



Ontario College of
Social Workers and
Social Service Workers

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

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

PANEL: Sophia Ruddock Chair, Public Member
Rita Silverthorn Professional Member
Rick Lamb Public Member

BETWEEN:

ONTARIO COLLEGE OF SOCIAL WORKERS
AND SOCIAL SERVICE WORKERS

-and-

LYNDA CULLAIN

)
) M. Jill Dougherty for Ontario
) College of Social Workers
) and Social Service Workers
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)
) Lisa Hamilton for
) Lynda Cullain
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)
)
) Andrea Gonsalves,
) Independent Legal Counsel

Heard: September 25, 2017

DECISION AND REASONS FOR DECISION

This matter came on for hearing before a Panel of the Discipline Committee (the “Panel”) on September 25, 2017 at the Ontario College of Social Workers and Social Service Workers (the “College”).

The Allegations

In the Amended Notice of Hearing dated September 25, 2017, Lynda Cullain (the “Member”) is alleged to be guilty of professional misconduct pursuant to subsection 26(2) of the *Social Work and Social Service Work Act, 1998*, SO 1998, c 31 (the “Act”) in that she is alleged to have engaged in conduct that contravenes the Act, Ontario Regulation 384/00 (the “Professional Misconduct Regulation”), Schedule “A” to By-law No. 66 of the Ontario College of Social Workers and Social Service Workers, being the Ontario College of Social Workers and Social Service Workers Code of Ethics (the “Code of Ethics”), and Schedule “B” to By-law No. 66 of the Ontario College of Social Workers and Social Service Workers, being the Ontario College of Social Workers and Social Service Workers Standards of Practice Handbook (the “Handbook”).

The particulars of the allegations made against the Member are as follows.

1. Now, and at all times relevant to the allegations, you were a registered social work member of the Ontario College of Social Workers and Social Service Workers (the “College”).
2. Now and at all times relevant to the allegations, you were employed as a social worker, in the position of [“Manager”] at the Children's Aid Society of the Districts of [location in Ontario] (the “CAS”).
3. In or about December 2015 or January 2016, “AA” (the “Client”) and her daughter were involved with the CAS in relation to child protection concerns, with respect to which child protection proceedings were commenced under the *Child and Family Services Act*, R.S.O. 1990, c. C.11.
4. The Client's file at the CAS was “masked” and/or categorized as a Level 3 file within the CAS's internal electronic file case management/ recording system (sometimes referred to as “Frontline”), to limit access to the file.
5. This masking and/or categorization of the Client's file in the CAS's system was due to the potential conflict arising from the Client's relationship to “BB”. In light of that potential conflict, the Client's file was later transferred to another agency.
6. In addition to the relationship with the Client, BB was at all relevant times a close family friend of the Member and had at times provided professional advice to the Member.
7. From in or about January of 2016 to in or about April of 2016, the Member provided confidential information from and about the CAS file of the Client to BB, without the knowledge and/or consent of the Client or her superiors at the CAS and contrary to the CAS's policies and procedures and/or governing legislation. In particular, the Member communicated this information to BB by means of telephone discussions, text messages and/or in person conversations.

8. Certain of the information the Member conveyed to BB was obtained by the Member accessing “Frontline” and reviewing the information recorded there regarding the Client’s CAS file, without proper authorization to do so.
9. In addition to accessing and conveying information from and about the Client’s CAS file to BB, the Member influenced or attempted to influence the handling of the Client’s file with the CAS, to assist or accommodate BB.
10. At some point prior to April of 2016, the Client raised a concern with the CAS that BB appeared to know more about her CAS file than he should (including details about meetings she had with her CAS worker, and/or the fact that her file had been masked by the CAS internally and was categorized as a “Level 3” according to the CAS’s internal masking policy). On or about April 4, 2016, the Client made a complaint to the CAS regarding these concerns.
11. In or about January of 2016 to in or about April of 2016, the Member also provided BB with information about another Crown Wardship case in which BB was involved. In particular, the Member advised BB about the identity of the staff member involved in that case and confirmed that it was not someone involved in the Client’s file.
12. The CAS conducted an investigation as a result of the Client’s complaint. Upon being confronted by the CAS with the Client’s allegations, the Member retired from her employment with the CAS, effective April 30, 2016.
13. Upon completing its investigation, the CAS determined that had the Member not resigned, it would have terminated her employment for cause as a result of her misconduct. On May 30, 2016, the CAS therefore made a mandatory report to the College in relation to the member.

It is alleged that by reason of engaging in some or all of the conduct outlined above, you are guilty of professional misconduct as set out in section 26(2)(a) and (c) of the *Act*:

- (a) In that you violated Sections 2.2, 2.10 and 2.28 of the Professional Misconduct Regulation and Principle II of the Handbook (commented on in Interpretations 2.2, 2.2.1(i), (ii) and (iii), and Footnotes 6 and 7) by engaging in a professional relationship that constituted a conflict of interest and providing professional services to “AA” (the “Client”), while you were in a conflict of interest by reason of a close personal and/or professional relationship with “BB” and while you had a personal, professional and/or financial interest or obligation which gave rise to a reasonable apprehension that the interest or obligation might influence you in the exercise of your professional responsibilities toward the Client;
- (b) In that you violated Section 2.2 and 2.11 of the Professional Misconduct Regulation and Principle V of the Handbook (commented on in Interpretations 5.1, 5.3 and 5.6) by failing to comply with applicable privacy and other legislation, failing to obtain the necessary consent to the

use or disclosure of client information and improperly disclosing information concerning or received from clients without the clients' consent when you improperly released information to BB relating to proceedings under the *Child and Family Services Act*, R.S.O. 1990, c. C. 11, including a proceeding involving the Client and her child and a Crown wardship proceeding, contrary to the provisions of the *Child and Family Services Act*.

- (c) In that you violated Section 2.29 of the Professional Misconduct Regulation by contravening a federal, provincial or territorial law or a municipal by-law (namely, the *Child and Family Services Act*, R.S.O. 1990, c. C. 11 and regulations thereunder), the purpose of which is to protect public health, and/or the contravention of which is relevant to your suitability to practise, in that you improperly released information to BB relating to proceedings under the *Child and Family Services Act*, including a proceeding involving the Client and her child and a Crown wardship proceeding, contrary to the provisions of the *Child and Family Services Act*;
- (d) 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 circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

Member's Position

The Member admitted allegations (a), (b), (c) and (d) of the Amended Notice of Hearing. The Panel conducted an oral plea inquiry and was satisfied that the Member's admissions were voluntary, informed and unequivocal.

The Evidence

The evidence was tendered by way of an Agreed Statement of Facts, which set out the following.

1. Now, and at all times relevant to the allegations, Lynda Cullain was a registered social work member of the Ontario College of Social Workers and Social Service Workers (the "College")
2. Now and at all times relevant to the allegations, Lynda Cullain was employed as a social worker, in the position of ["Manager"] at the Children's Aid Society of the Districts of [location in Ontario] (the "CAS").
3. In or about December 2015 or January 2016, "AA" (the "Client") was involved with the CAS in relation to child protection concerns and proceedings under the *Child and Family Services Act*, R.S.O. 1990, c. C.11.

4. The Client's file at the CAS was "masked" and/or categorized as a Level 3 file within the CAS's internal electronic file case management/recording system (sometimes referred to as "Frontline"), to limit access to the file.
5. This masking and/or categorization of the Client's file in the CAS's system was due to the potential conflict arising from the Client's relationship to "BB". In light of that potential conflict, the Client's file was later transferred to another agency.
6. In addition to the relationship with the Client, BB was at all relevant times a friend of the Member, and had at times provided professional advice to the Member.
7. From in or about January of 2016 to in or about early March of 2016 when the Member went on sick leave following surgery, the Member accessed the Client's file using "Frontline", without the Client's consent or other authorization to do so, and contrary to the CAS's policies and procedures and/or governing legislation.
8. The Member conveyed some aspects of the Client's information to BB by means of telephone discussions and text messages, without the Client's consent or other authorization to do so, and contrary to the CAS's policies and procedures and/or governing legislation.
9. Additionally, the Member influenced or attempted to influence the handling of the Client's file with the CAS, to assist or accommodate BB.
10. On or before April 4, 2016, the Client made a complaint to the CAS that BB appeared to know confidential details about the Client's CAS file, i.e. regarding meetings between the Client and the CAS worker, and that the file had been masked by the CAS internally and was categorized as a "Level 3" according to the CAS's internal masking policy.
11. In or about January 2016 to in or about early March of 2016 when the Member went on sick leave, the Member also provided BB with information about the identity of staff members involved in another Crown Wardship case in which BB was also involved. In particular, the Member revealed that different CAS staff members were handling the other case and the matter involving the Client.
12. The Member was called in to work on April 22, 2016, before she was medically cleared to resume her employment, to be interviewed by a CAS investigator in relation to the Client's allegations. At that interview, the Member was confronted with the content of some of the text messages she had exchanged with BB. Following that interview, the Member retired effective April 30, 2016.
13. Upon completing its investigation, the CAS determined that had the Member not resigned, it would have terminated her employment for cause as a result of her misconduct. On May 30, 2016, the CAS therefore made a mandatory report to the College in relation to the member.

14. By reason of engaging in the conduct identified above, the Member admits to having committed professional misconduct as set out in section 26(2)(a) and (c) of the Act:
- (a) In that she violated Sections 2.2, 2.10, and 2.28 of the Professional Misconduct Regulation and Principle II of the Handbook (commented on in Interpretations 2.2, 2.2.1(i), (ii) and (iii) and Footnotes 6 and 7) by engaging in a professional relationship that constituted a conflict of interest and providing professional services to “AA” (the “Client”) while she was in a conflict of interest by reason of a close personal and/or professional relationship with BB and while she had a personal, professional and/or financial interest or obligation which gave rise to a reasonable apprehension that the interest or obligation might influence her in the exercise of her professional responsibilities toward the Client;
 - (b) In that she violated Sections 2.2 and 2.11 of the Professional Misconduct Regulation and Principle V of the Handbook (commented on in Interpretations 5.1, 5.3 and 5.6) by failing to comply with applicable privacy and other legislation, failing to obtain the necessary consent to the use or disclosure of client information and improperly disclosing information concerning or received from clients without the clients’ consent when she improperly released information to BB relating to proceedings under the *Child and Family Services Act*, R.S.O. 1990, c. C.11, including a proceeding involving the Client and her child and a Crown wardship proceeding, contrary to the provisions of the *Child and Family Services Act*;
 - (c) In that she violated Section 2.29 and 2.11 of the Professional Misconduct Regulation by contravening a federal, provincial or territorial law or a municipal by-law (namely, the *Child and Family Services Act*, R.S.O. 1990, c. C.11 and regulations thereunder), the purpose of which is to protect public health, and/or the contravention of which is relevant to her suitability to practise, in that she improperly released information to BB relating to proceedings under the *Child and Family Services Act*, including a proceeding involving the Client and her child and a Crown wardship proceeding, contrary to the provisions of the *Child and Family Services Act*;
 - (d) In that she 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 circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

Decision

Having considered the admissions of the Member, the evidence contained in the Agreed Statement of Fact, and the submissions of counsel, the Panel finds that the Member committed

professional misconduct as alleged in paragraphs (a), (b), (c) and (d) of the Amended Notice of Hearing. With respect to allegation (d), the Panel accepts the member's admission that the conduct would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

Reasons for Decision

The Panel accepts the Member's admissions and the Agreed Statement of Facts as proof of the occurrence of the alleged misconduct. For each allegation, evidence of professional misconduct was set out in the Agreed Statement of Facts and the Panel was satisfied that the evidence proved the allegations on a balance of probabilities:

Allegation (a) in the Notice of Hearing is supported by paragraphs 2, 4, 5, 6, and 9 in the Agreed Statement of Facts. The Member acted in such a way that her personal relationship with BB gave rise to a reasonable apprehension that her personal interest may influence her in the exercise of her professional responsibilities. The Panel notes that actual influence is not required in order for a conflict of interest situation to exist. Rather, it is sufficient if there is a reasonable apprehension that there might be such influence. The Panel finds that, as a result of the Member's personal relationship with BB who was also a relative of the Client, a reasonable person, informed of all the circumstances, would have a reasonable expectation that that interest might influence the Member in carrying out her professional responsibilities.

Allegation (b) in the Notice of Hearing is supported by paragraphs 2, 3, 4, 7, 8, 10 and 11 in the Agreed Statement of Facts. The evidence established that the Member disclosed confidential client information to BB without her Client's consent or legal authorization, amounting to a breach of confidentiality and her Client's privacy.

Allegation (c) in the Notice of Hearing is supported by paragraphs 2, 3, 4, 7, 8, 10 and 11 in the Agreed Statement of Facts. Specifically, the evidence establishes that the Member contravened s. 45(8) of the *Child and Family Services Act*, which provides as follows:

45(8) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding, or the child's parent or foster parent or a member of the child's family.

One of the purposes of the *Child and Family Services Act* is to protect public health. In addition, the Member's contravention of that Act is relevant to her suitability to practise. For social workers, particularly those working with children and other vulnerable members of society, it is of vital importance that clients can be confident that the information they disclose will be shared only with those who are required to have access to that information, or those they have consented to. The Member's disclosure of confidential information to BB was a serious breach of this trust and undermines the public's confidence in the profession.

For allegation (d), the Panel found that the Member's conduct, having regard to all circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

Accordingly, the Panel concluded that the Member is guilty of professional misconduct as set out in the Notice of Hearing in that she engaged in conduct that contravenes the Act, the Professional Misconduct Regulation, the Code of Ethics, and the Handbook.

Penalty Submission

The parties were in agreement on the issue of penalty, and jointly proposed that this Panel make an order as follows:

1. The Member shall be reprimanded in writing by the Discipline Committee and the fact and nature of the reprimand shall be recorded on the College's Register.
2. The Member's Undertaking, Agreement & Acknowledgement, dated September 25, 2017, and the Discipline Committee's finding and Order (or summaries thereof) shall be published, with the name and identifying information of the Member included, but with identifying information relating to the Member's client or former client removed, in the College's official publication and on the College's website.
3. The Member's Undertaking, Agreement & Acknowledgement, dated September 25, 2017 and the results of the hearing shall be recorded on the Register.
4. The Member shall pay costs to the College in the amount of \$5,000.

The parties filed as an exhibit an Undertaking, Agreement & Acknowledgement signed by the Member on September 25, 2017 (the "Undertaking"). The Undertaking provides, in relevant part, as follows.

[...] I, Lynda Cullain, undertake that:

1. I hereby resign permanently as a member of the College, and surrender irrevocably my Certificate of Registration, effective September 25, 2017.
2. Following my resignation on September 25, 2017, I will not practise as a social worker in Ontario and/or engage in activities within the scope of practice of the profession of social work in Ontario, as defined in the current Code of Ethics and Standards of Practice Handbook of the College, now or in the future;

AND NOW THEREFORE, I also confirm, agree and acknowledge that:

3. I will not be entitled in the future to seek membership in the College after having resigned permanently from membership in the College and having irrevocably surrendered my Certificate of Registration pursuant to the Undertaking, Agreement & Acknowledgement above.
4. I will no longer:

- a. use the English title "social worker" or "registered social worker" or the French title "travailleur social" or "travailleur social inscrit" or an abbreviation of any of those titles to represent expressly or by implication that I am a social worker or registered social worker;
 - b. represent or hold out expressly or by implication that I am a social worker or a registered social worker; and/or
 - c. engage in the practice of social work in any capacity in the Province of Ontario.
5. The College will seek an order by the Discipline Committee, with my consent, directing that this Undertaking, Agreement & Acknowledgement shall be included on the public portion of the Register maintained by the College and that the Register shall reflect that I entered into this Undertaking, Agreement & Acknowledgement as part of a resolution of Discipline Committee proceedings.
6. I acknowledge that the College is authorized to provide information regarding this Undertaking, Agreement & Acknowledgement in response to any inquiries it receives from any authority that regulates the practice of social work in any other jurisdiction.
7. I understand and agree that if I breach or fail to comply with any of the terms of this Undertaking, Agreement & Acknowledgement, information relating to the breach or failure to comply will be brought to the attention of the Registrar, who has the authority to initiate an investigation into the breach or failure to comply. The results of the investigation, if undertaken, would be presented to the Executive Committee, which has the authority to take various actions, up to and including referring specified allegations of professional misconduct to the Discipline Committee. The College may also take any other legal action against me that it deems appropriate.

College counsel submitted that the joint submission on penalty meets the College's mandate to protect the public interest, maintains high standards of practice, and is appropriate having regard to all of the circumstances of the present case and to the principles of specific and general deterrence.

Counsel for the College referred to three cases involving similar conduct by members of this and other professional self-regulatory Colleges: *Ontario College of Social Workers and Social Service Workers v. Barnim* (Discipline Committee, June 6, 2017), *College of Nurses of Ontario v. Calvano*, 2015 CanLII 89633 (ON CNO), and *College of Nurses of Ontario v. Oliviera*, 2015 CanLII 10721 (ON CNO). In all three cases the penalty consisted of a suspension of varying durations, and various terms, conditions and limitations. Counsel for the College submitted that in those cases the members were expected to continue to practice. That is unlike the present case, where the member does not propose to continue to practise, are therefore it would not serve any purpose to propose similar terms, conditions and limitations. Having regard to the Member's

Undertaking, the College was satisfied that the member would not continue to work at CAS or anywhere else, and would not hold herself out as a social worker.

College counsel submitted that there are a number of mitigating and aggravating circumstances that should be considered. The mitigating factors are that the member, (1) had no prior discipline history with the College, and (2) had acknowledged her misconduct early in the process and Agreed to the Statement of Facts and to a joint submission on penalty.

The aggravating factors are as follows:

1. the conduct was serious,
2. the conduct occurred over a period of time,
3. the conduct included a conflict of interest and disclosure of personal information in order to support a personal relationship with BB, and
4. the conduct included a breach of not only the Professional Standards but also the *Child and Family Services Act*.

The counsel for the Member agreed with College counsel's submissions and raised additional mitigating factors, including the ending of the Member's 33 years long unblemished history at CAS. Counsel submitted that the Member has taken responsibility for her actions and entered into the Agreed Statement of Facts and joint submission on penalty, which should be taken as an indication of her remorse. Furthermore, counsel for the Member noted that the Member had not practiced in over a year and a half, had retired from CAS and had no intention of returning to practice.

Penalty Decision

Having considered the findings of professional misconduct, the evidence and the submissions of the parties, the Panel accepts the joint submission and makes an order as follows.

1. The Member shall be reprimanded in writing by the Discipline Committee and the fact and nature of the reprimand shall be recorded on the College's Register.
2. The Member's Undertaking, Agreement & Acknowledgement, dated September 25, 2017, and the Discipline Committee's finding and Order (or summaries thereof) shall be published, with the name and identifying information of the Member included, but with identifying information relating to the Member's client or former client removed, in the College's official publication and on the College's website.
3. The Member's Undertaking, Agreement & Acknowledgement, dated September 25, 2017 and the results of the hearing shall be recorded on the Register.
4. The Member shall pay costs to the College in the amount of \$5,000.

Reasons for Penalty Decision

The Panel recognized that the penalty should maintain high professional standards, preserve public confidence in the ability of the College to regulate its members, and, above all, protect the public. This is achieved through a penalty that considers the principles of general deterrence, specific deterrence and, where appropriate, rehabilitation and remediation of the Member's practice. The Panel also considered the principle that the Panel should accept a joint submission on penalty unless it is contrary to the public interest and would bring the administration of justice into disrepute.

The Panel concluded that the jointly proposed penalty was within the acceptable range of penalty for this type of professional misconduct. The Panel considered the aggravating and mitigating circumstances submitted by both counsel. The Panel noted the fact that the Member cooperated with the College, has agreed to the proposed penalty, and has no prior complaints during her long professional social work career. By agreeing to the facts and proposed penalty, the Member has accepted responsibility for her actions.

The elements of the jointly proposed penalty achieve both general deterrence, deterring other members of the profession from engaging in similar misconduct. The penalty also has a specific deterrence element, deterring the Member from engaging in similar misconduct, although the Panel recognizes that the objective of specific deterrence has reduced relevance where a member will not be returning to practice. The Member has retired and was not proposing to return to practice, and therefore the principle of rehabilitation was not considered. The penalty is also consistent with the decisions in analogous cases. The Panel considers that the proposed penalty is reasonable in the light of the goals and principles of maintaining high professional standards, preserving public confidence in the College's ability to regulate its members and above all, protecting the public. For these reasons the Panel found no reason to depart from the joint submission on penalty

Although the Panel ordered a reprimand in writing as sought in the joint submission, the Member had traveled from out of town to attend the hearing in person, and having filed a written waiver of appeal, requested to receive the reprimand orally. The College consented. In the circumstances, the Panel agreed and administered the reprimand orally.

I, Sophia Ruddock, sign this Decision as Chairperson of the Panel and on behalf of the Panel members listed below.

Date: _____

Signed: _____

Sophia Ruddock
Rita Silverthorn
Rick Lamb