

DELIVERED BY COURIER  
PERSONAL & CONFIDENTIAL

January 30, 2008

CALSCO  
Mr. David Hodgson  
Registrar  
5060 - 3080 Yonge Street  
Toronto, ON M4N 3N1

Dear Mr. Hodgson:

Re: Complaint By The Association Of Hearing Instrument Practitioners Ontario; Re:  
Your File No.C07-15 Arzani vs.Berge [REDACTED]

We enclose herein submissions to the panel of the Complaints Committee on behalf of Dr. Brenda Berge [REDACTED] in response to the complaint materials referred to and enclosed with your letter to each of them dated November 29, 2007. The deadline set out in your letter was extended by you to January 31, 2008, in accordance with our request, and we thank you for the opportunity to prepare a proper response.

We would ask that a copy of these submissions not be provided to Ms. Arzani for comment. We make that request owing to the sensitive nature of the submissions, which was required in order to give the Committee a full and frank response to what is regarded as an illegitimate complaint. We also make that request on the basis that the Association of Hearing Instrument Practitioners Ontario and/or their members have seen fit to attempt to further use the complaint process in an improper and possibly illegal manner. We are given to understand that the fact of their "complaint", and some of its content have been made public by them. In addition, other erroneous facts regarding the "complaint" have been published by them

## NATURE OF THE COMPLAINANT

The mandated complaints process of the College of Audiologists and Speech Language Pathologists of Ontario (the College) makes it clear that one of the functions of the College, in fulfilling its mandate to protect the public interest, is to receive, investigate and act upon complaints made against its members. There can be no doubt that the complaints process exists in order to deal with genuine complaints made in good faith and for the purpose of ensuring the provision of proper care to patients. The complaints process is not in place to assist a competitive organization whose members seek merely to gain an economic advantage or to increase their revenues nor does it exist to advance the cause of any organization which wants to raise the status of its members who are motivated by monetary and self interests.

Further, the College mandate is to protect the public interest and not the interests of those who attempt to seize an opportunity to abuse and misuse the College process for their own purposes. The College must, in reviewing this alleged complaint, inquire as to the motivation for the complaint. That motivation is suspect, as this is a clear case of a complainant failing to comply with either the letter or the spirit of the right to make a complaint as it is in no way directed to or concerning "care provided by its members".

## NO COMPLAINT ABOUT CARE PROVIDED BY A MEMBER

The letters sent to the College are on behalf of the President Ms. Arzani. It is our understanding that B. Maggie Arzani, in addition to being the president of the Association, is in business in Toronto trading under the name of Sound Communication located at 1849 Yonge St in Toronto. (Appendix A). The letters are signed for her by Joanne Sproule who is the executive director of the Association. (Appendix B).

The motivation of the Association in this instance is self-evident having regard to not only who the Association is, the interests it represents, and its position in respect of Audiologists, but also the fact that the Association has lodged no complaint about the care provided by any of my three clients. The short answer to the complaint having regard to its source and the fact it is not in relation to the care provided by any of my clients is that the complaint should be rejected as not being one within the proper mandate of the complaint process.

Additionally, however, the complaint should also be dismissed as an abuse of process.

## IMPROPER MOTIVE OF THE ASSOCIATION AND ABUSE OF PROCESS

The Association has, in this instance, sought to utilize the complaints process of the College for their own monetary and political purposes. While fully aware of the proper legal processes available to them (which processes do not involve the College) the Association seeks to have the College do its "dirty work". If the College acts upon this complaint it will be allowing its processes to be misused by those who seek to position themselves to be in direct competition with Audiologists. It will also be allowing the Association to shield itself behind the College.

Ms. Arzani's organization has long sought to raise its status in the public community. In conjunction with the Canadian Hearing Instrument Practitioners Society they seek to uplift hearing instrument dispensing by hearing instrument salespersons to a professional level with Audiologists. (Appendix C).

Both groups also seek to raise their status by denigrating the status and role of Audiologists. In its website the Association lists and has a portal to its publication of an article entitled "What's the Difference between an Audiologist & A Hearing Instrument Specialist". That article does not identify the author but the e-mail address given is that of *tvenema@conestogac.on.ca*. (Appendix D). On the website of the Canadian Hearing Instrument Practitioners Society the identical article is referred to. (Appendix E). When accessed, same article appears and the author is revealed as Ted Venema Ph.D. Coordinator HIS program Conestoga College Kitchener, Ontario. (Appendix F). He is currently a consultant to Provincial Hearing Consultants in Hamilton, Ontario (a group of hearing instrument salespersons and the coordinator of the HIS program at Conestoga College). (Appendix G). Mr. Venema's bias is seen in the article. Quite apart from the questionable statements made in the article it can be readily appreciated that Mr. Venema is seeking to attempt to denigrate Audiologists and raise the status of hearing instrument practitioners.

The College itself has recognized the self interest of the Association and its dichotomy with Audiologists to the point where it felt the need to respond to the comments made by the Association to the Health Professions Regulatory Advisory Council (HPRAC). In July 2005, David Pfingstgraef, Audiologist, as President of the College, wrote to the HPRAC Chair Ms. Barbara Sullivan to respond to the Association. That response signaled the gulf between the Association and the College in relation to their "obviously differences in our points of view" regarding: assessment testing and dispensing becoming additional controlled acts; prescribing; dispensing carrying a risk of harm; and regulation all requiring the care of a licensed and regulated professional. (Appendix H)

In addition, in the College's response to HPRAC recommendation number 15 ( dealing with representation by the Association on the College), the Registrar of the College David Hodgson voiced concern over the heavy weighting on the Council of hearing instrument practitioners as compared to Audiologists and speech language pathologists. This would impact the public by influencing the standards/functioning of

the College to their own lower academic standards, and increase the number of services that their members may perform to the public. The Registrar of the College was obviously concerned that the established standards and programs for hearing instrument salespersons would clearly not be acceptable to the level expected by the College, for the sake of the care that would ultimately be provided to the public. (Appendix I)

The combination of the position taken on the Association's website, their submissions to HPRAC, and the fact that HPRAC did not alter the system to the satisfaction of the Association gives rise to more than a suspicion concerning the motives of the Association in bringing these "complaints". In fact it demonstrates that the complaint is not genuine, nor is it made in good faith or in the public interest.

The above comments should be sufficient to reject the complaint. There are, however, additional reasons for rejection of this complaint. I will address these below.

#### **COLLEGE CANNOT ALLOW ITS REGULATORY PROCESS TO BE USED TO ASSIST TORTIOUS CONDUCT**

The College cannot put itself in the position of assisting in a breach of the law. Ms. Arzani seeks to have the College utilize its complaints process in order that the Association restrains members of the College in their trade occupation or calling. This restraint is clearly a tort giving rise to a cause of action for damages and may also be a breach of the Competition Act RSC 1985.Chap.C-34 as amended . If the College were to assist the Association it would be aiding and abetting a tort and perhaps a breach of the *Competition Act*.

#### **MEMBERS CONDUCT APPROPRIATE**

The Association seeks to invoke *Ontario Regulation 749/93* which provision concerns professional misconduct made under the *Audiology And Speech Language Pathology Act 1991* which, in section 1 (16) provides that an act of professional misconduct for the purposes of clause 51 (1) (c) of the *Health Professions Procedural Code* includes "inappropriately using the term, title or designation in respect of the member's practice". This attempt to utilize these provisions is not only a poorly disguised attempt to lessen competition but it is also misguided and without merit.

In respect of the [REDACTED] members who are the subject of the Association's complaint, there is nothing in the material provided by the Association which supports an allegation of inappropriate conduct.