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 Sanu Augustine, 2025 ONCSWSSW 13

Date: 20251111

BETWEEN:

THE ONTARIO COLLEGE OF SOCIAL WORKERS
AND SOCIAL SERVICE WORKERS

- and -

SANU AUGUSTINE

PANEL:	Rita Silverthorn	Chair, Professional Member
	Chisanga Chekwe	Public Member
	Lori Monroe	Professional Member

Appearances: Amy Block and Natasha Novac, counsel for the College
Daniel Libman, counsel for the Registrant
Andrea Gonsalves, Independent Legal Counsel to the Panel

Heard: November 18-22, 2024; December 6, 2024

DECISION AND REASONS FOR DECISION

[1] The Ontario College of Social Workers and Social Service Workers (the "**College**") alleges that the registrant, Sanu Augustine (the "**Registrant**"), has engaged in acts of professional misconduct. The allegations came on for a hearing by video conference before a panel of the Discipline Committee (the "**Panel**") of the College between November 18 and 22, 2024, followed by written submissions and closing arguments presented on December 6, 2024.

[2] For the reasons set out below, the Panel makes no finding of professional misconduct. The evidence presented at the hearing failed to satisfy the College's burden of proving the allegations of professional misconduct on a balance of probabilities.

Overview

[3] The College alleges that the Registrant engaged in professional misconduct by touching three of his Ayurvedic massage clients in a sexual manner without their consent, in the guise of providing them with therapeutic treatment. Specifically, it is alleged that the Registrant encouraged [C1] to remove her bra so that he could massage her breasts, making her feel uncomfortable. It is further alleged that the Registrant was careless with [C1], encroaching her panty line, making her uncomfortable. With respect to [C2], the College alleges that the Registrant invited her to remove her bra, following which he massaged her breasts, and then proceeded to insert his finger in her vagina, rub her clitoris and ask if she orgasmed. Finally, with respect to [C3], it is alleged that the Registrant placed his hand beneath her swimsuit bottoms and massaged her vaginal area.

[4] The Registrant denies the allegations. He maintains that he did not massage [C1]'s breasts. The Registrant denies massaging [C2]'s breasts or inserting his finger in [C2]'s vagina or massaging her clitoris, claiming instead that [C2] invited him to massage her genitals, which he declined. He further denies massaging [C3]'s genital area.

[5] The College witnesses' accounts of events and the Registrant's version were diametrically opposed. Neither the College witnesses nor the Registrant were consistently credible and reliable. There was as much evidence to support the allegations as to rebut them. Having regard to the onus and standard of proof in this proceeding, and our credibility findings, the Panel determined that the College has not proven the allegations against the Registrant on a balance of probabilities.

Publication ban

[6] The College requested an order banning publication of the identities of the individuals who received services from the Registrant in this matter and of any information that would identify the those individuals.

[7] The Registrant did not oppose the order sought.

[8] The Panel granted the order as requested, pursuant to s. 28(7) of the *Social Work and Social Service Work Act*, 1998, SO 1998, c 31 (the "**Act**"). This case involves intimate and sensitive personal information about the Registrant's clients, including allegations of inappropriate sexual touching by the Registrant. The desirability of avoiding public disclosure about those matters in connection with the clients' identities outweighs the desirability of disclosing to the public the clients' identities.

[9] The three individuals who received services from the Registrant in connection with the events giving rise to this discipline proceeding were not clients of the Registrant's social work practice. As stated, they received massage services from the Registrant. The three individuals are referred to in these reasons as "[C1]", "[C2]" and "[C3]", or as the "clients", though the Panel recognizes that they were not social work clients of the Registrant at any time.

The allegations

[10] In the Notice of Hearing dated August 4, 2022, the Registrant is alleged to be guilty of professional misconduct pursuant to the Act in that he is alleged to have engaged in conduct that contravenes the Act and Ontario Regulation 384/00 (the "**Professional Misconduct Regulation**").

[11] The factual particulars of the College's allegations against the Registrant are set out in the Notice of Hearing as follows:

> 1. Now and at all times relevant to the allegations, you were a registered social worker with the Ontario College of Social Workers and Social Service Workers (the "College") and were also a registered natural medicine practitioner. At all relevant times, you provided both Ayurvedic services and social work services to clients through Natural Healing Services in [location], Ontario.
>
> 2. Between in or about May and August 2018, you provided Ayurvedic services to Client [C1] and her two adult daughters, [C2] and [C3]. The Ayurvedic services you provided included massage treatments, among other things.
>
> **Conduct with respect to [C1]**
>
> 3. During one or more of [C1]'s treatments, you asked if she wanted to remove her bra and underwear, to which she said no. You continued encouraging her to remove her undergarments, despite the fact that [C1] had indicated she was not comfortable doing so and your intake forms indicated that female clients could choose to keep their bra and underwear on during treatment.
>
> 4. During one or more of [C1]'s treatments, you attempted to touch her in the genital area, despite [C1]'s words and/or conduct making it clear that she was not comfortable with your conduct.
>
> 5. [C1] covered her genital area with her hand and pushed your hand away to prevent you from touching her genital area.
>
> 6. At one or more of [C1]'s appointments, you convinced her to remove her bra. You then proceeded to massage [C1]'s breasts. That contact was not necessary or appropriate to the services being provided and/or you did not take appropriate steps to ensure [C1] consented to that contact. Your conduct caused [C1] to feel uncomfortable.
>
> **Conduct with respect to [C2]**
>
> 7. Client [C2] had approximately three appointments with you. When reviewing her initial intake forms that [C1] filled out for her, [C2] indicated that she did not want her breasts, pelvic area, or buttocks to be touched.
>
> 8. During [C2]'s final appointment, you grazed her groin multiple times during the massage. You then moved aside the bathing suit bottom she was wearing, put your hand directly on her groin and/or vaginal area, and proceeded to massage her groin/vaginal area.
>
> 9. That contact was not necessary or appropriate to the services being provided and/or you did not take appropriate steps to ensure [C2] consented to that contact. Your conduct caused [C2] to feel uncomfortable and/or violated.

Conduct with respect to [C3]

10. Client [C3] had approximately three appointments with you. When filling out her initial intake forms, [C3] indicated that she did not want her breasts, pelvic area, or buttocks to be touched.

11. At one or more of [C3]'s appointments, despite her indication that she did not want her pelvic area or buttocks to be touched, you asked that she move down and/or remove the bathing suit she was wearing.

12. Despite [C3]'s indication that she did not want her breasts, pelvic area, or buttocks touched, you asked if you could touch her in these areas. [C3] felt uncomfortable but said you could do so, and you then proceeded to massage her breasts and buttocks.

13. That contact was not necessary or appropriate to the services being provided and/or you did not take appropriate steps to ensure [C3] consented to that contact.

14. During [C3]'s final appointment, you inserted one finger in her vagina and/or massaged her clitoris. You then asked [C3] if she had orgasmed.

15. You did not ask [C3]'s permission to touch her in this manner. Your conduct was unwelcome and inappropriate and/or it was not necessary or appropriate to the services being provided. Your conduct caused [C3] to feel uncomfortable and/or violated.

16. [C3] had to seek out therapy to deal with the trauma she experienced as a result of your conduct.

[12] The College alleges in the Notice of Hearing that by reason of engaging in some or all of the conduct outlined above, the Registrant is guilty of professional misconduct as set out in section 26(2)(a) and (c) of the Act in that he:

> (a) … 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.

Registrant's plea

[13] The Registrant denies the allegation of professional misconduct in the Notice of Hearing.

The evidence

[14] Most of the key facts at issue in this hearing are disputed. The following basic facts are not contested. The Registrant was born in India and moved to Canada in 2013. At the time of the hearing, he had been married for almost 13 years. He and his wife have two daughters, aged [age] and [age]. He holds a Bachelor's degree from Mahatma Ghandi University. He also has a Doctor of Naturopathy designation from the Institute of Alternative Medicine in India. Upon his arrival in Canada, and after doing his credential evaluation, the Registrant worked as a Developmental Support Worker in Ontario. He became a registrant of the College in May 2018.

[15] The Registrant offers massage services, including Ayurvedic massage, a type of full-body massage traditionally practised in India that includes the use of warm, medicated oils. At all material times, the Registrant practised and offered Ayurvedic massage services at a location in Ontario that had a main floor with a reception room, three treatment rooms, and one washroom.

[16] Because the College's witnesses and the Registrant provide vastly different versions of the key events, it is useful to summarize the evidence of each witness.

The College's witnesses

[17] The College called four witnesses: [C1]; her daughters [C3] and [C2] (who are twins); and [redacted], who was [C3]'s boyfriend at the relevant time.

i. [C1]'s evidence

[18] At all material times, [C1] lived in the same city where the Registrant had his clinic. She lived with her husband and two daughters. In the summer of 2018, the daughters were university students. [C1]'s husband was, and continues to be, a businessman.

[19] [C1] is self-employed as a holistic life coach and counsellor. She does not see herself as a business competitor to the Registrant, whom she sees as a traditional massager. [C1] does not provide Ayurvedic massage. She does not earn enough self-employment income to be financially independent of her husband. In her work she is motivated more by passion than a desire to make money.

How [C1] *met the Registrant*

[20] [C1] testified that she learned of the Registrant's services from a co practitioner who praised his services. [C1] was interested in the Registrant's services because she understood he provided Ayurvedic massage as it is practised in India. According to [C1], it is difficult to get good Ayurvedic massage in Ontario.

[21] [C1] testified that in India, the attire for Ayurvedic massage consists of disposable underwear. The patient's chest area is not covered.

[22] Satisfied that the Registrant would provide the kind of massage she wanted, [C1] contacted the Registrant in May 2018. The Registrant informed [C1] that he was also a social worker. [C1] was surprised that a social worker offered massage services but she testified that she was glad that he was a social worker because although she did not need his services as a social worker, she could then claim the cost of the massage from her insurer using the Registrant's social work number.

The Registrant's treatment of [C1]

[23] [C1] purchased from the Registrant a treatment package to cover four or five sessions at a total cost of between $400 and $500.

[24] [C1] attended at the Registrant's clinic for an initial session on May 8, 2018, and completed several intake forms including a Health History Form, an Informed Consent to Natural Healing, a Patient Consent for Treatment, and a Human Body Diagram to label areas of concern. [C1]

disclosed on the Health History Form that she had hypothyroidism and a history of anxiety. [C1] signed the Human Body Diagram and Patient Consent to Treatment, and identified areas of concern on the Human Body Diagram but testified that she did not recall discussing the forms with the Registrant. On the Informed Consent to Natural Healing form were outline drawings of the front and back of the human body. Clients could circle areas on the body where they did not want to receive treatment. [C1] did not circle any areas on the form she filled in.

[25] [C1] recalls undressing and lying on the massage table. She removed her outer clothes, but left her bra and panties on. She did not wear disposable underwear. The Informed Consent to Natural Healing form that [C1] signed indicated: "I acknowledge and understand that during natural medicine Services body work, male client should wear underwear and female clients may wear bra (optional) and panties (no draping during therapy followed — unless specified otherwise). I am allowing the therapist to do hands on therapy on my body." Although [C1] consented to massage "on whole body", she chose to keep her bra on.

[26] During the first treatment, the Registrant massaged [C1]'s neck, shoulder, and arms. He also massaged just below and just above the bra line. He did not massage the panty area. [C1] found that the treatment improved her condition and she decided to book more sessions. She asked the Registrant for additional sessions and he agreed to schedule additional appointments to provide further treatment to [C1].

Intrusive treatment

[27] [C1] could not recall the exact number of treatments she had with the Registrant, but there were several. [C1] testified that on the last of these treatments, the Registrant suggested [C1] remove her bra because he could not massage her effectively with the bra on. [C1] removed her bra reluctantly.

[28] [C1] testified that the Registrant massaged [C1]'s breasts, but she could not recall how many times he did so. She did not have a discussion with the Registrant about massaging her breasts before he suggested she remove her bra.

[29] [C1] further testified that the Registrant also slipped his fingers under [C1]'s panties from time to time while he was massaging her legs and upper thighs. [C1] recalled this happening in more than one treatment and that it "got worse" in later treatments. She would put her hand on her crotch area to stop him and protect against the Registrant touching her there. He did not touch her "sensitive area" but he was pushing towards it had she had to be "strict" with him. She felt uncomfortable when the Registrant's hands were near her panty line and her body went a little tense. Although the Registrant's actions annoyed and confused [C1], she attributed it to "carelessness". It was the first time she had received Ayurvedic massage from a male practitioner. Looking back on the experience, however, [C1] said "there were red flags".

[C1] *refers her daughters to the Registrant*

[30] [C1] continued to see the Registrant for Ayurvedic massage because she was getting the benefits she wanted. [C1] also recommended the treatment her daughters because in her experience Ayurvedic massage is "the ultimate healing therapy" for stress. Both daughters had shown signs of stress and [C1] thought they would benefit from the massage service offered by the Registrant. However, in referring her daughters to the Registrant, [C1] was concerned that the Registrant not

touch their genital areas. She spoke with the Registrant about treating her daughters and told him not to massage their private areas. In response to this, the Registrant said he could have his wife sit in on the sessions with the daughters. This raised [C1]'s comfort level.

[31] The Registrant treated [C2] first, followed by [C3]. [C1] cautioned the daughters to be careful and clarify on the Registrant's intake form that certain parts of their bodies were not to be touched. She advised them to keep their undergarments on, and not to let the Registrant massage their bra area or panty area. That way, the daughters would be more comfortable.

[32] [C1] does not recall how many treatments [C2] received from the Registrant. [C2] did not disclose to [C1] any concerns about the Registrant's massage treatments.

[33] [C1] was out of town when [C3] had her first treatment and did not attend the appointment with her. To [C1]'s knowledge, [C3] attended one or two treatments with the Registrant.

The incident with [C3]

[34] [C1] learned that [C3] was unhappy about a session she had with the Registrant in August 2018. [C3] told [C1] about the appointment shortly after it occurred. Specifically, [C3] told [C1] that the Registrant had told her to take off her underwear and he then put his finger in her crotch. When [C1] asked why [C3] did not leave after this incident, [C3] said she was in a daze. [C3] seemed very upset.

[35] [C1] testified that she was upset and angry to find out that [C3] had been inappropriately touched, contrary to the express instructions given to the Registrant. On August 16, 2018, [C1] sent angry text messages to the Registrant confronting him about the incident and asking why he had disobeyed her instructions. [C1] threatened the Registrant that she would go to the police and the College. She reminded him that "this is not India", where he could play out his sexual perversions under the guise of massage. She did not refer any more clients to him.

[36] [C1] did not report the incident to the police or take further steps in August 2018 because: (a) she did not want her husband to find out what was going on, as this would make him angry; (b) it was a stressful time for [C1], as her sister was undergoing cancer treatment in the United States; and (c) the Registrant had gone to India at some point after the incident, which made [C1] feel less concerned.

[37] At some later date, [C1] learned through Facebook that the Registrant had returned to Canada. [C1] then reported the matter to the College on or about June 14, 2021.

[38] After [C1] had made a report to the College about the Registrant's conduct with [C3], [C2] also revealed that she too had been touched inappropriately by the Registrant.

Receipts for treatment

[39] [C1] claimed reimbursement the cost of the Registrant's massage treatments from her insurance company. For this purpose, she submitted the Registrant's name and social work licence number. [C1] testified that the Registrant was aware [C1] had submitted the claims, even though the services he provided were not social work. The Registrant offered to [C1] that he could issue

a reimbursable receipt since he was a social worker. The Registrant gave [C1] a number of receipts bearing his social work number.

[40] During her evidence in this proceeding, examining counsel showed [C1] a number of receipts the Registrant had produced to the College. [C1] testified that the receipts looked different from the receipts she got from the Registrant. Unlike the receipts produced by the Registrant which were stamped "Natural Medicine Practitioner", [C1] testified that the receipts she received had no stamps on them and had the Registrant's social worker number. Further, the receipts produced by the Registrant show various amounts; the receipts [C1] received were for amounts around $100. [C1] did not produce copies of the receipts the Registrant had given to her.

ii. [C3]'s evidence

[41] [C3] was born in [year] in India, and has lived in Canada since 2007. At the time of the events in issue in the summer of 2018, she was [age] and pursuing an undergraduate program. [C3] later graduated with a Bachelor's degree in animal biology and mathematics. She then completed a Doctor of Veterinary Medicine program in 2023.

[42] [C3] received massage treatment and oil therapy from the Registrant in the summer of 2018. At that time, she was living with her parents and enrolled in an online summer semester at an Ontario university. She was introduced to the Registrant by her mother, [C1]. [C3]'s sister, [C2], and [C1] had both received treatment from the Registrant and they recommended him because his massage treatment had therapeutic effects.

[43] Prior to the treatment, [C3] and [C1] had discussed the areas of her body where she wished to be massaged. [C3] recalls seeing the Registrant for two treatment sessions, but there was possibly one more appointment. In an email [C3] sent to a College investigator, she stated there were three appointments: August 3, 6 and 15, 2018. At the time of her testimony, she could not recall the August 6 session.

[44] [C3] testified that her first treatment session with the Registrant was on August 3, 2018. [C1] attended with [C3] at the Registrant's clinic for that initial session. [C1] and [C3] sat in chairs in the reception area of the Registrant's clinic; he sat across a table from them. After [C1] introduced [C3] to the Registrant, [C1] and [C3] completed, and [C3] signed, the Health History Form and Informed Consent to Natural Healing Services. [C1] had already decided on the kind of treatment [C3] was to have. One area of concern was the recurring backaches that [C3] was experiencing. [C1] also completed the body diagram on the Informed Consent form indicating areas not to be touched. [C1] circled and put an "x" through the chest and genital area on the front-side drawing, and the buttocks area on the back-side drawing.

[45] [C3] felt positive effects from the first treatment with the Registrant and decided to return for further treatments.

The incident of alleged sexual touching

[46] [C3]'s last treatment session with the Registrant was on August 15, 2018. [C3] testified that the appointment did not go well, although she was scheduled to receive the same treatment she had received previously. [C1] did not accompany [C3]. On this occasion, there was no

discussion between [C3] and the Registrant concerning her treatment. [C3] recalls the Registrant offering her a glass of water.

[47] [C3] testified that shortly after the Registrant started the massage, as [C3] was lying facedown and the Registrant was massaging her lower back, the Registrant said it would be easier if [C3] lowered her underwear a bit. She lowered her underwear to slightly below her hips to allow more access to her lower back. The Registrant then massaged her glutes for some time. He told [C3] that a glute massage would provide relief from the lower back pain she experienced as her menstrual cycle began.

[48] At some point [C3] turned over to lie on her back. The Registrant suggested that [C3] remove her bra, because he did not wish to be restricted by clothing and shoulder straps. [C3] removed the bra to allow more access to areas she had agreed to have massaged. The Registrant made circular motions as he massaged [C3]. He touched her breasts, but not her nipples. [C3] was surprised, tense, and a little scared, because she did not know what would happen next. [C3] was surprised that the Registrant was not following the instructions as to which parts of the body should and should not be massaged.

[49] As the massage continued, the Registrant's hands moved closer to [C3]'s pelvic area. At this point, [C3]'s underwear was still on. [C3] testified that the Registrant then said, "it would be easier if you lowered this", in reference to her underwear. [C3] lowered her underwear to her knees. The Registrant then inched closer to [C3]'s genitals.

[50] [C3] testified that the Registrant eventually placed the tip of one of the fingers of his left hand inside [C3]'s vagina and moved it in and out. He also rubbed [C3]'s clitoris. This continued for between 30 seconds and a minute. At some point, the Registrant asked [C3] if she orgasmed. [C3] could not recall how many fingers the Registrant was using, but she did recall that the right hand was massaging her clitoris. [C3] was tense, shocked, and fearful, and wanted it to stop.

[51] The Registrant eventually removed his fingers and said he was going to wash his hands.

[52] After this experience, [C3] continued the appointment by moving on to oil therapy. Five minutes into that therapy, [C3] asked to leave. The Registrant asked why she wanted to leave, and [C3] said she was not feeling well. [C3]'s car was parked outside. She got into the car, called her boyfriend, and told him about the vaginal penetration. She was confused at the time as to whether it was part of the treatment.

[53] [C3] then drove to her parents' home. She was feeling unsettled and confused about what had occurred so she told her mother than the Registrant had touched her genitals. [C1] was very angry and texted the Registrant. [C3] believes that [C1] also told her sister, [C2], what had happened.

[54] [C3] testified that what occurred with the Registrant has left her unable to trust male health care practitioners and consent documents. She feels uncomfortable in physical interactions with her father and has put a lot of mental, financial and emotional effort into being comfortable with her body again.

iii. [redacted]'s evidence

[55] In the summer of 2018, [redacted] was [C3]'s boyfriend. He lived about 400 kilometres away from [C3], as he had a summer job away from home. At the time of this hearing, [redacted] and [C3] were engaged to be married. [C3] and [redacted] have lived together since 2021.

[56] [redacted] has never met the Registrant nor has he received treatment from him. [redacted] knew, however, that [C3] had received treatment from the Registrant for muscle tension.

[57] [redacted] testified that in mid-summer 2018, during a lunch break, he received a call from [C3]. [C3] seemed "scattered and upset", as well as confused. [C3] was calling [redacted] from her car and told him she had just finished a session with the Registrant. She talked about having circled areas on a diagram where she did not want to be touched. He was initially unclear what the relevance of the diagram was.

[58] [C3] explained to [redacted] that while the Registrant was massaging her, he kept getting closer to her pelvic area, even though she had written down that she did not want the area to be touched. She said he had put a finger inside her. [redacted] was shocked at the news. [C3] asked him if this normally happened during appointments. [redacted] said he had never heard of that and thought it was very unacceptable. [redacted] suggested [C3] take deep breaths and write down what had happened. [redacted] also suggested that [C3] discuss the incident with [C1] who had recommended the Registrant.

[59] [redacted] ended the conversation because his lunch break was over and he had to go back to work.

[60] [redacted] testified that he and [C3] had subsequent conversations about the Registrant's behaviour, especially going into the new academic year. [redacted] and [C3] talked mostly about [C3]'s emotional state. During these discussions [C3] was typically upset, frustrated, and uncomfortable with her body.

[61] Despite these discussions, [redacted] did not learn the Registrant's name until a College investigator gathering evidence about the incident contacted him. He was told that his evidence would potentially be needed. The College investigator then advised [redacted] not to talk to anybody about what he had told the College investigator. [redacted] complied.

iv. [C2]'s evidence

[62] [C2] was born in [year] in India. She has lived in Canada since 2007. In the summer of 2018, she was [age] and a student of architecture at an Ontario university. She lived with her parents.

[63] In the summer of 2018, [C2] had taken time away from her studies for mental health reasons. She was seeking alternative therapies to reach a more stable place and was supported in this effort by [C1]. [C2] was later diagnosed with depression.

[64] [C2] sought massage therapy services from the Registrant in 2018. [C1] had told her that the Registrant provided traditional massage therapy using Ayurvedic oils. [C2] had two or three treatment sessions with the Registrant.

[C2]'s first appointment with the Registrant

[65] In late June 2018, [C2] attended with [C1] at what looked like a residential home for a massage appointment with the Registrant. After talking about the treatment, the Registrant gave [C2] and [C1] forms to complete. [C2] completed and signed the Health History Form, the Patient Consent for Treatment, and the Informed Consent to Natural Healing Services. The latter form had two diagrams of the human body. [C1] marked the drawing of the human body to indicate areas of [C2]'s body where she did not give consent to be touched: the breast and genital areas of the "front" diagram, and the buttocks area of the "back" diagram. [C2] watched [C1] circle the areas and agreed she was not giving consent to be touched there.

[66] After completing the forms and handing them to the Registrant, [C2] was led to a treatment room while [C1] stayed in the waiting area. [C2] changed into a two-piece bathing suit in preparation for the massage. The Registrant was not present when [C2] changed into the bathing suit.

[67] The massage concentrated on [C2]'s shoulders, back, torso, and legs. It felt like a regular massage but with stronger pressure. There was nothing remarkable about the first massage and [C2] had no concerns. In fact, she found the treatment beneficial and decided to return for more sessions.

[C2]'s last appointment with the Registrant

[68] [C2]'s last appointment with the Registrant was in July, 2018. The treatment began in much the same way as the first one had. [C2] could not recall discussing the scope of the massage for this particular session, which began with a steam chair treatment before the actual massage. Again, [C2] wore a two-piece pink- or salmon-coloured bathing suit. The massage started with [C2] lying on her front with her back facing up. At some point, she changed positions and lay on her back.

[69] [C2] testified that the Registrant massaged [C2]'s legs from the ankles, up to the thighs. He used sweeping motions and occasionally made "brushed contact" with [C2]'s genital area. [C2] did not say anything about this as she thought it was unintentional.

[70] As the massage continued, the Registrant alluded to [C2]'s history of menstrual cramps. He told [C2] a lower abdominal massage would provide relief from menstrual cramps. The Registrant talked about treating the area, but [C2] did not understand. The Registrant's hands were on [C2]'s abdomen and then over her vagina. The Registrant moved his hands back and forth. The Registrant did not put his finger inside [C2], but his hand was briefly under her bathing suit bottom. [C2] flinched and jumped off the massage table "a little bit". At this point, the Registrant removed his hand, leaving [C2] "frozen" and "in shock."

[71] [C2] was not expecting to be touched in the pelvic area and was shocked when the Registrant grazed her groin multiple times. She did not want her groin or vaginal area massaged.

[72] At the time, [C2] did not tell anyone what had happened. She was coming to terms with the incident and felt shame and guilt.

[C2]'s Interview with the College Investigator

[73] [C2] had an interview with a College investigator on December 10, 2021, sometime after [C1] made the report about the Registrant's conduct with [C3]. [C2] did not disclose her own experience during that interview; however, after the call ended, [C2] made the decision to call the College investigator right back and shared her account. She wanted to be completely truthful with the College investigator. Only after she had disclosed her experience to the College investigator did [C2] tell [C1] and [C3] what had happened, "without going into too much detail".

[74] [C2] testified that she felt her sister [C3] could have avoided her own experience had [C2] revealed sooner what had happened to her.

Registrant's evidence

[75] The Registrant testified in his own defence.

[76] He specializes in Ayurvedic massage, which aims to align the body, mind, and spirit. Ayurvedic is not, however, the only massage service offered by the Registrant. The particular massage offered to clients depends on the results of an assessment that he conducts.

[77] Although Ayurvedic massage patients are typically treated in a state of nudity in India, the Registrant denied that he ever massages the breasts or genital areas of female clients. He testified that he requires male clients to wear thongs. He further testified that female patients are provided disposable undergarments to wear, but wearing a bra is optional. The Registrant testified that he offers all female patients the choice of being treated by female practitioners.

i. Interactions with [C1]

[78] The Registrant testified that [C1] sought him out for treatment because of his expertise in Ayurvedic massage. [C1] wanted treatment similar to what she had received in India.

[79] The Registrant denied encouraging [C1] to remove her undergarments, but acknowledged that he sometimes encourages clients to do this when undergarments make them uncomfortable. He also denied treating [C1]'s "sensitive areas", specifically her groin, buttocks, and breasts. The Registrant testified that [C1] had told him that breasts and glutes were massaged in India and that she wanted the Registrant to massage her in the same way. The Registrant declined to massage [C1]'s breasts because, "I don't do that". The Registrant further testified that he typically gives patients a towel to cover their private area during treatment. At no time did [C1] appear uncomfortable with the treatment and she never pushed the Registrant's hand away in an effort to prevent him from touching her genital area.

ii. Record of treatment for [C1]

[80] The Registrant testified that there are no notes with respect to the treatment received by [C1], because it is not his practice to take notes. Notes are not usually taken for this kind of treatment in India. The Registrant did, however, testify that [C1] had not excluded any part of her body from treatment. A diagram on the Informed Consent to Natural Healing Services form signed by [C1] was produced in support of this testimony.

iii. Interactions with [C3]

[81] The Registrant testified that he treated [C3] on a number of occasions. [C3] asked the Registrant for full body treatment, including face and head. [C3] indicated on the intake forms that she did not want her breasts, pelvic area, or buttocks to be touched.

[82] The Registrant recalled that in the last appointment with [C3], he started by massaging [C3]'s back and he also used a kizhi—a pouch of medicinal substances rubbed on the body—on her back, feet, hands and legs. After tying her bra, which had been untied to make the back massage easier, he asked her to turn over. The Registrant then applied oil on [C3]'s legs and proceeded with the massage. In order to oil [C3]'s abdomen, the Registrant asked [C3] to lower her underwear. At this point, the Registrant went to get the oil. [C3] then removed her panties and dropped them down on the floor. She asked if he could massage her genital area as she had a yeast infection and thought the treatment oil would help. The Registrant declined the request to massage [C3]'s genital area, and instead, covered the area. The Registrant testified that after this, [C3] appeared upset. The Registrant offered to give [C3] the kizhi so she could treat herself at the end of the session, but she did not want to.

[83] Despite appearing to be upset, [C3] told the Registrant that she wanted to continue with the massage. He completed the massage, then left to wash his hands while she got dressed.

[84] This was not the first time the Registrant had been asked to massage a client's genital area. Sometimes a client gets aroused, and when this happens, he tries to distract them. If they ask for sexual stimulation, he immediately stops the session. He did not feel [C3] was sexually aroused at this time.

[85] The Registrant denied massaging [C3]'s breasts or glutes. He denied inserting his finger in her vagina. He did not touch her sensitive areas at all. He worked only on her back, chest, and beauty bone (clavicle or collarbone). He denied massaging [C3]'s clitoris. The Registrant denied asking [C3] if she had orgasmed.

[86] After the second massage treatment, the Registrant asked [C3] if she wanted another session. [C3] indicated that her exams were coming up. She made no contact with the Registrant after that.

iv. Interactions with [C2]

[87] The Registrant treated [C2] on three occasions. In order to prepare [C2] for the treatment, the Registrant offered her disposable undergarments and left the treatment room so she could change. [C2] had steam and Ayurvedic massage on the first appointment. [C2] signed a Informed Consent to Natural Healing Services form and also indicated on a diagram that her genital area, breasts, and buttocks were not to be touched during the treatment.

[88] The Registrant testified that he never touched [C2]'s restricted areas. He did, however, ask that she lower her bathing suit bottom, which was close to her navel, for more effective massage. He asked that she move it down slightly, just above the glutes. He also opened her bra, so he could massage her back properly. He refastened the bra once he had finished working on her back. The Registrant denied that during [C2]'s final appointment, he grazed her groin multiple times, moved aside the bathing suit bottom she was

wearing, put his hand directly on her groin and/or vaginal area, and proceeded to massage this area.

[89] The Registrant testified that the last session with [C2] was uneventful and that [C2] advised him that [C1] would contact him to schedule more sessions. He did not see [C2] again as a patient.

Submissions

[90] Before setting out our analysis, we will summarise the key points of the parties' submissions.

The College's submissions

[91] Counsel for the College submitted that although the allegations do not involve social work clients, the Registrant's conduct is disgraceful, dishonourable, and unprofessional. The College acknowledges that it bears the burden of proving the allegations on a balance of probabilities but notes that this is a case of sexual misconduct, which occurred behind closed doors. The lack of corroborating witnesses is not fatal.

i. Legal principles

[92] The College made submissions on the approach to credibility and reliability, which are distinct concepts. Credibility has to do with the honesty or veracity of a witness's testimony, whereas reliability has to do with the accuracy of a witness's testimony. The Panel must assess both credibility and reliability when reaching its conclusion in this case. After reviewing relevant case law, Counsel offered the following additional principles by way of assisting the Panel in assessing credibility and reliability:

a. Demeanour alone is a notoriously unreliable predictor of the accuracy of the evidence of the witness. However, demeanour is a relevant factor in assessing credibility.

b. Where proof is on a balance of probabilities, there is no rule as to when inconsistencies in the evidence of the witness will cause a decision-maker to conclude that the witness's evidence is not credible or reliable. The decision-maker must not consider the witness's evidence in isolation, but should consider the totality of the evidence in the case, and assess the impact of any inconsistencies on questions of credibility and reliability pertaining to the core issue in the case.

c. If the inconsistency relates to a material matter about which an honest witness is unlikely to be mistaken, the inconsistency may demonstrate a carelessness with the truth. Even with a material inconsistency, however, the witness's testimony may still be accepted as credible (and preferred over the evidence of other witnesses), as long as the panel properly assesses the inconsistency along with all other relevant factors.

d. Where the Court gives adequate consideration to matters of reliability, the absence of details in a witness's evidence regarding evidence of sexual misconduct may not necessarily diminish the force of the witness's evidence and may be sufficient to secure even a criminal conviction.

[93] The College provided submissions about the principles regarding allegations of sexual misconduct, relying on the Supreme Court of Canada's decision in *R v Chase*, [1987] 2 SCR 293, as to whether touching is of a "sexual nature", and the decision in *R v Kruk*, 2024 SCC 7, as to avoiding myths and stereotypes when assessing allegations of sexual abuse.

[94] The College brought a motion for the Panel to consider the evidence of [C1], [C2] and [C3] as similar fact evidence, such that the evidence of the Registrant's behaviour with respect to each of [C1], [C2] and [C3] could be used to decide the allegations the Registrant's behaviour regarding the others. This issue is addressed below.

ii. Submissions as to the facts of the case

[95] The College submitted that it has proved the allegations set out in the Notice of Hearing on a balance of probabilities. All four College witnesses gave evidence that was credible and reliable.

[96] The evidence proves that the Registrant asked [C1] to remove her bra, asked [C3] to remove her bra and underwear, and asked [C2] to lower the top band of her bathing suit bottoms. With respect to [C1], College counsel submitted that she testified in an honest, forthright and consistent manner. She was clear about the evidence she could recall, and when she had no recollection she answered accordingly. According to the College, [C1] was unwavering on the essential aspects of her evidence. She also provided a logical and believable explanation when cross-examined a to why she sent her daughters to the Registrant if he had behaved improperly with her.

[97] In response to the Registrant's counsel's suggestions that [C1]'s evidence cannot be believed because she submitted false insurance claims, the College submitted that [C1]'s evidence was clear and direct. She explained that the Registrant had suggested to her that she could claim insurance reimbursement for the treatment under the Registrant's social work registration. The receipts the Registrant provided to [C1] were not the same receipts he had provided to the College. The receipts provided to the College show amounts like $79.40, not the actual amount of $100.00 plus tax, which is the amount [C1] paid. For example, there is a text from the Registrant which reads, "I have already sent all four receipts totalling $400 plus tax". This text suggests that [C1]'s account is accurate. [C1] made claims for $100 plus tax for a total of $113. The documentary evidence aligns with [C1]'s testimony.

[98] The College also asserted that [C3]'s evidence is credible and reliable. She too testified in an honest, forthright and consistent manner, and was candid about what she did not remember. She was unshaken in her evidence that the Registrant massaged her breasts, inserted his finger in her vagina with one hand, massaged her clitoris with the other, and then asked her if she orgasmed. She was not cross-examined on any inconsistency as between what she told [C1], [redacted] or the College investigator. [C3]'s conduct immediately following the Registrant's sexual abuse, as well as her state of mind, offer circumstantial evidence that the event occurred as she described.

[99] [C3] was cross-examined on why she did not stop the Registrant, why she did not convey through her body language that she was uncomfortable, and/or why she did not walk out at that time. [C3] explained the confusion and shock when placed in a situation she was not expecting. College counsel submitted that the Panel must consider that the abuse occurred under the guise of what [C3] understood to be a legitimate Ayurvedic treatment; her testimony speaks to her process of grappling with the wrongdoing she had just experienced. The Panel should avoid impermissible

stereotypes, including that a sexual abuse complainant who remains passive or failed to resist must have consented to such conduct.

[100] The College also urged the Panel to accept [C2]'s evidence as credible and reliable. College counsel said she testified in an honest, forthright and consistent manner. When she was cross-examined about the fact that her evidence before the Panel was more detailed than what she told the investigator, she explained that she was not asked by the investigator to specify the anatomy as the College prosecutor had asked her to do at the hearing.

[101] [C2] was also cross-examined on her delayed disclosure to the College investigator. It was suggested to [C2] that in the twenty minutes between her first and second call with the College investigator, she called her sister and then changed her evidence. College counsel pointed out that [C2] flatly denied this. [C2] had known about the interview for at least two weeks and if she wanted to confer with her sister she could have done so at any time, and did not need to wait until after her call. College counsel argued that there is no inviolable rule as to how victims of sexual assault behave. Late or incremental disclosure will not, standing alone, constitute a reason to diminish the victim's credibility.

[102] The College argued that the Panel should reject the Registrant's theory that [C1] colluded with [C3] and [C2] to lie and fabricate the allegations because [C1] and the Registrant were business competitors. [C1]'s business is a hobby and passion. Neither she nor her family rely on her coaching practice for income. Further, there is no evidence to support the Registrant's suggestion that the evidence of [C1], [C3] or [C2] is undermined by collusion.

[103] Conversely, the College argues that the evidence of the Registrant should be rejected. The Registrant's evidence was evasive and shifted to meet the exigencies of the case. He offered explanations that were implausible and inconsistent with the documentary evidence. Although he took no notes, has a client base that exceed 4,000 individuals and had close to 9,000 appointments between 2018 and the date he testified, he offered details of his appointments with [C1], [C3] and [C2] that would not be expected of someone with such a practice size who engaged in no wrongdoing. The College submits that where his evidence diverges from that of the College witnesses, his evidence should be rejected.

[104] The Registrant's evidence that he offers all female patients the choice of being treated by female practitioners is not credible especially since his evidence at the hearing is the first time he made this claim. He had ample opportunity during the investigation of this matter to make this claim, but he never did.

iii. The allegation of professional misconduct

[105] The College submitted that sexual misconduct is disgraceful, dishonourable and unprofessional conduct that is relevant to the practice of social work, and therefore the Registrant's inappropriate sexual touching constitutes professional misconduct.

[106] [C1] acknowledged that she consented to the Registrant touching her breasts, but she felt pressured and was not comfortable. She also felt the Registrant was careless with regard to his boundaries, massaging around her panty line. Given the sexualized areas of the body involved, this constitutes misconduct of an objectively sexual nature. With respect to [C3] and [C2] the Registrant's conduct in massaging their genital areas was explicitly and incontrovertibly sexual.

On the Registrant's own admission, there is no therapeutic reason in the context of Ayurvedic massage that would justify the Registrant's decision to touch [C3] and [C2] in the genital areas.

[107] The Registrant's misconduct occurred in the guise of what each client understood to be a legitimate Ayurvedic massage. In the case of [C3] and [C2], it occurred in the face of clear documentation expressly withholding consent to massage sensitive areas. There is no evidence (even from the Registrant) that he adequately sought their consent to touch genital areas.

[108] The Registrant's misconduct with [C1], [C3] and [C2] is relevant to the practice of the profession. Although the conduct did not occur in the context of the provision of social work services, the allegations involve an abuse of power in a practitioner-client relationship, invasive non-consensual sexual touching, failing to take appropriate steps to confirm consent and respect boundaries, encouraging clients to remove clothing, and touching clients in a manner that was not appropriate and /or necessary to the services provided. The Registrant agreed that many of the same ethical principles and central tenets of the healing professions that govern the practice of social work apply in the context of the provision of Ayurvedic massage.

[109] The College relied on case law in which discipline panels have found that "off-duty" conduct—that is, conduct not involving clients of the profession or occurring in the regulated professional workplace—is relevant to the practice of the profession, including *Dr. Jha v College of Physicians and Surgeons of Ontario*, 2022 ONSC 769, at para 119, and the cases cited therein, and *Ontario College of Social Workers and Social Service Workers v Paul Schauber*, 2021 ONCSWSSW 4, at paras 15-16.

The Registrant's submissions

[110] Counsel for the Registrant emphasized that this case had nothing to do with the provision of social work services and that the Registrant denies all allegations. He specifically denies engaging in the professional misconduct alleged. He further denied assisting [C1] in fraudulently submitting insurance claims. The Registrant did not benefit in any way from "[[C1]]'s dishonesty" with respect to the insurance claims.

i. Burden of proof

[111] The College must prove on a balance of probabilities that the Registrant committed the misconduct alleged. This standard, while lower than the standard of "proof beyond a reasonable doubt", is still significant. It requires more than proof that the allegations *might* be true. The Panel does not have before it sufficiently clear, cogent, and convincing evidence to establish that the Registrant engaged in the misconduct alleged.

[112] The Registrant challenged the evidence of all three clients. He submitted that [C1]'s evidence was unbelievable. She claimed she had to create a physical barrier with her hands on her crotch to restrain the Registrant and yet she sent her daughters to this same practitioner. [C2]'s story changed. She initially told the College investigator that the Registrant had touched her inappropriately. She did not claim at that time that the Registrant rubbed his hands on her vagina. [C3]'s evidence was clinical in nature. She used her knowledge as a veterinarian professional to craft her story. She may have been worried that her mother may have been angry to learn she had asked the Registrant for genital massage.

[113] [C1] herself admitted that with respect to her massage, the Registrant did not violate any boundaries. [C1] decided to report the matter only after the Registrant had returned to Canada and after she had started her own business. The Registrant argued that there was no contact of a sexual nature with [C1] given that [C1] voluntarily sought the Registrant's treatment and knew what that treatment entailed. [C1] specifically wanted the Registrant to treat her because he was the only one who could provide Ayurvedic massage to her satisfaction and as it is practised in India.

[114] The Registrant's counsel submitted that while [C1], [C2], and [C3] were not social work clients, and the College is not alleging that the Registrant committed sexual abuse as defined by the Regulations and the Act, the College is nonetheless asking the Panel to make findings that the Registrant's conduct was sexual in nature. The Panel does not have before it sufficiently clear, cogent, and convincing evidence to establish, on a balance of probabilities, that the Registrant engaged in the specified alleged acts of professional misconduct. The College has failed to prove the allegations on a balance of probabilities.

ii. Legal principles: credibility and reliability

[115] The Registrant agreed with the College on the principles governing the Panel's approach to credibility assessments. He noted that the Panel is required to evaluate the reliability of each witness by assessing their ability to observe, recall, and recount the events about which they give evidence. The Panel does not have to find that the College's witnesses were intentionally untruthful or lying in order to be concerned with their reliability.

[116] The Registrant cited cases involving a clash between two versions of the same event where allegations of professional misconduct were dismissed. In each case, the member did not specifically challenge the honesty of the complainant or allege that the complainant was lying. The cases emphasize that, notwithstanding the apparent honesty of the complainant, reliability remained at issue. In each of these cases, it was the position of the member that the complainant was mistaken in her recollections. In all of the cases, the allegations were either dismissed or findings were overturned for reasons relating to a failure to appropriately and critically scrutinize the complainant's testimony: see *Stefanov v College of Massage Therapists of Ontario*, 2016 ONSC 848, *Karkanis v College of Physicians and Surgeons*, 2014 ONSC 7018 and *Ahmed v College of Registered Nurses of Manitoba*, 2017 MBCA 121

iii. Inconsistencies in evidence given by [C1], [C2], and [C3]

[117] The Registrant submitted that [C1], [C2], [C3], and C gave testimony that was unreliable and insufficient to prove on a balance of probabilities that the alleged acts of misconduct occurred. Their credibility and reliability falls short on the opportunity to observe, common sense, probability of their stories, whether their statements were consistent, whether there was anything to confirm their version of events and whether they were forthright in their evidence. He argued that even when [C1], [C2], and [C3] appeared to be honest, the Panel must bear in mind that honest witnesses can be unreliable.

[118] Overall, the testimony from [C1], [C2], and [C3] had several inconsistencies, improbabilities, and often lacked common sense.

[119] The Registrant argued that [C1] was inconsistent in her testimony about how she felt about the Registrant, as she maintained she had growing concerns about the Registrant, yet was

comfortable with the Registrant and sent her to daughters to him for treatment. The Registrant's counsel called it "perplexing" that [C1] described the Registrant as someone who tested her boundaries and that he became increasingly inappropriate, yet she sent her adult daughters to the Registrant for the same treatment after those incidents. It is unbelievable that [C1] felt comfortable enough with the Registrant because of a purported offer to have his wife be present during the massages. [C1]'s description of events was logically inconsistent and she seemed unable to recall specific details other than her growing suspicion of the Registrant's conduct, which she claimed only came to her in hindsight despite her needing to be "strict" with him.

[120] The Registrant identified other inconsistencies in [C1]'s testimony. For example, [C1] explained that she did not initially file a complaint in 2018 because she felt safe when the Registrant left Canada for India. However, [C1] also testified that she learned that the Registrant was back in Canada in January 2020, but did not file a report with the College until June 14, 2021. If [C1]'s concerns were about the Registrant practising in Canada, then it would have been important for [C1] to report the Registrant when she first came to learn of his return to practise in 2020.

[121] The Registrant further argued that [C1]'s credibility and reliability were undermined by on her admission that she asked the Registrant to provide her with false or misleading documents for insurance reimbursement. [C1] blamed the Registrant for the insurance claims. But, the idea that the Registrant would forge receipts for [C1]'s benefit is not credible. The truth is that the Registrant refused to commit insurance fraud. [C1] offered no correspondence between herself and Canada Life Insurance to prove the Registrant's participation in the fraud. [C1] alleged that the Registrant forged receipts when he provided his records to the College. It is absurd to suggest that the Registrant forged one set of receipts for the insurance company, then another set for the College.

[122] The Registrant argued that [C2] gave different versions of what happened while she was attended to by the Registrant. She added details years later that are unbelievable. [C2] appeared to honestly believe the allegations against the Registrant. However, the Registrant submits that the Panel cannot make a finding of guilt based on her allegations alone. [C2]'s version of events were not consistent, credible, or reliable from the time she told the College investigator to the time she testified before the Panel. For example, the colour of the bikini she wearing was only mentioned much later. Another example is that in her initial complaint she did not mention that the Registrant touched her labia and clitoris. These details were never previously disclosed. [C2] provided no reasonable explanation for how she could omit such detail. These were material omissions that the Registrant submits would have been disclosed if they were true.

[123] With respect to [C3], the Registrant's counsel argued that while she may have presented in a straightforward manner and appeared to honestly believe the allegations against the Registrant, it does not necessarily follow that her evidence on the key facts was credible or reliable. Indeed, there is no other evidence apart from what [C3] said versus what the Registrant said, as the treatment was done in a private room and without any independent records to support either version of events. [C3] may believe her allegations against the Registrant, but this does not make them true. In some manners, [C3]'s evidence was overly technical and reliant on her knowledge of anatomy as a veterinarian. The Panel must not give her testimony undue weight just because she is a healthcare professional.

[124] [C3] was also inconsistent on several points. Her evidence that [C1] attended her first appointment is inconsistent with [C1]'s adamant evidence that she did not attend. [C3]'s testimony also had inconsistencies with her prior statements. During her interview with the College investigation she said she had heard children in another part of the house; however, at the hearing she testified that she did not hear or see anyone other than the Registrant. Each little inconsistency may not seem important, but taken as a whole, the inconsistencies matter.

[125] Although the clients were evasive at points in their testimony, the Registrant accepts that [C1], [C2], and [C3] believe that certain misconduct occurred. It is not the Registrant's position that [C1], [C2], [C3], or C were intentionally misleading the Panel. Rather, it is the Registrant's position that their evidence was unreliable in their testimony and failed to accept or acknowledge the inconsistencies in their evidence and recollections.

iv. Credibility of the Registrant

[126] In contrast, the Registrant submitted that he was a credible witness and was in the best position to observe the events in issue. His version of events accords with common sense and his statements have been consistent. He was transparent and forthcoming. The Registrant volunteered information even if it may have painted him in a negative light or even if he was not specifically asked about it, because he it was true. The Registrant was adamant that he did not touch the sensitive areas of [C1], [C2], or [C3].

[127] The Registrant provided the College with the receipts he had on file for [C1], [C2], and [C3]. The Registrant created these physical receipts following each treatment session and they did not contain the Registrant's social worker registration number. The receipts accurately reflect the Registrant's natural medicine practitioner registration number and stamp and described the treatment services as Ayurveda. The Registrant shared these receipts with the College, to his own potential detriment, as they list his old e-mail address, "dr.sanu.ca@gmail.com". The Registrant did not reply to [C1] when she requested that he provide her with falsified receipts.

[128] The Registrant's response has been consistent throughout and was not undermined in cross-examination. The Registrant testified in a forthright and straightforward manner. He was not evasive or at times combative like [C1], [C2], and [C3]. He was open with respect to not only his version of events, but also with respect to his reflections on this matter.

Advice of Independent Legal Counsel

[129] Independent Legal Counsel to the Discipline Committee ("**ILC**") gave the Panel advice on the legal aspects of its decision. The parties had an opportunity to comment on ILC's advice.

The burden of proof

[130] The onus of proving the alleged misconduct lies with the College. The standard of proof to be met is the civil standard of a "balance of probabilities". The evidence required to prove an allegation on a balance of probabilities must be sufficiently clear, convincing, and cogent.

The misconduct

[131] Although the Notice of Hearing, dated August 4, 2022, particularizes several specific alleged incidents involving the Registrant, there is only one allegation of misconduct, pursuant to s. 2.36 of the Professional Misconduct Regulation. The incidents referenced in the factual particulars of the Notice of Hearing are not akin to counts in criminal proceedings. The College need not prove that each and every incident set out in the Notice of Hearing occurred. The College must, however, prove that the Registrant engaged in professional misconduct pursuant to s. 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.

[132] The Panel must assess and weigh all the evidence before deciding what facts have been proven and whether they constitute disgraceful, dishonourable, and unprofessional conduct. The College need not prove that all three elements of the misconduct have been proven. Consequently, the Panel may decide that the Registrant's conduct is disgraceful, dishonourable, and unprofessional, or that it is only one or two of these.

[133] In assessing and weighing the evidence, the Panel must identify the factual disputes and assess the credibility and reliability of each witness. The Panel may accept some aspects of a witness's evidence while rejecting other aspects. The Panel need not accept or reject all the testimony from a particular witness.

[134] ILC gave advice to the Panel about the proper approach in law to credibility assessments, which was consistent with the parties' submissions. ILC cautioned the Panel not to place undue reliance on a witness's demeanour. It is acceptable for the Panel to consider a witness's demeanour as one factor in assessing their credibility; however, the Panel must also consider the content of their evidence. If a witness tells a realistic story that is internally consistent and consistent with other evidence, the Panel should be cautious about rejecting this evidence simply because of the witness's "demeanour". Similarly, the Panel should not be so impressed by a witness' demeanour that it neglects to evaluate the content of that witness's evidence. Although common sense is important in credibility assessments, the Panel must not conflate this with myths about how sexual assault victims behave in general. The focus must be on these particular alleged victims**.**

Use of cases

[135] The parties relied on a number of cases. In determining how much weight to place on these cases, the Panel must understand that cases from Ontario courts are binding. Prior decisions of the Discipline Committee are not binding, but the Panel should consider them. Consistency in a tribunal's decisions is important and each case turns on its own facts. The Panel must read the cases and pay attention to similarities, as well as distinguishing aspects.

Deciding the allegation of professional misconduct

[136] ILC advised the Panel that the allegation of professional misconduct has two elements:

1. Did the Registrant engage in conduct or perform an act relevant to the practice of the profession?

2. Having regard to all the circumstances, would members of the profession reasonably regard the Registrant's conduct as disgraceful, dishonourable or unprofessional?

[137] ILC advised the Panel that although the Registrant's dealings with [C1], [C2] and [C3] were in his Ayurvedic massage practice and he did not provide social work services to the clients, the Panel may find that his conduct was relevant to the practice of the profession. Based on his written submissions, the Registrant does not appear to challenge that point. The Panel should be guided by the Divisional Court's decision in *Dr. Jha v College of Physicians and Surgeons of Ontario*, *supra*, at para 119, where the Court held that the conduct of members outside of their professional work will be relevant to the practice of the profession if the conduct is "not consistent with the core values of [the] profession and/or where there is a need for a regulated profession to maintain confidence of the public in the profession and not be seen to condone certain types of conduct by its members."

[138] ILC further advised that the Panel does not require evidence of how other members of the profession would regard the Registrant's conduct. The Panel can make that assessment itself by looking at the facts and its findings as a whole and asking: how would reasonable members of the profession regard this conduct? ILC referred the Panel to the well-established definitions of the terms "disgraceful", "dishonourable" and "unprofessional" in s. 2.36 of the Professional Misconduct Regulation:

- "Unprofessional" conduct does not require any dishonest or immoral element. Unprofessional conduct includes a serious or persistent disregard for one's professional obligations. This term recognizes the general traits of good judgment and responsibility that are required of those privileged to practise the profession. Failure to live up to the standards expected of members can demonstrate that a registrant is, simply put, not professional. However, mere errors in judgment, or discretionary decisions made reasonably (though the Panel might have made them differently), are not properly considered "unprofessional" conduct.

- "Dishonourable" conduct has an element of moral failing. It is often the best description for conduct involving dishonesty or deceit, though it may also apply to conduct not involving dishonesty or deceit. When a registrant commits a dishonourable act, they ought to, or will, know that their conduct is unacceptable and falls well below the standards of a professional. Conduct amounting to fraud, theft, public indecency, or assault, would be examples of dishonourable conduct.

- "Disgraceful" conduct also has elements of moral failing. However, it is conduct that is more serious than that which is dishonourable and it has the effect of shaming the Registrant and, by extension, the profession. In order to be regarded as disgraceful, the conduct should cast serious doubt on the Registrant's moral fitness and inherent ability to discharge the higher obligations the public expects professionals to meet. In general, the more knowledge a registrant has (or ought to have had) of the wrongfulness of their conduct at the time, the more it will tend to be "disgraceful" instead of merely "dishonourable."

Decision of the Panel

[139] The Panel recognized that the College bears the onus of proving the allegations against the Registrant on the balance of probabilities, using clear, cogent, and convincing evidence.

[140] Having considered the onus and standard of proof, the evidence, and the submissions of the parties, the Panel finds that the College has not proven that the Registrant committed the acts of professional misconduct alleged in of the Notice of Hearing. The allegation of professional misconduct is dismissed.

Reasons for Decision

[141] In determining the allegation of professional misconduct against the Registrant, the Panel had to determine the College's motion for consideration of similar fact evidence.

The College's motion for consideration of similar fact evidence

[142] The College argued that if the Panel determined that the evidence of each of [C1], [C3] and [C2] was not, on its own, sufficient to meet the balance of probabilities for their respective accounts, they the Panel can and should consider the evidence of each one as similar fact evidence supporting the allegations of the others. The Registrant argued that the test for similar fact evidence was not met.

[143] The Panel denies the College's motion and has not considered similar fact evidence in reaching our findings.

i. Submissions of the College

[144] The College alleged that the Registrant engaged in distinct acts of inappropriate touching in respect of each of [C1], [C2], and [C3]. The College acknowledged that none of the clients was present during the Registrant's treatments of the others or had direct evidence to give about the alleged incidents of inappropriate touching, except their own. However, the College asked the Panel to apply the similar fact evidence rule if it found that the evidence of each client about her interactions with the Registrant did not, on its own, meet the balance of probabilities threshold.

[145] The College cited the test to admit similar fact evidence from *R v Handy*, 2002 SCC 56: notwithstanding its presumptive inadmissibility, similar fact evidence may be admissible where the probative value of the evidence outweighs its prejudicial effect. To determine whether similar fact evidence can be used, the Panel must: (a) assess the probative value of the evidence; (b) assess the potential prejudice that could be caused by admitting the evidence; and (c) balance the two to determine which outweighs the other. The College argued that the test is met here and that the Panel could, therefore, consider the evidence of one client about her own interactions with the Registrant as evidence supporting the allegations in relation to the other clients.

Probative value and strength of similar fact evidence

[146] In assessing the probative value of the evidence, the Panel ought to consider the strength of the similar fact evidence, including the potential for collusion, the issue in question before the Panel, and the similarities and differences between the evidence of [C1], [C3], and [C2]. The Panel

must decide whether the similar fact evidence is strong enough to negate the Registrant's position that the sexual misconduct did not occur.

[147] The College submitted that the similar fact evidence here is highly probative. The evidence of each College witness remained unshaken in cross-examination and should be believed. There is no evidence to support the suggestion that the reliability of [C1]'s, [C3]'s, or [C2]'s evidence is undermined by collusion, or that the witnesses intentionally collaborated.

Identification of the issue in question

[148] The next step in the legal analysis requires the College to identify the particular issue for which the similar fact evidence is sought to be introduced: "the utility of the [similar fact] evidence lies precisely in its ability to advance or refute a live issue pending before the trier of fact" (*R v Handy*, 2002 SCC 56, at paras 50 and 51).

[149] In this case, the College seeks to admit similar fact evidence to address the issue as to whether the sexual misconduct occurred as alleged by [C1], [C2], and [C3]. The Registrant's defence is that the sexual misconduct did not happen.

[150] It is well established that similar fact evidence may be admitted for the purpose of establishing the actus reus (guilty act) of an offence or professional misconduct allegation and thereby rebutting a defence of denial. Similar fact evidence has been admitted for this purpose in professional misconduct matters. For example, in *Ontario (College of Physicians and Surgeons) v Smith*, 2003 ONCPSD 36, a physician was alleged to have engaged in acts of sexual impropriety in respect of three complainants. The panel admitted the evidence of two additional witnesses as similar fact evidence to rebut the defence that the sexual misconduct had not occurred in respect of the three patient complainants. As in this case, Dr. Smith alleged that no such conduct occurred.

The relevant connecting factors

[151] If the Panel concludes that the similar fact evidence speaks to a live issue before it, the Panel must then assess the similarity of the evidence to determine its probative value. The Supreme Court has identified a number of factors to consider in undertaking this analysis. These include:

a. The extent to which the other acts are similar in detail to the alleged conduct;

b. Number of occurrences of the similar acts;

c. Circumstances surrounding or relating to the similar acts;

d. Any distinctive feature(s) unifying the incidents of the similar acts;

e. Intervening events;

f. Proximity in time of the similar acts;

g. Any other factor that would tend to support or rebut the underlying unity of the similar acts.

[152] The Supreme Court has cautioned that these factors are only a guide and are meant to be helpful rather than exhaustive. One or more factors might not apply in a given case. In addition, the Panel must not add up similarities and dissimilarities and then, "like an accountant" derive a net balance. As noted by the Court of Appeal for Ontario in *R v JW*, 2013 ONCA 89, at para 49, it is not a "numbers exercise."

[153] The College submitted that when considering the connecting factors in this case, the similar fact evidence emerges as highly probative to the defence that the behaviour did not occur. The College outlined a number of purported connecting factors in this case, including:

a. All instances of alleged misconduct occurred between May 2018 and August 2018;

b. The acts of misconduct are close enough temporally to be probative;

c. The misconduct occurred in the Registrant's home massage studio, during massage treatment, while the Registrant was alone with the client;

d. The misconduct unfolded in a similar manner, with gradual encroachment on the pelvic area of all three witnesses before full touching in the cases of [C3] and [C2];

e. The Registrant provided each client with an Informed Consent form indicating restricted areas, possibly to establish trust and / or a veneer of professional boundaries, then proceeded to disregard it;

f. The Registrant asked [C1] to remove her bra, asked [C3] to remove her bra and underwear and asked [C2] to lower the top band of her bathing suit bottoms;

g. The incidents occurred in the context of the practitioner / client relationship;

h. The incidents occurred while the client attended the office unaccompanied, and no one else was present; for [C3] and [C2] the Registrant waited until they attended alone;

i. The Registrant told [C1], [C3] and [C2] that if they removed pieces of clothing and / or pushed their underwear down, he could massage them better; and

j. The Registrant told [C3] and [C2] that the touching of sensitive areas would make the massage treatment more effective.

[154] The College submitted that the evidence of each of the College witnesses is admissible in the case of the others to rebut the suggestion that the Registrant did not touch the witnesses inappropriately as alleged. The evidence is highly probative of the Registrant's pattern of using Ayurvedic massage as a guise to establish trust with clients and then touch them in a sexual manner. In particular, the evidence reveals a pattern of similar details in respect of the Registrant's misconduct, including a pattern of asking the client to remove her undergarments before engaging in the inappropriate sexual touching (thus creating confusion around consent), gradually encroaching on restricted areas of the client's body (testing boundaries), and advising clients that massage of their restricted body parts would be therapeutic or beneficial.

[155] The evidence provides information that is highly relevant to understanding the context in which the alleged misconduct occurred, and sheds light on the nature of the Registrant's conduct with his clients. It is also probative of the sexual nature of the conduct, and relevant to rebutting the Registrant's assertion that [C1], [C3], and [C2] are lying with respect to their evidence that he touched them inappropriately.

The potential prejudice of similar fact evidence is minimized

[156] In addition to assessing the probative value of the similar fact evidence, the Panel must also assess the potential prejudice that arises from its admission. Evidence of discreditable conduct is inherently prejudicial. However, in assessing the prejudice of the proposed evidence, it is important to keep in mind that prejudice in this context is not the risk of a finding—it is the effect this kind of evidence may have in compelling the Panel to make a finding against the Registrant, not on the strength of the evidence marshaled against him, but on the strength of the evidence of his bad character.

[157] The College asked the Panel to use the similar fact evidence to rebut the Registrant's defence of denial. The College did not propose that the similar fact evidence be used to demonstrate that the Registrant is a bad person or is "the type of person" who would engage in the conduct alleged or that he is immoral. For this reason, any prejudice is mitigated.

[158] The College further submitted that in this case, the evidence that could be characterized as "similar fact" or "propensity" evidence is all admissible because it relates to similar allegations of sexual impropriety from three different clients as set out in the Notice of Hearing. Accordingly, the question is not whether the evidence can be admitted, but whether the evidence of the other clients can be used in support of the case against the Registrant regarding each client. The risks associated with similar fact evidence are minimized in these circumstances.

The probative value exceeds the potential prejudice

[159] The final step in determining the admissibility of similar fact evidence is to weigh the probative value of the evidence against its prejudicial effect. In the College's submission, the probative value of the similar fact evidence outweighs the prejudicial effects. The College's position is that the allegations of misconduct are made out on the evidence of [C1], [C3], and [C2] assessed in isolation. Nevertheless, the similar fact evidence is admissible to rebut the Registrant's claim that the abuse simply did not occur as alleged.

ii. **The Registrant's submissions on similar fact evidence**

[160] There is no disagreement between the Registrant and the College with respect to the basic law governing the similar fact evidence rule. The disagreement is in the application of the rule.

[161] The general exclusionary rule that similar fact evidence is presumptively inadmissible recognizes that the potential for prejudice, distraction, and time consumption associated with the evidence generally outweighs its probative value. Sometimes the probative value of similar fact evidence outweighs the potential for misuse—similar circumstances may defy coincidence or other innocent explanation. As the evidence becomes more focused and specific to the charge, its probative value becomes more cogent.

[162] The Panel should not consider that the Registrant was more likely to have engaged in misconduct with respect to each of [C1], [C3], and [C2] because of his conduct with respect to the others. It would be inappropriate to hold that the Registrant had the propensity to commit acts of misconduct because he is a bad person or the kind of person who would commit acts of misconduct against one client because he had allegedly done so against another.

[163] Counsel for the Registrant submitted that the evidence adduced by [C1], [C2], and [C3] reveals a lack of similar acts or similar circumstances surrounding the acts. The only similarity is that [C1], [C2], and [C3] received Ayurvedic massages from the Registrant. That is not, on its own, sufficiently similar and distinctive to make the Registrant the type of bad actor who would seek to touch a client's sensitive areas. In fact, [C1], [C2], and [C3] described their treatments with the Registrant in significantly different ways.

[164] [C1] described a consensual breast massage that [C1] viewed as therapeutic. The Registrant denies even this description of events. [C2] described the Ayurvedic massage as rigorous and in her version of events, the Registrant placed his hands under her bathing suit and over her labia and clitoris. [C3]'s description of the treatment included her removing her bra for a breast massage, where the Registrant did not touch her areola or nipples, and the Registrant inserting a finger into her vagina, massaging her clitoris, and asking if she had orgasmed. Those three descriptions are completely dissimilar. There is no strikingly similar thread that ties each allegation together, nor is there any distinctive conduct or virtually the same description of key events. Therefore, there is no probative value or connectedness of the events.

[165] The only similarity is the allegation that their sensitive areas were touched, which the Panel can assess when considering the credibility and reliability of the College's witnesses. The fact that the witnesses alleged their sensitive areas were touched during an Ayurvedic massage does not strengthen their allegations into similar fact evidence. To reach that conclusion would be dangerous given the lack of probative value and distinctive features.

[166] The Registrant submitted that this case is distinct in an important way. In many similar fact evidence applications, the previous similar conduct has been proven. In a significant number of cases, there is either evidence of similar acts committed in the past, or a decision that the member committed the acts of misconduct in question against other patients. In this case, the allegations are essentially being made contemporaneously. The events at issue occurred within the same month or two. There have been no findings against the Registrant with respect to the type of conduct at issue. The prejudice of admitting the evidence as similar fact would be palpable and result in a demonstrably unfair hearing.

[167] For these reasons, counsel for the Registrant submitted that the prejudice in this case far outweighs any probative value. The evidence should not be considered as similar fact evidence.

iii. Panel's decision on similar fact evidence issue

[168] The Panel finds that the test to admit similar fact evidence is not met in this case.

[169] In this case, the alleged conduct serving as the basis for the similar fact evidence motion is not proven: the purported similar fact evidence is the unproven allegations of the Registrant's conduct in respect of [C1], [C2] and [C3] that are before the Panel for determination in this proceeding. There is neither evidence of similar acts committed in the past, nor a judicial or quasi-

judicial finding that the Registrant committed acts of misconduct similar to those in question against other clients. The Panel agrees with counsel for the Registrant that the prejudice of admitting the evidence of [C1], [C2], and [C3] may render the hearing unfair. There have been no previous findings against the Registrant with respect to the conduct complained of.

[170] Although there are similarities among the allegations in respect of [C1], [C2] and [C3], we find that there are also significant dissimilarities, and that those dissimilarities outweigh the similarities. The similarities include the fact that [C1], [C2], and [C3] are members of the same family and that they all received Ayurvedic massage treatment from the Registrant. However, the relationship between [C1] and the Registrant is significantly different from the relationship between [C2] and the Registrant, or [C3] and the Registrant. [C1] knew the Registrant and was comfortable with the service he provided. [C2] and [C3] had no independent way of assessing the Registrant's service. They relied entirely on [C1] for this.

[171] The way the massage was performed on [C1] was also different from the way it was performed on [C2] and [C3]. [C1] testified that she was comfortable removing her bra and having her breasts massaged because this is how Ayurvedic massage was performed on her in India. Although Ayurvedic massage for women is always performed by women, according to [C1]'s testimony, [C1] was nonetheless comfortable receiving this service from the Registrant because of his good reputation. Indeed, [C1] did not claim that the Registrant had sexually assaulted her by touching her breasts, but said he had merely been "careless". In contrast, [C2], and [C3], had, at the insistence of [C1], circled areas on a body diagram that were not to be touched by the Registrant. No such restrictions were recorded on the body diagram with respect to [C1].

[172] It is also noteworthy that [C2] and [C3] did not have any concerns with two of their appointments. These appointments went well to the point where [C2] and [C3] sought out more treatment sessions with the Registrant.

[173] There is a danger that applying the similar fact evidence rule could lead to the prejudicial conclusion that the Registrant is guilty because he is 'the kind of person' who would commit the alleged misconduct.

[174] On the facts, the prejudice in this case outweighs any probative value that admitting similar fact would have**.** The similar fact evidence rule cannot be properly applied to this case.

Findings on disputed facts

[175] The Panel considered the evidence as to the Registrant's interactions with respect to each of [C1], [C2] and [C3], without using their evidence as similar fact evidence to support the accounts of one another.

i. Witness credibility assessments

[176] In reaching its findings, the Panel considered the credibility and reliability of each witness having regard to the relevant legal principles. Credibility is as a function of truthfulness, reliability and accuracy. A credible witness is one who is truthful, reliable and accurate. A witness can be honest but mistaken. Honesty and accuracy are two distinct concepts. Evidence can be sincerely given but can arise from an honest mistake as to what was seen, heard or experienced. A witness may appear sincere and truthful. A witness may be doing their best to tell the truth. That is not

enough to determine that the evidence is reliable. It is possible that the witness has failed to recall a fact accurately or has a faulty memory. A witness can be honest but wrong.

[177] In assessing credibility, the Panel relied on common sense and experience while being conscious of the need to avoid stereotypes and prejudices. The Panel considered the relevant factors identified in the case law, including:

a. the witness's opportunity to observe,

b. the witness's capacity to remember,

c. the probability or reasonability of the evidence,

d. the internal consistency or inconsistency of the evidence,

e. the external consistency of the evidence,

f. the witness's interest in the outcome of the case, and

g. the witness's appearance and demeanour.

[178] As we will explain, the Panel had difficulty with the evidence of all the witnesses. At various times, the evidence of [C1], [C2], [C3] and the Registrant was of questionable credibility and reliability, and C had no direct knowledge of the events in question. It is the College's burden to prove the allegation of misconduct on a balance of probabilities, and having regard to the testimony and the Panel's credibility assessment, the Panel found the College did not discharge its burden and the allegation must be dismissed.

[179] The following is our assessment of the reliability and credibility of the witnesses.

Credibility assessment of [C1]

[180] The Panel noted several unexplained inconsistencies and contradictions in [C1]'s testimony that adversely affected her credibility. For example, [C1] explained her delay in reporting the Registrant to the College by the fact that for much of the time in issue the Registrant did not practise in Canada.

[181] Although delays in reporting assault are widely recognized as understandable and common, the specific reasons provided by [C1] for not reporting the Registrant's alleged conduct raise concerns about her credibility. [C1] stated that she refrained from filing a complaint in 2018 because she felt safe following the Registrant's departure for India. However, she also testified that she became aware of the Registrant's return to Canada in January 2020, yet did not submit a report to the College until June 14, 2021—approximately 17 months later.

[182] If [C1]'s primary concern was the Registrant's ability to practise in Canada, it would be reasonable to expect that she would have prioritized notifying the College promptly upon learning of the Registrant's return and resumption of practice. The extended delay undermines the plausibility of her stated motivation.

[183] Furthermore, although [C1] ultimately filed a complaint with the College, she did not report the matter to any Ayurveda organization or certifying body responsible for the Registrant's credentials in natural medicine. Given her expressed concerns about the Registrant's suitability as a practitioner, such a step would have been prudent and consistent with a genuine intent to prevent potential harm to others.

[184] [C1] complained that the Registrant crossed boundaries during her massage (for example, by slipping his fingers under her panties from time to time) but also said she was not assaulted. [C1]'s testimony regarding her interactions with the Registrant was marked by significant internal inconsistency. While she expressed growing concerns about the Registrant's conduct, she also stated that she felt comfortable with him and ultimately made the decision to refer her adult daughters, [C3] and [C2], for treatment with the Registrant. This contradiction undermines the reliability of her evidence.

[2] Notably, [C1] described the Registrant as someone who tested her personal boundaries and whose behaviour became increasingly inappropriate, culminating in her need to be physically defensive during sessions, including shielding her crotch with her hand. Despite these troubling experiences, she nonetheless chose to send [C3] and [C2] to the Registrant for similar treatment. Her explanation that she felt reassured by the Registrant's purported offer to have his wife present during massages strains credulity.

[185] [C1]'s account was further weakened by her inability to recall specific details, aside from a general sense of growing suspicion, which she claimed emerged only in hindsight. [C1]'s overall evidence lacked coherence and credibility.

Credibility assessment of [C3]

[186] With respect to [C3]'s evidence, there was also a significant discrepancy between her and [C1]. For example, [C1] was adamant that she did not attend [C3]'s first appointment, whereas [C3] has a distinct recollection of [C1] attending her first appointment. [C3] testified that she has a clear recollection of [C1] being present at her first appointment on August 3rd, 2018 and that [C1] circled the areas on the body diagram on the Informed Consent to Natural Healing Services form for [C3]. The circled areas were not to be included in the treatment.

[187] [C3] also has inconsistencies with her prior statement, where she said she heard children in another part of the house during her interview with the College investigator, however she testified that she did not hear or see anyone other than the Registrant.

[188] [C3] testified that she did not have a conversation with the Registrant prior to treatment but told the College investigator that the Registrant explained the process to her prior to the treatment. Furthermore, [C3] testified that she did not discuss what happened with [C2], but she knew [C2] was aware of what happened because [C1] told her. This contradicts [C2]'s testimony that [C3] told her and [C1] about the incident with the Registrant in detail.

[189] [C3] also acknowledged that she could not see the Registrant's face when he was allegedly massaging her glutes. When [C3] was lying on her back, she could see his hands but could not recall whether they were crossed. Despite being in a supine position at the time, [C3] could not recall details such as the lighting in the room.

[190] [C3]'s allegation that the Registrant masturbated her and asked her if she orgasmed is extremely serious. She testified that she was not sure if this touching was part of the treatment. The Panel heard no evidence that digital penetration is a part of Ayurvedic massage. The Panel does not accept that [C3] was unsure about this alleged touching being part of the treatment. It could not be—[C3] expressly excluded the genital area from treatment and what [C3] alleges is not momentary contact. [C3] is a highly educated woman who would have known that the Registrant's alleged behaviour could not be part of the treatment. Her testimony that she was unsure about the touching being part of the treatment does not strike us as credible.

[191] Furthermore, the Panel notes that no evidence was adduced to show that [C3] discussed the possibility of counselling or other options to promote healing for what would by all accounts be a shocking experience. While she may have decided not to undergo counselling for understandable reasons, it is improbable that the possibility would never have been raised with any friend or family member, considering [C3]'s knowledge, education, and sophistication .

[192] [C3] testified that she did not discuss the incident with [C2], although she believed [C2] was aware of it because [C1] had informed her. This account is inconsistent with [C2]'s testimony, wherein [C2] stated that [C3] had described the incident in detail to both her and [C1]. This contradiction raises concerns regarding the reliability of the testimony provided by the individuals involved. However, such inconsistency, in isolation, does not amount to proof of collusion which entails the possibility that witnesses may have conferred about the events in question and, whether deliberately or inadvertently, altered or aligned their accounts in a manner that renders their testimony more consistent or persuasive. The mere fact that family members discussed a matter does not, in and of itself, amount to collusion. In this case, the Panel assessed the totality of the evidence in the particular context of the case to determine the weight to attribute to each witness' evidence. It is normal and expected that family members may discuss abuse. The discussions referenced do not amount to collusion. If the witnesses had colluded, they would have collectively given more consistent evidence. There is no persuasive evidence of collusion in this case.

Credibility assessment of C

[193] C could testify only to what [C3], told him. He did not personally observe any of the interactions between [C3] and the Registrant. He testified without emotion and was matter-of-fact in the way he recalled his reaction to the claim that [C3] had been assaulted. Although a witness who maintains their composure while testifying is not necessarily untruthful, the Panel was struck by the way C ended the conversation with [C3]. He said he had to go because his lunch time was almost over and suggested the two continue the discussion later. That evidence suggests C was not distressed by the information he received in the call with [C3]. He was prepared to continue with his usual routine despite the upsetting news that his girlfriend had just been touched inappropriately in a massage session. There is no evidence that he was shocked by the news. C did not, for example, suggest that the matter be reported to police. He did not suggest counselling either.

Credibility assessment of [C2]

[194] The Panel notes that [C2], on multiple occasions, provided differing accounts of the same events. Material particulars that were absent from her initial statements were subsequently introduced years after the alleged incidents. This pattern raises concern that such additions may have been made only for the purpose of strengthening the allegations against the Registrant.

[195] [C2] presented as a somewhat hesitant and reserved witness. Her demeanour lacked the confidence observed in other witnesses, such as [C3]. Nonetheless, [C2] appeared to genuinely believe the veracity of her allegations. The Panel acknowledges that sincerity of belief, while relevant, is insufficient to satisfy the evidentiary threshold of proof on a balance of probabilities.

[196] In the present matter, [C2]'s testimony stands as the sole evidentiary foundation for the allegations regarding the Registrant's interaction with her. Given that the treatment in question occurred in a private setting, the absence of corroborative evidence is not unexpected or fatal. However, in these circumstances, the consistency and reliability of [C2]'s account assume heightened significance. The Panel finds that [C2]'s narrative evolved materially from her initial interview with the College investigator to her testimony before the Panel. Her description of the alleged touching of her genital area became increasingly detailed over time. Initially, she described the Registrant's hand being placed over the genital area. Later, she introduced new elements, including the colour of her bathing suit, which had not been mentioned in either of her prior interviews. Furthermore, it was not until the hearing itself that [C2] alleged, for the first time, that the Registrant had specifically touched her labia and clitoris. These are significant and specific allegations that were not previously disclosed.

[197] [C2] did not offer a satisfactory explanation for the omission of these details in her earlier accounts. Her assertion that she was now disclosing the "whole truth" because the matter had become "official" does not, in the Panel's view, adequately account for the delay in providing such material information. While the Panel recognizes that witnesses may struggle to recall peripheral details of events that occurred six years prior—such as ambient music or lighting conditions—these omissions pertain to central aspects of the allegations. It is reasonable to expect these details, if true, to be disclosed contemporaneously.

[198] [C2] did not expect to be touched in the pelvic area and the Informed Consent to Natural Healing Services form completed for her indicated that this area was not to be treated. [C2] testified that the Registrant occasionally brushed her genital area, but she thought this action was not intentional. She testified that at one point she flinched and jumped off the massage table "a little bit". The Panel understands that a person treated in the way alleged by [C2] would flinch and jump.

[199] However, the Panel was left with concerns that the information [C2] gave to the College when she was interviewed was less comprehensive than the evidence she gave in her testimony. The Panel would have expected her to give more comprehensive and detailed information to the College given the proximity in time to the alleged occurrence and the gravity of the allegations. [C2]'s memory of the event would have been clearer at the time she spoke to the College than at the time she testified to the Discipline Committee. For this reason, we would have expected [C2] to give a much fuller account to the College. A member of the public being interviewed by a College investigator would understand the importance of being forthcoming. [C2] is an educated and sophisticated woman who must have understood the import of the statement she was giving to the College. She must have known that the information she was giving to the College would be important in future proceedings.

[200] It is not consistent with human experience that [C2]'s memory would improve over time. The increase in details of [C2]'s account over time cast doubt on the evidence she gave at the hearing.

The Registrant

[201] The Registrant's denial that he behaved inappropriately with [C3] and [C2] is given credence by the fact that there is no evidence of [C3] and [C2] complaining directly to the Registrant. This fact alone cannot, however, be treated as proof that the alleged assaults did or did not occur. The absence of a direct complaint to the accused person does not necessarily undermine the overall credibility of a complainant. In this particular case there is no evidence to explain why [C3] and [C2], who are highly educated and sophisticated, would not confront the Registrant at least by email. There is no evidence to show that there were, for example, cultural, social, temperamental, or other factors to restrain [C3] and [C2] from directly confronting the Registrant. The Panel understands also that educational level alone is not enough in this regard. Even highly educated victims of abuse may avoid confronting an assailant for any number of reasons including perceived humiliation and safety. There is no such evidence in this case to explain why [C3] and [C2] did not confront the Registrant directly.

[202] With respect to the allegations of inappropriate behaviour during the massage sessions with [C1], [C3] and [C2], the Panel prefers the evidence of the Registrant. He generally came across as a credible witness. His statements were real, relatable, and generally consistent. Most of the time he gave his evidence in a steadfast manner, avoiding embellishment and hyperbole.

[203] The Registrant provided direct testimony regarding the events in question. In general, his account aligns with common sense. However, there are notable exceptions. The Registrant's assertion that [C3] voluntarily removed her underwear during a treatment session is questionable. The allegation is remarkable considering that at the time [C3] had a yeast infection and was also menstruating. Additionally, the Registrant's claimed ability to recall specific sessions with [C1], [C3], and [C2] is problematic, given his admission that he had treated "thousands of patients" in the intervening period. In the absence of contemporaneous notes (which the Registrant did not keep) or distinguishing circumstances, it is improbable that such detailed recollection would be possible. The Panel is unaware of any circumstances that would render the Registrant's interactions with [C1], [C3] and [C2] more memorable than those with his other clients.

[204] Nonetheless the Panel found the Registrant to be generally credible, with testimony that was largely consistent and persuasive. At times, his evidence included disclosures that, while forthright, could reasonably be construed as potentially detrimental to his position. For example, the Registrant volunteered that he had received letters from the College of Massage Therapists of Ontario and the College of Naturopaths of Ontario on his unauthorized use of restricted titles. He testified that when those concerns were brought to his attention, he changed his practice to bring himself into compliance.

[205] The Registrant was categorical that he did not touch the sensitive areas of [C1], [C2], or [C3]. In support of this assertion he testified that he typically offered female practitioners to female clients. This particular part of the Registrant's testimony was, however, marked by material inconsistencies and lacked corroborative documentation.

[206] In relation to the Registrant's claim regarding the availability of female practitioners, the evidence presented was internally inconsistent, lacked corroboration from prior statements, and was further compromised by material alterations made during the course of the Registrant's testimony. The Registrant initially testified that he routinely offers female clients the option of a female practitioner. When cross-examined, however, the Registrant qualified this claim, saying he does not offer female practitioners "100%" of the time. He clarified that such an option is

contingent upon the availability of a female practitioner who is actively working with him at the time.

[207] Prior to the hearing, during his engagements with the College, the Registrant did not disclose that he had worked with female practitioners, as he later claimed at the hearing. It is not credible that the Registrant would have failed to mention such a significant detail at the outset of the investigation. Instead, the Registrant testified that he always told female clients that they could stop the session whenever they felt uncomfortable.

[208] When asked why he did not mention this practice in his will-say statement (despite having counsel at the time), the Registrant said he had memory issues as a result of a concussion. This explanation was not substantiated. If anything, it raises more questions about the reliability of his recollections.

[209] Following the appointment with [C3], and during subsequent text correspondence with [C1], the Registrant was presented with another opportunity to clarify that female clients could receive treatment from female practitioners. The Registrant did not avail himself of this opportunity. Rather, he reiterated his standard advisory that female clients should terminate the session at any point should they experience discomfort.

[210] The Panel is also concerned about the Registrant's evidence with respect to the insurance receipts. That matter is not germane to the main issue and is addressed below.

[211] The Panel approached the evidence of all witness with appropriate caution, keeping the burden of proof central. The Panel did not have to accept all of the Registrant's evidence and explanations in order to evaluate the evidence and make findings.

i. Conduct with respect to [C1]

[212] With respect to [C1], the College alleges that during one or more of her treatments, the Registrant asked if she wanted to remove her bra and underwear, to which she said no. The Registrant continued to encourage [C1] to remove her undergarments, despite the fact that [C1] had indicated she was not comfortable doing so and the Registrant's intake forms indicated that female clients could choose to keep their bra and underwear on during treatment. At one or more of [C1]'s appointments, the Registrant convinced [C1] to remove her bra. He then proceeded to massage [C1]'s breasts. During one or more of [C1]'s treatments, the Registrant attempted to touch [C1] in the genital area, despite [C1] making it clear that she did not want this. [C1] covered her genital area with her hand and pushed the Registrant's hand away to prevent him from touching her genital area.

[213] The Registrant emphasizes that [C1] was inconsistent in her testimony about how she felt about the Registrant. She claimed to have growing concerns about the Registrant, while at the same time, she felt comfortable enough with him to send her daughters to him for treatment. [C1] described the Registrant as someone who was increasingly inappropriate and tested her boundaries to the point where she found it necessary to be strict and physically cover her crotch with her hand during sessions. This experience did not, however, discourage [C1] from sending her adult daughters to the Registrant for the same treatment. It is not credible that the Registrant's purported offer to have his wife be present during the massages was all that it took to assure her that her daughters would be safe with the Registrant.

Findings with respect to [C1]

[214] On the basis of the evidence and using the balance of probabilities standard, the Panel does not find that the College met its burden of proving that the Registrant encouraged [C1] to remove her bra and underwear, or that he massaged her breasts or inappropriately touched her genital area.

[215] The Registrant acknowledged that he sometimes asks clients whether they want to move or remove undergarments that are interfering with treatment, but he was adamant that he does not massage breasts. It is possible that the Registrant encouraged [C1] to remove her bra, even after she declined and said she was uncomfortable, and that she did so reluctantly, but it is equally possible that the Registrant asked [C1] to remove her bra and she consented. The evidence also leaves the Panel unable to conclude on a balance of probabilities that the Registrant massaged [C1]'s breasts or that he attempted to touch [C1]'s genital area.

[216] [C1] was familiar with Ayurvedic massage, as she has received this kind of treatment in India. By her own testimony, Ayurvedic massage patients in India typically remove their bras during the treatment. While the Panel acknowledges [C1]'s testimony that female patients in India are treated by female massage therapists, we also note that in this case [C1] specifically chose the Registrant as her therapist. She must have known that if she wanted Ayurvedic massage as it is provided in India, it would require that her breasts be exposed. Ayurvedic massage recipients do not ordinarily wear a bra during treatment.

[217] The Registrant has a form bearing the image of a human body that he asks patients to use to indicate which parts of their bodies may not be touched during massage. This form was provided to [C1] and she did not indicate that her breasts (or any other area of her body) were not to be touched. Accordingly, we cannot find on the evidence that the Registrant encouraged [C1] to remove her bra or that she did so unwillingly. Further, in light of our concerns with [C1]'s credibility, the College has not proven that the Registrant massaged [C1]'s breasts.

[218] With respect to touching [C1]'s genital area, even on [C1]'s evidence, any such touching was inadvertent and "careless". As a result of our credibility findings, the Panel does not accept [C1]'s evidence that she had to physically block the Registrant from touching her crotch area because of his persistent attempts to do so. [C1]'s evidence in that regard is implausible and not credible.

[219] [C1] presented as a sophisticated woman keenly aware of her rights. Although her testimony was that she did not consider the Registrant's behaviour to constitute sexual assault, but to be mere "carelessness", pressuring [C1] to remove her undergarments and attempting to touch her genital area would constitute sexual assault. A person of [C1]'s sophistication would understand this immediately.

[220] The College has not met its burden in respect of the allegations involving [C1].

ii. Conduct with respect to [C3]

[221] There is no dispute that [C3] had two or three appointments with the Registrant. It is also agreed that when filling out her initial intake forms, [C3] indicated that she did not want her breasts, pelvic area, or buttocks to be touched.

[222] The Registrant disputed that he asked [C3] to move down and/or remove the panties she was wearing and that despite [C3]'s indication that she did not want her breasts, pelvic area, or buttocks touched, he asked if he could touch her in these areas. The Registrant further denied that he massaged [C3]'s breasts and buttocks or any of the restricted areas at any time. The Registrant denied touching her vulva area, pelvis, groin, buttocks, upper glutes, and breasts. As well, the Registrant denied rubbing [C3]'s clitoris and denied inserting a finger into [C3]'s vagina, and later asking if she had orgasmed.

[223] The Registrant's explanation was that he worked on [C3]'s upper chest, above the bra line and closer to the shoulder area. The Registrant recalled that [C3] was having lower back pain due to menstrual cramps. In fact she had a history of back pain from childhood. To treat this, the Registrant, after obtaining [C3]'s consent to do so, placed oil on [C3]'s abdomen. The Registrant then asked [C3] to move her underwear down a bit to treat the lower abdomen and [C3] agreed. She lowered them to her knees. The Registrant turned round to get more oil and when he faced [C3] again, [C3] had removed her underwear and thrown it to the floor. The Registrant said he was in shock and immediately found a small towel to cover her genital area. The Registrant also testified that [C3] then asked him to massage her genitals but he refused.

Findings with respect to [C3]

[224] On the basis of the evidence offered and using the balance of probabilities standard, the Panel finds that the College has not proven that the Registrant inserted a finger into [C3] and touched her pelvis, groin, buttocks, upper glutes, and breasts. The allegation requires the Panel to accept [C3]'s testimony. For the reasons given above, we had concerns as to both the credibility and reliability of [C3]'s evidence. There is no independent evidence to support or refute the allegation.

[225] C's evidence did not help the College meet its burden. C gave evidence that was generally consistent with [C3]'s account of what she told him following her last appointment with the Registrant. There is not much dispute between the parties with respect to C's evidence. However, C could testify only to what he heard from [C3]. C cannot confirm whether what [C3] told him was true, although he can say, as he did, that he believed [C3]. C's testimony was well meaning and given in a forthright manner. The testimony did not, however, tilt the balance of evidence in favour of the College.

[226] The nature of the incident described by [C3] is striking in its severity and brazenness. We note that at all material times, the Registrant had been recently registered as a social worker with the College. He must have been fully aware of the obligations of a social worker and the fact that sexual assault, in any context, would lead to disciplinary action by the College and possibly revocation of his right to practice social work in Ontario. No evidence was adduced as to why the Registrant would take this risk.

[227] In the circumstances the Panel must find that the College has not proved this claim on a balance of probabilities.

[228] Our finding that the College has not met its burden does not mean we accept the Registrant's claim that [C3] removed her underwear and asked for a genital massage. We had significant difficulty with the Registrant's evidence in that regard. [C3] generally testified in a straightforward manner and came across as a little shy. The demeanour presented by [C3] is not

consistent with the claim that she asked for a genital massage and threw her underwear to the floor while the Registrant was not looking. However, as noted the Panel is not required to accept the Registrant's account in its entirely—it is the College that bears the onus in this matter.

[3] [C3] may well believe the allegations she has made against the Registrant. That is not, however, sufficient to make a finding that the College has proved its case on a balance of probabilities. There is as much evidence here to support [C3]'s claims as there is to undermine them. In the circumstances, we must find that the College, with respect to [C3], has not proved its case on a balance of probabilities.

iii. Conduct with respect to [C2]

[229] There is no dispute that [C2] had approximately three appointments with the Registrant and that when her initial intake forms were filled in, it was indicated that her breasts, pelvic area, or buttocks were not to be touched.

[230] There is a dispute, however, as to what occurred during [C2]'s final appointment. She testified that the Registrant grazed her groin multiple times during the massage and then moved aside the bathing suit bottom [C2] was wearing, put his hand directly on her groin and/or vaginal area, and proceeded to massage that area. The Registrant disputed these allegations and suggested that [C2] continued to add details for the purpose of strengthening them.

[231] The Registrant admitted to asking [C2] to lower her bathing suit bottoms, but only for the purpose of properly massaging her lower back area, just above the glutes. As for the bikini top, the Registrant unfastened this while [C2] was facing down so he could massage her back properly. He refastened the bikini top as soon as he had finished the back massage. The Registrant recalled massaging the area just below [C2]'s panty line but he testified that he never massaged [C2]'s groin area nor did he at any point place his hand on [C2]'s vagina.

Findings with respect to [C2]

[232] On the basis of the evidence offered and using the balance of probabilities standard, the Panel finds that the College has not proven that the Registrant placed his hand directly on [C2]'s groin and/or vaginal area, or massaged that area.

[233] [C2] testified clearly and without emotion. She appeared to genuinely believe at least some of her allegations against the Registrant. It is possible that something untoward happened during the session [C2] has complained about, but the Panel cannot make a finding based on possibility. The allegations concern what may or may not have happened in a private room without independent witnesses.

[234] The Panel does not believe the Registrant's claim that he offered [C2] a female practitioner. This was not the first time he treated a female and there is no independent evidence to suggest that the Registrant routinely offers female practitioners to female patients. The Registrant, by his own admission, had treated about 9,000 patients in the intervening period between his encounter with [C2] and this hearing. It seems unlikely to the Panel that after so many patients and all this time, he would remember a detail such as offering [C2] a female practitioner.

[235] That said, and despite testifying in a calm and unemotional manner, [C2]'s version of events were not always consistent. Her description of crucial events tended to vary. For example, the touching of her genital area became increasingly detailed. The description began as the Registrant's hand over the genital area and then [C2] provided more details such as the salmon pink colour of her bathing suit. This detail was not provided on either one of [C2]'s calls with the College investigator, which was already three years after the alleged incident. Similarly, [C2]'s statement that the Registrant touched her labia and her clitoris was only revealed at the hearing. The Panel would have expected such serious allegations to have been revealed to the College investigators.

[236] That [C2] might have had a desire to forget the incident and not report it, is understandable. This, however, is inconsistent with her recall, years after the alleged incident, of such details as the colour of the bathing suit she wore**.**

[237] [C2] testified that when the Registrant as[C2]d if he could treat her abdominal area to address the pre-menstrual cramps she experienced, [C2] said she may have nodded. The Panel infers from that evidence that [C2] did not object to her abdomen being massaged at that point in the testimony. Given the proximity of [C2]'s abdomen to the pelvic area, [C2] must have had a degree of confidence that the Registrant would not touch her inappropriately. [C2] testified that she was in fact "briefly" touched inappropriately. But she also made it clear that she was not digitally penetrated.

[238] [C2] further testified that the Registrant removed his hand from under the bathing suit as soon as [C2] showed discomfort by "flinching" and "jumping off the table a bit". If we believe [C2]'s testimony, this would suggest a degree of sensitivity on the part of the Registrant not to touch [C2] inappropriately.

iv. Disputed facts pertaining to receipts issued by the Registrant

[239] Evidence was adduced as to whether the Registrant had participated in a scheme to defraud an insurance company by colluding with [C1] to improperly claim the cost of Ayurvedic massage therapy using the Registrant's social work number. The Notice of Hearing does not allege professional misconduct in respect of this issue. Rather, both sides addressed the issue in the context of [C1]'s and the Registrant's credibility. The Panel feels dutybound, however, to comment on these allegations in light of the amount of evidence that has been adduced with respect to the same.

[240] [C1] testified that at her first or second appointment, the Registrant advised her that he was in the process of being registered with the College, and once his registration was accepted she would be able to submit her massage receipts to her insurance company. [C1]'s first appointment was May 8, 2018, prior to the Registrant's registration. By her third appointment on May 29, 2018, the Registrant had been registered with the College. [C1]'s evidence is that once he became registered with the College, the Registrant provided her with his social worker registration number so she could submit her receipts to the insurance company. The Registrant volunteered this information. The Registrant also asked [C1] to let him know if she was able to get the cost of his services reimbursed.

[241] The Registrant disputed [C1]'s account and submitted that there are serious reasons to question [C1]'s credibility and reliability based on her admission that she asked the Registrant to

provide her with false or misleading receipts for services that were not rendered, completely unprompted, in March 2019. [C1] was asked whether she agreed that her e-mail asked the Registrant to provide false invoices and she said, "it appears so". There is no doubt that [C1] submitted claims for "SW" and was reimbursed by her insurance company. There is no evidence whatsoever, beyond [C1]'s mere assertion, that the Registrant had any knowledge of [C1]'s insurance claims. The evidence was clear that [C1] made her own insurance claims and was reimbursed, independent of the Registrant.

[242] Between the two versions concerning the issuance of receipts, the Panel finds [C1]'s account more credible than the account offered by the Registrant.

[243] The records of the insurance company show that [C1] was reimbursed for several massages with the Registrant. Each one of these receipts had a value of $100, plus $13 tax for a total of $113. The reimbursement to [C1] was paid directly into her bank account. Since the Registrant does not do direct billing, [C1] submitted the insurance claims herself, describing the treatment she received as "social work services". [C1] testified that she believed at the time that "social work" was an accurate description of the services she received from the Registrant, especially as the Ayurvedic treatments were therapeutic and helped with mental health. [C1] testified further that the Registrant had told her that his services were covered and she relied on him as the professional.

[244] The Panel notes that the receipts the Registrant produced for the College during the investigation (Exhibits 19, 28 and 29) were not the receipts she received from the Registrant. The receipts the Registrant provided to the College include variable figures like $69.95, $79.95, whereas the receipts the Registrant gave her were for round numbers *i.e.* $100 plus tax. According to [C1], those receipts included the Registrant's social worker registration number. On the other hand, the stamp on the version of the receipts that the Registrant provided to the College stated "Natural Medicine Practitioner" and included the Registrant's natural medicine practitioner number; not his social worker number.

[245] [C2] and [C3] both testified that [C1] paid for the services that the Registrant provided to them. They had no financial interaction with the Registrant other than perhaps to deliver receipts to [C1].

[246] The Registrant's denial that he gave [C1] his social worker number so that she could submit receipts to her insurance is not supported by the documentary evidence. The Panel notes the following documentary evidence in particular that undermines the Registrant's account:

a. Sometime before August 16, 2018, the Registrant sent a text message to [C1] stating that he had given [C2] four receipts totalling $400 plus tax to deliver to [C1]. These receipts are for whole numbers and different from the receipts the Registrant provided to the College. The Panel has no difficulty in accepting that the receipts the Registrant provided to the College were not in fact the receipts he had provided to [C1].

b. The Registrant's text message that he sent four receipts totalling $400 plus tax home with [C2] (i.e. $100 each, plus tax) is consistent with [C1]'s evidence that each receipt was around $100 and in round numbers. This is also consistent with the insurance company's records, which show that [C1] claimed services valued at $100 plus tax. Furthermore, it is consistent with the charges displayed on the Registrant's website ($100 per hour for social

work services and for Ayurveda treatments), which the Registrant acknowledged were the same in 2018.

[247] [C1]'s evidence is fortified by the fact that she kept the Registrant apprised of the status of her insurance claims. In an email dated June 18, 2018, [C1] reported to the Registrant: "I checked the bank - your claim is still under processing. They have not passed it yet." The Panel notes that at that time, the Registrant was a newly registered social worker, having only been licensed on May 28, 2018, and would have wanted to know whether the claim had been accepted by the insurance company. He may have been testing, via [C1], whether future claims would be accepted by insurance companies.

[248] For these reasons, the Panel preferred the evidence of [C1] over that of the Registrant in respect of the receipts and finds on a balance of probabilities that the Registrant gave [C1] receipts with his social worker registration number for her to submit to her insurer and claim reimbursement for massage treatments. Whether or not [C1] believed that the Registrant's Ayurvedic massages were covered by her insurance policy, the Registrant erred in participating in the provision of misleading information to the insurance company.

[249] Even so, the Panel cannot find that the Registrant engaged in an act of professional misconduct in respect of the insurance claims since these events are not included in the scope of the Notice of Hearing. Furthermore, finding [C1] to be more credible than the Registrant in this particular aspect of the matter, does not change the fact that in other aspects of the case, the Panel found the Registrant to be more credible.

Findings on allegation of professional misconduct

[250] The College alleges in the Notice of Hearing that the Registrant is guilty of professional misconduct as set out in s. 26(2)(a) and (c) of the Act in that he violated s. 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.

[251] The onus is on the College to prove on a balance of probabilities that the Registrant is guilty of professional misconduct as alleged. Applying that standard, the College failed to prove that the Registrant engaged in touching of a sexual nature with respect to [C1], [C2] or [C3] as alleged in the Notice of Hearing. Therefore, the College has not proven that the Registrant engaged in conduct relevant to the practice of social work that would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, as alleged.

Conclusion

[252] For the reasons set out above, the allegation of professional misconduct against the Registrant set out in the Notice of Hearing is dismissed.

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

Date: _____ Signed: _____

Rita Silverthorn, Chair
Chisanga Chekwe
Lori Monroe