



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 Jessica Kline,
2020 ONCSWSSW 2

Decision date: 20200515

BETWEEN:

THE ONTARIO COLLEGE OF SOCIAL WORKERS
AND SOCIAL SERVICE WORKERS

- and -

JESSICA KLINE

PANEL: Charlene Crews Chair, Professional Member
Frances Keogh Professional Member
Andy Kusi-Appiah Public Member

Appearances: Jill Dougherty and Lara Kinkartz, counsel for the College
Jesse Elders, counsel for the Member
Andrea Gonsalves, Independent Legal Counsel to the Panel

Heard: November 14, 2019

DECISION AND REASONS FOR DECISION

[1] This matter came on for hearing before a panel of the Discipline Committee (the “**Panel**”) on November 14, 2019, at the Ontario College of Social Workers and Social Service Workers (the “**College**”).

Order for Closed Hearing

[2] The allegations in this case concern the alleged unauthorized disclosure of sealed adoption records. At the outset of the hearing the College sought an order closing the hearing, as well as an order prohibiting the publication of the Complainant's identity, or information that could disclose the identity of the Complainant and of the individual referred to below as "A", the adopted child (who is now an adult). The College sought the order due to the nature and sensitivity of the matters raised in the hearing. The College submitted that the Panel has jurisdiction to make an order to close a hearing under the *Social Work and Social Service Work Act, 1998*, S.O. 1998, Chapter 31 (the "**Act**"), s. 28(7)(b), which provides:

The Discipline Committee may make an order that the public, including members of the College, be excluded from a hearing or part of a hearing if the Committee is satisfied that,

...

- (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;

[3] The Member, Jessica Kline (the "**Member**"), consented to the order sought. The parties jointly proposed that the Complainant and her support person, and a support person for the Member, be exempted from the order for a closed hearing, on condition that they undertake to keep confidential the information disclosed at the hearing.

[4] The Panel received advice from independent legal counsel who advised that a decision to close a hearing should not be made lightly and that the Act supports a closed hearing where sensitive personal information may be disclosed and the interest in protecting the information outweighs the interest in public disclosure of the information.

[5] The Panel was satisfied that the interest of protecting the privacy of the Complainant and A outweighed the desirability of adhering to the principle that hearings be open to the public. Accordingly, the Panel made an order closing the hearing to the public except for the Complainant and her support person, as well as a support person for the Member. The two support persons present gave an undertaking to keep the information disclosed in the hearing confidential.

The Allegations

[6] In the Notice of Hearing dated July 17, 2017, the Member is alleged to be guilty of professional misconduct pursuant to the Act in that she is alleged to have engaged 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**”).¹

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

1. Now, and since on or about July 9, 2013, you have been a registered social work member of the Ontario College of Social Workers and Social Service Workers (the “College”).
2. Now and at all times relevant to the allegations, you were employed as a social worker at a Children’s Aid Society (the “CAS”).
3. In or about 1983, Ms. X (the “Complainant”) had a son whom she gave up for adoption at birth, by means of a closed adoption that was handled by the CAS. After that adoption, until in or about December of 2012, there was no contact between the Complainant and her son and neither had any information concerning the other’s whereabouts or identity.
4. In or about 2012, without the knowledge or consent of the Complainant or the CAS and without any legal authorization to do so, you:
 - (a) accessed the CAS’s file(s) concerning the closed adoption of the Complainant’s son, A
 - (b) identified A’s biological parents, and/ or
 - (c) copied the file(s) and provided the file(s) and/ or information from the file(s) to A, with whom you had a personal relationship.
5. In or about December of 2012, you and A contacted the Complainant’s parents and, subsequently, the Complainant, by using information from the CAS file(s) to identify and locate them. That contact was initiated without the Complainant’s consent and had a negative impact on her emotionally and in her personal and employment relationships.
6. The Complainant is a police officer. After learning of her identity, A repeatedly told members of the police force where the Complainant is employed that he is her son, in an attempt to extricate himself from various legal issues, and subsequently made allegations of improper conduct against the Complainant to her employer.
7. In or about March of 2013, the Complainant reported the above information to the CAS, which conducted an investigation as a result of that complaint. The CAS’s investigation confirmed that you had improperly accessed the

¹ 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.

adoption file relating to A. Upon being confronted by the CAS with the results of the investigation, you were allowed to resign from your employment there.

8. Subsequently, on or about June 9, 2013, you became a social work member of the College. The above circumstances, which reflect on your suitability to practise as a Registered Social Worker, were not disclosed to or known to the College when you were granted a certificate of registration.

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, in that you violated:

1. **Section 2.29 of the Professional Misconduct Regulation** by contravening a federal, provincial or territorial law or a municipal by-law (namely, the *Vital Statistics Act*, R.S.O. 1990, c. V.4, the *Child and Family Services Act*, R.S.O. 1990, c. C.11, and/or the Adoption Information Disclosure Regulation (O. Reg. 464/07)), the contravention of which is relevant to your suitability to practise, in that you improperly accessed and released information to A relating to a closed adoption; and/or
2. **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

[8] The Member admitted to the allegations set out in the Notice of Hearing. The Panel conducted an oral plea inquiry at the hearing and was satisfied that the Member's admissions were voluntary, informed and unequivocal. The Member's admissions and the substance of the plea inquiry were also confirmed in an Agreed Statement of Facts (discussed further below), which was made an exhibit at the hearing.

The Evidence

[9] The parties tendered an Agreed Statement of Facts, which contained the evidence before the Panel in this hearing. The Agreed Statement of Facts provided in relevant part as follows.

1. Jessica Kline (the "**Member**") received a Bachelor of Social Work degree in 2008. From October 2008 to April 9, 2013, the Member was employed by a Children's Aid Society ("**CAS**") as a child protection worker.
2. Since on or about July 9, 2013, the Member has been a registered social work member of the Ontario College of Social Workers and Social Service Workers ("**the College**").
3. Since her registration with the College in 2013, the Member has worked for the following organizations in a social work capacity: Brain Injury Services of

Hamilton, Quest Community Health Care, and Niagara Health System. In these roles, Ms. Kline has not been subject to any complaints or disciplinary action.

4. This matter arises from a complaint by Ms. X (the “**Complainant**”) to the College in December 2016 regarding the Member’s unauthorized access to and release of information from sealed adoption files at CAS.

THE ADOPTION

5. In or about June, 1983, the Complainant (who was then 18 years old and pregnant) contacted CAS about placing the baby she was expecting up for adoption. CAS opened a pregnancy planning file in relation to the Complainant, who became a client of CAS at that time.
6. After the Complainant’s baby (a boy, “**A**”) was born, he was admitted to the care of CAS and was later placed for adoption in June of 1984. The Complainant shared her pregnancy with very few people, and decided early on in her pregnancy that she would never make contact with her biological son. She was assured with the CAS worker that her identity would remain confidential forever.
7. The pregnancy planning file was closed and services terminated to the Complainant on June 12, 1984. Thereafter, CAS retained two files (the pregnancy planning file and A’s adoption file, collectively referred to as the “**adoption files**”), both of which were sealed.
8. From 1983 to December 2012, the Complainant and A had no contact with one another and neither had any information concerning the other’s whereabouts or identity. The Complainant did not seek to establish contact with A and she had never told A’s father about the baby or the subsequent adoption.

THE MEMBER’S POSITION AT THE CAS

9. From October 2008 to April 9, 2013, the Member was employed as a child protection worker at CAS. While her position at CAS did not require her to be a registered social worker, it required her to have a Bachelor of Social Work or Masters of Social Work degree and to provide “social work services, within the family service team, consistent with the overall direction provided by the Supervisor, the requirements of the *Child and Family Services Act* and its regulations, Ministerial requirements and Society policies and procedures.”
10. As a child protection worker, the Member was required to understand and work within the requirements of the *Child and Family Services Act*, its regulations (including the *Adoption Information Disclosure* regulation), Ministerial Standards and Guidelines, and approved CAS policies and procedures. She also agreed, as an employee of CAS, to actively uphold the principles identified in CAS’s Code of Ethics.
11. The Member received training regarding her confidentiality obligations as a social worker throughout her BSW program. C.M., a tenured professor and former Acting

Director of the University of Waterloo's Renison University College (where the Member obtained her BSW) reviewed the academic requirements that were in place when the Member obtained her BSW. Ms. C.M. provided an expert opinion to the College outlining those requirements and concluding that based on the Member's student record, it appeared that the Member had a full understanding of these concepts. Ms. C.M. summarized her review of the program requirements and the Member's record as follows:

In summary, it would appear from reviewing the courses and practicum manual that would have guided Ms. Kline's BSW orientation, undergraduate classroom education and 720 hour practicum, that the concepts of confidentiality and ethics were comprehensively covered to the degree that upon her graduation in October of 2008, a solid and competent knowledge of these concepts would have been achieved. The courses noted on Ms. Kline's transcript indicate she was academically successful as a student in the BSW student at Renison University College. This would strongly infer that she understood the material covered in the courses ... Furthermore, Ms. Kline's transcript indicates that she passed all three Practicum courses, ... amounting to 720 practice hours. The later [*sic*] is significant as these courses emphasize the transfer of theory from the classroom to the practicum or field, which would have included the topics of ethical behaviour and the importance of confidentiality. If any issue related to either of these concepts arose during any of the three required practicums, ... the BSW Program Manager would have been notified by the Field Instructor and a meeting arranged with the School as soon as possible. There is no such note in Ms. Kline's BSW transcript that this was the case. Lastly, and more importantly, Ms. Kline would not have been able to do a practicum had she not signed the document contained in the School of Social Work BSW Practicum Manual stating that she read the CASW Code of Ethics, 2005, and agreed to the principles of ethical and professional conduct, including that of confidentiality.

It is my opinion that Ms. Kline graduated from the School of Social Work, Renison University College, in 2008, with a thorough understanding of the concepts of ethical and professional behaviour and that of confidentiality prior to her employment at the agency, [CAS], in the same year.

12. The Member received further training regarding her confidentiality obligations during her employment at CAS and signed CAS's "Declaration of Confidentiality" on October 14, 2008, acknowledging that she understood, and agreed to abide by, the CAS Policy Statement on Confidentiality including, among other things, that:
 - a. confidentiality was a basic right of the client;

- b. personal information of clients had to be safeguarded and could not be disclosed without consent unless required by law;
- c. client information must be protected from indiscriminate disclosures;
- d. all information about a client had to be treated as confidential;
- e. client records could only be removed from the office if logged out and signed back in; and
- f. client records could not be given to or read by any person other than an employee of CAS unless supervised by a CAS solicitor.

THE CONFIDENTIALITY BREACH

13. In late November 2012, the Member reconnected with A, whom she had initially met in high school, on an online dating website. Shortly after, the Member and A began a romantic relationship.
14. In late November or early December 2012, A discovered that the Member worked at CAS and had access to adoption records. A disclosed to the Member that he was adopted and that he did not know the identity of his biological parents. A asked the Member if she could access his adoption file to determine the identity of his birth mother and the Member agreed to this request.
15. The CAS adoption files relating to A and the Complainant were contained on a secure CAS server where sealed adoption information is stored (the “**D**” Drive”). Information contained on the “D” Drive is highly confidential and only accessible by a limited number of CAS employees.
16. The Member had access to the “D” Drive because she was working in CAS’s Intake Screening Department at the time and was responsible for (among other things) intake and screening of requests for access to adoption information.
17. When such requests were received, the Member was only authorized to confirm whether CAS had any relevant file(s) and, if so, to inform the requester about the process for seeking disclosure of adoption information from CAS. The Member was not authorized to access the contents of the adoption files on the “D” Drive or to disclose any information from those files.
18. Nevertheless, the Member accessed the adoption files relating to A and the Complainant on the “D” Drive. The Member accessed the content of the Complainant’s file on four separate occasions (December 3, 2012, December 17, 2012, December 18, 2012, and December 19, 2012). The Member also accessed the content of A’s file on four separate occasions (twice on December 3, 2012 and twice on December 17, 2012).
19. On one or more of the occasions when the Member accessed the Complainant’s and A’s adoption files, the Member photocopied and/or took handwritten notes of the

contents of those files. The Member subsequently gave A these documents. A states that the Member told him that they would “change [his] life forever”, or words to that effect.

20. The Member was fully aware, when she engaged in the above conduct, that accessing and disclosing information from those adoption files was illegal, violated the CAS policies and Declaration of Confidentiality, and violated the client confidentiality obligations applicable to social work practice.

THE MEMBER CONTACTS THE COMPLAINANT’S FAMILY

21. On or around December 18, 2012, with the information obtained from the “D” Drive and at A’s request, the Member called the Complainant’s parents and informed them that A was the Complainant’s biological son. The Member left them her phone number and asked that they have the Complainant contact her.
22. In the following days, A contacted the Complainant’s parents himself and asked them to have the Complainant call him.
23. The Complainant was (and is) a police officer who often works undercover and was out of town in December of 2012, working on an undercover operation. Her parents (with whom she has a strained relationship) contacted the Complainant and indicated that they needed to speak to her in person.
24. On or around December 19, 2012, the Complainant met with her parents at their home. The Complainant’s mother advised her that she had received a call from the Member the previous day. The Member had stated that A was the Complainant’s biological son and that he wanted to meet her.
25. On or around December 21, 2012, after the Complainant’s parents informed her that they had received a call from A, the Complainant determined that she had no choice but to contact him. After some conversation, A asked if he could meet with the Complainant and she agreed to meet with him that night.
26. A arrived at the Complainant’s home a few hours later with the Member, whom A had asked to come with him. During this meeting, the Member explained to the Complainant that she worked at CAS and that she was the one who had accessed A’s adoption files. According to the Complainant, the Member stated that she had been dating A for a month, that she was in love with him, and that she agreed to access and disclose his adoption file after finding out that he was adopted. The Complainant states that the Member told her that she photocopied the adoption file, brought it home, put it in a file folder, and gave it to A as an “early Christmas present”. The Complainant also states that the Member claimed that there was no chance of her being caught for accessing A’s adoption file, because there was no electronic footprint of the access in the computer systems at CAS.
27. A’s relationship with the Member ended in January 2013.

EVENTS FOLLOWING THE INITIAL CONTACT

28. Following her meeting with A and the Member on December 21, 2012, the Complainant attempted to have a relationship with her biological son. However, this relationship only lasted a few weeks, as the Complainant discovered shortly thereafter that A had serious issues with drug addiction and criminality and that A was attempting to exploit the Complainant's position as a police officer for his personal benefit.
29. In the months and years after meeting the Complainant, A was pulled over by the police on numerous occasions, at which point A indicated that he was the Complainant's son. The Complainant's superiors in the police force learned of this information and she was forced to explain the details of the adoption to them. This information also became known to the Complainant's colleagues on the police force. To date, A has continued to use the Complainant's name when he is pulled over or apprehended by the police (which is still occurring).
30. The identity of A's biological father, Y, was also revealed as a result of the Member's disclosure. At that time, Y was married (although he and his wife later divorced) and had two other children.
31. In light of the Member's disclosure of the adoption information, the Complainant felt compelled to tell her partner and the biological father, Y., that she had been pregnant by Y at age 18 and had given the baby up for adoption. Prior to this conversation, the Member had not informed her partner or Y of these facts .

CAS INVESTIGATION INTO THE MEMBER'S CONDUCT

32. On March 25, 2013, one of the Complainant's colleagues on the police force (W) contacted L.F., the Director of Professional Standards at CAS, on the Complainant's behalf. W informed L.F. of the confidentiality breach that had occurred with respect to the Complainant. W also explained to L.F. the personal and professional consequences to the Complainant that were caused by the breach.
33. On April 5, 2013, L.F. met with W and the Complainant. The Member was identified as the CAS employee responsible for the confidentiality breach.
34. After receiving this information, CAS initiated an investigation into the confidentiality breach. CAS staff were able to retrieve the electronic footprint from CAS's "Frontline" computer system, which indicated that the Member had accessed the Complainant's CAS file on four separate occasions (December 3, 2012, December 17, 2012, December 18, 2012, and December 19, 2012) and A's CAS file on four occasions (twice on December 3, 2012 and twice on December 17, 2012).
35. On April 8, 2013, L.F. and D.H. (the Director of Human Resources at CAS) met with the Member and her union representative. During this meeting, the Member was asked the following questions by D.H. and the Member provided the following answers:

- a. When D.H. asked why the Member had accessed A's CAS file on Frontline, the Member denied that she had.
- b. When D.H. asked again why the Member had accessed A's CAS file on Frontline, the Member said that she wanted to check A's age because she thought he was older than he was saying.
- c. When D.H. asked if the Member was familiar with the Complainant's last name, the Member said that she had not heard that name before.
- d. When D.H. asked the Member to think about whether she knew the Complainant's last name, the Member said she thought that it might be A's mother's last name.
- e. When D.H. asked when the Member contacted A, the Member said that she contacted A in early January.
- f. When D.H. asked if the Member had contacted A's biological grandparents, the Member said that she had not.
- g. When D.H. asked if the Member had contacted A's biological mother (the Complainant), the Member said that she had not.
- h. When D.H. told the Member that to their knowledge the Member had contacted A's biological grandparents and mother, the Member said that she had not.
- i. When D.H. asked if the Member accessed A's birth information and information in relation to his biological parents on Frontline, the Member said that she had not.
- j. When D.H. told the Member they had reason to believe she had accessed this information, the Member said that she had not.
- k. When D.H. asked the Member how many times she had accessed the "D" file in relation to A's birth records, the Member said that she only accessed it once. The Member further explained that she had met the Complainant at A's house and that the Complainant is a police officer.
- l. When D.H. advised that an electronic footprint could confirm that the Member accessed A's "D" file on four occasions and the Complainant's file on four occasions, the Member did not respond.
- m. When D.H. asked the Member why she would tell A "this information is going to change your life" if it didn't contain confidential information, the Member denied making this statement.

- n. When D.H. asked the Member why she had not told the truth when she said she contacted A in January 2013, the Member said that she was unclear of the timelines when the question was asked.
 - o. When D.H. asked the Member why she hadn't been honest when she was asked how many times she accessed A and his mother's "D" file, the Member said she had only accessed A's file once. When D.H. advised that they had an electronic footprint proving the Member accessed the adoption files eight times, the Member declined to comment.
 - p. When D.H. asked the Member to confirm that she provided A with a copy of the "D" file for the Complainant, the Member said that she hadn't and that she did not provide him with any documentation.
 - q. When D.H. advised the Member that the Complainant had confirmed that the Member contacted A's biological grandparents, the Member said that she had not contacted the biological grandparents.
36. Following the meeting on April 8, 2013, D.H. received a call from the Member's union representative indicating that the Member wanted to tender her resignation. The next morning, on April 9, 2013, the Member and her union representative met with D.H., and the Member resigned from her employment with CAS.
37. Following the Member's resignation, various efforts were made by CAS to recover the documents provided to A by the Member. After numerous attempts were made to contact A, D.H. spoke to A on the phone. A confirmed that he had received written documentation related to his adoption from the Member, but that he was no longer in possession of these documents. The investigation was concluded after A indicated that he had destroyed the documentation provided to him by the Member.

ADMISSIONS OF PROFESSIONAL MISCONDUCT

38. The Member acknowledges that the College has jurisdiction to make findings of misconduct in respect of the conduct outlined above. She further 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 2.29 of the Professional Misconduct Regulation** by contravening a federal, provincial or territorial law or a municipal by-law, the *Vital Statistics Act*, R.S.O. 1990, c. V.4, the *Child and Family Services Act*, R.S.O. 1990, c. C.11, and/or the *Adoption Information Disclosure Regulation* (O. Reg. 464/07), the contravention of which is relevant to her suitability to practise, in that she improperly accessed and released information to A relating to a closed adoption; and
 - b. In that she violated **Section 2.36 of the Professional Misconduct Regulation** by engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all circumstances, would

reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

Decision of the Panel

[10] After considering the Member's admissions, the Agreed Statement of Facts, and the submissions of counsel for both parties, the Panel found that the Member committed acts of professional misconduct alleged in the Notice of Hearing. With respect to allegation 2, the Panel found that the Member's conduct would reasonably be regarded by members as disgraceful, dishonourable and unprofessional.

Reasons for Decision

[11] The Panel accepted the Member's plea of guilty to the allegations of Professional Misconduct as set out in the Notice of Hearing. The Panel found that the Member's admissions were voluntary, informed and unequivocal.

[12] The Panel accepted that it had jurisdiction to discipline the Member even though the professional misconduct in issue occurred prior to her registration with the College on July 9, 2013. The Committee's jurisdiction to discipline members for pre-registration conduct in certain circumstances was confirmed by a panel of the Committee in an earlier motion in this case (see *Ontario College of Social Workers and Social Service Workers v Kline*, 2019 ONCSWSSW 3). In that decision, the Committee held that pre-membership conduct can constitute professional misconduct "where such conduct indicates that the member is currently unsuitable to practise the profession as a member of the College" (para. 91).

[13] Based on the facts outlined in the Agreed Statement of Facts, and the Member's admissions, the Panel was satisfied that the Member's pre-registration conduct is relevant to her current suitability to practise.

[14] Although the Member was not, and was not required to be, a registered social worker for her position at CAS, she had received adequate training and understood that the position required her to comply with the *Child and Family Services Act* and its regulations, Ministerial requirements and CAS policies and procedures. The Member acknowledged that she understood and agreed to abide by the CAS policy statement on confidentiality at the outset of her employment with the CAS when she signed the agency's Declaration of Confidentiality, on October 14, 2008. Further, prior to her employment with CAS the Member had also received significant training and practicum experience regarding confidentiality obligations and concepts of ethical and professional behaviour, while she was earning her Bachelor of Social Work degree at the University of Waterloo. The Panel notes the evidence that C.M., a tenured professor and former Acting Director of the University of Waterloo Renison University College, reviewed the requirements of the Member's BSW program and the Member's academic record, and was of the opinion that the Member graduated with a thorough understanding of concepts of ethical and professional behavior. The Panel finds on the evidence that the Member knew and understood her confidentiality obligations during her employment at CAS.

[15] The Member copied and released records and information contained in sealed adoption records to which she had access during her employment with CAS. The Member's conduct in that regard breached the CAS Declaration of Confidentiality and Code of Ethics, and contravened

Ontario law, namely the *Vital Statistics Act*, the *Child and Family Services Act*, and the *Adoption Information Disclosure Regulation*.

[16] The Panel agreed with the College's submissions that the Member's actions reflect poorly on her character, integrity and honesty. Maintaining confidentiality is a cornerstone of the social work profession, as demonstrated by various provisions of the Code of Ethics and the Handbook setting out standards of the profession regarding confidentiality. While there are no allegations before us that the Member's conduct failed to meet the standards of the profession (since she was not a member at the time), the Member's actions flouting her confidentiality obligations cast doubt on her current suitability to practise. Thus, the Panel is satisfied that the Member's contravention of provincial law is relevant to her suitability to practise.

[17] The evidence demonstrates that the College has proven all of the elements of s. 2.29 of the Professional Misconduct Regulation, supporting a finding on the first allegation.

[18] Regarding the second allegation, the Panel notes that the consequences of the Member's confidentiality breach were far-reaching. Her actions had profound, negative impacts on A, on the Complainant (including on her personal and professional relationships), and on A's biological father who had no prior knowledge of the Complainant's pregnancy or A's birth. The Panel finds that the comments of the Ontario Superior Court of Justice in *Cheskes v Attorney General for Ontario*, 2007 CanLII 38387 are equally applicable to this case: the disclosure of the sealed adoption records had "traumatic implications" and "constituted an invasion of the dignity and self-worth" of the Complainant and A.

[19] The Panel considered two previous decisions of the Discipline Committee that involved similar issues: *Ontario College of Social Workers and Social Service Workers v Cullain* (September 25, 2017) and *Ontario College of Social Workers and Social Service Workers v Denham*, 2019 ONSCSSW 7. Both cases concerned allegations that a member had accessed and disclosed personal information contrary to statutory prohibitions on disclosure. In both cases the members were found guilty of professional misconduct and were found to have engaged in conduct that would reasonably be regarded as unprofessional, disgraceful and dishonourable.

[20] The Panel found that the Member's conduct was egregious. As admitted by the Member and jointly submitted by the parties, the Member's conduct would reasonably be regarded by members as disgraceful, dishonourable and unprofessional.

[21] The Member's conduct was unprofessional in that she showed a serious and persistent disregard for her professional obligations, a lack of judgment and a failure to accept the responsibilities incumbent on those privileged to practise the profession. The Member did not seek supervision regarding the conflict of interest when she discovered that her partner, at the time, was adopted and had asked her to access his sealed records. She proceeded to copy and disclose sealed adoption records thus breaching organizational confidentiality, legislation and professional standards.

[22] The Member's conduct was dishonourable in that the Member demonstrated moral failing and her conduct fell well below the standards of the profession. The Member showed such moral failing when she advised the Complainant that she believed that her access to the adoptions records could not be traced. Her conduct was also morally blameworthy when, confronted by her employer, she denied accessing the records and then later admitted to accessing the records on

only one occasion. When she was advised subsequently of the evidence of an “electronic footprint” of her actions from the CAS computer system, she tendered her resignation immediately as a way of avoiding penalty.

[23] Indeed, the Member’s conduct reached the level of disgraceful. She had foreknowledge of a clear conflict of interest in that she knew, or ought to have known, based on her formal education, work experience with vulnerable client populations, and professional training in the child welfare field, that accessing and disclosing sealed adoption records was a clear breach of confidentiality, as well as legislative requirements and professional standards. Furthermore, the Member approached the Complainant in her family home with this far reaching and life-altering information. These serious breaches of trust undermine public confidence in the profession and have the effect of shaming the Member and by extension, the profession, as it casts serious doubt on her moral fitness and inherent abilities to discharge the higher obligations that the public expect from the profession. For these reasons the Panel finds that the Member’s conduct would be regarded by members as disgraceful, dishonourable and unprofessional.

Penalty Submissions

[24] The parties presented to the Panel a Joint Submission on Penalty and Costs, which provided as follows.

1. The Member shall be reprimanded in writing by the Discipline Committee and the fact and nature of the reprimand shall be recorded on the College's Register.
2. The Registrar shall be directed to suspend the Member’s Certificate of Registration for a period of sixteen (16) months, the first fourteen (14) months of which shall be served commencing on the date of the Discipline Committee’s Order (the “**Order**”) herein. The remaining two (2) months of the suspension shall be suspended for two years from the date of the Order and shall then be remitted if (on or before the expiry of that two year period) the Member provides evidence, satisfactory to the Registrar of the College, of compliance with the terms and conditions imposed in paragraph 3, as set out below.²
3. The Registrar shall be directed to impose a term, condition and limitation on Ms. Kline’s Certificate of Registration, to be recorded on the Register, requiring that the Member:
 - a. meet and confer with the Registrar and/or the Registrar’s designate within six (6) months from the date the Order. In advance of such meeting, Ms. Kline will review sections 1-3 of the College’s Privacy Toolkit for Social Workers and Social Service Workers. Ms. Kline will discuss with the Registrar and/or the Registrar’s Designate the following topics:

² 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.

- i. the acts or omissions for which Ms. Kline was found to have committed professional misconduct;
 - ii. the consequences of the misconduct to the individuals involved, Ms. Kline, her colleagues, and the profession;
 - iii. strategies for preventing the misconduct from recurring; and
 - iv. the development of a learning plan; and
 - b. at her own expense, within twelve (12) months from the date the Order, participate in and successfully complete social work training and/or continuing education with respect to ethical practice, including confidentiality and conflicts of interest, based upon the learning plan developed under subparagraph 3(a)(iv) and as directed by a regulatory expert (i.e. a regulated health professional with expertise in professional regulation) designated by the Registrar (the “**Regulatory Expert**”). The social work training and/or continuing education with the Regulatory Expert shall consist of five (5) in-person meetings for a total of ten (10) hours. The Regulatory Expert shall provide a report in writing to the Registrar, within 30 days of the final in-person meeting with the Member, confirming whether the Member has successfully completed the social work training and/or continuing education with the Regulatory Expert.
4. The finding and the order of the Discipline 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.
5. The Member shall pay costs to the College in the amount of thirteen thousand dollars (\$13,000), payable in thirteen (13) equal instalments of one thousand dollars (\$1,000.00) each, payable on the first day of the month for thirteen (13) consecutive months, beginning with the first instalment on the date of the Order.

[25] At the hearing, following questioning by the Panel, the parties agreed to amend paragraph 1 of the Joint Submission to provide that the reprimand would be delivered orally.

[26] College counsel argued that the terms of the Joint Submission serve the goals of both specific and general deterrence. Specific deterrence is met by the requirement that the Member's certificate of registration be suspended for a period of 16 months (14 months commencing on the date of the order, with two months suspended); the imposition of specified terms, conditions and limitations on the Member's certificate of registration; and the oral reprimand from the Panel.

[27] General deterrence is met by the requirement that the Member's name will be published in this decision on the College's website, sending a loud and clear message to the membership and to the public that the College takes its public protection mandate seriously and will prosecute vigorously matters of professional misconduct. The College's register is accessible by members of the public, including employers, and provides transparency in the College's discipline process.

[28] College counsel submitted that the joint submission also provides an opportunity for significant remedial measures to address the deficiencies that led to the misconduct. The Member, at her own expense, will engage in a rigorous learning program relating to ethical practice, confidentiality and conflicts of interest, under the supervision and consultation of a regulatory expert, as approved of by the College. Through the lens of public interest, these measures provide an opportunity for the Member to significantly remediate the deficiencies that led to her past conduct.

[29] The Member's counsel argued that the joint submission strikes an appropriate balance between the severity of the Member's professional conduct and her demonstrated insight and remorse, as demonstrated by her admissions which avoided a contested hearing. Counsel highlighted that the conduct occurred prior to the Member being a registered member of the College, during an isolated period 7 years ago, with no repeated conduct of this nature, or other incidents, complaints or discipline matters with the College, since her registration in 2013. The Member has made genuine efforts to learn from her mistakes and to move forward heeding her professional responsibilities. These considerations are mitigating factors.

[30] Independent legal counsel ("ILC") advised that all of the components of the joint submission are within the Panel's jurisdiction. In considering the joint submission, the Panel should assess whether it will serve as a general deterrence by sending a message to the profession at large to discourage similar conduct by others. The lengthy suspension and publication of the decision are two features of the joint submission that may have a general deterrent effect. The Panel should also consider specific deterrence to the Member and whether the penalty sought in the joint submission will discourage similar conduct in the future, as well as providing rehabilitation and remediation for the Member. ILC advised that public protection can be best served if the Member can develop tools to avoid the pitfalls that led to her misconduct. The terms, conditions and limitations set out in the joint submission are designed to provide those tools and insights when the Member returns to practice.

[31] ILC advised the Panel to consider the aggravating and mitigating factors identified by the parties. The Member's admissions of misconduct and entering into the Agreed Statement of Facts and joint submission are mitigating factors that warrant a reduced penalty. ILC further advised that the Panel must consider whether the penalty is proportionate to the misconduct, and the Member's circumstances and blameworthiness. ILC noted that the prior decisions of the Discipline Committee relied on by the College are somewhat different on their facts, but may assist the Panel in assessing whether the penalty sought in the joint submission falls within a reasonable range.

[32] ILC advised that the law requires the Panel to consider the joint submission as it stands. The Panel should not assess the joint submission based on what the Panel might have imposed if the matter were contested. Rather, the Panel is required to accept the jointly proposed penalty unless it would bring the administration of justice into disrepute or it is contrary to public interest. ILC stated that the parties, both represented by experienced counsel and opposed in interest, have come together and jointly propose a penalty that addresses the interests of the public, the profession and the Member. For joint submissions to benefit the College's disciplinary process, parties must have a high degree of confidence that it would be accepted by the Panel.

[33] ILC advised that costs are not meant to be punitive and not considered part of the penalty. It is appropriate that the Member pay some of the costs relating to the investigation and bringing

the matter to a hearing. Otherwise, the full burden of the costs would fall on the membership. While costs are not subject to the same legal principles as a joint submission on penalty, where the parties have agreed on an amount payable for costs, the Panel can and should treat that agreement in the same manner.

[34] The College's counsel and the Member's counsel both agreed with ILC's advice to the Panel.

Penalty Decision

[35] After considering the submissions of counsel for both parties, the Panel accepted the Joint Submission on Penalty and Costs and made the following order.

1. The Member shall receive an oral reprimand and the fact and nature of the reprimand shall be recorded on the College's Register.
2. The Registrar is directed to suspend the Member's Certificate of Registration for a period of sixteen (16) months, the first fourteen (14) months of which shall be served commencing on the date of the Discipline Committee's Order (the "**Order**") herein. The remaining two (2) months of the suspension shall be suspended for two years from the date of the Order and shall then be remitted if (on or before the expiry of that two year period) the Member provides evidence, satisfactory to the Registrar of the College, of compliance with the terms and conditions imposed in paragraph 3, as set out below.³
3. The Registrar is directed to impose a term, condition and limitation on the Member's Certificate of Registration, to be recorded on the Register, requiring that the Member:
 - a. meet and confer with the Registrar and/or the Registrar's designate within six (6) months from the date the Order. In advance of such meeting, Ms. Kline will review sections 1-3 of the College's Privacy Toolkit for Social Workers and Social Service Workers. Ms. Kline will discuss with the Registrar and/or the Registrar's Designate the following topics:
 - i. the acts or omissions for which Ms. Kline was found to have committed professional misconduct;
 - ii. the consequences of the misconduct to the individuals involved, Ms. Kline, her colleagues, and the profession;
 - iii. strategies for preventing the misconduct from recurring; and
 - iv. the development of a learning plan; and

³ 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.

- b. at her own expense, within twelve (12) months from the date the Order, participate in and successfully complete social work training and/or continuing education with respect to ethical practice, including confidentiality and conflicts of interest, based upon the learning plan developed under subparagraph 3(a)(iv) and as directed by a regulatory expert (i.e. a regulated health professional with expertise in professional regulation) designated by the Registrar (the “**Regulatory Expert**”). The social work training and/or continuing education with the Regulatory Expert shall consist of five (5) in-person meetings for a total of ten (10) hours. The Regulatory Expert shall provide a report in writing to the Registrar, within 30 days of the final in-person meeting with the Member, confirming whether the Member has successfully completed the social work training and/or continuing education with the Regulatory Expert.
4. The finding and the order of the Discipline 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.
5. The Member shall pay costs to the College in the amount of thirteen thousand dollars (\$13,000), payable in thirteen (13) equal instalments of one thousand dollars (\$1,000.00) each, payable on the first day of the month for thirteen (13) consecutive months, beginning with the first instalment on the date of the Order.

Reasons for Penalty Decision

[36] 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.

[37] During the penalty phase of the hearing, the Panel requested further submissions from the parties as to why a penalty that did not include revocation of the Member's certificate of registration would not be contrary to the public interest, given what the Panel considered to be egregious conduct by the Member. Both parties made further submissions. After considering those submissions, the Panel accepted the joint submission, albeit with some reluctance.

[38] In response to the Panel's request for further submissions, College counsel submitted that if this matter had proceeded to a contested hearing, the College would have sought revocation of the Member's certificate of registration. However, the College recognized the Member's admissions, and willingness to enter into an Agreed Statement of Facts and joint submission on penalty as mitigating factors. The Member agreed to remedial terms in the Joint Submission, which shows her willingness to learn. That would not have been the case had the remedial terms been imposed on her without her agreement. College counsel also acknowledged that a significant period of time has passed since the misconduct occurred. The Member is now 7 years more mature and has practised since her registration in 2013, without any other complaints made to the College.

[39] The College advised that if the Panel were to reject the Joint Submission, the Member might be entitled to re-enter a plea and to contest all allegations. That could result in the Complainant and A having to testify.

[40] The College submitted that applying the lens of public protection, the terms of the joint submission act as a deterrent against future misconduct and send a clear message that the College takes such conduct seriously and is prepared to vigorously prosecute such misconduct.

[41] After careful consideration, the Panel decided to accept the joint submission.

[42] The penalty sought in the joint submission meets the objective of general deterrence. It includes publication of the Panel's decision with the Member's name, as well as a lengthy suspension and the imposition of terms, conditions and limitations on the Member's certificate of registration. While a penalty of revocation might have a stronger general deterrent effect than a 16-month suspension, general deterrence is not the only consideration. It must be balanced with the other objectives of penalty as well as the mitigating and aggravating factors, and the principle of proportionality.

[43] The penalty also serves the objective of specific deterrence, particularly through the reprimand, delivered orally after the hearing, through which the Panel expressed its disapproval of the Member's conduct. The suspension and publication of the decision on the College's website are also significant measures, which will deter the Member from engaging in similar misconduct in the future.

[44] The objective of rehabilitation/remediation is served by the terms of the penalty requiring the Member to meet with the Registrar (or her designate), to review the College's Privacy Toolkit and to undergo further training/continuing education. Those are intense remediation measures, not simply an online course or reading assignment, but rather a plan directed and overseen by a regulatory expert chosen by the Registrar. The carefully designed remediation terms will help the Member to develop insight and tools to prevent future violations. The Panel accepts the College's submission that despite her serious misconduct, by agreeing to these remediation measures (at her own cost), the Member has demonstrated that she is governable.

[45] The Panel recognized the aggravating factors in this case, including that the Member's conduct violated the foundational expectation of confidentiality; that the conduct related to a vulnerable person (A, an adoptee); that the conduct had widespread and long lasting negative repercussions for the Complainant; and that the Member had a BSW and had received training through her education and employment on confidentiality, ethics, and the legislation that was relevant to her role at CAS.

[46] The mitigating factors included the Member's willingness to enter into the Agreed Statement of Facts and joint submission on penalty; the Member's guilty plea and admissions to detailed facts as outlined in the Agreed Statement of Facts; that the Member has had no other complaint or discipline matters since she registered with the College; and that the conduct related to an isolated incident at a specific period of time in her life.

[47] Had the Member contested the allegations of professional misconduct – as was her right – she could have disputed whether her pre-membership conduct reflected on her current suitability to practise. She could have submitted evidence supporting her professional conduct over the past

7 years, during which time she was not the subject of any complaints or discipline in the course of her work. By admitting to her misconduct, she waived her right to make those arguments. The joint submission takes into account her waiver of those rights, which relieved the College of the need to call witnesses to prove the allegations. Further, the lack of complaints or discipline against the Member since the time of the misconduct gives the Panel reason to believe that the Member can be rehabilitated and will be able to practise safely and in accordance with professional standards going forward, particularly with the benefit of the terms, conditions and limitations, which will require her to work with a regulatory expert.

[48] While the Panel would likely have ordered revocation of the Member's certificate of registration in the absence of the joint submission on penalty, we note that the proper focus of our consideration is not whether the joint submission reflects the same order that we would have made. Rather, we must ask whether accepting the joint submission would bring the administration of justice into disrepute or would be contrary to the public interest. Having considered all of the circumstances of this case, the objectives of penalty, the aggravating and mitigating facts, and the submissions of the parties, we did not find that the high bar to depart from a joint submission is met in this case. We therefore ordered a penalty in accordance with the terms of the joint submission.

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

Date: _____

Signed: _____
Charlene Crews, Chair
Frances Keogh
Andy Kusi-Appiah