



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**

Indexed as: Ontario College of Social Workers and Social Service Workers v Rozina Shaheen, 2019 ONCSWSSW 9

Decision date: 20191129  
Corrected decision released: 20200120

**BETWEEN:**

THE ONTARIO COLLEGE OF SOCIAL WORKERS  
AND SOCIAL SERVICE WORKERS

- and -

ROZINA SHAHEEN

PANEL: Angèle Desormeau Chair, Professional Member  
Frances Keogh Professional Member  
Karen Fromm Public Member

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

Heard: October 15, 2019

**CORRECTED DECISION AND REASONS FOR DECISION**

Corrected Decision: The text of s. 28(7)(b) of the *Social Work and Social Service Work Act*, 1998, S.O. 1998, c 31 is corrected in paragraph 5.

[1] This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) on October 15, 2019, at the Ontario College of Social Workers and Social Service Workers (the “College”).

### **Member's Motion for an Order Closing the Hearing**

[2] At the outset of the hearing, the Member made a motion requesting that the Panel order that the public be excluded from the hearing, which the Panel has the power to do under s. 28(7) of the *Social Work and Social Service Work Act, 1998*, S.O. 1998, c 31 (the “Act”) and s. 9(1) of the *Statutory Powers Procedure Act*, RSO 1990, c S.22 (“SPPA”). The College opposed the motion. The Member gave evidence in support of her motion in a *voir dire* and was cross-examined by College counsel. After hearing submissions from both parties, the Panel dismissed the motion and directed that the hearing would proceed open to the public. Our reasons for that decision are as follows.

[3] The Member requested a closed hearing for two reasons. First, she expressed to the Panel fears that XX [name redacted] might try to attend the hearing and, if XX were to learn the nature of the allegations, she might be at risk of harm. Second, she expressed concern that, due to her cultural background, she could be at risk if details about the allegations against her of professional misconduct were revealed to her community. The Panel held a *voir dire* in order to allow the Member to present evidence in support of her request. The Member presented documents, which were entered as exhibits. Two of the documents were certificates of recognition of her years of supportive service to Muslim women and refugees. Another of the exhibits, dated January 24, 2012, was a recommendation from a co-ordinator of a Social Work Bridge Program recommending the Member for a position in the Wilfred Laurier MSW programme. She also tendered a document dated 1997 confirming that she had worked as a “Social Organizer” in a Pakistan Forest Development project, with a mandate to involve women in natural resource management. Under cross-examination, the Member clarified that she had emigrated to Canada from Pakistan in 2008 with her husband and their three children and that her work experience both in her country of birth and in Canada was focused on empowering women. She acknowledged that she has not suffered physical abuse since coming to Canada. Furthermore, in response to a question from College Counsel about her future work plans, she answered that she wished to continue to work in the social work field but that she would not work in psychotherapy or counselling.

[4] The College's position was that the Member had not proven a compelling reason to displace the presumption that hearings of the Discipline Committee are public. It is important to public confidence in the integrity of this discipline process and the legitimacy of the College that members of the public have access to hearings and see the manner in which the Committee deals with allegations of misconduct against its members. College counsel argued that while it might be awkward, embarrassing and distressing for the Member if certain others were to learn the details of the case, that is the case with virtually any matter that comes before the Committee involving allegations of boundary violations or [redacted] and does not justify closing the hearing. At the time of the Member's motion, XX was not present in the hearing and did not attempt to enter the hearing room. College counsel stated that if XX did seek to attend the hearing, the College might reconsider its position.

[5] After considering the Member's evidence and the parties' submissions, the Panel dismissed the Member's motion to close the hearing. Under the Act and the SPPA, hearings of the Discipline Committee are presumptively open to the public. Under s. 28(7) of the Act, the Committee may order a closed hearing if it is satisfied that:

- (a) matters involving public security may be disclosed;
- (b) financial or personal or other matters may be disclosed at the hearing of such a nature that the desirability of avoiding public disclosure of them in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public;
- (c) a person involved in a civil or criminal proceeding may be prejudiced; or
- (d) the safety of a person may be jeopardized.

[6] Similarly, under s. 9(1) of the SPPA the Committee may close a hearing if it is of the opinion that:

- (a) matters involving public security may be disclosed; or
- (b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.

[7] Open hearings are fundamental to inspiring public confidence in the College's discipline process and ensuring transparency and accountability. There must be compelling evidence of harm to displace that presumption. While the Panel accepted that the Member was genuinely worried about XX's reactions if XX were to attend the hearing and learn the details of the allegations against her, the fact that XX did not seek to enter the hearing room was significant and the Panel concluded that the Member's concern about the mere possibility that XX might attend could not override the important presumption of public access to the hearing. The Panel found that the exhibits presented by the Member in the *voir dire* were not relevant to either of the two reasons she gave for her request for a closed hearing. The Member's oral evidence was unspecific regarding her concerns about XX's behaviours and reactions, her fear and difficulty talking about her professional misconduct, and the possible consequences if her community were to learn about the allegations. By her own admission, she had not been physically harmed since coming to Canada in 2008. The fears she expressed in her evidence were about XX being physically present in the hearing room and learning the details of the case. As this did not come to pass, the Panel was not persuaded that there was a risk of harm to the Member if the hearing were to proceed open to the public and the Panel decided that her fears could not override the strong presumption of an open hearing. The Panel found the Member presented insufficient evidence to prove the existence of any ground under s. 28(7) of the Act or s. 9(1) of the SPPA to displace the open court principle, and therefore the Panel declined to close the hearing.

### **The Allegations**

[8] In the Notice of Hearing dated November 20, 2018, the Member is alleged to be guilty of professional misconduct pursuant to the Act in that she is alleged to have engaged in conduct that contravenes the Act, Ontario Regulation 384/00 (the "**Professional Misconduct Regulation**"), Schedule "A" to By-law No. 66 of the Ontario College of Social Workers and Social Service Workers, being the Ontario College of Social Workers and Social Service Workers Code of

Ethics (the "**Code of Ethics**"), and Schedule "B" to By-law No. 66 of the Ontario College of Social Workers and Social Service Workers, being the Ontario College of Social Workers and Social Service Workers Standards of Practice Handbook (the "**Handbook**").<sup>1</sup>

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

1. At all relevant times, you were registered as a social work member with the Ontario College of Social Workers and Social Service Workers (the "**College**").
2. From approximately November 2017 to approximately February 2018, you provided counselling and social work services to (the "**Client**"). During this time, your employer was Family Services Perth – Huron ("**FSPH**"). You were aware that the Client had a history of sexual abuse and trauma and that he was seeking therapeutic services to treat emotional issues arising out of this history.
3. From approximately January 2018 to approximately February 2018, and during one or more counselling sessions with the Client the Member made inappropriate disclosures of personal information, engaged in a number of boundary violations and in conduct and remarks that the Client reasonably perceived to be of a personal/romantic nature rather than a professional nature.
4. From approximately January 2018 to approximately March 2018, you repeatedly called and/or texted the Client outside of scheduled counselling sessions, and left several voicemails for the Client. You continued to call the Client after the termination of the therapeutic relationship and after he told you that he did not want you to contact him.
5. On or about February 22, 2018 you were placed on paid leave as a result of an investigation into your conduct resulting from a complaint from the Client. At a meeting with staff of FSPH regarding your suspension, you were told not to have any contact with any of your clients during the course of the investigation. Despite this you contacted the Client after the February 22, 2018 meeting.
6. On or about March 8, 2018 you had another meeting with the staff of FSPH regarding the complaint. At this meeting you were told the identity of the Client who had made the complaint. After this meeting, you contacted the Client again.
7. On or about March 22, 2018 you contacted the Client's sister, and subsequently met with her in person on March 29, 2018. At the meeting you told the Client's sister that you were treating a relative and that you had formed a strong attachment to that relative.

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<sup>1</sup> By-law 24, as amended by By-law Nos. 32 and 48 and revoked effective July 1, 2008 by By-law 66, continues to apply to conduct which occurred prior to July 1, 2008.

**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 I of the Handbook (commented on in Interpretation 1.5 and 1.6)** [redacted];
- (b) In that you violated **Section 2.2 of the Professional Misconduct Regulation and Principle II of the Handbook (commented on in Interpretation 2.2, 2.2.2, 2.2.3, 2.2.8)** [redacted];
- (c) In that you violated **Section 2.2 of the Professional Misconduct Regulation and Principle V of the Handbook (commented on in Interpretation 5.1, 5.3.6, and 5.3.7)** [redacted];
- (d) In that you violated **Section 2.2 of the Professional Misconduct Regulation and Principle VIII of the Handbook (commented on in Interpretation 8.1, 8.2, 8.3, 8.6 and 8.7)** [redacted];
- (e) In that you violated **Section 2.5 of the Professional Misconduct Regulation**[redacted];
- (f) In that you violated **Section 2.11 of the Professional Misconduct Regulation** [redacted];
- (g) In that you violated **Section 2.28 of the Professional Misconduct Regulation and Section 26(2)(a) of the Act** [redacted]; and
- (h) In that you violated **Section 2.36 of the Professional Misconduct Regulation** [redacted].

**Member's Position**

[10] The Member admitted the allegations set out in the Notice of Hearing. The Panel conducted an oral plea inquiry and received a written plea inquiry that was signed by the Member and made an exhibit at the hearing. The Panel was satisfied that the Member's admissions were voluntary, informed and unequivocal.

**The Evidence**

[11] The evidence was tendered by way of an Agreed Statement of Facts, which provided in relevant part as follows.

1. Now and at all times relevant to the allegations, Rozina Shaheen (the "**Member**") was a registered social work member of the Ontario College of Social Workers and Social Service Workers (the "**College**").

2. From approximately November 2017 to approximately February 2018, the Member provided counselling and social work services to M.B. (the “Client”). During this time, the Member’s employer was Family Services Perth – Huron (“FSPH”). The Member was aware that the Client had a history of sexual abuse and trauma and that he was seeking therapeutic services to treat emotional issues arising out of this history.
3. From approximately January 2018 to approximately February 2018, and during one or more counselling sessions with the Client the Member made inappropriate disclosures of personal information, engaged in a number of boundary violations and in conduct and remarks that the Client reasonably perceived to be of a personal/romantic nature rather than a professional nature.
4. From approximately January 2018 to approximately March 2018, the Member repeatedly called the Client outside of scheduled counselling sessions, and left several voicemails for the Client. The Member also texted the Client on one occasion. The Member continued to call the Client after the termination of the therapeutic relationship and after he told her that he did not want her to contact him.
5. If the Member were to testify she would say that she did not recall the Client telling her that he did not want her to contact him.
6. On or about February 22, 2018 the Member was placed on paid leave as a result of an investigation into her conduct resulting from a complaint from the Client. At a meeting with staff of FSPH regarding her suspension, she was told not to have any contact with any of her clients during the course of the investigation. Despite this the Member contacted the Client by telephone after the February 22, 2018 meeting.
7. On or about March 8, 2018 the Member had another meeting with the staff of FSPH regarding the complaint. At this meeting the Member was told the identity of the Client who had made the complaint. After this meeting, the Member contacted the Client by telephone again.
8. On or about March 22, 2018 the Member contacted the Client’s sister, and subsequently met with her in person on March 29, 2018. At the meeting the Member told the Client’s sister that she was treating a relative and that she had formed a strong bond to that relative.
9. While the Member does not dispute the content of the above conversation, if the Member were to testify she would say that she did not give the Client’s name to the Client’s sister.

10. The Member admits that by reason of engaging in the conduct outlined above, she is guilty of professional misconduct as set out in section 26(2)(a) and (c) of the *Social Work and Social Service Work Act*:
- a. In that she violated **Section 2.2 of the Professional Misconduct Regulation and Principle I of the Handbook (commented on in Interpretation 1.5 and 1.6)** [redacted];
  - b. In that she violated **Section 2.2 of the Professional Misconduct Regulation and Principle II of the Handbook (commented on in Interpretation 2.2, 2.2.2, 2.2.3, 2.2.8)**[redacted];
  - c. In that she violated **Section 2.2 of the Professional Misconduct Regulation and Principle V of the Handbook (commented on in Interpretation 5.1, 5.3.6, and 5.3.7)** [redacted];
  - d. In that she violated **Section 2.2 of the Professional Misconduct Regulation and Principle VIII of the Handbook (commented on in Interpretation 8.1, 8.2, 8.3, 8.6 and 8.7)** [redacted];
  - e. In that she violated **Section 2.5 of the Professional Misconduct Regulation** [redacted];
  - f. In that she violated **Section 2.11 of the Professional Misconduct Regulation** [redacted];
  - g. In that she violated **Section 2.28 of the Professional Misconduct Regulation and Section 26(2)(a) of the Act** [redacted] ; and
  - h. In that she violated **Section 2.36 of the Professional Misconduct Regulation** [redacted].

### **Decision of the Panel**

[12] Having considered the admissions of the Member, the evidence contained in the Agreed Statement of Facts, and the submissions of College counsel and of the Member, the Panel finds that the Member committed the acts of professional misconduct alleged in the Notice of Hearing.

### **Reasons for Decision**

[13] The Member admitted to all the allegations in the Notice of Hearing and the Panel found that the evidence in the Agreed Statement of Facts was adequate to support her admissions and proved the allegations on a balance of probabilities.

[14] Pursuant to s. 26(2) of the Act, a panel of the Discipline Committee may find a member of the College guilty of professional misconduct if, after a hearing, the panel believes that the member has engaged in conduct that (a) contravenes the Act, the regulations or the College's by-laws or (c) is defined as being professional misconduct in the regulations.

[15] Allegations (a) through (d) of the Notice of Hearing all concern the Member's alleged failure to meet the standards of the profession, specifically by violating certain principles of the Handbook. Section 2.2 of the Professional Misconduct Regulation makes it an act of professional misconduct for a member to fail to meet the standards of the profession. The Handbook, which is a by-law of the College, sets out certain standards of the social work profession. A contravention of the standards of practice as contained in the Handbook is therefore professional misconduct under both s. 26(2)(a) and (c) of the Act.

[16] With respect to allegation (a), the evidence before the Panel was that during one or more counselling sessions with a vulnerable Client the Member told the Client about her [redacted]. In doing so she violated Principle I (Interpretations 1.5 and 1.6) of the Handbook by failing to distinguish her needs from those of her Client'.

[17] With respect to allegations (b) and (d), the Agreed Statement of Facts contains numerous examples of conduct and remarks by the Member toward her Client that crossed professional boundaries[redacted]. The Member failed to establish and maintain clear and appropriate boundaries contrary to Principle II of the Handbook (Interpretations 2.2, 2.2.2, 2.2.3 and 2.2.8). She also failed to ensure that [redacted].(Interpretation 8.1, 8.2, 8.3, 8.6 and 8.7). She therefore engaged in professional misconduct. These facts also support a finding on allegation (e) [redacted].

[18] With respect to allegations (c) and (f), the Panel found that the Member disclosed the identity of and/or information about the Client without his consent when she met with the Client's sister and told the sister that she was treating a relative and had formed a strong bond to that relative. There was a level of carelessness on the part of the Member while she was talking to the Client's sister, which created the possibility of identifying the Client. Therefore, the Panel found that the Member violated Principle V of the Handbook (Interpretations 5.1, 5.3.6 and 5.3.7) and s. 2.11 of the Professional Misconduct Regulation.

[19] College Counsel referred to previous cases of the Discipline Committee in which similar conduct by a member was found to be professional misconduct. These include *Ontario College of Social Workers and Social Service Workers v Beauchamp-Brown* (2017) and *Ontario College of Social Workers and Social Service Workers v Rourke* (2013). The Panel reviewed those decisions and was of the view that they support the findings of professional misconduct in respect of all of the allegations in this case.

[20] Allegation (g) is established by the Member's contraventions of the Professional Misconduct Regulation and the Handbook, as described herein.

[21] Finally, with respect to allegation (h), the Panel found that, having regard to all circumstances, the Member's conduct would reasonably be regarded by members as disgraceful, dishonourable or unprofessional. By engaging in a series of boundary violations with a vulnerable Client who had a history of trauma and sexual abuse, including repeatedly contacting him outside of scheduled counselling sessions, [redacted], the Member showed not only poor judgement but also an element of moral failing. She ought to have known that such behaviour is unacceptable and that it shames both herself and the social work profession.

## Penalty Submissions

[22] The parties were in agreement on most of the issues regarding penalty and presented to the Panel a Partial Joint Submission as to Penalty (“**Partial Joint Submission**”) asking the Panel make an order including the following terms.

1. The Member shall be reprimanded by the Discipline Committee and the fact of the reprimand be recorded on the register.
2. The Registrar shall be directed to suspend the Member’s Certificate of Registration for a period of five (5) months, the first four (4) months of which shall be served commencing on the date of the Discipline Committee’s Order herein. Upon completion of those first four (4) months of the suspension, the remaining one (1) month of the suspension shall be suspended for a period of two (2) years, commencing on the date of the Discipline Committee’s Order herein. The remaining one (1) month of the suspension shall be remitted on the expiry of that two year period if (on or before the second anniversary of the Discipline Committee’s Order herein) the Member provides evidence, satisfactory to the Registrar of the College, of compliance with the terms and conditions imposed under paragraph 3 below. For greater clarity, the terms and conditions imposed under paragraph 3 below will be binding on the Member regardless of the length of suspension served and the Member may not elect to serve the full suspension in place of performing those terms and conditions. If the Member fails to comply with the terms and conditions, the Registrar may refer the matter to the Executive Committee of the College. The Executive Committee, pursuant to its authority, may take such action as it deems appropriate, which may include referring to the Discipline Committee allegations of professional misconduct arising from any failure to comply with the terms and conditions.
3. The Registrar shall be directed to impose a term, condition and limitation on the Member’s Certificate of Registration, to be recorded on the Register, requiring the Member to, at her own expense, participate in and successfully complete a boundaries and ethics training course, as prescribed by and acceptable to the College, and provide proof of such completion to the Registrar within four (4) months from the date of the Order.
4. The Member shall pay costs to the College in the amount of \$2,500 to be paid within eight months of the date of the Order.

[23] The parties disagreed on one aspect of penalty. While they agreed that the Panel’s decision should be published, they disagreed as to whether the Member’s name should be published with the decision. The College’s position was that the Panel’s order ought to include publication with the Member’s name, while the Member submitted that her name should not appear with the published decision.

[24] The parties’ submission on the Partial Joint Submission and the contested issue of publication are as follows.

[25] College counsel submitted that while the Partial Joint Submission does not bind the Panel, the Supreme Court of Canada has held that a joint submission should not be rejected unless it would be contrary to the administration of justice or would otherwise bring the administration of justice into disrepute. There are strong policy reasons for that very high bar in that joint submissions coupled with agreed statements of facts have the advantages of avoiding a full hearing and the need for vulnerable witnesses to testify and be subjected to cross-examination. Those principles have been accepted in previous decisions of the Discipline Committee

[26] College counsel submitted that the suspension meets the goals of both specific and general deterrence as it sends a clear message to the Member and others that this type of behaviour will not be treated lightly. College counsel cited other cases where suspensions were ordered for similar misconduct, for example, *Ontario College of Social Workers and Social Service Workers v Walther* and *Ontario College of Social workers and Social Service Workers v Michell*. Also the terms limits and conditions provide both deterrence and rehabilitation as the member is required to, at her own expense, complete a boundaries and ethics training course, with the casework being a measure that is remedial and educational. College counsel submitted that the mitigating factors were that this is the Member's first offence, that she has demonstrated insight, and that by co-operating she has saved the Client from needing to testify. The aggravating factors were that a vulnerable client was involved and that there were a variety of negative ramifications as a result of her behaviours.

[27] Regarding the contested issue of whether the Panel's decision should be published with the Member's name, College counsel argued that the transparency provided by publication is essential for the public confidence in the College's ability to police itself as it demonstrates to members of the profession and to the public that the College's members will be held fully accountable for their actions. If a discipline decision does not include the member's name, it undercuts the deterrent effect of the decision. The publication of the Member's name together with the Discipline Committee's decision serves the duty of the College to protect the public interest.

[28] College counsel submitted that publication of the Member's name would be consistent with the overwhelming trend of discipline committees of other Colleges to make their decisions public. It would also follow the approach taken previously by this Discipline Committee in cases such as *Ontario college of Social Workers and Social Service Workers v Rahmani-Azad* and *Ontario College of Social Workers and Social Service Workers v Venema*, in which the members were found guilty of similar allegations of professional misconduct. College counsel also cited the cases of *Ontario College of Teachers v Kernaghan*, 2003 OCTDD No. 37, and *Ontario College of Teachers v Curtis*, 2005 OCTDD Nov. 12, in which the discipline committee of the Ontario College of Teachers ordered publication of the members' names due to the absence of compelling reasons to overcome the responsibility of the College to protect the best interests of the public. College counsel argued that possible stress, embarrassment or emotional difficulty for the Member arising from publication are not sufficient to warrant not publishing the name and cited the *Orpin v College of Physicians and Surgeons of Ontario* (1998), 25 OAC 235, and *Law Society of Upper Canada v Xynnis*, 2014 ONLSAP 9, to support this position.

[29] College counsel submitted that while the Member had not provided evidence of any compelling reason to require that publication occur without her name, if the Panel found

evidence justifying any limitations, the concerns could be addressed by redacting from the published decision certain facts about the Member's conduct, while still leaving in the Member's name. However, College counsel argued that the Panel should be cautious in taking that approach because any member who finds themselves in similar circumstances may say it is embarrassing and distressing to have the details known in their family and community, and ask not have all the details published. Redaction of any of that type of information from a discipline committee decision ought to be a rare occurrence. Such redaction ought to be limited to those circumstances where the panel is persuaded there is a risk that meets the very high threshold set by the courts.

[30] The Member did not make submissions regarding the Partial Joint Submission except to express her acceptance of its terms. On the contested issue of publication, she argued that if her name is published there is a risk that XX and others would come to know about the allegations against her, and she is concerned about XX's reaction. She submitted that if there were redactions that she would accept the publication of her name.

### **Penalty Decision**

[31] Having considered the findings of professional misconduct, the evidence and the submissions of the parties, the Panel accepts the Joint Submission and makes an order as follows.

1. The Member shall be reprimanded by the Discipline Committee and the fact of the reprimand be recorded on the register.
2. The Registrar shall be directed to suspend the Member's Certificate of Registration for a period of five (5) months, the first four (4) months of which shall be served commencing on the date of the Discipline Committee's Order herein. Upon completion of those first four (4) months of the suspension, the remaining one (1) month of the suspension shall be suspended for a period of two (2) years, commencing on the date of the Discipline Committee's Order herein. The remaining one (1) month of the suspension shall be remitted on the expiry of that two year period if (on or before the second anniversary of the Discipline Committee's Order herein) the Member provides evidence, satisfactory to the Registrar of the College, of compliance with the terms and conditions imposed under paragraph 3 below. For greater clarity, the terms and conditions imposed under paragraph 3 below will be binding on the Member regardless of the length of suspension served and the Member may not elect to serve the full suspension in place of performing those terms and conditions. If the Member fails to comply with the terms and conditions, the Registrar may refer the matter to the Executive Committee of the College. The Executive Committee, pursuant to its authority, may take such action as it deems appropriate, which may include referring to the Discipline Committee allegations of professional misconduct arising from any failure to comply with the terms and conditions.
3. The Registrar shall be directed to impose a term, condition and limitation on the Member's Certificate of Registration, to be recorded on the Register, requiring the Member to, at her own expense, participate in and successfully complete a boundaries and ethics training course, as prescribed by and acceptable to the College, and provide proof of such completion to the Registrar within four (4) months from the date of the Order.

4. The finding and the order of the Committee shall be published, in detail or in summary, with the name of the Member, online and/or in print, including but not limited to, in the official publication of the College, on the College's website, and on the College's public register, except the details of paragraph 3 (a) through (p) of the Agreed Statement of Facts and paragraph 10 (b), (d) and (e) of the Agreed Statement of Facts, or any portion of these reasons that refer to those paragraphs (including paragraph 3 of the particulars and allegations (b), (d) and (e) in the Notice of Hearing), which must be redacted in any publication of the Committee's finding and order, but may be replaced with the following:

Paragraph 3: From approximately January 2018 to approximately February 2018 and during one or more counselling sessions with the Client, the Member made inappropriate disclosures of personal information, engaged in a number of boundary violations and in conduct and remarks that the Client reasonably perceived to be of a personal/romantic nature rather than a professional nature.

Paragraph 10. b: In that she violated **Section 2.2 of the Professional Misconduct Regulation and Principle II of the Handbook (commented on in Interpretation 2.2, 2.2.2, 2.2.3, 2.2.8)**

d. In that she violated **Section 2.2 of the Professional Misconduct Regulation and Principle VIII of the Handbook (commented on in Interpretation 8.1, 8.2, 8.3, 8.6 and 8.7)**

e. In that she violated **Section 2.5 of the Professional Misconduct Regulation**

5. The Member shall pay costs to the College in the amount of \$2,500 to be paid within eight months of the date of the Order.

### **Reasons for Penalty Decision**

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

[33] The components of the jointly proposed penalty to which the Member agrees include the suspension of her certificate of registration for five months (with one month suspended and remitted if she complies with paragraph 3 of the penalty order) and a reprimand. Those penalty terms will be recorded on the register and satisfy the principles of general and specific deterrence. Those measures send a message to both the Member and other members that the College will not tolerate the kind of behaviour in which the Member engaged. The goal of remediation is addressed through the terms, conditions and limitations on the Member's certificate of registration requiring her to complete a boundaries and ethics training course, so that she can develop insight and learn appropriate tools in order to practise in the future without

engaging in professional misconduct. The jointly proposed penalty terms are within the acceptable range of penalty for this type of professional misconduct, as demonstrated by cases such as *Ontario College of Social Workers and Social Service Workers v Walther* (2012) and *Ontario College of Social Workers and Social Service Workers v Forgaard-Pullen* (2017). The Panel found that the proposed penalty is reasonable in supporting the goals of penalty and the principles of maintaining high professional standards, preserving the public confidence in the College's ability to regulate its members and above all, protecting the public. For these reasons the Panel accepted the terms of the Partial Joint Submission.

[34] Regarding the contested issue of publication, the Panel considered s. 26(5)(3) of the Act which gives the Panel the authority both to direct that its finding and order be published, and to decide whether publication will be with or without the Member's name. The Panel considered the College's submissions (1) that publication of the Members name supports the open court principle (citing the cases of *Canadian Broadcasting Corp. v New Brunswick (Attorney General)*, [1996] 3 SCR 480, *R v Conway*, [2010] 1 SCR 765, and *Toronto Star v AG Ontario*, 2018 ONSC 2586, which held that documents filed with and resulting from hearings should be available to the public), and (2) that publication of the Member's name would be consistent with recent decisions from the Discipline Committee of this College and discipline committees of other regulatory colleges. The Panel also considered the Member's submissions that she will be at risk if her name is published.

[35] Independent legal counsel advised the Panel to consider the "*Dagenais/Mentuck test*",<sup>2</sup> which addresses publication bans and other limitations on the open court principle. That test calls for any limitations on openness to be the least restrictive necessary to prevent a serious risk to the administration of justice and for the benefits of the limitation to outweigh the negative impacts.

[36] Having considered the submissions, the case law and the evidence, the Panel decided that its findings and order should be published with the Member's name. The Member did not provide sufficient compelling evidence that if the decision is published with her name it will pose a serious risk that cannot be prevented through reasonably alternative measures. Publication of the name of a member who has been found guilty of professional misconduct is consistent with the statutory mandate of the Discipline Committee and is important in demonstrating to the public how the Discipline Committee responds to misconduct. Publication also has a general deterrent value and reflects transparency and openness while ensuring public protection and accountability.

[37] That said, the Panel accepted that more limited measures are available and are appropriate to address the Member's genuine fear of harm to her arising from publication of the decision. The Member expressed concerns that if XX becomes aware of the allegations of [redacted] misconduct against her that she would be "at risk", as she is unsure about how XX might react. Her request for a closed hearing also reflected similar concerns about XX and about reactions in her family and cultural group, as she has not disclosed the nature of the allegations against her to any of them. The Panel accepted as sincere the Member's testimony regarding her fears about XX, [redacted]. The Panel accepted that the Member has some vulnerability to XX's potential negative reaction to some of the specific details of her misconduct, and that such

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<sup>2</sup> Named after two Supreme Court decisions, *Dagenais v Canadian Broadcasting Corporation*, [1994] 3 SCR 835 and *R v Mentuck*, [2001] 3 SCR 442 in which the test was developed.

vulnerability is sufficiently compelling to justify narrow limits on the publication of the findings and order. The Member's concerns can be addressed by redacting certain details regarding the Member's misconduct from the published version of the Panel's finding and order. Specifically, the descriptions and characterizations of the Member's boundary violations [redacted] as set out in paragraphs 3 and 10 (b), (d) and (e) of the Agreed Statement of Facts, and any part of these reasons that refer to those details and characterizations, ought to be redacted from the publication of the Panel's findings and order. The Panel concluded that this limited non-publication order strikes an appropriate balance between the Member's concerns and the mandate of the College to protect the public. Given their limited nature, the redactions order will not impede the specific or general deterrence value of the penalty or undermine the protection of the public interest. The public will still know that the Member made inappropriate disclosures of personal information, and engaged in a number of boundary violations and in conduct and remarks that the Client reasonably perceived to be of a personal/romantic nature rather than a professional nature.

[38] While, by her own admission XX had not physically harmed her since coming to Canada in 2008, the Member expressed genuine fear about how she would be treated if XX became aware of the details of her conduct toward the Client. The Member described [redacted] and testified that she did not disclose the College's allegations against her to anyone including her best friend. She repeatedly expressed fears of being at risk of negative reactions from both XX and their cultural community if the nature of the allegations became known to them. Although, the Panel was not satisfied that the Member's evidence was sufficient to warrant the significant step of closing the hearing, particularly given that XX had not attempted to enter the hearing room, the Panel did accept that the Member's fears about the consequences to her if the details of her conduct were made known to XX and her cultural community were genuine and went beyond the stress, embarrassment or emotional difficulties that any member can be expected to experience when faced with professional misconduct allegations, particularly regarding boundary violations and [redacted]. Accordingly, while orders limiting the publication of discipline decisions must be exceptional, the Panel concluded that paragraph 4 of its order is appropriate in the specific circumstances and the evidence before it in this case.

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

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Angèle Desormeau, Chair  
Frances Keogh  
Karen Fromm