

**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 Freedman,
2024 ONCSWSSW 5

Decision 20240328
date:

BETWEEN:

THE ONTARIO COLLEGE OF SOCIAL WORKERS
AND SOCIAL SERVICE WORKERS

- and -

MARK FREEDMAN

PANEL:	Rita Silverthorn	Chair, Professional Member
	Charlene Crews	Professional Member
	Chisanga Chekwe	Public Member

Appearances: Deb McKenna, counsel for the College
Jordan Glick, counsel for the Registrant
Edward Marrocco, Independent Legal Counsel to the Panel

Heard: January 29, 2024

DECISION AND REASONS FOR DECISION

[1] This matter was heard by way of videoconference before a panel of the Discipline Committee (the “**Panel**”) on January 29, 2024, at the Ontario College of Social Workers and Social Service Workers (the “**College**”). All parties attended and were represented by counsel.

Publication Ban and Sealing Order

[2] At the outset of the hearing, the Panel made two orders with the consent of all parties.

- [3] First, the Panel ordered that no person shall publish or broadcast the name or any other information which may cause the individual referred to in the proceedings as X.X. or the Client to be publicly identifiable.
- [4] Second, the Panel ordered that the exhibit brief filed as Exhibit 3 on the proceedings is sealed. No member of the public may access Exhibit 3 as part of the Tribunal's record of its proceedings.

The Allegations

- [5] In the Notice of Hearing dated February 1, 2022, Mark Freedman (the "**Registrant**") is alleged to be guilty of professional misconduct pursuant to the *Social Work and Social Service Work Act, 1998*, SO 1998, c 31 (the "**Act**") in that he is alleged to have engaged in conduct that contravenes the Act, Ontario Regulation 384/00 (the "**Professional Misconduct Regulation**"), Schedule "A" to By-law No. 66 of the Ontario College of Social Workers and Social Service Workers, being the Ontario College of Social Workers and Social Service Workers Code of Ethics (the "**Code of Ethics**"), and Schedule "B" to By-law No. 66 of the Ontario College of Social Workers and Social Service Workers, being the Ontario College of Social Workers and Social Service Workers Standards of Practice Handbook (the "**Handbook**").
- [6] The allegations are set out in the Notice of Hearing and the particulars are as follows:

I. The following are particulars of the said allegations:

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**"). At all relevant times, you provided social work services to clients through your employment at Homewood Health ("**Homewood**").
2. Between in or about July 2015 and April 2016, you provided social work services at Homewood to Client [X.X.] You again provided services to [X.X.] between in or about March 2019 and January 2020. Those services included counselling.
3. You violated professional boundaries and/or engaged in behaviour or remarks of a sexual nature towards [X.X.] that were not of a clinical nature appropriate to the service provided between in or about March 2019 and January 2020. In particular, you:
 - (a) Gave [X.X.] your personal phone number and encouraged [X.X.] to contact you at that number any time;
 - (b) Encouraged [X.X.] to continue texting you and/or indicating that she was not crossing a line by texting you about matters unrelated to her counselling;
 - (c) Repeatedly exchanged text messages with [X.X.] that were personal, flirtatious, and/or unprofessional in nature. On many occasions, you had multiple conversations with [X.X.] by text message in a single day. Examples of these personal and/or unprofessional messages include, but are not limited to:
 - (i) Discussions of your respective plans for the day and/or evening;
 - (ii) Discussions about taking a shower or bath and/or how showers and baths made you each feel;
 - (iii) Providing [X.X.] with compliments, including but not limited to telling her that you admired her, that you hoped she was safe and/or warm, that she was very special, that she had enriched your life, that you would like to see her dance, and/or that she wrote beautifully;

- (iv) Disclosing personal information, including but not limited to information about your activities, your family, and your hobbies;
 - (v) Sending [X.X.] music you enjoyed, telling her that you hoped she found them “stimulating”, and/or asking her to tell you more about how they made her feel;
 - (vi) In response to [X.X.]’s texts, responding inappropriately and/or unprofessionally, including but not limited to by telling [X.X.] that her words made you feel “stimulated”, that they made you blush, and/or that they made you feel good;
- (d) When [X.X.] sent personal, flirtatious and/or suggestive texts to you, instead of setting boundaries with her, you did not dissuade her, encouraged her, and/or indicated that you liked these messages;
 - (e) On or about January 18-19, 2020, engaged in a sexual conversation with [X.X.] via text message, wherein she described performing sexual acts involving the two of you. Your responses to her messages were sexual in nature, encouraged [X.X.]’s sexual messages and/or asked her to provide you with more detail;
 - (f) Discussed the possibility of a continued “sexting” relationship, without physical contact with one another;
 - (g) Accepted gifts from [X.X.];
 - (h) Told [X.X.] that you cherished a card she wrote you;
 - (i) Gave [X.X.] a copy of your band’s CD as a gift.
- 4. After the text message conversation on or about January 18-19, 2020, you texted [X.X.] and informed her that you did not want to lead her on and/or were not interested in a relationship with her.
 - 5. [X.X.] was confused by your conduct, as your actions had caused her to “fall” for you and had led her to believe that you were attracted to her and/or wanted a romantic/sexual relationship with her.
 - 6. As a result of your conduct, [X.X.] felt that she could not continue to see you for counselling.
 - 7. On or about January 22, 2020, [X.X.] disclosed your conduct to another therapist.
 - 8. When Homewood confronted you about your relationship with [X.X.], you initially lied and stated that nothing inappropriate had occurred.
 - 9. [X.X.] was required to redo the Depression Care program she had been doing with you after she was transferred to another counsellor, because she had not finished it by the time she reported you.
 - 10. Your conduct harmed [X.X.] Your actions caused her to feel that you had violated her trust, she questioned the veracity of things you had told her, and she expressed that it would take time for her to begin to trust others again

II. It is alleged that by reason of engaging in some or all of the conduct outlined above, you are guilty of professional misconduct as set out in section 26(2)(a) and (c) of the Act:

- (a) In that you violated **Section 2.2 of the Professional Misconduct Regulation** and
 - (i) **Principle I of the Handbook (commented on in Interpretations 1.5 and 1.6)** by failing to be aware of your values, attitudes and needs and how those impact on your professional relationship with clients; and by failing to distinguish your needs and interests from those of your clients to ensure that, within your professional relationship, clients’ needs and interests remained paramount;
 - (ii) Principle II of the Handbook (commented on in Interpretations 2.2, 2.2.1, and 2.2.8) by:
 - (A) failing to ensure clients are protected from an abuse of power during and after the provision of professional services and/or failing to maintain clear and appropriate boundaries in a professional relationship;

- (B) engaging in a professional relationship that constitutes a conflict of interest and/or in a situation in which you ought reasonably to have known that [X.X.] would be at risk;
- (C) engaging in conduct that could reasonably be perceived as reflecting negatively on the profession of social work;
- (iii) **Principle III of the Handbook (commented on in Interpretation 3.7)** by failing to assume full responsibility for demonstrating that a client was not exploited, coerced or manipulated, intentionally or unintentionally;
- (iv) Principle VIII of the Handbook (commented on in Interpretations 8.1, 8.2.3, and 8.4) by:
 - (A) failing to be solely responsible for ensuring that sexual misconduct did not occur;
 - (B) engaging in behaviour or remarks of a sexual nature towards a client, other than behaviour or remarks of a clinical nature appropriate to the service provided; and
 - (C) failing to state clearly that the behaviour was inappropriate when a client initiated behaviour of a sexual nature;
- (b) In that you violated **Section 2.5 of the Professional Misconduct Regulation** in that you abused a client physically, sexually, verbally, psychologically or emotionally, including by sexually abusing a client within the meaning of subsection 43(4) of the *Act*;
- (c) In that you violated **Section 2.28 of the Professional Misconduct Regulation** by contravening the *Act*, regulations or by-laws; and/or
- (d) In that you violated **Section 2.36 of the Professional Misconduct Regulation** by engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

Registrant's Plea

- [7] The Registrant was arraigned and admitted the allegations set out in the Notice of Hearing. The Panel conducted an oral plea inquiry and was satisfied that the Registrant's admissions were voluntary, informed and unequivocal.

The Evidence

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

A. Overview

1. The Registrant was first registered as a social worker on June 3, 2010.
2. Other than the allegations set out in the Notice of Hearing dated February 1, 2022 (attached as **Exhibit "A"**), the Registrant has no prior discipline or complaint history with the College.
3. At all times material to the allegations in **Exhibit "A"**, the Registrant was practising as a social worker at Homewood Health ("**Homewood**") in Toronto, Ontario – a facility that specializes in providing assistance to individuals with mental health and addiction concerns.
4. During the periods from between July 2015 to April 2016 and March 2019 to January 2020, the Registrant provided social work services at Homewood to [X.X.] (the "**Client**"). Those services included counselling.
5. As a result of the Registrant's conduct with respect to [X.X.], the Registrant's employment with Homewood was terminated on February 4, 2020. Homewood subsequently filed a mandatory report with the College on February 19, 2020.

B. Incidents Leading to Mandatory Report

6. [X.X.] initially saw the Registrant in 2015 to 2016 for counselling relating to addiction and an emotionally abusive relationship. At that time, the Registrant encouraged [X.X.] to try Alcoholics Anonymous or Codependents Anonymous and also shared with [X.X.] that he also had an addiction to alcohol.
7. In 2019, [X.X.] returned to the Registrant for counselling and indicated that she wanted to stop drinking. At that time, the Registrant gave [X.X.] his cellphone number and told [X.X.] to call anytime.
8. On March 28, 2019, [X.X.] texted the Registrant for the first time and asked about residential treatment for substance abuse.
9. [X.X.] completed an in-patient program, and it was recommended that [X.X.] follow-up with therapy for depression and back-to-work assistance. [X.X.] began counselling with the Registrant for that purpose.
10. [X.X.]'s first in-person session with the Registrant, after residual treatment, was on June 15, 2019. She saw the Registrant approximately once a week until January 20, 2020.
11. During the professional relationship, the Registrant accepted gifts from [X.X.], including a hot water bottle with a faux fur cover, scented bath salts, and a book. [X.X.] also frequently brought coffee to the Registrant for their counselling sessions.
12. During this time, [X.X.] and the Registrant also communicated extensively via text, including exchanging messages that were personal in nature and breached professional boundaries. This included texting about their personal lives, families, and hobbies, and what they were doing on a particular day or evening. The first such text was on August 18, 2019.
13. Attached as **Exhibit "B"** to the ASF is a collection of the text messages exchanged between the Registrant and [X.X.] during the period from August 2019 and January 2020.
14. On January 18, 2020, the Registrant and [X.X.] also engaged in explicit sexting. On that occasion, [X.X.] texted the Registrant indicating that she had feelings for him and asking if the Registrant wanted to know how she released those feelings.
15. The Registrant responded to [X.X.], "please yes", and [X.X.] sent texts to the Registrant of a sexual nature describing what she was doing to herself. In between [X.X.]'s texts, the Registrant responded with "yes" and "tell me".
16. The Member also sent messages to [X.X.] that stated, "mouth. now", "finish me", and "will you finish you."
17. On the following day, [X.X.] texted that she was going for a hot shower and the Registrant asked her to tell him how it was. In response, [X.X.] stated that he made her feel good, the Registrant indicated, "like that."
18. [X.X.] attended an in-person counselling session two days later (on January 20), which was professional and contained neither intimate nor sexual content. At the conclusion of the counseling session, the Registrant gifted [X.X.] with a copy of his band's CD.
19. Later that day, [X.X.] and the Registrant exchanged texts. Within those texts, the Registrant indicated that he did not want to lead her on in terms of a committed relationship. After some questions from [X.X.], the Registrant stated that he was not in a position to pursue anything with her, not wanting to lead her on or confuse her.
20. [X.X.] subsequently terminated the professional and personal relationship with the Registrant.
21. When Homewood was advised of what had transpired between the Registrant and [X.X.], it confronted the Registrant about the texts, after which time the Registrant's employment was terminated.
22. Based on these facts, the Registrant admits that he engaged in and is guilty of professional misconduct, as described in paragraphs 1 to 27 above, and within the meaning of section 26(2)(a) and (c) of the *Act*, in that:

- (a) The Registrant violated Section 2.2 of the Professional Misconduct Regulation and:
 - (i) Principle I of the Handbook (commented on in Interpretations 1.5 and 1.6) by failing to be aware of his values, attitudes and needs and how those impact on his professional relationship with [X.X.]; and by failing to distinguish his needs and interests from those of [X.X.] to ensure that, within the professional relationship, [X.X.]'s needs and interests remained paramount;
 - (ii) Principle II of the Handbook (commented on in Interpretations 2.2, 2.2.1, and 2.2.8) by:
 - (A) failing to ensure that [X.X.] was protected from an abuse of power during the provision of professional services and failing to maintain clear and appropriate boundaries in a professional relationship;
 - (B) engaging in a professional relationship that constitutes a conflict of interest and/or in a situation in which [X.X.] ought reasonably to have known that [X.X.] would be at risk;
 - (C) engaging in conduct that could reasonably be perceived as reflecting negatively on the profession of social work;
 - (iii) Principle III of the Handbook (commented on in Interpretation 3.7) by failing to assume full responsibility for demonstrating that [X.X.] was not exploited, coerced or manipulated, intentionally or unintentionally;
 - (iv) Principle VIII of the Handbook (commented on in Interpretations 8.1, 8.2.3, and 8.4) by:
 - (A) failing to be solely responsible for ensuring that sexual misconduct did not occur;
 - (B) engaging in behaviour or remarks of a sexual nature towards [X.X.], other than behaviour or remarks of a clinical nature appropriate to the service provided; and
 - (C) failing to state clearly that the behaviour was inappropriate when [X.X.] initiated behaviour of a sexual nature;
- (b) The Registrant violated Section 2.5 of the Professional Misconduct Regulation in that he abused a client physically, sexually, verbally, psychologically or emotionally, including by sexually abusing [X.X.] within the meaning of subsection 43(4) of the *Act*;
- (c) The Registrant violated Section 2.28 of the Professional Misconduct Regulation by contravening the *Act*, regulations or by-laws; and/or
- (d) The Registrant 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.

ACKNOWLEDGEMENTS:

- 23. The Registrant understands the nature of the allegations that have been made against him and that, by voluntarily admitting these facts, he waives his right to require the College to otherwise prove these facts.
- 24. The Registrant understands that the panel of the Discipline Committee can accept the facts herein constitute professional misconduct and, in particular, can accept his admissions that they constitute professional misconduct.
- 25. The Registrant understands that the panel of the Discipline Committee can make orders as a result of a finding of professional misconduct, as described in the Notice of Hearing dated February 1, 2021. The Registrant understands that if the panel makes a finding or findings of professional misconduct against him, then the panel's decision and its reasons, and/or a summary of its reasons, including the facts contained herein, and the Registrant's name will be published, including but not limited to, in the College's publications, on the College's public register, on the College's website, and/or on CanLII (the website operated by the Canadian Legal Information Institute).

26. The Registrant has had the opportunity to obtain independent legal advice and was encouraged to do so by the College. He further acknowledges that he is entering into this Agreed Statement of Facts freely and voluntarily, without compulsion or duress.

Decision of the Panel

- [9] Having considered the admissions of the Registrant, the evidence contained in the Agreed Statement of Facts, and the submissions of counsel, the Panel found that the Registrant committed the acts of professional misconduct alleged in the Notice of Hearing. The Panel found that the Registrant's conduct would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

Reasons for Decision

- [10] The Panel found that the evidence in the Agreed Statement of Facts, together with the Registrant's admissions proved, on a balance of probabilities, each of the allegations made against the Registrant.
- [11] With respect to allegation (a) in the Notice of Hearing, the Panel found that the Registrant violated Section 2.2 of the Professional Misconduct Regulation, by contravening the standards set out in the Handbook in each of the two subparagraphs under allegation (a).
- [12] With respect to allegation (a)(i) in the Notice of Hearing, the Panel found that the Registrant violated Principle I of the Handbook (commented on in Interpretations 1.5 and 1.6) by failing to be aware of the Registrant's own values, attitudes and needs and how these have an impact on the Registrant's professional relationship with clients. During the professional relationship, the Registrant accepted gifts from [X.X.], including a hot water bottle with a faux fur cover, scented bath salts, and a book. [X.X.] also frequently brought coffee to the Registrant for their counselling sessions. By these actions, the Registrant opened the way to an inappropriate relationship with [X.X.] that ultimately undermined [X.X.]'s interests.
- [13] With respect to allegation (a)(ii) in the Notice of Hearing, the Panel found that the Registrant violated Principle II of the Handbook (commented on in Interpretations 2.2, 2.2.1, 2.2.3, 2.2.4, and 2.2.8) by failing to ensure clients are protected from an abuse of power during and after the provision of professional services and/or failing to maintain clear and appropriate boundaries in a professional relationship. The Registrant gave [X.X.] his personal telephone number and encouraged [X.X.] to contact him at that number any time. The Registrant then manipulated [X.X.] by encouraging her to continue texting him and indicating that she was not crossing a line by texting him about matters unrelated to her counselling. [X.X.] was understandably confused by the Registrant's conduct. His actions had caused her to "fall" for him and led her to believe that the Registrant was attracted to her and/or wanted a romantic/sexual relationship with her. Given the vulnerability of [X.X.], the Registrant ought to have anticipated this confusion and the difficulties it would cause for [X.X.]. As a result of the Registrant's conduct, [X.X.] felt that she could not continue to see him for counselling. The Registrant's conduct was harmful to [X.X.] and can reasonably be perceived as reflecting negatively on the profession of social work. The public are entitled to have confidence that members of the profession of social work will always respect boundaries.

- [14] With respect to allegation (a)(iii) in the Notice of Hearing, the Panel found that the Registrant violated Principle III of the Handbook (commented on in Interpretation 3.7) by failing to assume full responsibility for demonstrating that [X.X.] was not exploited, coerced or manipulated, intentionally or unintentionally. On January 20, 2020, the Registrant and [X.X.] exchanged texts messages within which the Registrant indicated that he did not want to lead [X.X.] on with respect to a committed relationship. After some questions from [X.X.], the Registrant stated that he was not in a position to pursue anything with her, not wanting to lead her on or confuse her. But at this point the Registrant had already led [X.X.] on. He had earlier encouraged her to “have feelings” for him and to tell him how she released those feelings.
- [15] With respect to allegation (iv) in the Notice of Hearing the Panel found that the Registrant violated Principle VIII of the Handbook (commented on in Interpretations 8.1, 8.2.3, and 8.4) by encouraging the developing of a sexual relationship with [X.X.] expressed through text messages. The Registrant made remarks of a sexual nature that had absolutely nothing to do with the service he was engaged to provide to [X.X.]. Instead of stopping inappropriate sexual messages between him and [X.X.], the Registrant actively encouraged this talk.
- [16] With respect to allegation (b) in the Notice of Hearing, the Panel found that the Registrant violated Section 2.5 of the Professional Misconduct Regulation in that he abused a client physically, sexually, verbally, psychologically or emotionally, including by sexually abusing [X.X.] within the meaning of subsection 43(4) of the Act. Under this provision, “sexual abuse” includes behaviour or remarks of a sexual nature by a registrant toward a client, other than behaviour or remarks of a clinical nature appropriate to the service provided. There is no shortage of sexually charged remarks by the Registrant in the Agreed Statement of Facts.
- [17] With respect to violation (c) in the Notice of Hearing, the Panel found that the Registrant violated Section 2.28 of the Professional Misconduct Regulation by contravening the Act, regulations or by-laws. The Registrant admits that he engaged in and is guilty of professional misconduct caught by the provisions of section 26(2)(a) and (c) of the Act.
- [18] With respect to allegation (d) in the Notice of Hearing, the Panel found that the Registrant 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 registrants as disgraceful, dishonourable, or unprofessional.

Penalty Submissions

- [19] At the outset of the penalty phase of the proceedings, counsel jointly confirmed that the Registrant had already provided a resignation letter to the College with an undertaking to not reapply for membership. The Panel accepted this submission.
- [20] The parties were also in agreement on the issue of penalty. They presented to the Panel a Joint Submission on Penalty (“**Joint Submission**”) which stipulates that:

1. The Registrant will be reprimanded, orally, by the Discipline Committee via an electronic hearing, and the fact and nature of the reprimand shall be recorded on the College's public register for an unlimited period of time.
2. The finding and penalty of the Discipline Committee shall be published, with the Registrant's name, online and/or in print, including, but not limited to, in the official publications of the College, on the College's public register, and posted to CanLII.
3. The Registrant shall pay costs to the College in the amount of five thousand dollars (\$5,000.00), which amount shall be paid to the College on the following timetable:
 - \$416.66 – January 29, 2024
 - \$416.66 – February 29, 2024
 - \$416.66 – March 29, 2024
 - \$416.66 – April 29, 2024
 - \$416.66 – May 29, 2024
 - \$416.66 – June 28, 2024
 - \$416.66 – July 29, 2024
 - \$416.66 – August 29, 2024
 - \$416.66 – September 30, 2024
 - \$416.66 – October 29, 2024
 - \$416.66 – November 29, 2024
 - \$416.74 – December 30, 2024

Penalty Decision

- [21] Having considered the findings of professional misconduct, the evidence and the submissions of the parties, the Panel accepted the Joint Submission and made an order consistent with its terms before the conclusion of the hearing.
- [22] The Joint Submission contained a waiver of appeal clause so the Panel proceeded to deliver an oral reprimand to the Registrant before the conclusion of the proceedings.

Reasons for Decision on Penalty

- [23] The Registrant's proactive undertaking to resign and not re-apply for registration was essential to the Panel's deliberations. In such circumstances, the power to reprimand and the ability to address costs are the remaining tools available for the purposes of the Joint Submission.
- [24] A clear message must be sent to the profession that engaging in sexual abuse and crossing professional boundary lines will not be tolerated. Absent proactive resignation, the penalty which would otherwise attach to the serious misconduct found in this case would certainly go beyond a reprimand.
- [25] The Panel notes that the Registrant has no prior history of professional misconduct. The Panel also acknowledges the Registrant's willingness to take full responsibility for his

actions, and to cooperate with the College to reach a resolution which prevented a contested and costly hearing. He voluntarily entered into the Agreed Statement of Facts.

- [26] An appropriate penalty must maintain high professional standards, preserve public confidence in the ability of the College to regulate its registrants, and, above all, protect the public. This is achieved through a penalty that considers the principles of general deterrence, specific deterrence and, where appropriate, rehabilitation and remediation of the Registrant's practice. The Panel also acknowledges the well-established legal principle that a panel should accept a joint submission on penalty unless doing so would be contrary to the public interest and bring the administration of justice into disrepute.
- [27] With the benefit of the parties' submissions, the Panel had no reason to challenge the Joint Submission or to be concerned that it may be contrary to the public interest or bring the administration of justice into disrepute. The Panel also noted that there were personal issues present on the facts of this matter by way of the Registrant caring for a loved one with a debilitating disease. While this in no way excuses the misconduct that occurred, this information assisted the Panel in understanding how the parties came to be in agreement on the terms of the Joint Submission. The Panel has no reason to doubt that the Registrant has permanently departed from the practice of social work.
- [28] An appropriate order on penalty must be tailored to the circumstances of each particular case. The Panel is satisfied that, for all of the facts noted above, the Joint Submission is appropriately tailored to the particulars of this case.

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

Date: March 28, 2024

Signed: _____
Rita Silverthorn, Chair
Charlene Crews
Chisanga Chekwe