants who wrote the QA Test in 2017 must have received assistance. Obviously, this is simply not supportable.
- 64) The CDHO suggested that an inference that the Registrants assisted each other can be drawn from the sequence of events that occurred on September 29, 2017. Specifically, that Mrs. Sinnott achieved a better mark and completed the QA Test in less time than Mrs. Blundon and that Ms. Lewis achieved the same mark as Mrs. Sinnott but completed the QA Test in less time than Mrs. Sinnott.
- 65) Based on the evidence that has been presented, this was not an inference that could be drawn by this Committee. There was a significant amount of evidence presented that would explain why the Registrants achieved the marks that they did and completed the QA Tests in the time that they did (in addition to the fact that the Registrants deny they assisted each other and there was no direct evidence to contradict that assertion). As a result, the CDHO's position is nothing more than speculation and not supported by evidence.
- 66) There was no evidence that the Registrants reviewed the diagnostic reports generated at the end of the QA Test so that they could review the questions they answered incorrectly.
- 67) The CDHO relied on the fact that Mrs. Sinnott answered 2 questions correctly that Mrs. Blundon answered incorrectly as evidence that the Registrants assisted each other. To accept this inference, you would need to first conclude that but for the assistance of Mrs. Blundon and/or Ms. Lewis, Mrs. Sinnott would not have answered these 2 questions correctly. Given that many others who wrote this form of the QA Test and scored very highly, an inference can be drawn that the Registrants did not need assistance to answer these questions correctly.

- 68) The only way for the Registrants to have known they answered a question incorrectly on the QA Test was to review the diagnostic report after they had completed the QA Test. Mrs. Blundon and Mrs. Sinnott both testified that they did not review the questions on the diagnostic report after they completed their QA Tests. They also confirmed that they did not discuss the questions on their test, whether correct or incorrect.
- 69) The CDHO did not lead any evidence to suggest that the Registrants, particularly Mrs. Blundon, reviewed the diagnostic report after her QA Test. There is no data available from the NDHCB that would provide any evidence of whether the Registrants reviewed their diagnostic reports. There is no data available from Ms. Lewis's internet provider (Bell Canada) that would constitute evidence on how long the QA Test website was accessed on September 29, 2017 from Ms. Lewis' IP address.
- 70) Further, Mrs. Sinnott and Ms. Lewis both testified that they learned of the overlap from the investigator's report. Mrs. Blundon did not tell them that questions from the paid practice tests appeared on her test. Likewise, Mrs. Sinnott did not tell Ms. Lewis about the overlap after completing her test. This is consistent with their evidence that they did not share or speak about the questions or answers on their tests.
- 71) Given this lack of evidence, the direct evidence of the Registrants with respect to this issue should have been preferred.
- 72) There is a preponderance of evidence that provides a reasonable explanation as to why the Registrants achieved the marks they did and completed the QA Tests in the time that they did.
- 73) In addition to the fact that these Registrants deny assisting each other and there was no direct evidence to contradict those denials. There was compelling evidence presented that could lead this Committee to conclude that the sequence of events that occurred on September 29, 2017 did not give rise to the inference that the CDHO had asked the Committee to make. These are:
 - i. The Registrants' experience
 - ii. Their academic excellence
 - iii. Their preparation for the QA Test
 - iv. The overlap between practice tests and the QA Test
 - v. Ms. Lewis' unique circumstances.

- 74) The Committee believed that these Registrants risked their long, unblemished careers to assist each other with an open-book exam. In order to accept the theory advanced by the College (that these Registrants attended the September 29 meeting with the intention of writing the QA Test together), you had to have accepted that Mrs. Sinnott and Mrs. Blundon who had only met for the first time on September 22, 2017, decided at that first meeting that they would write the test together the following week. It is simply not a plausible inference to have made.
- 75) The Registrants purchased and reviewed practice tests from the NDHCB. There was significant overlap between the questions on the QA Tests and those on the practice tests.
- 76) In studying for the audit, the Registrants reviewed three (3) practice tests that Mrs. Blundon purchased from the NDHCB, along with the sample tests from the NDHCB and a board preparation textbook which had mock questions.
- 77) The questions from CDHO counsel during cross-examination suggest that the College took the position that Mrs. Sinnott and Ms. Lewis would not have had a sufficient amount of time to absorb the information from the practice tests given they were hearing the questions for the first time and that they only reviewed them for a short period of time.
- 78) The Registrants all testified that they were able to review the material on the practice tests that morning. While there were three practice tests, Ms. Lewis testified that there was overlap between some of the questions. The Registrants stated that the answers to many of the questions were obvious and that others were rudimentary, resulting in them not having to spend much time on them. Given the nature of the review, there is no reason to believe that this review could not have been completed in the time that the Registrants say it occurred.
- 79) When considering this evidence from the Registrants, it is important to remember that the first time there was a suggestion that there was a similarity between the questions on the QA Tests and on the practice tests purchased from the NDHC was when these Registrants raised it during their interviews with the Investigator in May, 2018. All three Registrants testified that they told the investigator that they recognized a lot of the questions on their QA Test, some of them word for word.
- 80) At the time of those interviews, there had been no acknowledgment from the NDHCB that there was an overlap between the QA Test and the practice tests. It was not until June 22, 2018, a month later, that the NDHCB first advised the CDHO that there was overlap. The fact that all three Registrants told the investigator in their interviews that they recognized questions on the QA Test and that the evidence obtained from the NDHCB subsequent to their interviews confirmed there was in fact overlap. It is evident that the Registrants were being truthful when they testified that they recognized a lot

of the questions. If the Registrants were fabricating this evidence, then they would have needed to also have the foresight to predict that evidence would be obtained from the NDHCB after their interviews with the CDHO that would, as is noted in the ASF, the overlap between the questions on the practice tests and the QA Tests was significant:

- i. There was a 52% overlap for Mrs. Blundon. 39 of 75 questions were identical or similar. A comparison of the questions on the QA Test (Form 2) and the three practice tests is found at Tab 25 of the JBD.
- ii. There was a 52% overlap for Mrs. Sinnott. 39 of 75 questions were identical or similar. A comparison of the questions on the QA Test (Form 7) and the three practice tests is found at Tab 26 of the JBD.
- iii. There was a 57.33% overlap for Ms. Lewis. 43 of 75 questions were identical or similar. A comparison of the questions on the QA Test (Form 8) and the three practice tests is found at Tab 27 of the JBD.

- 81) The impact of this overlap cannot be overstated. It would be reasonable to expect that a registrant would do well and complete the test in a shorter amount of time if they were already aware of at least 50% of the answers prior to writing the QA Test.
- 82) This mistake by the NDHCB was significant and should not be disregarded. In a case where allegations of professional misconduct are being made, the Committee must consider all potential explanations as to why the Registrants did as well as they did on these QA Tests. The error made by the NDHCB provides a reasonable explanation as to why these Registrants were successful.
- 83) The NDHCB no longer administers the QA Test for the CDHO as of 2018.
- 84) The fact that each Registrant successively completed the QA Test in less time does not lead to an inference that they assisted each other.
- 85) The CDHO had focused on the time it took the Registrants to complete the QA Tests as evidence that they must have assisted each other. However, the evidence does not support such an inference. Others could suggest that if the Registrants assisted each other, they would have ensured that the length of times writing the QA Tests would have been somewhat equivalent and longer so as not to trigger a suspicion of misconduct.
- 86) Based on the lack of any direct evidence from the CDHO that supported its allegations, the CDHO asked this Committee to make findings of professional misconduct grounded on the following:

- a) The Registrants were not credible and reliable and therefore there was a sufficient basis to question their denials that they assisted each other with the QA Test; and
 - b) There was “circumstantial” evidence that proved on a balance of probabilities that the Registrants assisted each other with the QA Test.
- 87) The Registrants stated that the CDHO has failed to demonstrate that they were not credible and/or reliable with respect to their testimony as to what occurred on September 29, 2017. Furthermore, while the Registrants conceded that findings of misconduct can be made by this Committee based on circumstantial evidence, in this case the circumstantial evidence that the CDHO relied upon does not lead to an inference that the Registrants committed misconduct.
- 88) The CDHO failed to show that the evidence of the Registrants was not credible and/or reliable. The evidence must always be clear and cogent to satisfy the balance of probabilities. *F.H. v. McDougal SCC*
- 89) When assessing credibility, the Committee must keep in mind that the CDHO did not lead any evidence that contradicts the testimony of the Registrants. This was not a case where there were differing witness accounts of what occurred on September 29, 2017. The Committee was not in a position of having to determine that one witnesses’ testimony as to what occurred should be preferred to that of another witness. Rather, the CDHO seeks to identify inconsistencies between the recollection of each of the Registrants and suggest that these inconsistencies demonstrate that the Registrants are not credible and/or that their evidence was not reliable.
- 90) The Ontario Court of Appeal has provided guidance on how credibility and reliability are different. “Credibility has to do with a witness’s veracity, reliability with the accuracy of the witness’s testimony. Accuracy engages consideration of the witness’s ability to accurately i) observe; ii) recall; and iii) recount, events in issue.” *R. v. HC 2009 ONCA*
- 91) The Divisional Court has noted that when assessing credibility, the Panel should use good common sense and its knowledge of human nature. *RePitts and Director of Family Benefits Branch and the Ministry of Community and Social Services. (1985)O.J. No 2578 (Div. Ct.)*
- 92) The passage of time can lead to inconsistencies or gaps in a witnesses’ memory. Inconsistencies in a witnesses’ memory do not automatically lead to a conclusion that they are not credible or that their evidence is not reliable. The Ontario Court of Appeal in *R. v. M.G., 2019 ONCA 796*, provided the following guidance with respect to how to assess inconsistencies in the evidence of a witness: Probably the most valuable means

of assessing the credibility of a crucial witness is to examine the consistency between what the witness said in the witness box and what the witness has said on other occasions, whether on oath or not. Inconsistencies on minor matters, or matters of detail, are normal and are to be expected. They do not generally affect the credibility of the witness. This is particularly true in cases of young persons. But where inconsistency involves a material matter about which an honest witness is unlikely to be mistaken, the inconsistency can demonstrate a carelessness with the truth. The trier of fact is then placed in the dilemma of trying to decide whether it can rely upon the testimony of a witness who has demonstrated carelessness with the truth. *1995 Can LII8733(On Ca) para 23*

- 93) This Committee has recently confirmed in *Coker* and *Istenes* that the impact of the passage of time on a witness' evidence can lead to "minor inconsistencies". *1994 CanLII8733 at para 23*
- 94) There is no reason to question the credibility of the Registrants or the reliability of their testimony. There were, not surprisingly, minor inconsistencies between the Registrants as to specific details of September 29, 2017. That would be expected when you ask three people to describe the specific details of events that occurred 1242 days ago. However, the Registrants were all consistent in their evidence on the material facts. They testified in a clear and forthright manner. Their evidence was not seriously challenged on cross-examination. Their evidence with respect to the allegations was clear and consistent:
- i. They did not receive assistance,
 - ii. They did not provide assistance,
 - iii. They did not copy, share or disclose the QA Test; and
 - iv. They kept the QA Test confidential.
- 95) Mrs. Blundon was honest and forthright in her evidence. Her recollection of the sequence of events on September 29, 2017 was consistent with the testimony of Mrs. Sinnott and Ms. Lewis. She completed her QA Test without assistance, did not provide any information about the test to Mrs. Sinnott and Ms. Lewis and left Ms. Lewis' house after she completed the QA Test. During her testimony, she even explained what had led the CDHO to request an on-site assessment of her practice in 2018. She did so even though acknowledging this could be embarrassing to do in front of her peers.
- 96) More importantly, there were no inconsistencies identified between her evidence and that of the other Registrants.
- 97) Mrs. Sinnott was honest and forthright in her evidence and provided clear evidence with respect to her test day from her arrival at Ms. Lewis' house, to studying the practice tests, to registering for her own test, to writing her test after Mrs. Blundon had left the house. Mrs. Sinnott confirmed that she did not know what questions had

appeared on Mrs. Blundon's test and, further, did not share any aspect of her own test with Ms. Lewis.

- 98) Mrs. Sinnott was not seriously challenged on cross-examination. Where she was presented with two minor inconsistencies between her testimony and what she told the investigator during the investigation, she acknowledged the inconsistencies. She clarified that she had told the investigator she had purchased practice tests but what she meant was that she had contributed to the cost of Mrs. Blundon purchasing them. Mrs. Sinnott also conceded that at the time of her interview, she did not recall Mrs. Blundon having lunch at Ms. Lewis' but that in fact Mrs. Blundon had stayed for lunch then left afterwards. These inconsistencies are minor.
- 99) Ms. Lewis' evidence was also credible and reliable. She was not seriously challenged on cross-examination. Her evidence on the sequence of events that transpired on September 29, 2017 was consistent with the evidence of Mrs. Blundon and Mrs. Sinnott and confirmed that she had not assisted the others with their examinations and that she did not receive assistance from the others when she completed her QA Test.
- 100) During cross-examination, Ms. Lewis was asked to explain the inconsistency in how the Registrants described their meeting on September 22, 2017. In particular, Mrs. Sinnott and Mrs. Blundon had both confirmed that they did not study for the QA Test at this meeting. For her part, Ms. Lewis characterized it as a meeting to "study" and explained that in preparing their practice portfolios they had been reviewing the "bones of dental hygiene", including infection control, radiology, record-keeping, and medical emergencies. This was content that would also appear on the QA Test but the focus on September 22, 2017 was the portfolios. Likewise, the free sample test from the NDHCB allowed them to test their knowledge. This was not an inconsistency between their evidence, but simply a different use of terms.
- 101) Ms. Lewis gave detailed evidence on the "early lunch" that the Registrants ate on September 29, 2017. She explained that she had bought the ingredients to make a special Jack Astor's burger and did not want Mrs. Blundon to leave without having lunch. She began to cook while Mrs. Blundon was writing her test to ensure that they could have lunch before Mrs. Blundon departed. The difference in length of time – 15-20 minutes vs. not more than 20-30 minutes – was also explained by Ms. Lewis on re-examination. She testified that she considered the length of time from Mrs. Blundon finishing her test to her leaving as "lunch" not only the time sitting at the table.
- 102) The Registrants were asked to recount the timing of a lunch that occurred 1242 days ago. They cannot be criticized for not recalling how long the lunch was to the precise minute. *Coker ibid para 27 Istenes ibid para 27*
- 103) In May 2018, eight months after Sept. 29, 2017, the investigator interviewed the Registrants by phone. The resulting 3 Investigative Reports were not entered into evidence by CDHO.

This significant error, I believe, indicates a lack of transparency and good faith on the part of CDHO.

- 104) On March 2, 2018, the investigator also interviewed Mr. Lavoie, Executive Director, National Dental Hygiene Certification Board, who had initially brought to the attention of the CDHO Registrar his concerns about suspicious activities that may have occurred September 29, 2017, at Ms. Lewis's home. That ensuing Investigative Report along with the other three Investigative Reports of the Registrants were not entered into evidence. CDHO did not prove its case of Professional Misconduct.
- 105) Based on their testimony, I find it credible that the three Registrants met to study Preparatory QA tests at Ms. Lewis's home because Mrs. Sinnott's home was being renovated and Mrs. Blundon, who had purchased three Preparatory Tests, would stop by to study with the other two and then be on her way shopping in Ottawa.
- 106) After studying for 1 hour and 30 minutes, one by one each Registrant applied at different times to write the QA tests, and each completed the tests at different times. There could not have been prior intent to write the QA Tests on September 29, 2017 because there was an understanding that the length of time between a call to the College and NDHCB to write a QA test and subsequently receiving permission to write the QA test is not predetermined and could be as much as 2 to 3 days.
- 107) Because of the high marks and differing times it took to write three individual tests, 1 hour, 30 minutes, and 13 minutes, it was alleged they helped each other write their tests which apparently led to the accusation of Professional Misconduct. I can appreciate that some adjudicators may be suspicious of the apparent circumstances and possibly arrive at a conclusion of collusion among the Registrants. However, to arrive at a decision of guilt, I feel that the Discipline Committee should have at least met and surpassed a higher standard than that afforded by one's 'suspicions' to affect the rights and future careers of these three Registrant professionals.
- 108) There must be clear and demonstrable evidence to support a finding of wrongdoing, which I do not believe has been achieved in this case. That evidentiary standard must be met when a Registrant's reputation and right to work in their profession are at stake.
- 109) Some may find that the rules for writing the QA tests are weak or deficient as they stand, they do not prohibit a Registrant from:
 - a) writing from the same physical address as another Registrant
 - b) using the same IP address as another Registrant
 - c) writing on the same day as another Registrant

- d) relying on practice tests when completing the QA test *Agreed Statement of Facts, Paid Practice Tests #10 and #12*
- e) relying on a diagnostic report generated at the end of a Practice Test, which provides the correct answers and explanations, when completing a QA Test *Quality Assurance Test #7, the Statement of Understanding Quality Assurance Test #7*

110) On the evidence that CDHO asked this Committee to draw an inference of misconduct and the testimony of the Registrants before the Discipline Committee, I find that:

- a) It is an unsubstantiated allegation that the three Registrants received assistance from and /or assisted each other to complete the QA test on September 29, 2017. There is no evidence that Mrs. Blundon received assistance from Mrs. Sinnott and/or Ms. Lewis or that Mrs. Sinnott received assistance from Mrs. Blundon and/or Ms. Lewis or that Ms. Lewis received assistance from Mrs. Blundon and /or Mrs. Sinnott when they completed their QA test.
- b) There was no prior assurance that they could register and write their QA tests on that day. If Mrs. Blundon and Mrs. Sinnott planned to write the QA tests on Sept. 29, they would have ensured they had permission prior to making the trip to Ms. Lewis's home and not wasted the trips.
- c) There were no witnesses.
- d) Phone calls, tower pings, GPS or other data from computers and IP addresses were consistent with the Registrants' positions.
- e) No phone records show any communication between the Registrants at the time they were completing their QA tests.
- f) No Investigative Reports were submitted into evidence. CDHO did not prove its case.
- g) All three Registrants have unblemished records and are members in good standing at CDHO.
- h) All three Registrants have participated in continuing education. I have listened to the testimony of each of the three Registrants describing what happened September 29, 2017. I find all three to be credible, clear, no contradictions and all consistent with material facts. CDHO has failed to prove that the evidence of the Registrants was not credible and/or reliable.

- 111) The Registrants are experienced Dental Hygienists. The Registrants have been practicing dental hygienists for decades. Their records show they are honest, hard-working members in good standing. They each testified about the pride that they get from their professional standing and contributions to their patient's health. The Registrants each have years of practical experience and continuing education to prepare them for the QA Test. Despite this, each spoke in detail about the extent of their studying that led to them being thoroughly prepared to write the open book test.
- 112) There is no hard evidence, and no data, to support wrongdoing, only supposition, conjecture, and probabilities. The circumstantial evidence that CDHO relies on does not lead to an inference that the Registrants committed Professional Misconduct. All three Registrants have cooperated fully with the College and have maintained their memberships.
- 113) In determining the Registrants credibility and the reliability of their evidence, the Committee should have also considered how these Registrants approached the process initiated by the CDHO.
- 114) They complied with all requests and provided responses to the CDHO investigation report. They facilitated a more streamlined hearing by agreeing to a lengthy Agreed Statement of Facts that would have otherwise necessitated the calling of additional witnesses. They were candid in their evidence before this Committee, answering all the questions they were asked. They did not avoid any questions. Despite the attack on their integrity by the CDHO, they conducted themselves in a professional manner at all times. The fact that the registrants co-operated with the CDHO was a positive factor that was considered by this Committee in the *Coker* and *Istenes* decisions.
- 115) It should also be noted that it was because of the information provided by the Registrants during their interviews and their actions after the matter was referred to the Discipline Committee that the extensive documentation and data from the NDHCB about the QA Test was disclosed and relied upon in this hearing.
- 116) As the Committee heard during the testimony of the Registrants, they raised the issue of overlap with the investigator during their interviews in May. The investigator obtained information from the NDHCB with respect to the overlap in June. All three Registrants advised that the only reference to overlap in the investigation report completed by the investigator is what is set out in paragraph 14 of the ASF. There was no information about the extent of the overlap for each particular form of the QA Test.
- 117) While the CDHO consented to having the data and other documentation disclosed by the NDHCB in April 2019, it did not do so until the Registrants made the request and after the Registrants were referred to the Discipline Committee.

- 118) The Registrants submit that the Committee is in a better position to determine what happened on September 29, 2017 with all of the data, the actual tests and practice tests before it than it would have been if that information was not available.
- 119) The Registrants all confirmed that they will not be returning to clinical practice of dental hygiene after this process is completed, for various reasons. Given they do not plan to practice clinically, they could have resigned their memberships from the CDHO. They all chose to maintain their memberships and contest these allegations because it was so important for them to ensure that their reputations, which they spent a long time building up, would remain intact. The Registrants each provided a heart-felt and genuine account of the impact of the process, especially the difficulty of having to defend themselves against allegations they know to be untrue. It is implausible that these Registrants would have risked their long-standing, unblemished careers in dental hygiene to cheat on an open-book test that could be written three (3) times.
- 120) The Committee would also have to believe that these Registrants would risk their long, unblemished careers to assist each other with an open-book exam. In order to accept the theory advanced by the College (that these Registrants attended the September 29 meeting with the intention of writing the QA Test together), you would have to accept that Mrs. Sinnott and Mrs. Blundon who had only met for the first time on September 22, 2017 decided at that first meeting that they would write the test together the following week. It is simply not a plausible inference to make.
- 121) On the basis of the above, there is no reason to question the credibility of any of these Registrants or the reliability of their evidence.
- 122) The evidence that the CDHO relied upon was not circumstantial evidence that provided clear, cogent and convincing evidence that on a balance of probabilities, the Registrants committed acts of professional misconduct.
- 123) The testimony of the three Registrants on February 22, 23, and 24, 2021, was credible, consistent and no substantive contradictions which is a credit to their memories of the details of the events on September 29, 2017 more than three years later.
- 124) They testified in a clear and forthright manner which was not seriously challenged on cross examination. Their testimony supported the fact they did not receive assistance, they did not provide assistance, they did not copy, share or disclose the QA test and that they kept the QA test confidential.
- 125) The CDHO asked this Committee to draw an inference that the Registrants assisted each other with the QA Test on the following basis:
- a) They all wrote on the same day from the same location;

- b) They all wrote one after the other;
- c) Mrs. Blundon achieved a score that was higher than the average score for her version of the QA Test and she completed the test in less time than the average time for her version of the QA Test;
- d) Mrs. Sinnott, who wrote her QA Test after Mrs. Blundon, scored a higher mark than Mrs. Blundon and completed the QA Test in less time than Mrs. Blundon;
- e) There were two questions on Mrs. Blundon's QA Test that she answered incorrectly that Mrs. Sinnott answered correctly;
- f) Mrs. Sinnott achieved a score that was higher than the average score for her version of the QA Test and she completed the test in less time than the average time for her version of the QA Test;
- g) Ms. Lewis, who wrote her QA Test after Mrs. Sinnott, scored the same mark that Mrs. Sinnott achieved and completed the QA Test in less time than Mrs. Sinnott; and
- h) Ms. Lewis achieved a score that was higher than the average score for her version of the QA Test and she completed the test in less time than the average time for her version of the QA Test.

126) To prove its allegations, the CDHO asked this Committee to:

- i. Disregard the Registrants' direct evidence that they did not assist one another with the QA Test;
- ii. Disregard the evidence that contradicts or challenges the inferences that the CDHO has asked this Committee to make about these Registrants;
- iii. Disregard the evidence that explains why the Registrants completed the QA Tests in the time they did and achieved the results they did; and
- iv. Conclude that the most probable explanation is that the Registrants would not have completed the QA Tests in the time they did and achieve the results they did without assisting each other. The probability that 2 or 3 people, fraught with disagreements and discussions, can answer questions in less time than one person seems unlikely.

- 127) The Registrants stated that there was a lack of an evidentiary basis for the Committee to draw the inferences that the CDHO asked it to make as supporting a finding of professional misconduct. On that basis, the CDHO's theory was simply based on speculation and innuendo. The Registrants relied upon the following arguments in support of their position while registrants who chose to complete the QA Test in 2017 were required to keep the contents of the test confidential and complete the QA Test on their own.
- 128) The Statement of Understanding did not preclude registrants from completing the test with an open book, on the same day, from the same location and from the same IP address as other registrants.
- 129) Given the above, the fact that the Registrants all completed their QA Test at Ms. Lewis' house on September 29, 2017 does not give rise to an inference that they assisted each other with the QA Tests. This Committee has already previously confirmed this in the *Coker* and *Istenes* Decisions.

Conclusion

- 130) Based on the evidence that has been presented to the Discipline Committee, the CDHO has failed to present clear, cogent and convincing evidence that on a balance of probabilities, the Registrants committed acts of professional misconduct. The Registrants state that the evidence does not support findings of professional misconduct for the following reasons:
- a) Mrs. Blundon, Mrs. Sinnott and Ms. Lewis all testified that they each completed the QA Test without assistance and that they did not provide assistance to the others when they completed their QA Tests. They were credible, their evidence was consistent, withstood cross-examination and was reliable.
 - b) There were no witnesses or other information (such as cell phone data) that would challenge the denials of Mrs. Blundon, Mrs. Sinnott and Ms. Lewis
 - c) There was no prohibition on registrants completing the QA Test with an open book, on the same date, from the same location and using the same IP address.
 - d) There is no evidence to support the notion that these Registrants can be characterized as being disgraceful, dishonorable and unprofessional. They were credible and reliable.

- 131) The evidence that the CDHO relied upon as “circumstantial evidence” did not give rise to the inferences that it asked this Committee to make and is therefore nothing more than speculation.
- 132) Although some may find a person guilty on a preponderance of 50+1%, I find it to be unjust and unfair. It is contrary to the principles of natural justice and procedural fairness to assign guilt on a 50+1% likelihood. In this case, the decision was based purely on supposition and conjecture considering the lack of hard evidence presented to this committee by CDHO. The Supreme Court of Canada articulated that evidence must be clear and cogent to satisfy the balance of probabilities. CDHO has not proven its case. The registrants were credible and reliable. *F.H. vs. McDougall SCC2008*
- 133) In my opinion, the Registrants have been treated unfairly during this process. This matter began in Sept. 2017 and is only now, nearly four years later, being adjudicated. The Registrants have lived under a cloud of suspicion as well as having to incur legal costs in order to defend themselves. Notwithstanding the finding of Professional Misconduct, in my opinion, a significant penalty has already been paid by Mrs. Blundon, Mrs. Sinnott and Ms. Lewis.
- 134) All three Registrants were truthful when they told the investigator during their interviews that they recognized questions on their QA test and that the evidence obtained from NDHCB subsequent to the interviews confirmed a degree of 52% to 57% overlap on the practice tests and the QA tests they took in Sept. 2017. This is evidence that the Registrants were being truthful when they testified that they recognized a lot of the questions on their respective QA tests.
- 135) In my opinion, this matter should not have been forwarded to the Discipline Committee and perhaps some examination of the ambiguous process to which the Registrants were subjected, over too much time and unsubstantiated hard evidence, should be considered.
- 136) For all the reasons I have stated above, I respectfully dissent in this case from the findings of my colleagues on this Discipline Committee. CDHO did not prove its case beyond a balance of probabilities.

I, Margaret Wade, sign my dissenting reasons for this Decision and Reasons.

Dated this 2 of September, 2021.



Margaret Wade, Public Member of Council

**THE DISCIPLINE COMMITTEE OF THE COLLEGE
OF DENTAL HYGIENISTS OF ONTARIO**

IN THE MATTER of the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18, as amended, and the regulations thereunder, as amended;

AND IN THE MATTER of the *Dental Hygiene Act, 1991*, S.O. 1991, c.22, as amended, and the regulations thereunder, as amended;

AND IN THE MATTER of allegations of professional misconduct/incompetence referred to the Discipline Committee of the College of Dental Hygienists of Ontario by the Inquiries, Complaints and Reports Committee;

BETWEEN:)	
)	
)	
)	
THE COLLEGE OF DENTAL)	Anastasia-Maria Hountalas
HYGIENISTS OF ONTARIO)	for the College of Dental Hygienists of Ontario
)	
-and-)	
)	
)	
PATRICIA SINNOTT)	Andrew McKenna
)	for the Registrant, Patricia Sinnott
)	
)	
)	Josh Koziembrocki
)	Independent Legal Counsel
)	
)	Heard:
)	January 11, 2022
)	
)	
)	
)	
)	

Panel Members:

Vanessa Pereira, Chair, Professional Member of Council

Margaret Wade, Public Member of Council

Gillian Dunn, Non-Council Committee Member

Ilga St.Onge, Professional Member of Council

DECISION AND REASONS ON PENALTY AND COSTS

PENALTY SUBMISIONS

[1] Counsel provided the Panel with a Joint Submission on Penalty and Costs (“JSPC”) which stated the following:

- a. The Registrant is required to appear, by electronic means, before a panel of the Discipline Committee immediately following the hearing of this matter to be reprimanded, with the fact of the reprimand and the text of the reprimand to appear on the public register of the College of Dental Hygienists of Ontario (the “College”).
- b. The Registrar is directed to suspend the Registrant’s certificate of registration for a period of two (2) months, commencing on the date that the Registrant obtains a general certificate of registration.
- c. The Registrant is required to complete the PROBE ethics course, at her own expense, within six (6) months of the date that the Registrant obtains a general certificate of registration.
- d. The Registrant is required to pay to the College costs in the amount of \$5,000.00, in monthly installments over twelve (12) months, with the first payment being due thirty (30) days form the date of this Order. Payments one (1) to eleven (11) shall be in the amount of \$416.66. Payment twelve (12) shall be in the amount of \$416.74.

[2] Counsel stated that the proposed order on penalty was appropriate and included elements of remediation and deterrence while also considering aggravating and mitigating factors. Mitigating factors include: the Registrant has no previous Discipline history, the Registrant cooperated with the investigative process, and the Registrant reached an agreement with the College on the proposed order. The nature of the Registrant’s misconduct was an aggravating factor. Counsel submitted that proposed order on penalty also maintained public confidence in the profession and was proportional to the severity of the misconduct. Case law was provided to reassure the Panel that the proposed order was reasonable. These cases included:

- a. *Ontario (College of Dental Hygienists of Ontario) v O'Donnell*, 2019 ONCDHO 3
- b. *Ontario (College of Dental Hygienists of Ontario) v Marino*, 2019 ONCDHO 2
- c. *Ontario (College of Dental Hygienists of Ontario) v Bernardi*, 2019 ONCDHO 11
- d. *Ontario (College of Dental Hygienists of Ontario) v Rooney*, 2019 ONCDHO 12

[3] Counsel stated that the costs are not meant to be punitive but are instead meant to recover part of the costs incurred by the College in pursuing this matter so that the entire financial burden is not left to members of the College. Costs also reflect the financial situation of the Registrant and the fact that she agreed to the JSPC.

[4] Counsel stated that the JSPC should be accepted by the Panel unless the sentence would bring the administration of justice into disrepute and/or is contrary to the public interest. The case of *Timothy Edward Bradley v Ontario College of Teachers*, 2021 ONSC 2303 was reviewed to demonstrate the test for rejecting a joint submission on penalty.

ORDER ON PENALTY AND COSTS

[5] The Panel carefully considered the JSPC, the case law provided, and the oral submissions of counsel. The Panel concluded that the JSPC met the needs of this case and addressed the legal principles relevant to setting a penalty. Accordingly, the Panel accepted the JSPC and made the following order:

- a. The Registrant is required to appear, by electronic means, before a panel of the Discipline Committee immediately following the hearing of this matter to be reprimanded, with the fact of the reprimand and the text of the reprimand to appear on the public register of the College of Dental Hygienists of Ontario (the "College").
- b. The Registrar is directed to suspend the Registrant's certificate of registration for a period of two (2) months, commencing on the date that the Registrant obtains a general certificate of registration.
- c. The Registrant is required to complete the PROBE ethics course, at her own expense, within six (6) months of the date that the Registrant obtains a general certificate of registration.
- d. The Registrant is required to pay to the College costs in the amount of \$5,000.00, in monthly installments over twelve (12) months, with the first payment being due thirty (30) days from the date of this Order. Payments one (1) to eleven (11) shall be in the amount of \$416.66. Payment twelve (12) shall be in the amount of \$416.74.

REASONS FOR THE ORDER ON PENALTY AND COSTS

- [6] Although the Panel has discretion to accept or reject a joint submission on penalty, The Panel found that the conditions for rejecting a joint submission were not met.
- [7] The Panel found that the JSPC was reasonable as it appropriately addresses the principles of specific and general deterrence, public protection, public confidence, and rehabilitation. The principle of specific deterrence is served in this case by the two-month suspension, reprimand, and the terms, conditions or limitations on the Registrant's certificate of registration. These aim to ensure that this conduct will not be repeated, but also serve to protect the public and instil public confidence in the profession. Moreover, these same elements serve as general deterrence because it communicates to the profession that such misconduct will not be tolerated and the Discipline committee will seek to deter members from engaging in conduct that disregards the College's public protection mandate. Also, because this decision will be published on the College's website, other registrants will be aware of the consequences of this type of professional misconduct. The principle of rehabilitation will be realized by the Registrant's successful completion of a PROBE ethics course, which serves to remediate the Registrant so that she has the requisite knowledge to practice safely and ethically if she returns to practice.
- [8] At the conclusion of the hearing, the Registrant waived her right of appeal and the reprimand was administered by the Panel.

I, Vanessa Pereira, sign this decision and reasons for the decision as Chair of the Discipline panel and on behalf of the Panel as listed below.

Dated this 20 of January 2022.



Vanessa Pereira, Chair, Professional Member of Council

Discipline Panel Members:

Gillian Dunn, Non-Council Member
Ilga St. Onge, Professional Member of Council
Margaret Wade, Public Member of Council

**Summary of Reprimand Issued by Discipline Committee to Patricia Blundon, Trina Lewis and
Patricia Sinnott on January 11, 2022**

Ms. Blundon, Ms. Lewis, Ms. Sinnott: As part of your penalty order, this Discipline Panel has ordered that you be given an oral reprimand. The fact that you have received this reprimand will be part of the public portion of the Register and, as such, part of your record with the College.

The panel has found that you have engaged in professional misconduct in the following ways:

1. Signing or issuing in the member's professional capacity, a document that the member knows or ought to know contains a false or misleading statement; and/or
2. Failing to take reasonable steps to ensure that information provided by or on behalf of the member to the College is accurate;
3. Engaging in conduct or performing an act, relevant to the practise of the profession, that, having regard to all the circumstances would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

It is a matter of profound concern to this panel that you have engaged in these forms of professional misconduct. By doing so, you have brought discredit to the profession and to yourself. Public confidence in this profession and its ability to regulate itself has been put in jeopardy. Moreover, the result of your misconduct is that you have let down your clients, the public, the profession of dental hygiene and yourself.

We need to make it clear that your conduct is unacceptable.

Consequently, it is necessary for us to take steps to impress upon you the seriousness of the misconduct in which you have engaged.