



Ontario College of
Social Workers and
Social Service Workers

Ordre des travailleurs
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en travail social de l'Ontario

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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 Hayden, 2019
ONCSWSSW 10

Decision date: 20190807
(findings)
20191213
(penalty and
costs)

BETWEEN:

THE ONTARIO COLLEGE OF SOCIAL WORKERS
AND SOCIAL SERVICE WORKERS

- and -

TROY HAYDEN

PANEL: Frances Keogh Chair, Professional Member
Angèle Desormeau Professional Member
Gerald Mak Public Member

Appearances: Jill Dougherty and Ada Keon, counsel for the College
Member not Present or Represented
Aaron Dantowitz, Independent Legal Counsel to the Panel

Heard: August 7, 2019

DECISION AND REASONS FOR DECISION

[1] This matter came on for hearing before a panel of the Discipline Committee (the “**Panel**”) on August 7, 2019 at the Ontario College of Social Workers and Social Service Workers (the “**College**”). At the hearing, the Panel made findings of professional misconduct against Troy Hayden (the “**Member**”), with reasons to follow. The Panel also heard submissions on penalty and costs, and reserved its decision on penalty and costs. The following are the reasons of the Panel for its findings of professional misconduct, along with its decision and reasons on penalty and costs.

Absence of the Member

[2] The Member was neither present or represented at the hearing. College counsel called evidence to establish that the Member had been served with the Notice of Hearing and advised of the hearing date. The Panel accepted that the Member was properly served with the Notice of Hearing and had adequate notice of the time, date, place and nature of the hearing.

[3] Accordingly, the Panel proceeded with the hearing in the Member’s absence on the basis that the Member denied the allegations against him.

Publication Ban/Partially Closed Hearing

[4] In the course of the hearing, the College sought an order excluding the public from the hearing during the testimony of the Member’s former client (the “**Client**”), as well as an order prohibiting the publication of the Client’s identity or information that could disclose the identity of the Client. College counsel explained that given the nature of the allegations and the background facts, the Client’s evidence would address intimate personal matters, including her medical history.

[5] The Panel received advice from Independent Legal Counsel that the effect of excluding the public from that portion of the hearing would be that the public would not have access to the Client’s testimony, and that references to the Client’s testimony in the Panel’s reasons would have to be redacted in any public version of the reasons. College counsel disagreed that closing the hearing would have that effect, and clarified that the purpose of excluding the public during the Client’s testimony was to avoid the Client having to testify in front of members of the public who would then know her identity.

[6] The Panel accepted that the Client’s interest in keeping her identity private outweighed the desirability of public access to that information, in light of the intimate personal matters she would be testifying to. The Panel therefore made an order that the public be excluded from the hearing during the testimony of the Client, and that the publication of the Client’s identity or of information that could identify the Client be prohibited, but that references to the Client’s testimony in the Panel’s reasons could otherwise be published.

The Allegations

[7] In the Notice of Hearing dated September 14, 2018, the Member is alleged to be guilty of professional misconduct within the meaning of Section 26(2) pursuant to the *Social Work and*

Social Service Work Act, 1998, S.O. 1998, c 31 (the “**Act**”) in that he 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**”).

[8] The factual particulars of the allegations set out in the Notice of Hearing are as follows:

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. You graduated from Georgian College with a diploma in social service work in 2015.
3. Commencing on or about July 27, 2015, you began working as a Peer Support Worker at [the Agency].
4. [The Client] first became a client of [the Agency] on October 3, 2013. Her involvement with the Agency ended on May 12, 2014, and then re-commenced on April 7, 2015 until the present time.
5. You made notes with respect to the Client’s care in [the Agency] database management system, Catalyst, on the following dates: August 7, 2015; August 21, 2015; March 29, 2016; July 12, 2016; September 13, 2016; November 2, 2016; and November 3, 2016.
6. On or about March 2017 you were aware that the Client was a client of [the Agency].
7. Between March 2017 and November 2017 (“the “Relevant Period”), while providing social service work services to the Client, you sent sexually suggestive text messages and made comments to the Client that were sexual in nature. You additionally engaged in a series of boundary crossing violations during the Relevant Period while providing social service work services to the Client. In particular you made verbal comments to the Client including, but not limited to the following:
 - (a) “What is it you’re wearing under your shirt? Your tits are huge;”
 - (b) “I was trying to look at your rack;”
 - (c) “Look at you in that tight v neck. I know what I will be doing later;”

- (d) “Your tits look so fucking hot today;”
 - (e) “What’s going on with your hubby and ex?” “He is a pretty lucky guy, cause what, he is my age?”
 - (f) “Hey your ass looks really good today;”
 - (g) “Do me a favour, can you unzip your jacket so that I can see your tits;”
 - (h) “I just need to tell you how bad I want to fuck you right now;”
8. It is also alleged that you, on more than one occasion, asked the Client to send you a picture of herself. When the Client did not do this, you found a picture of the Client on the Internet and sent it to her.
9. It is alleged that on several occasions you refused to contact the Client’s doctor in order to assist her with obtaining her prescription medication because she had not yet sent you the pictures of herself that you had requested.
10. During the Relevant Period you sent text messages including but not limited to the following:
- (a) “You don’t wear much make up do you? You don’t need it. But you sure look tasty with or without it.”
 - (b) “Well I would take the chance at ruining my career to mess around with you just once.”
 - (c) “You can’t die until I get a taste of that sweet sweet tang. You have a classic bod. Marilyn Monroe.”
 - (d) “Not too many ladies get me excited but you do.”
 - (e) “I was checking you out. Trust me there is nobody else that looks like you in clinic.”
 - (f) “I didn’t think you could look better but today wow. [Your husband] is a luck guy.” Love the long straight hair. Can I get a pic of you. And you had jeans on today too. Yummy Mummy!!!!”
 - (g) “You are still hot and sexy.”
11. On November 17, 2017 you contacted the Client as well as an employee of [the Agency] after being placed on a paid leave of absence from [the Agency] despite being expressly told not to do so.

12. On December 14, 2017 you were terminated from your position as a Peer Support Worker at [the Agency].

[9] The allegations of professional misconduct set out in the Notice of Hearing are as follows:

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:
- i. **Principle I of the Handbook (commented on in Interpretation 1.5 and 1.6)** by failing to be aware of your values, attitudes and needs and how those impact on your professional relationships with clients; and failing to distinguish your needs and interests from those of the client;
 - ii. **Principle II of the Handbook (commented on in Interpretation 2.1, 2.2.1, 2.1.5, 2.1.3 and 2.2.8)** by failing to maintain clear and appropriate boundaries in a professional relationship; by not engaging in the process of self-review and evaluation and/or seeking consultation; by failing to maintain current knowledge of policies, legislation, programs and issues related to the community, its institutions and services in your areas of practice; and, by engaging in conduct which could reasonably be perceived as reflecting negatively on the profession of social service work¹;
 - iii. **Principle VIII of the Handbook (commented on in Interpretation 8.1, and 8.2.3)** by failing to ensure that sexual misconduct did not occur and engaging in behaviour or making remarks of sexual nature towards the client other than behaviour or remarks of a clinical nature appropriate to the service provided
- (b) In that you violated **Section 2.5 of the Professional Misconduct Regulation** by abusing a client sexually, verbally, psychologically or emotionally, including sexually abusing a client within the meaning of subsection 43 (4) of the Act.
- (c) In that you violated **Section 2.6 of the Professional Misconduct Regulation** by using information obtained during a professional relationship with a client or using one's professional position of authority to coerce, improperly influence, harass or exploit a client or former client.

¹ The Notice of Hearing referred to "the profession of social work". The Panel accepts that this was a typographical error and that it would be reasonably understood that it should read "the profession of social service work".

- (d) In that you violated **Section 2.28 of the Professional Misconduct Regulation** by contravening the Act or regulations or by-laws.
- (e) 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

[10] The Member was not present or represented at the hearing. Accordingly, he was deemed by the Panel to deny the allegations.

The Evidence

[11] The Panel received substantial documentation and evidence presented by College Counsel that the Member had engaged in conduct of a sexual nature, made sexual advances and remarks to a patient (the Client) at [the Agency] during the periods of 2015 to 2017, where the Member was employed as a Peer Support Worker for the Community Opioid Treatment Clinic run by [the Agency]. The Panel also heard witness testimony, from Melanie Farber, a College investigator, and from the Client, who testified that she had received sexual advances from the Member. The Client provided key testimony confirming the alleged allegations and events where the Member had made sexual advances towards her and provided key details, speaking to the evidence presented by College Counsel. In addition, the panel received an affidavit and exhibits from "D.Z.K." of [the Agency], confirming the findings from an internal investigation that the Member had breached a number of organizational policies and procedures by making sexual advances to the Client, leading to his termination from [the Agency].

[12] The following was presented as evidence to the panel:

- The Member was employed as the sole Peer Support Worker at [the Agency] from July 27, 2015 until his termination on December 14, 2017. At all relevant times, the Member was a registered social service work member with the College.
- [The Agency] is a non-profit agency that provides community treatment services, support and assistance to those affected by substance use and problem gambling throughout the York Region, South Simcoe and beyond. [The Agency] uses a holistic, biological, psychological, social and spiritual approach to help individuals and families deal with addiction issues.
- The Member was employed by [the Agency], and was placed at the clinic of "Dr. I.N.", the clinic where the Client attended on a weekly basis. The Member's duties as a peer support worker as per his job description provided by [the Agency], required him to demonstrate an understanding of, and adhere to organizational policies and procedures, behave ethically, and maintain confidentiality.

- The Member had signed an Employee Acknowledgement Form, dated July 12, 2016, confirming that he had received a copy of the Employee Handbook of [the Agency] and that he had read and understood the policies associated with the position.
- Between March – November 2017, the Client was attending the clinic of “Dr. I.N.” on a weekly basis to receive medical assistance in relation to, among other matters, weaning off of methadone and was obtaining her medication from the clinic on a regular basis.
- The Member was introduced to the Client as a Peer Support Worker by “Dr. I. N.” in or around March 2017, where the Member approached the Client to check on her wellness and offer support. During the relevant period, the Member had made multiple entries on the Client’s clinical records between 2015 to 2017 and was aware of the Client’s status as a client of [the Agency]. However, the Member began to disclose personal information to the Client about various subjects, including his past relationships and sexually charged messages.
- The Member first made an inappropriate comment to the Client regarding her physical appearance in May of 2017, and sent sexualized text messages with vulgar language including sexual advances to the client. The Member had also advised the Client to text his personal phone number instead of using this work phone, where he continued with inappropriate messages of a sexual nature.
- The Member on more than one occasion asked the Client to send him a picture of herself. When the Client did not do this, he found a picture of the Client and on one occasion of her child on the internet and sent it to her.
- During her testimony, the Client indicated that on one occasion, Member sent her a text message with a peeping tom “bitmoji” and told her that he was outside her house.
- The Member also held back a medication request from the Client and insinuated that he would not assist the Client in obtaining medication until he had seen a personal photograph of her, holding the Client’s medication request hostage knowing full well the seriousness of his actions by attempting to extort a favour in return.
- On November 14, 2017, “Dr. I. N.” sent an email to “S. G.” of [the Agency], notifying that the Client had disclosed allegations of misconduct against the Member involving suggestive messages to the Client over several months, making her feel extremely uncomfortable. “Dr. I. N.” also noted his concern regarding an abuse of power.
- On November 17, 2017, “Ms. D. Z. K.”, a human resources manager at [the Agency] met with the Member to inform him of the allegations, and that he was being placed on a paid leave of absence while an investigation was conducted. “Ms. D. Z. K.”, expressly told the Member that he was not to contact any clients or employees of [the Agency] while on the leave of absence.
- “Ms. D. Z. K.” spoke with the Client on Tuesday, November 21, 2017 to inform her that the investigation had commenced. The Client informed “Ms. D. Z. K.” that on Friday, November 17, 2017, the Member had sent her a text inquiring if she had filed a complaint against him, and that he had been fired.
- [The Agency] conducted an internal investigation into the Client’s allegations, which included meetings with the Member on November 23 and November 29, 2017. These meetings were attended by “Ms. D. Z. K.”, a Human Resources Manager, and “T. C.”, then a Program Manager, of [the Agency], who independently made notes of these meetings and then produced a report. “Ms. D. Z. K.’s” role with [the Agency] involved,

among other things, investigating complaints against staff members of [the Agency], and hiring and termination of staff of [the Agency].

- The documents from the internal investigation conducted by [the Agency], which were provided as evidence, show that the Member had admitted to making comments that were sexual in nature to the Client. The Member claimed that the Client had flirted with him and was an active participant in the text messages. When asked by the Agency to provide the copies of the text messages to support his story, the Member claimed he had deleted all of his text messages relating to the conversation with the Client.
- The Panel was provided with detailed screenshots of messages from the Member to the Client which were sexual in nature including advances on the Client.
- In one of the meetings with [the Agency] and the Member during November 29, 2017, when being probed on answers, the Member became emotional and said “I’m not expecting to keep my job, and I don’t want to hurt [the Agency] because of my actions. If there’s anything you want me to do, sign or state anything, I’ll do it and go away quietly. If that means we can just stop all of this, that’s what I would like to do. I would never do anything more than I’ve already done to hurt the Agency or program. I was in the wrong and I’m admitting that. No matter which way I cut it, I was in the wrong. I never once denied that. It had nothing to do with what the Agency taught me or tried to teach me. It’s one of the best places in the country to get help. I know I was wrong. I admit that. I know that.” The Member also admitted that he was aware that the Client was a client of [the Agency].
- The Member sent an e-mail to [the Agency] on Thursday, November 30, 2017, retracting the statements and admissions he made at the November 29, 2017 meeting and stating that he was unwilling to answer any more questions related to the investigation.
- [The Agency] responded to the Member on December 5, 2017 by email informing him that [the Agency] was not prepared to accept the Member’s retraction and inviting him to meet again to give him the opportunity to fully explain his position and respond to [the Agency’s] remaining questions. [The Agency] gave the Member until 5 pm on Wednesday, December 6, 2017 to respond, but the Member did not respond.
- The Member was terminated from [the Agency] on December 14, 2017.
- To date, the Member has not provided a response to the College’s investigation.
- The College and the Member engaged in some communications to determine whether the hearing would be fully contested on all allegations (or whether any of the issues between the parties could be resolved).
- On May 29, 2019, the Member sent an email to College counsel stating that he would not be attending any hearings on this matter. Despite attempts to reach Mr. Hayden by telephone, email and letter, Mr. Hayden did not respond to any further communications from the College.
- The Member resigned his certificate of registration on June 12, 2018.

Decision of the Panel

[13] The Panel finds that the Member committed the acts of professional misconduct alleged in the Notice of Hearing. With respect to allegation II (e), the Panel finds that the Member’s conduct would reasonably be regarded by members as disgraceful, dishonourable and unprofessional.

Reasons for Decision

[14] As noted above, the Panel received oral evidence from two witnesses, the Client and Ms. Farber, and also received a signed affidavit and sworn testimony from “Ms. D. Z. K.” from [the Agency]. The Panel had to satisfy itself as to the credibility of all of these witnesses prior to making any findings. In order to do so, the Panel assessed both their accuracy and their truthfulness taking into account the consistency between their testimony and the exhibits provided, as well as any apparent motives and relationships to the parties.

[15] The first witness was Ms. Farber, the College’s investigator.

[16] The Panel considered Ms. Farber’s motivation for testifying on behalf of the College, given her job as the Investigator of this case, as well as her relationship with the College. The Panel also noted that, due the Member’s failure to attend the hearing, Ms. Farber was not subject to cross examination.

[17] The Panel found Ms. Farber to be a credible witness. She testified in a straightforward manner, gave clear and concise answers, and her oral testimony aligned completely with the written documents provided as exhibits.

[18] The second and final witness was the Client.

[19] The Panel considered the Client’s motivation for testifying, as well as her credibility as the victim of the Member’s alleged misconduct. The Panel also noted that, due the Member’s failure to attend the hearing, that the Client was not subject to cross examination.

[20] The Panel found the Client to be a credible witness. She testified in a straightforward, detailed manner, with great clarity. She appeared honest and forthright. The Client had no apparent motive to fabricate any of her story. She shared her concerns about what occurred during her appointment with “Dr. I. N.” on November 14th, 2017. She was consistent in her statements in regards to the significant facts of the case including the details regarding the text messages from the Member.

[21] Although during her testimony the Client expressed feelings of frustration and shame because of the way she was treated, she was credible. She recalled confidence in having a sense of agency at the time of the first inappropriate remarks from the Member when she rebuked him with a swear word, but that confidence was eroded as the ongoing and increasingly vulgar nature of his comments “made an already crappy situation worse” for her. This assessment fits with her ongoing need for anxiety medication during the period of the Member’s involvement, despite her hopes to have it reduced and culminated in her emergency consultation with “A. Y.”, a physician’s assistant, about her increased level of distress, the week before her November 2017 appointment with “Dr. I. N.”. The Client remembered specific details about the background to text messages between herself and the Member. She clarified that the origin of the exchanges about make-up was from her post on Instagram, of her son wearing Halloween make-up, which the Member then sent to her. The Client described in detail private parts of her life, particularly her complex medical history even though she was exposed and vulnerable. The Client’s testimony was supported by photo shots of text messages which confirmed the inappropriately

lewd and vulgar nature of the Member's messages to her. After careful consideration the panel found that the Client's testimony was cohesive, consistent and reliable.

[22] The Panel considered "Ms. D. Z. K.'s" motivation for her submission and exhibits on behalf of [the Agency], given her job as Human Resources Manager at [the Agency]. The Panel also noted that, due the Member's failure to attend the hearing, "Ms. D. Z. K.'s" submission and exhibits were not subject to cross examination. The evidence provided in the exhibit demonstrates a thorough investigation conducted by [the Agency] of the allegations against the Member, leading to his dismissal from [the Agency].

[23] After careful consideration, the Panel found that the Member violated Section 2.2 of the Professional Misconduct Regulation and Principle I of the Handbook (interpretation 1.5 and 1.6) and Section 2.6 of the Professional Misconduct Regulation by failing to be aware of how his messages to the client through lewd, manipulative and vulgar texts were a misuse of his position of authority and undermined his professional relationship with the Client, therefore engaging in professional misconduct. The Panel also found that the Member violated Section 2.2 of the Professional Misconduct Regulation and Principle II of the Handbook (interpretations 2.1, 2.2.1, 2.1.5, 2.1.3 and 2.2.8) and Section 2.5 and 2.2.8 of the Professional Misconduct Regulation by failing to maintain clear and appropriate boundaries as evidenced by his request that the Client send a picture of herself to him, by disclosing personal information to her and by suggesting that the Client use his private telephone number instead of the work phone number, therefore engaging in professional misconduct. Also, the Panel found that the Member violated Section 2.2 of the Professional Misconduct Regulation and Principle VIII interpretation 8.1 and 8.2) of the Handbook and Section 2.36 of the Professional Misconduct regulation by sending messages via text to the Client that included remarks of a sexually inappropriate, coercive and harassing nature, therefore engaging in professional misconduct. The Member ought to have know that these types of behaviours were a violation of his professional obligations. The members conduct is both disgraceful and dishonourable as it shows a level of moral failing and deceit. The increasing level of the manipulation and vulgarity in his interactions with the Client over a period of time has the effect of shaming the Member and by extension the profession as it casts serious doubt on his moral fitness and inherent ability to discharge the higher obligations that the public expects of a professional.

[24] At the end of its deliberations, the Panel was satisfied by the totality of the evidence that it was highly likely that the Member did make sexual advances to the Client, and engaged in all of the forms of professional misconduct alleged in the Notice of Hearing.

PENALTY

College's Position on Penalty

[25] In light of the findings against the Member, the College requested that the Panel make an order as follows:

- a. Directing that the Member be reprimanded by the Committee in writing and that the reprimand be recorded on the register for an unlimited period of time, pursuant to s. 26(5)(1) of the Act.

- b. Directing that the Registrar revoke the Member's certificate of registration.
- c. Fixing a period of five (5) years from the date of the Order, during which the Member may not apply for a certificate of registration, pursuant to s. 26(7) of the Act.
- d. Directing that the finding and the Order of the Committee be published, in detail, with the name of the Member, in the official publication of the College, on the College's website and on any other media related document that is provided to the public and is deemed appropriate by the College, pursuant to s. 26(5)(3) of the Act.

Evidence and Submissions of College Counsel in Support of the Penalty Sought

[26] Counsel for the College provided the Panel with a Brief of Legislation and Authorities Regarding Penalty.

[27] The Panel was reminded that it needs to consider the protection of the public as its primary consideration. However, the Panel should also consider: specific deterrence to the Member, general deterrence to the membership, the opportunity for rehabilitation, the seriousness of the conduct, risks to the public, any remorse shown by the Member and any aggravating or mitigating factors. The Panel was also urged to reflect on the importance of maintaining public confidence in the College's ability to regulate its members.

[28] As there is no directly applicable case law, College Counsel drew the Panel's attention to cases including *OCSWSSW v. Nathalie Beauchamp-Brown* (2017) and *OCSWSSW v. Heywood* (2016).

[29] The cases above that were presented demonstrate the respective Discipline Committees' decision in revoking the certificates of members who engaged in sexual abuse and were found guilty of professional misconduct.

[30] College Counsel noted that the Member failed to appear before the Discipline Committee despite clear evidence that the Member had been given notice of his obligation to appear. College Counsel further argued that the Member's failure to appear represented a conscious and deliberate action and that the penalties outlined were appropriate.

Independent Legal Advice

[31] The Panel considered whether a re-education component required from the Member, such as an ethics course and other applicable courses, should be added to the penalty and sought advice from ILC on this matter, in particular on the question of whether this type of education or demonstration of basic understanding of ethics would be required as a condition prior to simply re-applying within 5 years..

[32] ILC advised that if the member (who had already resigned from his membership) should seek to re-apply, the matter will be referred back to the Discipline Committee, under s. 29 of the *Social Work and Social Service Work Act*. The panel who hears the matter at that time will have the power to determine whether to accept the application, and if so, whether to attach any terms, conditions or limitations to the Member's certificate.

[33] ILC recommended that the Panel not add any additional terms at this stage, but rather to indicate in the reasons the Panel's view that such education would be of value if the Member re-applies. The panel (at that time when the member re-applies) will hear any reinstatement application and will have the benefit of the current Panel's reasons, but can also take into account anything that has happened in the intervening time.

Penalty Decision

[34] Having considered the findings of professional misconduct, the relevant evidence and the submissions by the College, the Panel makes the following order:

- a. Directing that the Member be reprimanded by the Committee in writing and that the reprimand be recorded on the register for an unlimited period of time, pursuant to s. 26(5)(1) of the Act.
- b. Directing that the Registrar revoke the Member's certificate of registration.
- c. Fixing a period of five (5) years from the date of the Order, during which the Member may not apply for a certificate of registration, pursuant to s. 26(7) of the Act.
- d. Directing that the finding and the Order of the Committee be published, in detail, with the name of the Member, in the official publication of the College, on the College's website and on any other media related document that is provided to the public and is deemed appropriate by the College, pursuant to s. 26(5)(3) of the Act.

Reasons for Penalty Decision

[35] The Panel carefully reviewed the submissions of College Counsel.

[36] The Panel did not receive any submissions from the Member. The Member in addition, did not attend the disciplinary hearing after being provided a Notice of Hearing through registered mail from the College.

[37] The Member was not present or represented to speak to any mitigating factors or allegations, although it was noted that he had no prior history with the College.

[38] The Panel then considered the specific allegations contained in the submissions made by College Counsel. The Panel found, that by failing to appear before the Panel on August 7th,

2019, after due notice had been provided, the Member's failure to appear represented a conscious and deliberate action.

[39] 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.

[40] The Panel found that the penalty is reasonable, serves and protects the public interest and ensures the maintenance of high professional standards. The penalty has particular components which provide both specific and general deterrence. The revocation of the Member's certificate of registration demonstrates to the Member and to other Members of the profession that this type of conduct will not be treated lightly and the publication of the details of this decision will further communicate a clear message to the public that professional misconduct of this nature will not be tolerated. The reprimand component also serves to inform the Member how his peers view his conduct and the penalty is the same as was ordered in *OCSWSSW v Parsons* (2018), and the Panel is satisfied that it falls within a reasonable range for sexual misconduct by a Member.

COSTS

College's Position on Costs

[41] In light of the findings against the Member, the College requested that the Panel make an order as follows:

- a. Directing that the Member pay costs in the amount of \$25,603.35, pursuant to s. 26(5)(4) of the Act.

Evidence and Submissions of College Counsel in Support of the Costs Sought

[42] The College provided affidavit evidence regarding costs and a Bill of Costs. In particular, the Panel was provided with a chart of College expenses associated with this matter. The chart did not reflect the College's total costs, but rather an approximation of total costs. College Counsel explained that they are seeking approximately 66% of the total costs of \$25,603.35.

[43] The College's Brief of Legislation and Authorities Regarding Penalty also contained a number of cases relevant to the issue of costs, including: *Shulakewych v. Alberta Assn. of Architects* (1997), *Hoff v. Alberta Pharmaceutical Assn.* (1994), *OCSWSSW v. Lori Weldon* (2018), *College of Chiropodists of Ontario v Qureshi* (2013), *Ontario College of Pharmacists v. Kothari* (2015), *College of Optometrists of Ontario v Cresswell* (2009), *College of Dental Hygienists v Gauthier* (2014), *College of Dental Hygienists v Forbes* (2014), *College of Chiropodists of Ontario v Vivekanand* (2003), *College of Opticians of Ontario v Marco* (2016), *College of Opticians of Ontario v Alasti-Faridani* (2015), *College of Opticians of Ontario v Ghai* (2005), and *College of Dental Surgeons v Clokie* (2016). These cases involved members of these respective professions who were ordered to bear the costs associated in conducting the investigation and hearing.

Independent Legal Advice

[44] The Panel acknowledged that the final cost amount was significantly large and sought advice from ILC regarding the amount of cost passed to the member, and what the standard was for fines, along with what threshold on amounts on how high/low fines can be and what measures would be taken if the Member does not pay the amount.

[45] ILC advised the Panel that, the College is not asking for a fine, but rather an order for costs. An order for costs is not intended to punish the Member for misconduct, or to promote specific or general deterrence or rehabilitation. And that it is important to make the distinction between these two concepts.

[46] ILC further advised the Panel that a fine is something the panel technically has the jurisdiction to order as part of the penalty, pursuant to s. 26(5)[2] of the Act, up to a maximum of \$5,000. Any fine gets paid to the government, not the College. Whereas an order for costs is aimed at compensating the College for at least some of the expense of the discipline process, which is otherwise borne by the membership of the College at large, through their annual dues. ILC referred the Panel to the College's written submissions, which in his view fairly set out the principles for determining what the appropriate range of a costs order would be.

[47] In terms of enforcement, ILC advised the Panel, that an order of the Discipline Committee, including a monetary order, can be enforced in the same way as a court order, if it is first filed with the court. There are different mechanisms by which a court order can be enforced. However, the Panel did not need to concern itself in making this decision because it will be the College's, not the Discipline Committee's, responsibility to determine what steps, if any, to take to enforce an order.

[48] The Panel asked a follow up question as to whether the 2/3 formula for calculating costs was standard across the regulatory professions. ILC referred the Panel to the *Gauthier* and *Forbes* cases cited by the College in support of its submission that 2/3 of the College's expenses has been deemed to be fair and reasonable by many regulatory bodies. Although those cases are both from the Discipline Committee of the College of Dental Hygienists of Ontario, there are cases from other professions as well that apply a similar approach. It is akin to an approach that is often used in determining costs in civil litigation. The important thing to remember is that this formula is not mandatory, and is a rough guide only, and the panel still needs to be satisfied that the actual costs incurred, to which the formula is being applied, were reasonable in all the circumstances.

Costs Decision

[49] The Panel makes an Order:

- a. Directing that the Member pay costs in the amount of \$25,603.35, pursuant to s. 26(5)(4) of the Act.

Reasons for Costs Decision

[50] The Panel found the College's request for costs was significantly large, being approximately 66% of the total costs given the Panel's findings.

[51] Although the costs order sought in this case is much greater than many other costs orders made against members of the College, the Panel was guided by the principle that each costs decision turns on: the particular facts of the case and the length of the investigation, the conduct of hearing, the complexity and multiplicity of allegations involved in the case, and the seriousness of the professional misconduct successfully proven by the College. The Panel found that the proposed costs order is supported by the decisions made by other Discipline Committees such as *College of Dental Hygienists v Gauthier* (2014), where the member also did not attend the hearing, and *College of Chiropodists of Ontario v Vivekanand* (2003), where it was noted that the Member did not call any evidence by way of explanation and relied on the College to prove, with limited exceptions, the facts. Furthermore the misconduct was serious, involving numerous boundary violations through both verbal and text messages. The volume and increasingly vulgar and manipulative nature of these comments underscore the persistent and invasive nature of the Members conduct towards an individual, who he knew was both vulnerable and a client. While costs are not intended to penalize the Member for his misconduct, the seriousness of the misconduct is a relevant factor in determining whether the resources the College put into the case were reasonable.

[52] The Member did not take the opportunity to provide his perspective to the Panel, including any concerns about financial hardship or any information about mitigating circumstances. Finally, his refusal to participate in the Hearing lengthened the proceedings and required the College to call the evidence of a vulnerable client. For all the reasons outlined here, The Panel found that a costs order of 2/3 of the College's expenses is reasonable and fair.

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

Date: 12/13/, 2019

Signed: _____
 Frances Keogh, Chair
 Angèle Desormeau
 Gerald Mak