



Ontario College of
Social Workers and
Social Service Workers

Ordre des travailleurs
sociaux et des techniciens
en travail social de l'Ontario

250 Bloor Street E.
Suite 1000
Toronto, ON M4W 1E6

Phone: 416-972-9882
Fax: 416-972-1512
www.ocswssw.org

**DISCIPLINE COMMITTEE OF THE
ONTARIO COLLEGE OF SOCIAL WORKERS AND SOCIAL SERVICE WORKERS**

Indexed as: Ontario College of Social Workers and Social Service Workers v Derrick Lawlor, 2018 ONCSWSSW 11

Decision date: 20180821

BETWEEN:

THE ONTARIO COLLEGE OF SOCIAL WORKERS
AND SOCIAL SERVICE WORKERS

- and -

DERRICK LAWLOR

PANEL: Frances Keogh, RSW Chair, Professional Member
Lisa Foster Public Representative
Mukesh Kowlessar, RSSW Professional Member

Appearances: Jill Dougherty, counsel for the College
No one appearing for the Member
Aaron Dantowitz, Independent Legal Counsel to the Panel

Heard: August 21, 2018

DECISION AND REASONS FOR DECISION

[1] This matter came on for hearing before a panel of the Discipline Committee (the “**Panel**”) on August 21, 2018 at the Ontario College of Social Workers and Social Service Workers (the “**College**”).

Absence of the Member

[2] Derrick Lawlor (the “**Member**” or “**Mr. Lawlor**”) was neither present nor represented at the hearing. College counsel advised the Panel that the Member was currently incarcerated and was not expected to attend. As described below, in the course of the hearing, College counsel called evidence to establish that efforts had been made to serve the Member with the Notice of Hearing at the last address he had provided to the College, as well as at [*name of correctional facility*], where the Member was known to be located at one point, but that the materials sent to both locations were returned to the College. The Panel also heard evidence, however, that efforts were made to reach two lawyers who had represented the Member in the course of his criminal matter to alert them to this discipline proceeding.

[3] The Panel was satisfied that the requirements for notice set out in the *Statutory Powers Procedure Act*, as well as the requirements regarding the manner of service in the Discipline Committee’s *Rules of Procedure*, were complied with. Although there was evidence that the materials served had been returned to the College, the Panel accepted that the College had made all reasonable efforts to serve the Member, and in light of the fact that his criminal counsel had also been contacted, there was a reasonable possibility that the Member was aware of this discipline proceeding and was aware of the time, date, place and nature of the hearing. Accordingly, the Panel proceeded with the hearing in the Member’s absence on the basis that the Member denied the allegations against him.

The Allegations

[4] In the Notice of Hearing dated January 31, 2018, the Member is alleged to be guilty of professional misconduct pursuant to the *Social Work and Social Service Work Act*, 1998, S.O. 1998, Chapter 31 (the “Act”) as follows:

It is alleged that you are guilty of professional misconduct as set out in Section 26(2) (a) and (c) of the Act:

1. In that you violated section 2.29 (ii) of the Professional Misconduct Regulation by contravening a federal, provincial or territorial law, the contravention of which is relevant to your suitability to practice the profession of social work;
2. In that you violated Section 2.36 of the Professional Misconduct Regulation by engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

[5] The Notice of Hearing lays out the particulars of the above allegations as follows:

1. You were registered as a social work member of the Ontario College of Social Workers and Social Service Workers (the ‘College’) on or about April 9, 2013.
2. On or about October 10, 2017, you were found guilty of first degree murder contrary to sections 229, 231, and/or 235 of the Criminal Code of Canada. You were subsequently sentenced to life imprisonment on or about October 12, 2017.

Member's Position

[6] Because the Member was not present or represented, he was deemed by the Panel to deny the allegations.

The Evidence

[7] The College called two witnesses. The first witness was Ms. Richelle Samuel, Director of Complaints and Discipline at the College. Ms. Samuel identified a number of documents containing registration information for the Member. She testified that the Member first registered as a Social Worker, with the College on April 9, 2013, and that he was, at the time of the hearing, administratively suspended for non-payment of fees. Furthermore Ms. Samuel stated that the College's registration information shows an address for the member in [*location in Ontario*] and that this address was never updated by the Member.

[8] Ms. Samuel also testified that the College became aware of the Member's name in various media releases dated October 12 and 13, 2017 which reported that the Member had been convicted of murder and sentenced to life in prison. The reports also indicated that the Member had also been convicted of manslaughter in 1985 and was given a four year prison sentence (but later received a pardon).¹ A [*newspaper*] report dated June 17, 2014 refers to the Member as being employed as a Student Advisor at the [*University*] and Ms. Samuel testified that that information is consistent with the information available on a screenshot of Mr. Lawlor's Facebook page. Photocopies of all these documents were entered as evidence.

[9] Ms. Samuel stated that as a result of this information published by media the College was prompted to initiate an investigation of the Member and to inform him about it. The College sent a package to the Member dated December 13, 2017. This package included a letter that advised the Member about the investigation, notified him about the allegations and invited him to respond. Also enclosed were disclosures of various Court documents relating to criminal proceedings. These documents were entered into evidence at this hearing and included: a certified copy of the Information of [*Constable "K"*] dated June 3, 2014 (a sworn document outlining the criminal allegation of first degree murder against the member), a certified copy of the Indictment dated February 26, 2016 and endorsements from the Superior Court of Justice records, which included confirmation that the member was found guilty of first degree murder on October 10, 2017, and on October 12, 2017 was sentenced to life in prison.

[10] Ms. Samuel testified that in March 2018 the package of materials sent to Mr. Lawlor was returned to the College, and as a result of this the College made other efforts to determine Mr. Lawlor's whereabouts including contacting [*Mr. "G"*], the Member's lawyer during the criminal proceeding, and contacting [*name of correctional facility*], where the Member indicated on his Notice of Appeal that he was in custody, to try to establish if he was still incarcerated there. Ms. Samuel stated that none of these efforts were successful in locating Mr. Lawlor.

¹ Ms. Samuel also testified that in 2015, Mr. Lawlor was the subject of a proceeding before the Discipline Committee arising from that manslaughter conviction, which the College first learned about from a media report of the Member's arrest on the murder charge at issue in this case. That Discipline proceeding did not result in a finding of professional misconduct, because the panel in that case was not satisfied on the basis of the evidence in that hearing that the Member and the person convicted were one and the same. The panel's reasons for decision were included in the College's Book of Authorities at this hearing.

[11] The second witness called by the College was [Ms. "L"], a law clerk with WeirFoulds LLP, who testified that she was involved in making requests for certified court documents about the Member and in attempting to serve Mr. Lawlor with various documents.

[12] [Ms. "L"] stated that she sent a request via e-mail on August 14, 2018 to a staff member at [location in Ontario] Courthouse regarding obtaining a copy of a Notice of Appeal, as she understood that the Member was appealing his murder conviction. This Notice of Appeal document dated October 19, 2017 was entered as evidence. [Ms. "L"] testified that this was one final way of trying to get contact information about the Member before the Discipline Committee hearing on August 21, 2018 as all other previous efforts to contact him had failed. [Ms. "L"] testified that no response from the Member was ever received and the materials sent to [name of correctional facility] were all returned and no name of any lawyer or contact information was provided on the Notice of Appeal Document. Finally, [Ms. "L"] testified that in addition to reaching out to [Mr. "G"], College counsel also attempted to contact a [Mr. "P"], who was identified on the transcript of the Member's sentencing proceeding as counsel for the Member, but that this attempt was also unsuccessful.

Submissions of the College

[13] The College submitted that efforts to serve the Member with documents regarding the Hearing were in accordance with Rule 2.03(1)(c) of the *Rules of Procedure* of the Discipline Committee and that the lack of response from the Member cannot interfere with the College's mandate to protect the public interest. Furthermore, there were inaccuracies in the Member's registration documents such as the lack of an updated address and the absence of his acknowledgement of being found guilty of manslaughter in 1985, but at the time of his conviction for murder in 2017 he was registered as a Social Worker with the College.

[14] The College submitted that as a result of the murder conviction the Member is guilty of professional misconduct (as defined in subparagraph 2.29 of the Professional Misconduct Regulation) in that he contravened a federal law (s. 229 of the *Criminal Code*) the contravention of which is relevant to his suitability to practice, due to the moral culpability in the act of murder demonstrated by the blatant disregard for human life which is inconsistent with the value of respect for human life, inherent in the practice of the profession. Various cases were cited to support this position: *Keida v Discipline Committee of the College of Nurses of Ontario* (2015) and *Tollett v Ontario College of Teachers* (2010). Also, the College cited the *Statutory Power Procedures Act* (section 15) which allows the Discipline Committee to admit "relevant" documentary evidence such as the Indictment and Reasons for Sentence, together with oral evidence, and permits the Panel to rely on the evidence of the criminal conviction as proof that the Member contravened the Criminal Code provisions related to First Degree Murder.

[15] Regarding jurisdiction, the College submitted that though the Member was suspended for non-payment of fees on July 6, 2015, he could still be disciplined, pursuant to subsection 13(5) of the Act, which provides that "a person whose certificate is suspended continues to be subject to the jurisdiction of the College for professional misconduct, incompetence or incapacity referable to the time when the person held a certificate of registration under the Act". The *College of Nurses of Ontario v Dumchin* was used as an example of analogous legislation (namely the *Health Professions Procedural Code* under the RHPA), where the Divisional Court supported Discipline Committees' jurisdiction to discipline former members in respect of

conduct “referable to the time when the person was a member” as the means for ensuring the prime objective of protection of the public.

[16] The College submitted that, in regard to the Member’s pending appeal, the Discipline Panel can engage in proceedings based on his criminal conviction and cited 2 cases where discipline hearings have gone ahead even with pending appeals (*Thomson v College of Physicians and Surgeons of British Columbia* (1998) and *Law Society of British Columbia v MacKrow* (1968). Furthermore, addressing professional misconduct in a timely way, especially in a case like this one which has been widely publicized, reassures the public that the College can regulate its members.

Decision of the Panel

[17] After deliberating, the Panel concluded that the College had proven the allegations of professional misconduct. Accordingly, the Panel found that the Member

1. violated section 2.29 (ii) of the Professional Misconduct Regulation by contravening a federal, provincial or territorial law, the contravention of which is relevant to his suitability to practice the profession of social work;
2. violated Section 2.36 of the Professional Misconduct Regulation by engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable and unprofessional.

Reasons for Decision

[18] The Panel accepted that it had the jurisdiction to discipline the Member even though he was under administrative suspension, and that it was appropriate to proceed notwithstanding that an appeal of his criminal finding of guilt was pending.

[19] The Panel concluded that allegations of the Member’s professional misconduct were established by the evidence. The Member has been a registered Member of the College since April 9, 2013 and according to court records of October 10 and October 12, 2017, entered as evidence, he was found guilty of first degree murder, contrary to Section 235(1) of the *Criminal Code of Canada*, and was sentenced to life in prison. A criminal conviction, resulting from the taking of another life, suggests a profound disregard for human life and as such is utterly and completely inconsistent with the practice of the profession. Disgraceful, dishonourable and unprofessional would reasonably be viewed by members as appropriate terms to apply to the Member’s behaviour, under the Professional Misconduct regulation.

Penalty and Costs Submissions

[20] The College requested an order containing the following terms:

1. Mr. Lawlor shall be reprimanded in writing and the fact and nature of the reprimand shall be recorded on the College’s Register.

2. The Registrar shall be directed to revoke Mr. Lawlor's Certificate of Registration.
3. The Discipline Committee's finding and Order (or a summary thereof) shall be published, with Mr. Lawlor's name, in the College's official publication, on the College's website and on any other outlet for publication that the College deems appropriate.
4. The results of the hearing shall be recorded on the Register.
5. Mr. Lawlor shall pay costs in the amount of \$5,000.

Penalty and Costs Decision

[21] The Panel decided to accept the College's submission on penalty and costs and therefore made the following order:

1. Mr. Lawlor shall be reprimanded in writing and the fact and nature of the reprimand shall be recorded on the College's Register.
2. The Registrar shall be directed to revoke Mr. Lawlor's Certificate of Registration.
3. The Discipline Committee's finding and Order (or a summary thereof) shall be published, with Mr. Lawlor's name, in the College's official publication, on the College's website and on any other outlet for publication that the College deems appropriate.
4. The results of the hearing shall be recorded on the Register.
5. Mr. Lawlor shall pay costs in the amount of \$5,000.

Reasons for Penalty and Costs Decision

[22] College Counsel recommended revocation of the Member's certificate of registration. Supporting this position the College provided the Panel with a few previous cases: *The College of Nurses of Ontario v Keida* (2015), and the *Ontario College of Physicians and Surgeons v McKnight* (1996), where the members had been convicted of second degree murder and had their registrations revoked. The penalty of revocation is appropriate here as a conviction of the more serious offence of murder denotes a blatant disregard for human life and is directly relevant to the Member's suitability to practice. The reprimand and the publication on the register serve as general deterrence. The aggravating factors in this case are that the member committed a grave offence in the egregious act of murdering a man which resulted in a criminal conviction and cast a negative light on the profession. This penalty decision is consistent with previous orders and demonstrates to the public as well as other members of the profession that this conduct will not be tolerated by the profession.

[23] Regarding costs, the Panel concluded that it was appropriate for the Member to bear part of the burden of the costs of this discipline process, and that \$5,000 was a reasonable amount in

the circumstances, given that the hearing was not complex and that the Member has a sentence of life imprisonment.

I, Frances Keogh, sign this decision as chairperson of the Panel and on behalf of the Panel members listed below.

Date: _____

Signed: _____

Frances Keogh, RSW

Lisa Foster

Mukesh Kowlessar, RSSW