



Ontario College of
Social Workers and
Social Service Workers

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**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 Denham, 2019
ONCSWSSW 7

Decision date: 20191007

BETWEEN:

THE ONTARIO COLLEGE OF SOCIAL WORKERS
AND SOCIAL SERVICE WORKERS

- and -

KELLEY JEAN DENHAM

PANEL: Rita Silverthorn Chair, Professional Member
Gerald Mak Public Member
Angèle Desormeau Professional Member

Appearances: Jill Dougherty and Ada Keon, counsel for the College
Kelley Jean Denham, self-represented
Andrea Gonsalves, Independent Legal Counsel to the Panel

Heard: July 10, 2019

AMENDED DECISION AND REASONS FOR DECISION

[1] This matter came on for a hearing before a panel of the Discipline Committee (the “**Panel**”) on July 10, 2019 at the Ontario College of Social Workers and Social Service Workers (the “**College**”).

Overview

[2] Kelley Jean Denham (“**Ms. Denham**” or the “Member”) is a registered social service worker. Starting in February 2016, she viewed and downloaded approximately 171 files on the Family and Children’s Services of Lanark, Leeds and Grenville (“**FCSLLG**”) website, including files that contained confidential information about the agency’s clients. The Member did not have consent or authorization to view the files. In April 2016, the Member posted on the page of a Facebook group with 11,000 members a link to the URL of one of the confidential documents. The document was a report that contained the names of 285 families involved with the FCSLLG. In February 2016, the Member posted online a two-hour video that she surreptitiously filmed in February 2016, which contained confidential documents of the FCSLLG’s Board of Directors.

[3] The College alleged that the Member engaged in professional misconduct because her actions were a contravention of provincial law that is relevant to her suitability to practise in the social service work profession; she failed to meet the standards of the profession; and she engaged in acts that would reasonably be regarded as disgraceful, dishonourable or unprofessional. The Member denied the allegations of professional misconduct. The hearing proceeded on the basis of an agreed statement of facts, but the Member disputed the College’s arguments that the facts support a finding of professional misconduct. After considering the evidence and the submissions of both parties, the Panel found that the College has proven on a balance of probabilities that the Member engaged in professional misconduct as alleged.

The Allegations

[4] In the Notice of Hearing dated June 15, 2018, 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 the Member 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 Services Workers Standards of Practice Handbook (the “**Handbook**”).

[5] The allegations set out in the Notice of Hearing and the particulars of those allegations are as follows.

I. The following are particulars of the said allegations:

1. At all relevant times, you were registered as a social service work member with the Ontario College of Social Workers and Social Service Workers (the “**College**”);
2. Commencing on or about February 2016 you accessed the Family and Children’s Services of Lanark, Leeds and Grenville (“**FCSLLG**”) Board of Directors web portal approximately 378 times and successfully viewed

and/or downloaded approximately 171 files, including files that contained confidential information about clients of FCSLLG. You were not involved in providing care for those clients, nor did you have consent or authorization to access their information.

3. On or about April 18, 2016 you posted a link to one of the confidential documents obtained from the FCSLLG Board of Directors web portal to a Facebook Group called “Smith Falls Swap Shop”. This document contained the names of 285 families involved with the FCSLLG.
4. On or about February 17, 2016^[1] you posted a two-hour video which you took of a February 3, 2016 meeting between yourself and [redacted] (former Director of Services) and [redacted] (Intake Manager) on the internet. The video contained confidential FCSLLG Board of Directors documents that you obtained from the FCSLLG Board of Directors web portal.
5. The posting of some or all of the information referred to in paragraphs 3 and/or 4, above had the effect of identifying one or more children who were witnesses at, or participants in, or subjects of hearings and/or proceedings under the *Child and Family Services Act*, RSO 1990, c C.11, and/or the parents or foster parents or family members of such child(ren), or any of them.
6. You were charged under sections 430(1.1)(c), 430(5), and 342.1(1)(c)(i) of the *Criminal Code*, RSC 1985 c. C-46 and under sections 75(11), 45(8) and 85(3) of the *Child and Family Services Act*, RSO 1990, c C.11 with respect to the conduct outlined in paragraphs 1 to 5, above.

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 **Section 2.2 of the Professional Misconduct Regulation and Principle V of the Handbook (commented on in Interpretation 5.1)** by failing to comply with applicable privacy and other legislation;
- (b) In that you violated **Section 2.29 of the Professional Misconduct Regulation** by contravening a federal, provincial or territorial law or a

¹ The Notice of Hearing indicates this date as February 17, 2017. The Agreed Statement of Facts as filed at the hearing also indicated the date as February 17, 2017. After the panel’s decision was released, the parties notified the panel that the date was in error and should be corrected to February 17, 2016. The panel issued amended reasons with the date corrected in paragraph 2 and as well as in paragraph 4 of the Notice of Hearing reproduced at paragraph 5, and paragraph 9 of the Agreed Statement of Facts, reproduced at paragraph 8. The panel was satisfied that the change of date does not affect the substance of its decision.

municipal by-law (namely, *Child and Family Services Act of Ontario*) where;

- (i) the contravention is relevant to the Member's suitability to practice; and/or
- (c) 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

[6] The Member denied the allegations of professional misconduct set out in the Notice of Hearing.

The Evidence

[7] The evidence was tendered by way of an Agreed Statement of Facts, which set out the facts that the Member and the College agreed the Panel could accept as true for the purposes of this hearing. Three documents were appended as schedules to the Agreed Statement of Facts.

[8] The Agreed Statement of Facts provided as follows (with schedules omitted).

1. Now and at all times relevant to the allegations, Kelley Jean Denham (the "**Member**") was a registered social service work member of the Ontario College of Social Workers and Social Service Workers (the "**College**").
2. At all times relevant to the allegations, the Member was a client of the Family and Children's Services of Lanark, Leeds and Grenville ("**FCSLLG**"), and had had interactions with them with respect to her children. The Member had never worked with FCSLLG in the course of her professional employment or scope of practice.
3. In the context of a dispute with FCSLLG, on or about February 2016, the Member used her computer to access the FCSLLG website. After finding a document on the public website, the Member then deleted a portion of the URL associated with the document and was able to access a Directory of Folders. The documents were organized by year and month within the year. The Member then accessed documents that were stored in the April and May folder of 2013 and 2015.
4. In total, the Member accessed the public website approximately 378 times and successfully viewed and/or downloaded approximately 171 files. Many of these files contained confidential information about FCSLLG. One document in particular contained confidential information about 285 clients of FCSLLG. The Member was not involved in providing care for

those clients, nor did the Member have consent or authorization to access their information. This document was [an] Excel Spreadsheet containing the names of new clients to FCSLLG with cases opened between April 2015 and November 2015 (“the **Report**” attached [to the Agreed Statement of Facts] as Schedule “**A**”). The Report included the following information:

- a. client’s name (likely a parent or guardian);
 - b. whether the client had a child under five;
 - c. the caseworker assigned;
 - d. the response time needed and the actual time it took to respond to the child protection complaint;
 - e. notes of explanation as to why some response times were not reached; and
 - f. Eligibility Spectrum Codes.
5. The Member was familiar with the Eligibility Spectrum Codes, which could be found in the Ministry of Children and Youth Services website. The codes indicate the type and severity of alleged abuse (physical abuse, neglect, parent capacity etc.)
 6. In addition to the Report, the Member found other documents with more client-identifying information. The Member accessed documents that were summaries of insurance claims which identified sexual abuse survivors, as well as a report from the Provincial Advocate for a child whom the Member was familiar with, a Coroner’s Pre-Inquest Report, identifiable information in Board Meeting Minutes and some resumes.
 7. The Member took a screenshot of the URL which led the user to the Report and posted it on the wall of the Facebook group, “Smith Falls Swap Shop”. This Facebook group was a members-only group of about 11,000 for the Smith Falls community where FCSLLG carried out services. The Member posted the screenshot along with the message “Freedom of speech allows for the sharing of publicly available information. My name is on this list. If your name is on this list too. please message me [sic]” (a copy of screenshot attached [to the Agreed Statement of Facts] as Schedule “**B**”).
 8. The Member also posted a Toronto Star article entitled “Children’s aid families’ names posted online” to her Facebook page with the comment “this might have been me” (A copy of screenshot attached [to the Agreed Statement of Facts] as Schedule “**C**”).

9. On February 3, 2016 the Member had a meeting with [redacted], former Director of Services and [redacted], Intake Manager, both of FCSLLG. The Member surreptitiously filmed the interview using a camera pen, without the permission of the FCSLLG or the staff that appeared in the video. The video contained confidential FCSLLG Board of Directors documents. The video was first posted on February 17, 2016 to the website “liveleak.com” under the channel “Space Coyote”. The video was then posted to both YouTube and in or around 80 Facebook accounts/groups.
10. The Member was charged with a number of offences under the Criminal Code and Provincial Offences Act by reason of the conduct described above. While some of those charges have been withdrawn, the Member is currently charged under the Criminal Code with the following offences:
 - a. Section 430(1.1)(c) – interference with lawful operation of the Family and Children’s Services of Lanark, Leeds and Grenville;
 - b. Section 430(5) – committing mischief in relation to computer data by wilfully without legal justification or excuse and without colour of right denying access to any person, computer data to wit: the website of Family and Children’s Services of Lanark, Leeds and Grenville; and
 - c. Section 342.1(1)(c i) – the indirect or direct use of a computer to fraudulently and without colour of right to obtain directly or indirectly a computer service, to wit: the data storage contained on the computer service of Family and Children’s Services of Lanark, Leeds and Grenville.
11. In addition, the Member is currently charged with the following Provincial Offences Act charges:
 - a. Publishing information that has the effect of identifying a witness or a participant in a hearing or a part to a hearing to wit: the names of 285 clients of Family and Children’s Services, contrary to sections 76(11) and 85(3) of the Child and Family Services Act of Ontario; and
 - b. Publishing information that has the effect of identifying a child who is a witness at or a participant in a hearing for the subject of a proceeding or the child’s parent or foster parent to wit: the names of clients of the clients of Family and Children’s Services, contrary to section 45(8) of the Child and Family Services Act of Ontario.

[9] The College also filed as an exhibit, with the consent of the Member, the Ontario Child Welfare Eligibility Spectrum revised October 2006, as referred to in paragraphs 4 and 5 of the Agreed Statements of Facts.

The Parties' Submissions

[10] Although the parties agreed on the facts of this case, they disagreed on whether, based on those facts, the Member engaged in professional misconduct as alleged in the Notice of Hearing. The College asserted that the Member's actions as described in the Agreed Statement of Facts do constitute professional misconduct, while the Member says that they do not.

College's Submissions

[11] College counsel argued that the Member used a computer to access and download documents from the FCSLLG website that were sensitive and confidential. In addition to posting the URL that linked to the Report (which was Schedule A to the Agreed Statement of Facts), the Member commented: "Freedom of speech allows for the sharing of publicly available information. My name is on this list. If your name is on this list too please message me." As a registered social service worker and client of FCSLLG, the Member understood the confidential and sensitive nature of the information. This was not a situation of the Member randomly posting an image of a link without commentary – she actively encouraged people in the Facebook group to go to the URL. Other individuals did in fact engage with the Member's post, including a response indicating that the information should not be posted on Facebook and making comments about the private nature of the information being shared, indicating that at least one person must have looked at the URL and seen the Report. The security of the documents on the FCSLLG website is not the issue in this proceeding. The Member's conduct, in recognizing the nature and sensitivity of the information and posting it to a Facebook group with a message encouraging people to go to the URL, is in issue

[12] College Counsel noted the significant amount of sensitive information available in the Report. That information includes the names of new clients of FCSLLG for cases opened between April 2015 and November 2015, the clients' locations, the FCSLLG worker name, whether the case involved a child 0-5 years old, and the applicable Eligibility Spectrum Codes.

[13] College counsel walked through the Eligibility Spectrum Codes as set out in the Ontario Child Welfare Eligibility Spectrum document (made exhibit 3 at the hearing), which was available to the public. As described in that document, the Eligibility Spectrum is a tool designed to assist FCSLLG staff in making decisions about eligibility for service at the time of a referral. The Eligibility Spectrum Codes indicate the level of abuse that is alleged to have occurred that falls above the line of intervention. By referring to the Eligibility Spectrum Codes, a member of the public can determine the level of neglect or abuse alleged in respect of each of the families named in the Report at the time of referral.

[14] Because at least some of the names on the Report were associated with "extremely severe" or "moderately severe" Eligibility Spectrum Codes, College counsel argued that the Panel can infer that the Report contained information that had the effect of identifying at least one child who was involved in a child protection proceeding (or the parent or foster parent of such a child) as prohibited by s. 45(8) of the *Child and Family Services Act* ("CFSA").

[15] College counsel argued that for the purpose of s. 45(8) of the CFSA it is not necessary that the child (or the parent or foster parent of the child) be the subject of a child protection

hearing. It is sufficient that the child is the subject of a “proceeding”, which has a broader meaning in the CFSA than “hearing”. Although “proceeding” is not a defined term in the CFSA, a part of the Act beginning at section 40 deals with “Commencing Child Protection Proceedings”. According to the College’s position, “proceedings” start before actual “hearings”, which are discussed starting at section 45 of the Act. Taking into account the number of names on the Report and the Codes which indicate that many of them involved concerns about serious abuse that would have warranted urgent action and inevitably would have involved apprehensions and hearings, it is more likely than not that the information published by the Member had the effect of identifying at least one a child that was the subject of a proceeding (or the child’s parent or foster parent or a member of the child’s family) even if the proceeding did not result in a hearing.

[16] College counsel referred the Panel to several cases in support of its position that the Member had contravened s. 45(8) of the CFSA. In *Catholic Children’s Aid Society of Toronto v B(N)*, 2012 ONCJ 439, the Ontario Court of Justice ordered a father to remove internet postings that would identify his children, directly or indirectly, as being connected to a protection proceeding. The postings did not directly name the child or specifically refer to a “child protection proceeding”. That decision was upheld on appeal: *Catholic Children’s Aid Society of Toronto v B(N)*, 2013 ONSC 1965.

[17] In *M(Y) v Beaman*, 2016 ONSC 7118, the Divisional Court concluded that s. 45(8) of the CFSA is mandatory and that it cannot be waived, either by the court or by any of the individuals involved. Citing the *Beaman* decision, College counsel argued that s. 45(8) has been interpreted very strictly, even when the parents want the information to be public.

[18] College counsel also relied on *Children’s Aid Society of Hamilton-Wentworth v L(T)*, 1997 CarswellOnt 1820 (SCJ). That case considered a news organization’s right to publish information contained in an affidavit that was prepared in connection with a child protection proceeding. The information published by the newspaper did not include the names of the children or the parties, or any information that would reveal their identities to the general public. The court held, at paragraph 11: “The Hamilton Spectator has every right to publish [information from the affidavit] if the newspaper does not, itself, contravene s. 45(8)”. Drawing on that statement, College counsel argued that even if it were the case that FCSLLG did not secure the information on its website, the Member was still bound by s. 45(8) and could not publish the information in a manner that would reveal the identities of the children or families involved, as she did.

[19] College counsel addressed the Member’s reliance on the Supreme Court of Canada’s decision in *Crookes v Newton*, 2011 SCC 47, in support of her position that she did not “publish” the Report by merely posting the URL. College counsel argued that *Crookes* has no direct application in this case because it deals with publication in the context of defamation, not the interpretation and application of s. 45(8) of the CFSA. She also pointed to paragraph 14 of Abella J’s reasons, which states: “a hyperlink, by itself, should never be seen as “publication” of the content to which it refers.” In this case, the Member did more than simply publish a hyperlink “by itself”. She actively encouraged people to follow the URL. This is more akin to the situation discussed in the concurring reasons of McLachlin CJ and Fish J at paragraph 50: “a hyperlink should constitute publication if, read contextually, the text that includes the hyperlink

constitutes adoption or endorsement of the specific content it links to.” The Member knowingly published the information. She was involved with the FCSLLG and had a grievance with the agency. She had access to sensitive information and, knowing that it was sensitive, put it on a Facebook page with 11,000 members and encouraged them to check out the information. College counsel argued that in doing so the Member risked having the link further dissemination among the public. In the case of *Pritchard v Van Nes*, 2016 BCSC 686, the court commented that the nature of Facebook means that “anyone posting remarks to a page must appreciate that some degree of dissemination at least, and possibly widespread dissemination, may follow” (at para. 83).

[20] Regarding the issue of whether the contravention of s. 45(8) is relevant to the Member’s suitability to practise, College counsel acknowledged that the Member did not act in her professional capacity when she posted the URL. She was not working for FCSLLG and was not serving any of the clients named in the Report. However, even if the Member’s action were not taken in her professional practice this does not change the fact that breaching s. 45(8) relates to suitability to practise. The fact that the Member was not acting within her practice does not address the sensitivity or confidentiality of the information, or create confidence about what the Member’s approach might be when dealing with confidential information in her practice. The College relied on *Ontario College of Social Workers and Social Service Workers v Cullain*, a 2017 decision of this Discipline Committee, in which that member was found to have contravened s. 45(8) of the CFSA. Ms. Cullain held a senior position with the Children’s Aid Society. She accessed the agency’s computer system and disclosed confidential information about a case in which she was not involved. The panel in that case held that the contravention was relevant to Ms. Cullain’s suitability to practise because clients must be confident that information they disclose to social workers will be shared only with those required to have access to the information. College counsel argued that the same reasoning applies to Ms. Denham’s conduct.

[21] College counsel explained that allegation (a), involving a failure to meet the standards of the profession, is an alternate way of framing the contravention of s. 45(8) engaged by allegation (b). The College is not suggesting that the Member has contravened any other legislation.

[22] With respect to allegation (c), College counsel cited *Cullain* and other cases in which members were found to have engaged in conduct that would reasonably be regarded as disgraceful, dishonourable or unprofessional based on circumstances that have some similarities to this case. In the case of *Ontario College of Social Workers and Social Service Workers v Barnim* (2017), the Discipline Committee found that the member violated s. 2.36 of the Professional Misconduct Regulation for merely accessed private health information that she was not authorized to access – she did not release that information to anyone, as the Member did in this case. In the case of *Ontario College of Social Workers and Social Service Workers v Sanford Champion* (March 2010), the Discipline Committee found that the member violated s. 2.36 and was found guilty of professional misconduct for defrauding a number of friends and co-workers even though he did not engage in the fraud in relation to a client or as part of his employment.

[23] College counsel submitted that even if the Panel does not find that the Member contravened s. 45(8) of the CFSA, it can still find that the Member engaged in conduct that members would reasonably regard as disgraceful, dishonourable or unprofessional due to the

nature of the information that she chose to share publicly. The Member went to the FCSLLG website and accessed highly confidential information. She understood the confidential nature of the information and the Eligibility Spectrum Codes, which indicate the nature and severity of the child protection concerns relating to each individual named on the list. Nevertheless, she posted the URL on a Facebook page with 11,000 members. In addition, she surreptitiously recorded FCSLLG staff and posted the video online. She should have known better.

Member's Submissions

[24] The Member argued that her action of posting the URL on Facebook did not amount to “publication” of information contrary to s. 45(8) of the CFSA because she did not adopt or endorse the information on the website. Relying on *Crookes*, the Member submitted that encouraging users to go to a website is not the same as adopting or endorsing the information on that website. The documents containing confidential information that she viewed and downloaded were already made publicly available by FCSLLG; she merely communicated that the Report existed, and where it could be located. That does not constitute publication.

[25] The Member claimed that FCSLLG did not respect and protect the confidential information contained of the Report. Her goal in posting the URL was to have the confidential information posted on the FCSLLG website removed from public access. The Member added that her family information was in the list of families in the URL that was shared publicly and that this presented a problem for her, given her registration as a social service worker with the College. The Member stated that she had tried to have the information removed before she took the step of posting the URL in the Facebook group..

[26] The Member further argued that s. 45(8) of the CFSA prohibits identifying parties to child protection proceedings. The individuals named on the report are involved in newly-opened FCSLLG files, not child protection proceedings, and the Act does not provide the same protection for open FCSLLG files. For example, she noted that the Agreed Statement of Facts, a civil action brought against her, and an earlier motion decision in this proceeding all identify her as a FCSLLG client. In the Member’s submission, the Eligibility Spectrum Codes do not identify parties to a child protection proceeding. They are an intake assessment and do not indicate whether any court intervention arises. There is no information in the Report that would indicate whether any of the named individuals was involved in a child protection proceeding.

[27] The Member disputed the College’s argument that her conduct would be regarded by members as disgraceful, dishonourable or unprofessional. In her submission, members would not regard her conduct as reflecting negatively on the profession. She was a client of the FCSLLG and her conduct was not in her role as a professional, but rather as a mother afraid of losing her children. FCSLLG published the information in question. It failed to take adequate steps to protect the information. With or without the link that she posted, the content was already available to the public.

Decision of the Panel

[28] 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.

[29] Having considered the onus and standard of proof, the Agreed Statement of Facts, and the submissions of College Counsel and of the Member, the Panel finds that the Member committed Professional Misconduct as alleged in the Notice of Hearing.

Reasons for Decision

[30] The Notice of Hearing contains three allegations of professional misconduct. As did College Counsel in her submissions, the Panel finds it most convenient in these reasons to deal first with allegation (b): that the Member violated s. 2.29 of the Professional Misconduct Regulation.

The Member contravened a provincial law and the contravention is relevant to her suitability to practise (s. 2.29 of the Professional Misconduct Regulation)

[31] The College's allegation that the Member violated s. 2.29 of the Professional Misconduct Regulation requires the Panel to consider and answer the two questions: (1) Did the Member contravene a federal, provincial or territorial law or a municipal by law? (2) If so, is the contravention relevant to her suitability to practise. Our reasons for answering both questions in the affirmative are as follows.

[32] The College alleges that the Member contravened s. 45(8) of the CFSA. At the relevant time, that provision read as follows:

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.

[33] The evidence was clear that the Member used a computer to access documents on the FCSSLG's website that were sensitive and confidential in nature, and that the Member understood that the information was sensitive and confidential in nature. The number of times she accessed the website (378) and the number of files she view and/or downloaded (171) indicate that she accessed the information deliberately, not accidentally. The Member's posting of the link on April 18, 2016 demonstrates her disregard for the confidential and sensitive information of families and children. The Report contained confidential information about 285 clients of FCSSLG and included the following information about those clients: the client's name (likely the parent or guardian); whether the client had a child under five; the caseworker assigned; the response time needed and the actual time it took to respond to the child protection complaint; in some cases explanation as to why some response times were not reached; and, significantly, the Eligibility Spectrum Codes. The Member's decision to accompany her posting of the URL with the statement "people should know" demonstrated that her main purpose was to disseminate the confidential information to the public.

[34] The publication of the URL where the Report, including client names, could be accessed, along with information about the Eligibility Spectrum Codes informed the public of the severity of abuse and neglect alleged in each case. The Panel agrees with the College that, for at least some of the clients listed on the Report, the Eligibility Spectrum Codes indicate that it was more likely than not that the children involved were the subject of a child protection proceeding under

the CFSA. The Member argued that the Report contained information about newly opened files and that the clients named were “only under investigation” and with no evidence or guarantee that they were participants at a hearing. Even if the Report contained only intake information, it included cases where the Eligibility Spectrum Code indicates “Extremely Severe” abuse or neglect, where a child protection proceeding likely would have been initiated (even if there was never a “hearing” under s. 45 of the CFSA). The Panel finds on a balance of probabilities that the Member published information that had the effect of identifying a child that is the subject of a protection proceeding or the child’s parent or foster parent.

[35] The Member argues that she did not “publish” the information in the Report, and therefore did not contravene s. 45(8). She relies on the *Crookes* case to support her argument that because she did not adopt or endorse the content of the information posted on the URL, she did not “publish” that content. The Panel disagrees with the Member’s reliance on the *Crookes* case. There is no suggestion that the Member adopted the content or endorsed the information. However, she expanded the audience of people who could access the confidential information in the Report by posting the URL on Facebook and encouraging individuals to go to the site.

[36] Having concluded on a balance of probabilities that the Member contravened s. 45(8) of the CFSA when she published the URL, we now turn to consider whether the contravention is relevant to her suitability to practise.

[37] In arguing that the Member’s contravention of s. 45(8) of the CFSA is relevant to her suitability to practise, the College stresses that the Member was aware of the sensitive nature of content, especially given that her own name was on the list. If the Member was worried about repercussions having her family’s name on the Report, she ought to have approached FCSLLG directly to have the information removed from the website. Instead, the Member posted the URL on Facebook and encouraged people to go to it. In addition, the Member’s decision to post the video of FCSLLG staff released more confidential information and was not an indication that she wanted the information removed. Despite the fact that the information was not secure on FCSLLG’s website, the Member still needs to be made accountable for making the information public.

[38] In arguing that her actions did not constitute professional misconduct, the Member pointed to the fact that she was not acting in her role as a professional when she accessed the confidential documents and then published the URL. However, the Panel accepts that a contravention of a provincial law may be relevant to a member’s suitability to practise even if it occurs outside a member’s professional practice. The Member demonstrated an appreciation of the sensitive nature of the information in the Report yet made the decision to publicize the URL and encourage people to go to the page. The act of accessing documents that are confidential and sensitive violates the Code of Ethics and Standards of Practice #6, which states: “A social worker or social service worker shall protect the confidentiality of all professionally acquired information. He or she shall disclose this information only when required or allowed by law to do so, or when clients have consented to disclosure.” The Member did not have the express consent of those whose information was included in the Report to publish the information. By sharing the URL in her Facebook post, the Member allowed public access to the confidential information contained in the Report. Although the Member’s conduct relates to information she accessed in her private life, not in her professional practice, it sends a broader message about her

respect for confidential information. The Panel agrees with the College that the Member's conduct does not generate confidence in her approach to confidential and sensitive information within the scope of her practice as social service worker.

[39] The Member, as registered social service worker, is aware of the College's standards of practice as set out in the Code of Ethics, including #6 (which is quoted above). The Code and Handbook set out standards of the profession that all members are expected to meet. The Member understood the sensitive nature of the information being shared and her decision to publish the information raises questions about her suitability to practise. Even though the Member was not acting within the scope of her professional practice at the time, her actions in publishing highly sensitive information contrary to child protection legislation were unacceptable and cast doubt upon her appreciation of the need to protect confidentiality within the scope of her professional practice. The Panel notes that in the *Cullain* case, the member was found to have violated Section 2.29 of the Professional Misconduct Regulation by improperly releasing information relating to child protection proceedings, contrary to the provisions of the CFSA. The Discipline Committee in that case found that the contravention was relevant to the member's suitability to practice even though the information did not relate to the member's own client (although, unlike this case, the member in *Cullain* had access to the information as a result of her employment with CAS).

[40] Accordingly, the Panel finds that Ms. Denham's contravention of s. 45(8) of the CFSA is relevant to her suitability to practice.

The Member failed to meet the standards of the profession by failing to comply with applicable privacy and other legislation

[41] The College alleges that the Member failed to meet the standards of the profession, and therefore violated s. 2.2 of the Professional Misconduct Regulation, by failing to comply with applicable privacy and other legislation as required by Principle V of the Handbook (commented on in Interpretation 5.1). Principle V and Interpretation 5.1 read as follows:

CONFIDENTIALITY

College members respect the privacy of clients by holding in strict confidence all information about clients and by complying with any applicable privacy and other legislation. College members disclose such information only when required or allowed by law to do so or when clients have consented to disclosure.

Interpretation

5.1 College members comply with any applicable privacy and other legislation.[Footnote 1] College members obtain consent to the collection, use or disclosure of client information including personal information,[Footnote 2] unless otherwise permitted or required by law.

[42] The footnotes in Interpretation 5.1 provide as follows:

1. Privacy legislation includes the federal *Personal Information Protection and Electronic Documents Act*, the federal *Privacy Act*, the *Personal Health Information Act, 2004*, the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*.
2. ‘Personal information’ means information about an identifiable individual and includes personal health information.

[43] In support of the allegation under s. 2.2 of the Professional Misconduct Regulation, the College relies on the same facts and alleged breach of s. 45(8) of the CFSA that underlie the allegation that the Member breached s. 2.29 of the Professional Misconduct Regulation.

[44] Earlier in these reasons we set out the Panel’s finding that the Member contravened s. 45(8) of the CFSA. The purpose of that provision is to protect the privacy of children and families who are involved in child protection proceedings. In our view, the prohibition set out in s. 45(8) of the CFSA is “applicable privacy and other legislation” with which the Member was required to comply as a standard of the profession under Principle V and Interpretation 5.1 of the Handbook. The information in the Report meets the definition of “Personal information” in footnote 2 which “means information about an identifiable individual and includes personal health information”.

[45] In Principle V of the Handbook, Interpretation 5.1 stipulates that “College members comply with any applicable privacy and other legislation. College members obtain consent to the collection, use or disclosure of client information including personal information, unless otherwise permitted or required by law”. The information that was accessed and published by the Member did not relate to her own clients. However, the Report contained confidential and sensitive information belonging to clients of the FCSLLG in the context of child protection matters. The nature of the services provided by FCSLLG in respect of child protection is closely related to the scope of practice of College members. As such, the Panel finds that “information about clients” in Principle V and “client information” in Interpretation 5.1 are broad enough to encompass the confidential and sensitive information relating to FCSLLG clients that was contained in the Report. Thus, the Member contravened this standards of the profession in that she was aware of the confidential and sensitive nature of the information and nevertheless decided to post the URL that allowed other members of the public to access the information.

The Member’s conduct would reasonably be regarded as disgraceful, dishonourable or unprofessional.

[46] The College has met its onus of proving that, having regard to all the circumstances, the Member’s conduct would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

[47] The terms “disgraceful”, “dishonourable” or “unprofessional” in section 2.36 of the *Professional Misconduct Regulation* can be defined as follows:

Disgraceful – this term is used to describe the most serious type of misconduct involving a moral failing on the part of the Member. It describes conduct that is so shameful that it casts doubt on the Member’s fitness to practice the profession.

Dishonourable – this is typically describes conduct with an element of moral failing. A member who engages in dishonourable behaviour knows or ought to know that the conduct is unacceptable.

Unprofessional – this term can be used to capture conduct that does not necessarily represent a moral failing, but involves conduct that falls below the standards expected of professionals.

[48] The Member published detailed, confidential information about a large number of families through social media. She was not attentive to the seriousness of the disclosure of information or the impact it could have on the lives of many vulnerable families and children. In addition, she surreptitiously video recorded a meeting with FCSLLG personnel and then posted the video online, along with confidential FCSLLG Board documents that she had obtained from a web portal. As a member of this College, the Member ought to have known better. We find that the Member engaged in conduct that other members would regard as disgraceful, dishonourable or unprofessional

Conclusion

[49] For the reasons set out above, the Panel finds on a balance of probabilities that the Member is guilty of professional misconduct as alleged in the Notice of Hearing. The Member used a computer to access documents on the FCSLLG website that were sensitive and confidential in nature, and the Member understood that the information contained in those documents was sensitive and confidential. The Member accessed the documents deliberately, as evidenced by the number of times she accessed the website (378) and the number of files she viewed or downloaded (171). The Member posted the URL to Facebook, which allowed members of the public to access those sensitive and confidential documents. The Member did not simply post the image of the URL without any context; rather, she included a statement encouraging people to view the document, saying: “My name is on this list [referring to the Report accessible on the URL]. If your name is on this too. Please message me”. The Panel finds that the Member contravened s. 45(8) of the CFSA; that the contravention was relevant to the Member’s suitability to practice; that the Member failed to meet the standards of the profession; and that the Member’s conduct would reasonably be regarded as disgraceful, dishonourable or unprofessional.

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

Date: _____

Signed: _____

Rita Silverthorn, Chair
Gerald Mak
Angèle Desormeau

