



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
Frances Keogh, RSW
Amanda Bettencourt, RSSW

BETWEEN:

ONTARIO COLLEGE OF SOCIAL WORKERS
AND SOCIAL SERVICE WORKERS

-and-

JOANN LEE

) Priya Morley and Jordan Glick,
) for the Ontario College of Social
) Workers and Social Service
) Workers
)
)
)
) No one appearing for the Member
)
)
) Aaron Dantowitz,
) Independent Legal Counsel

Heard: November 23, 2017

DECISION AND REASONS FOR DECISION

This matter commenced as a hearing before a panel of the Discipline Committee (the “Panel”) on November 23, 2017. The hearing took place at the Ontario College of Social Workers and Social Service Workers (the “College”).

Overview

This case involved allegations of professional misconduct against JoAnn Lee (the “Member”), concerning a personal and sexual relationship that developed between the Member and a client. The

Member did not attend the hearing, and the matter proceeded as if the Member denied the allegations. After hearing and considering the evidence and submissions of the College, the Panel reserved its decision. The following are the decision and reasons of the Panel.

Absence of the Member

Upon convening the hearing, the Panel noted that the Member was not present nor represented by counsel at the hearing and invited College counsel to make submissions on the Member's absence.

College counsel filed correspondence from the Member's counsel indicating she was aware of the hearing and that the Member was choosing not to attend. College counsel noted, however, that the Member reserves the right, if there is a finding of professional misconduct, to appear on the issue of penalty and costs, which would be dealt with at a later date.

In addition, College counsel filed a brief of documents that included a Notice of Hearing dated September 12, 2016, as well as a letter from the College, dated October 6, 2017, notifying the Member's counsel that the hearing would be commencing on November 23, 2017 at 9:30 am, along with affidavits of service indicating that each of these documents had been sent to the Member and her counsel.

College counsel advised that there are two Notices of Hearing involving this Member, but that they could not be heard together because the Member did not consent. The Panel asked for clarification as to whether the Member was aware which of them was being dealt with at this hearing. College counsel referred the Panel to correspondence sent to the Member's counsel on November 15, 2017, indicating that it was the College intention to proceed with the matters "sequentially based on the dates that the Notices of Hearing were issued, beginning with the Notice of Hearing dated September 12, 2016."

After hearing from Independent Legal Counsel and considering the matter, the Panel was satisfied that the Member had sufficient notice of the hearing, and that the Panel could proceed in her absence and in the absence of counsel for the Member.

Publication Ban

Because this matter involved allegations of misconduct of a sexual nature, College counsel requested an order prohibiting the publication of the name of the complainant in this case, or any information tending to identify the complainant, and the Panel made that order.

The Allegations

The allegations against the Member were set out in the Notice of Hearing, as follows:

1. Now, and at all times relevant to the allegations, you were a registered social worker with the Ontario College of Social Workers and Social Service Workers (the “College”).
2. On or about February 27, 1989, you commenced employment as a social worker with the [Facility]. You remained employed in this capacity until December 15, 2008 when the [Facility] divested to become the [Centre]. As an employee of the Centre, you held the role of social worker in Outpatient Services.
3. On or around November 29, 2015, you voluntarily retired from the Centre.
4. While employed at the Centre, you provided counselling and/or psychotherapy services to [Client A] (the “Client”) on approximately seven occasions from about April 2009 to June 2009.
5. The Client was a vulnerable client with a history of mental health issues, substance abuse, family/marital problems, and self-harming behaviours.
6. In the spring of 2009, during a meeting with the Client and another colleague, your colleague suggested that the Client ought to help you with a project relating to your Masters of Social Work program. You subsequently engaged the Client to assist you with your project.
7. While working on the project, you and the Client developed a personal relationship and friendship that was separate and apart from your social work relationship. During the period in which you carried on a personal relationship with the Client, which ended in or about the year 2013, you engaged in a series of boundary crossing behaviours relating to the Client including:
 - (a) communicating with the Client directly by personal phone and e-mail;
 - (b) sharing with the Client personal information about yourself and your family;
 - (c) permitting the Client to attend at your personal residence regularly, sometimes with his children. On these visits, the Client and/or his children sometimes assisted you with household tasks such as yard work and shoveling snow;
 - (d) attending family events and social functions with the Client including trips to various beaches, restaurants and cottages, attending at church together and holiday dinners at your home;
 - (e) travelling with the Client to [location in Ontario] to visit his daughter and staying in a single room in a hotel with the Client;

- (f) inviting the Client and his daughter to assist you in moving another client of yours from [location in Ontario] to [location in Ontario] and providing confidential information to the Client and his daughter about the client whom they were assisting;
 - (g) purchasing clothes and gifts for the Client and his children;
 - (h) permitting the Client to reside in, and look after, your personal residence in your absence;
 - (i) visiting with the Client and his family (including his children and his former spouse's family); and,
 - (j) discussing your relationship with the Client with his former spouse and/or children.
8. Beginning in or about the Fall or Winter of 2009 and ending in 2013, you additionally engaged in an intimate and romantic relationship with the Client which involved remarks of a sexual nature and sexual contact, including sexual touching, and sexual relations.
9. In addition to, or in alternative to the facts set out in paragraph 8, in or about the years 2009 to 2013, you acquiesced in the Client having a personal, romantic and/or sexual relationship with your sister whom you resided with.
10. Early in the romantic relationship, you encouraged the Client to cease attending at the Centre as well as other places that the Client sought support from in order to keep the relationship a secret.
11. In or about December 2015, you re-established communication with the Client, indicated that you wished to resume the relationship and engaged in sexual relations with him. You subsequently terminated the relationship.
12. In or around January 2016, you communicated with the Client about his complaint to the College and/or the College's investigation and you pressured him and/or offered him money to withdraw the complaint.

II. 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 and 2.5 of the Professional Misconduct Regulation** and **Principle VIII of the Handbook (as commented on in Interpretations 8.1, 8.2, 8.3, 8.4 and 8.6)** by failing to ensure that sexual misconduct did not occur; by engaging in sexual intercourse or another form of physical sexual relations with your client, by engaging in touching, of a sexual nature, of your client, and by engaging in behavior or

remarks of a sexual nature towards your client, other than behaviour or remarks of a clinical nature appropriate to the service provided; by developing sexual feelings towards your client that could, in your judgment, put the client at risk, and failing to seek consultation/supervision or develop an appropriate plan; by failing to state clearly to your client that behaviour of a sexual nature is inappropriate by virtue of the professional relationship; and by engaging in sexual relations with your client during the period in which you provided counselling services to the client;

(b) In addition or in alternative to paragraph (a), in that you violated **Section 2.2 of the Professional Misconduct Regulation and Principle VIII of the Handbook (as commented on in Interpretations 8.1, 8.2, 8.3, 8.4 and 8.7)** by failing to ensure that sexual misconduct did not occur; by engaging in sexual intercourse or another form of physical sexual relations with your former client, by engaging in touching, of a sexual nature, of your former client, and by engaging in behavior or remarks of a sexual nature towards your former client, other than behaviour or remarks of a clinical nature appropriate to the service provided; by developing sexual feelings towards your former client that could, in your judgment, put the former client at risk, and failing to seek consultation/supervision or develop an appropriate plan; by failing to state clearly to your former client that behaviour of a sexual nature is inappropriate by virtue of the professional relationship; and by engaging in sexual relations with your former client whom you provides counseling and/or psychotherapy services to;

(c) In that you violated **Sections 2.2 and 2.6 of the Professional Misconduct Regulation and Principle II of the Handbook (commented on in Interpretations 2.2.2, 2.2.3, 2.2.5 and 2.2.8)** by having sexual relations with your client or former client; by using information obtained in the course of a professional relationship, and/or by using your professional position of authority, to coerce, improperly influence, harass, abuse or exploit your client or former client; by failing, when a complaint investigation is underway to conduct yourself in a manner which demonstrates respect for both the complainant and the College; and by engaging in conduct which could reasonably be perceived as reflecting negatively on the profession of social work;

(d) In that you violated **Sections 2.2 of the Professional Misconduct Regulation and Principle III of the Handbook (commented on in Interpretations 3.7)** by failing to assume full responsibility for demonstrating that your client or former client has not been exploited, coerced or manipulated intentionally or unintentionally where a personal relationship occurs with the client or former client;

(e) In that you violated **Sections 2.2 of the Professional Misconduct Regulation and Principle I of the Handbook (commented on in Interpretations 1.1, 1.5 and 1.6)** by failing to participate together with your client to set and evaluate goals; by failing to maintain awareness of your

own values, attitudes and needs and how these impact on your professional relationship with your client; and by failing to distinguish your needs and interests from those of your client to ensure that your client's needs and interests remain paramount;

(f) 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 5.3 and 5.5)** by disclosing information concerning or received from your client; and by failing to distinguish between public and private information related to your client; and,

(g) 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

Because the Member did not attend the hearing, the Panel entered a plea of not guilty on her behalf, and proceeded on the basis that the Member denied all of the allegations.

The Evidence

The College called two witnesses. The first witness, Ms. M. F., an investigator with the College, testified that the Member registered with the College on May 1, 2000 and that her request to resign from the College was denied by the registrar on November 16, 2015, due to an open investigation regarding serious allegations of professional misconduct.

The second witness was [Client A], the client with whom the Member was alleged to have had a sexual relationship (the "Client").

The Client testified that he currently lives in [location in Ontario], where he moved to, in 1989, for employment. He divorced in 2009 and has two adult children.

He stated that he had suffered from anxiety and depression for his whole life, and when he was let go from work in 2000, a cycle of instability started where he would overdose, be admitted to hospital and eventually be discharged to out-patient services. In early 2009, after being discharged from hospital he was referred to [the Centre] for counseling which led to his meeting with the member.

The Client testified that his first appointment with the Member was in the spring of 2009. During the first session the Client felt a high degree of satisfaction and connection due in part to the Member disclosing that she was also from [location in Canada] and the Client found it easy to talk to the Member. At the same time the client was also attending a counsellor, [name of counsellor withheld] at the [name of facility withheld] in [location in Ontario] for support and advice regarding employment. During a three-way discussion between the Member, the other

counsellor [name of counsellor withheld] and the Client, it was decided that the Client could help the Member with a poster for her presentation for her Social Work degree.

The Client testified that in June 2009 he and the Member started conversing by phone about working on the poster and then she invited him to her home. During subsequent visits to the Member's home, the Client and the Member engaged in physical intimacy by hugging and cuddling. Following their first date in mid-August 2009 their physical relationship became closer with holding hands and intense making-out, and then towards the end of August 2009, the Client was stimulated to orgasm by the Member. The Client testified that towards the end of August the Member discussed with him that she could get into serious trouble if anyone found out about their intimate relationship, but during the following months they proceeded with the relationship and had sexual intercourse. The sexual relationship was consensual and the Client willingly followed the advice of the Member to cease contact with all his other support services because he was aware that their sexual relationship required secrecy.

The Client testified that during the fall of 2009, he house-sat for the Member for a two-week period and that both of his children spent time in the Member's home. Their activities in the Member's home included having dinners, watching tv and sleeping over, and the Member bought gifts for them.

The Member initiated contact with the Client's ex-wife to discuss the children's behaviours and the Client and his children were introduced to the Member's extended family. In particular the Client engaged in many social activities with the Member's sister [name withheld] who was living in the Member's home. The Client and the Member went on shopping trips to nearby towns and the Member purchased gifts for him, which made him feel uncomfortable as he could not reciprocate. The Client presented photographs showing various visits and outings with Ms. Lee, himself and his children.

The Client testified that the relationship with the Member lasted for approximately 3 years, but that after the first thirteen months, the Member withdrew from the sexual relationship, even though the Client still helped her with household chores and they had frequent phone conversations. After a period of no-contact they met in the street accidentally and subsequently re-established a sexual relationship. The Client became suspicious that the Member was in another sexual relationship and possibly married at that time and when her marriage was confirmed he was devastated.

The Client presented an audio recording, and transcript, of a conversation he had with Ms. Lee in April 2013, regarding the nature of their relationship. The conversation included the following exchange:

The Client: ...so am I to understand then that we are not going to be spending the rest of our lives together?

The Member : I can only go day by day (client's name). I can't make you that promise. It's too big of a thing to say to you I'm going to spend the promise of my life.

Later in the conversation the following exchange is heard:

The Client: ... *The thing there JoAnn is like OK, we were sort of together for awhile then we were sort of apart, and then you came back and said well like hey, you're the guy for me. And it was like ... hho hou know?*

The Member: *Well I missed you. I did miss you (client's name). Wow like...*

The Client: *And we were together, and I thought great we're a couple again.*

The Member: *But you have to let it play out (client's name). You can't force it like that.*

Subsequently, in November 2015, the Client filed a complaint against the Member and during this time the Client struggled emotionally and was despairing and fragile. After a phone call from the Member in December 2015 the Client felt regret about his complaint to the College and set up a phone and email system to allow himself and the Member to communicate by using aliases and therefore masking their identity. In January 2016, the Client agreed to meet with the Member in person and in the ensuing conversation the Client suspected that the Member was attempting to influence him to ask her for money, so that she could claim, as part of her defense against his complaint to the College, that he was trying to blackmail her.

Decision

The Panel recognized that the College bears the onus of proving the allegations against the Member on the balance of probabilities, using clear, cogent and convincing evidence. Having reviewed and considered the evidence, and the submissions of the College, the Panel makes the following findings:

On allegation II. (a) in the Notice of Hearing:

- the Panel finds the member guilty of professional misconduct under s. 2.2 of the Professional Misconduct Regulation.
- the Panel finds the member guilty of professional misconduct under s. 2.5 of the Professional Misconduct Regulation.

On allegation II. (b) in the Notice of Hearing, the Panel finds the member guilty of professional misconduct under s. 2.2 of the Professional Misconduct regulation.

On allegation II. (c) in the Notice of Hearing:

- the Panel finds the member guilty of professional misconduct under s. 2.2 of the Professional Misconduct Regulation.
- the Panel finds the member guilty of professional misconduct under s. 2.6 of the Professional Misconduct Regulation.

On allegation II. (d) in the Notice of Hearing, the Panel finds the member guilty of professional misconduct under s. 2.2 of the Professional Misconduct regulation.

On allegation II. (e) in the Notice of Hearing, the Panel finds the member guilty of professional misconduct under s. 2.2 of the Professional Misconduct regulation.

On allegation II. (f) in the Notice of Hearing:

- the Panel finds the member not guilty of professional misconduct under s. 2.2 of the Professional Misconduct Regulation.
- the Panel finds the member not guilty of professional misconduct under s. 2.11 of the Professional Misconduct Regulation.

On allegation II. (g) in the Notice of Hearing, the Panel finds the member guilty of professional misconduct under s. 2.36 of the Professional Misconduct regulation and finds that the conduct would reasonably be regarded by members as disgraceful, dishonourable and unprofessional.

Reasons for Decision

Credibility

The panel found that the Client's evidence was cohesive, consistent and reliable.

Although during his testimony the Client expressed feelings of resentment, humiliation and despair because of the way he was treated, he was credible. The Client remembered specific details about dates and location of activities with the Member over a three-year period. He was also able to recall details such as the duration of telephone calls and the cost of various articles of clothing bought by the Member as gifts for him. He also described in detail very intimate parts of his life although he was exposed and vulnerable. The Client's testimony was supported by photographs and audio evidence, which confirmed the nature of his relationship with the Member.

After careful consideration the panel accepted the Client's testimony as proof of the occurrence of the alleged misconduct.

Sexual Relationship

It is alleged in the Notice of Hearing at paragraph 8, (page 4) that Ms. Lee engaged in a sexual relationship with the Client and through that intimate relationship, tried to influence the client. The panel found that Ms. Lee engaged in a sexual relationship with the Client to whom she was supposed to provide social work services. Furthermore, Ms. Lee pressured the Client to both keep their relationship a secret and when he filed a complaint to the College she pressured him to withdraw it. These behaviours constitute abuse of a Client sexually under subsection 43(4) of the Act, as well as psychologically, and are contrary to sections 2.2, 2.5 and 2.6 of the Professional Misconduct Regulation, and Principles I, II, III and VIII of the Handbook. We therefore found that the Member had committed professional misconduct as set out in allegations II. (a), (b), (c), (d) and (e) of the Notice of Hearing.

Boundary Violations

Moreover, the panel found that the Member's misconduct was not limited to her sexual relationship with the Client. It is alleged in the Notice of Hearing at paragraph 7 (pages 2 and 3) that Ms. Lee engaged in a series of boundary-crossing violations relating to the Client. The panel found that these boundary violations occurred across a spectrum of relationships and

involvement with members of both the Client's extended family and the Member's extended family, most notably when Ms. Lee invited the Client and his children to stay in her home and bought the Client and his children gifts and had extensive communication with Client through phone calls and e-mails, and encouraged the Client to cease attending other support services. This resulted in the Client being intimately involved in the Member's personal life while at the same time being denied the professional counselling services to which he was entitled. The panel also found that Ms. Lee's failure to declare a conflict of interest and seek supervision indicates a lack of self-monitoring and reflected negatively on the profession of social work. We therefore found that the Member had further acted contrary to section 2.2 of the Professional Misconduct Regulation and Principles I, II, and III of the Handbook, as set out in allegations II. (c), (d) and (e) of the Notice of Hearing. The Member's conduct as described above would also reasonably be regarded by members of the profession as disgraceful, dishonourable and unprofessional, as alleged in allegation II. (g) of the Notice of Hearing, thus violating section 2.36 of the Professional Misconduct Regulation.

Unauthorized Disclosure of Client Information

It is alleged in the Notice of Hearing at allegation II. (f) that Ms. Lee violated section 2.11 of the Professional Misconduct Regulation and Principle V of the Handbook, by disclosing confidential information concerning or received from a client. The Panel found that there was insufficient evidence to support this allegation. While there was some allusion to a discussion between Ms. Lee and the Client about someone who was another client of Ms. Lee, the Panel felt that the evidence was not sufficiently clear to establish what information Ms. Lee shared with the Client.

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

Date: _____

Signed: _____

Sophia Ruddock
Frances Keogh, RSW
Amanda Bettencourt, RSSW