



Ontario College of
Social Workers and
Social Service Workers

Ordre des travailleurs
sociaux et des techniciens
en travail social de l'Ontario

250 Bloor Street E.
Suite 1000
Toronto, ON M4W 1E6

Phone: 416-972-9882
Fax: 416-972-1512
www.ocswssw.org

**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 Kelley
Denham, 2021 ONCSWSSW 3

Decision
date: 20210204

BETWEEN:

THE ONTARIO COLLEGE OF SOCIAL WORKERS
AND SOCIAL SERVICE WORKERS

- and -

KELLEY DENHAM

PANEL: Rita Silverthorn Chair, Professional Member
Angèle Desormeau Professional Member
Gerald Mak Public Member

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

Heard: November 5, 2020

CORRECTED DECISION AND REASONS FOR DECISION ON PENALTY

[1] On October 7, 2019, this panel of the Discipline Committee (the “**Panel**”) released its decision and reasons with respect to findings of professional misconduct made against Kelley Denham (the “**Member**”) under the *Social Work and Social Service Work Act, 1998*, SO 1998, c 31 (the “**Act**”). On November 5, 2020, the Panel reconvened the hearing for argument on the matter of penalty.

The Findings

[2] The detailed findings of the Panel and the reasons for those findings are set out in the Panel's written reasons of October 7, 2019, reported at see 2019 ONCSWSSW 7. In sum, the Panel found, on the basis of an agreed statement of facts, that the Member engaged in professional misconduct on three allegations:

- a. under s. 2.29 of Ontario Regulation 384/00 (the "**Professional Misconduct Regulation**") in that she contravened provincial law (namely, the *Child and Family Services Act*, RSO 1990, c C.11) and the contravention is relevant to the Member's suitability to practice;
- b. under s. 2.2 of the Professional Misconduct Regulation and the Ontario College of Social Workers and Social Services Workers Standards of Practice Handbook (the "**Handbook**"), Principle V (commented on in Interpretation 5.1), which is a by-law of the College, by failing to meet the standards of the profession when she failed to comply with applicable privacy and other legislation; and
- c. under 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.

Positions and Submissions on Order

College's Position and Submissions

[3] At the penalty hearing, and in light of the Panel's findings, the College asked for an order as follows.

1. The Member shall be reprimanded by the Discipline Committee and the fact of the reprimand be recorded on the register.
2. The Registrar shall be directed to suspend the Member's Certificate of Registration for a period of six (6) months, the first five (5) months of which shall be served commencing on the date of the Discipline Committee's Order herein. Upon completion of those first five (5) months of the suspension, the remaining one (1) month of the suspension shall be suspended for a period of two (2) years, commencing on the date of the Discipline Committee's Order herein. The remaining one (1) month of the suspension shall be remitted on the expiry of that two year period if (on or before the second anniversary of the Discipline Committee's Order herein) the Member provides evidence, satisfactory to the Registrar of the College, of compliance with the terms and conditions imposed under paragraphs 3, 4, and 5 below. For greater clarity, the terms and conditions imposed under paragraphs 3, 4, and 5 below will be binding on the Member regardless of the length of suspension served and the Member may not elect to serve the full suspension in place of performing those terms and conditions. If the Member fails to comply with the terms and conditions, the Registrar may refer the matter to the Executive Committee of the College. The Executive Committee, pursuant to its authority, may

take such action as it deems appropriate, which may include referring to the Discipline Committee allegations of professional misconduct arising from any failure to comply with the terms and conditions.

3. The Registrar shall be directed to impose a term, condition and limitation on the Member's Certificate of Registration, to be recorded on the Register, requiring the Member to, at her own expense, participate in and successfully complete an ethics course, as prescribed by and acceptable to the College, and provide proof of such completion to the Registrar within four (4) months from the date of the Order.
4. The Registrar shall be directed to impose a term, condition and limitation on the Member's Certificate of Registration, to be recorded on the Register, requiring the Member to, at her own expense, meet with the Registrar and/or a regulatory expert designated by the Registrar within six (6) months from the date of the Order. Prior to the meeting, the Member shall review sections 1-3 of the College's Privacy Toolkit for Social Workers and Social Service Workers. The subject of the meeting with the Registrar and/or regulatory expert will include:
 - a. the Acts or omissions for which the Member was found to have committed professional misconduct;
 - b. the potential consequences of the misconduct to the Member's clients, colleagues, the profession, and herself;
 - c. strategies for preventing the misconduct from recurring; and
 - d. the development of a learning plan.
5. The Registrar shall be directed to impose a term, condition and limitation on the Member's Certificate of Registration, to be recorded on the Register, requiring the Member to, for a period of 12 months from the date the Member returns to the practice of social service work:
 - a. notify any current or new employers of the Discipline Committee decision, and:
 - i. ensure the Registrar is notified of the name, address, and telephone number of all employer(s) within fifteen (15) days of commencing or resuming employment in any social service work position;
 - ii. provide her employer(s) with a copy of:
 1. the Discipline Committee's Order;
 2. the Notice of Hearing;
 3. the Agreed Statement of Facts; and

4. a copy of the Discipline Committee's Decisions and Reasons, once available;¹
 - iii. subject to paragraph 5(b), below, only practice social service work for an employer who agrees to, and does, forward a report to the Registrar within fifteen (15) days of the commencement or resumption of the Member's employment in any social service work position, confirming:
 1. that they received a copy of the required documents;
 2. that they agree to notify the Registrar immediately upon receipt of any information the Member has breached the Code of Ethics and Standards of Practice of the profession; and
 3. that they agree to perform three random audits of the Member's accesses to personal health information.
 - b. In the event that the Member operates a private practice, the Member must, at her own expense, receive supervision of her social service work practice from a member of a Regulated Profession approved by the Registrar for a period of two (2) years from the date at which the Member returns to practice from the mandatory six (6) month suspension. The Member must additionally provide to the approved supervisor (and any other approved supervisor) the Notice of Hearing and the final decision of the Discipline Committee and must provide written confirmation, signed by the supervisor, of receipt of the documents to the Registrar within fifteen (15) days of returning to practice under supervision (and within 15 days of the approval of any subsequent supervisor). The Member must seek consent from prospective clients to share personal health information with her supervisor in order to allow the supervisor to review client files and engage in review.² The substance of the supervision with the approved supervisor shall include a review of the safeguards, protocols and practices the Member has implemented in her private practice with respect to the protection of confidentiality. The supervisor shall provide a report to the Registrar at twelve (12) months and at twenty-four (24) months confirming that the supervision took place and the nature of the supervision.⁵
6. The Member shall pay costs to the College in the amount of seven thousand five hundred dollars (\$7,500) to be paid to the College within six months of the date of the Order.

¹ The College's submissions included a further item in this list, "this Joint Submission on Penalty". That was an error, as there was no Joint Submission on Penalty in this case. After the Panel released its reasons for decision, College counsel brought this error to the Panel's attention and the Panel issued corrected reasons.

² For greater clarity, while a client may refuse to sign a consent for the release of personal health information, the Member must maintain documentation, signed by the client, indicating that the request for consent was made and refused, for review by the supervisor.

7. The Discipline Committee's finding and Order (or a summary thereof) shall be published, with the Member's name, in the College's official publication, on the College's website, and on any other outlet for publication that the College deems appropriate.

[4] The College made the following submissions in support of its position on the appropriate penalty.

[5] The College's primary purpose of disciplinary proceedings is to protect the public interest. In arriving at a penalty determination, the Discipline Committee must balance the interests of the profession, of members of the public, and of members of the College. The Discipline Committee must consider the seriousness of the misconduct, the need to deter the Member from engaging in such misconduct again (i.e. specific deterrence), the need to rehabilitate the Member, and the need to deter others from engaging in similar misconduct (i.e. general deterrence). The circumstances of this case and the aggravating and mitigating factors also should be considered in determining an appropriate order. The penalty order should fall within the range of penalties ordered by this Committee in prior cases that involve similar misconduct.

[6] The College argued that its proposed penalty is appropriate in the circumstances and is consistent with the objectives of general deterrence, specific deterrence and rehabilitation, along with the other general principles that ought to be considered in a penalty decision. Specifically:

- a. A reprimand demonstrates to the public that the Discipline Committee takes findings of professional misconduct very seriously. The reprimand allows the Committee to communicate directly to Ms. Denham its disapproval of her conduct. Because the reprimand will be recorded on the Register, prospective clients or employers may inquire and learn about Ms. Denham's discipline history, which serves as a public protection measure.
- b. A suspension of six months (with one month remitted, provided that the Member complies with the terms, conditions and limitations imposed on her Certificate of Registration) will serve as both a specific and general deterrent. The length of the suspension sends a message (both to this Member and to other members) that serious misconduct of the nature found by the Panel will not be tolerated.
- c. The terms, conditions, and limitations set out in the proposed penalty will facilitate the Member's remediation. Coursework and supervision terms are measures that are intended to be educational while also providing both specific deterrence and rehabilitation. The ethics course requirement, and the review of the College's Privacy Toolkit, are educational measures that will provide the Member with tools to address the concerns noted by the Discipline Panel with respect to her approach to confidential information. The conditions proposed by the College require that any subsequent employer of the Member will be notified of the Discipline Committee decision, and in the event that the Member operates a private practice, she will receive supervision. Both of these measures will ensure that the Member has access to supervisory supports and that the public is protected.
- d. Publication of the Committee's finding and order operates as a specific and general deterrent, and is a necessary part of the College's role in protecting the public.

Publication puts other members of the College on notice of the penalties that may face if they commit professional misconduct in a similar manner. Publication is also consistent with the general principle of openness and transparency in the College's disciplinary proceedings.

[7] The College submitted that the above terms are consistent with penalties imposed by the Discipline Committee in prior cases involving a member's inappropriate disclosure of confidential information, contravention of a federal or provincial law and/or engagement in disgraceful, dishonourable or unprofessional conduct. The College identified the following cases as having similarities to this case: *Ontario College of Social Workers and Social Service Workers v Jessica Kline*, 2020 ONCSWSSW 2; *Ontario College of Social Workers and Social Service Workers and Lynda Cullain*, Decision and Reasons dated November 3 2017; *Ontario College of Social Workers and Social Service Workers and Shana Barnim*, Decision and Reasons dated July 17, 2017; *Ontario College of Social Workers and Social Service Workers and Susan DiFrancesco*, Decision and Reasons undated, heard December 11, 2013.

[8] In response to the Member's position that there should be no penalty ordered, the College argued that the Member's submissions effectively seek to challenge the Panel's misconduct findings. While it is open to the Member to challenge those findings on appeal, this is not the appropriate forum to do that. The fact that the Member was acquitted of criminal and *Provincial Offences Act* charges relating to the same underlying conduct is irrelevant to the Panel's penalty determination. There is no inconsistency between this Committee's misconduct findings and an acquittal in the criminal proceedings. Acquittal does not show that events did not occur but only that the case was not proven beyond a reasonable doubt. In contrast, a finding of misconduct is based on a balance of probabilities. The College further argued that the Member's position suggests she does not appreciate the seriousness of her conduct. The Member deliberately accessed and downloaded a number of confidential and sensitive documents belonging to Family and Children's Services, posted a link to a highly confidential document on a Facebook group, and encouraged others to access to link and view the documents. The College also submits that if no penalty is imposed then it sends a message that the respect for confidentiality is not important.

[9] With respect to the issue of costs, the College submitted that the principles of costs generally support a costs order in this case of up to 2/3 of the actual costs incurred by the College, if the College were to request it. The Member's misconduct was serious, exposing private information about children and families, and the College was successful in proving the misconduct alleged. The misconduct and penalty proceedings together occupied two full hearing days and involved legal issues of some complexity, given the parallel criminal and provincial offense proceedings. The costs order proposed by the College in the amount of \$7,500 is well below the College's actual costs incurred in this matter which exceed \$40,000, in recognition of the Member's financial circumstances. However, it is appropriate that the Member be required to pay at least a portion of the College's costs, given that the prosecution was occasioned by the Member's misconduct.

Member's Position and Submissions

[10] The Member's position at the penalty hearing was that there should be no penalty imposed on her. She likened herself to a whistleblower and argued that her purpose in disclosing the information was to safeguard others. She submitted that it was the publicity of the charges that led to the discipline proceedings against her and, ultimately, the finding of misconduct. Now, the

media has reported on her acquittal of the criminal charges, which shows that the public reporting and opinion of her case has changed significantly. The Member further argued that as aspects of the Committee's misconduct findings have been contradicted by the court's decision in her criminal case and facts that have now been reported in the media. The Member outlined that the College did not see the evidence used in the criminal proceedings and this was not included in the Agreed Statement of Facts that was used at the Discipline Hearing. She argued that as a result of her actions which exposed a problem and led to the removal of private information from a public website, other families are better off. In the circumstances of this case, it is in the public interest that no penalty order be made. The Member further argues that the fact that she has practised for the past year since the Panel's decision on the misconduct allegations, without further incident, indicates that a penalty is not necessary.

Advice of Independent Legal Counsel

[11] The Panel's independent legal counsel outlined the powers of the Discipline Committee, upon finding a member guilty of professional conduct, as set out in ss. 26(4) and 26(5) of the Act. Independent legal counsel advised the Panel that based on the wording of s. 26(4), which says the Discipline Committee "*shall* make an order doing one or more of the following..." the Panel must make an order revoking, suspending or imposing terms, conditions or limitations on the Member's certificate of registration (though the Panel may also direct that the imposition of one of those penalty terms be postponed for a specified period and not be imposed if specified terms are met within that period). As such, the Panel has no discretion to refuse to make any penalty order.

[12] Independent legal counsel explained that the purpose of a penalty order is not to punish the Member or exact retribution but rather to protect the public and preserve public confidence in the College's ability to regulate the profession. The Panel has the authority to make the penalty decision and is entitled to craft the penalty that it considers most appropriate, although it would be exceptional for a panel to impose a penalty that is more severe than what the College is seeking.

[13] In arriving at a penalty order that is appropriate to the finding of professional misconduct, the Panel must be guided by the principles of public protection, general and specific deterrence and remediation. The penalty must be based on the Panel's earlier misconduct findings; those findings may not be revisited at this stage. Independent legal counsel agreed with the College that the Member's acquittal on the criminal charges should not play a role in the Panel's assessment of the appropriate penalty and that there is no inconsistency between the Panel's findings of professional misconduct and the acquittal.

[14] Independent legal counsel described the objectives of public protection and maintaining public confidence, general and specific deterrence, and rehabilitation/remediation.

[15] Independent legal counsel further advised the Panel that the Member had a right to deny the allegations of professional misconduct and require the College to prove its case at a hearing. The fact that the Member exercised her right to a hearing must not be treated as an aggravating factor. However, in considering the prior cases presented to the Panel, the Panel should focus on similarities and differences between each case and this one, especially where the penalty decision in an early case resulted from a joint submission on penalty in a case where the member admitted to their misconduct, which is a significant mitigating factor.

[16] In terms of a cost order, independent legal counsel reminded the Panel that costs are not considered to be a fine or a punitive measure, but rather a way for the College to recover some of the costs of the discipline proceeding. The Panel has wide discretion with respect to both making an order for costs and the amount of any order. The financial circumstances of the Member may be taken into consideration. The amount of \$7,500 sought by the College is a considerable discount of the College's actual costs. Independent legal counsel advised the Panel that it has discretion to stipulate terms around the payment of a costs award, such as permitting it to be paid in installments or over a period of time.

Decision of the Panel on Penalty and Costs

[17] Having considered the findings of professional misconduct, the relevant evidence and the submissions of the parties, the Panel makes the following order.

1. The Member shall be reprimanded by the Discipline Committee, either in-person or by video conference as the Committee may direct, and the fact of the reprimand shall be recorded on the register.
2. The Registrar is hereby directed to suspend the Member's Certificate of Registration for a period of six (6) months, the first five (5) months of which shall be served commencing on the date of the Discipline Committee's Order herein. Upon completion of those first five (5) months of the suspension, the remaining one (1) month of the suspension shall be suspended for a period of two (2) years, commencing on the date of the Discipline Committee's Order herein. The remaining one (1) month of the suspension shall be remitted on the expiry of that two year period if (on or before the second anniversary of the Discipline Committee's Order herein) the Member provides evidence, satisfactory to the Registrar of the College, of compliance with the terms and conditions imposed under paragraphs 3, 4, and 5 below. For greater clarity, the terms and conditions imposed under paragraphs 3, 4, and 5 below will be binding on the Member regardless of the length of suspension served and the Member may not elect to serve the full suspension in place of performing those terms and conditions. If the Member fails to comply with the terms and conditions, the Registrar may refer the matter to the Executive Committee of the College. The Executive Committee, pursuant to its authority, may take such action as it deems appropriate, which may include referring to the Discipline Committee allegations of professional misconduct arising from any failure to comply with the terms and conditions.
3. The Registrar is hereby directed to impose a term, condition and limitation on the Member's Certificate of Registration, to be recorded on the Register, requiring the Member to, at her own expense, participate in and successfully complete an ethics course, as prescribed by and acceptable to the College, and provide proof of such completion to the Registrar within four (4) months from the date of the Order.
4. The Registrar is hereby directed to impose a term, condition and limitation on the Member's Certificate of Registration, to be recorded on the Register, requiring the Member to, at her own expense, meet with the Registrar and/or a regulatory expert designated by the Registrar within six (6) months from the date of the Order. Prior to the meeting, the Member shall review sections 1-3 of the College's Privacy Toolkit for Social Workers and Social Service Workers. The subject of the meeting with the Registrar and/or regulatory expert will include:

- a. the Acts or omissions for which the Member was found to have committed professional misconduct;
 - b. the potential consequences of the misconduct to the Member's clients, colleagues, the profession, and herself;
 - c. strategies for preventing the misconduct from recurring; and
 - d. the development of a learning plan.
5. The Registrar is hereby directed to impose a term, condition and limitation on the Member's Certificate of Registration, to be recorded on the Register, requiring the Member to, for a period of 12 months from the date the Member returns to the practice of social service work:
- a. notify any current or new employers of the Discipline Committee decision, and:
 - i. ensure the Registrar is notified of the name, address, and telephone number of all employer(s) within fifteen (15) days of commencing or resuming employment in any social service work position;
 - ii. provide her employer(s) with a copy of:
 1. the Discipline Committee's Order;
 2. the Notice of Hearing;
 3. the Agreed Statement of Facts;; and
 4. a copy of the Discipline Committee's Decisions and Reasons, once available;³
 - iii. subject to paragraph 5(b), below, only practice social service work for an employer who agrees to, and does, forward a report to the Registrar within fifteen (15) days of the commencement or resumption of the Member's employment in any social service work position, confirming:
 1. that they received a copy of the required documents;
 2. that they agree to notify the Registrar immediately upon receipt of any information the Member has breached the Code of Ethics and Standards of Practice of the profession; and
 3. that they agree to perform three random audits of the Member's accesses to personal health information.

³ The Panel's reasons for decision initially included in the items listed in paragraph 5(a)(ii) of the penalty order "this Joint Submission on Penalty". After being notified of the error in the College's submissions, the Panel identified the error in its own order and issued these corrected reasons. The reference to "this Joint Submission on Penalty" has been deleted as there is no Joint Submission on Penalty in this case.

- b. In the event that the Member operates a private practice, at her own expense receive supervision of her social service work practice from a member of a Regulated Profession approved by the Registrar for a period of two (2) years from the date at which the Member returns to practice from the mandatory six (6) month suspension. The Member must additionally provide to the approved supervisor (and any other approved supervisor) the Notice of Hearing and the final decision of the Discipline Committee and must provide written confirmation, signed by the supervisor, of receipt of the documents to the Registrar within fifteen (15) days of returning to practice under supervision (and within 15 days of the approval of any subsequent supervisor). The Member must seek consent from prospective clients to share personal health information with her supervisor in order to allow the supervisor to review client files and engage in review.⁴ The substance of the supervision with the approved supervisor shall include a review of the safeguards, protocols and practices the Member has implemented in her private practice with respect to the protection of confidentiality. The supervisor shall provide a report to the Registrar at twelve (12) months and at twenty-four (24) months confirming that the supervision took place and the nature of the supervision.⁵
6. The Member shall pay costs to the College in the amount of seven thousand five hundred dollars (\$7,500) to be paid to the College within 36 months of the date of the Order.
7. The Discipline Committee's finding and Order (or a summary thereof) shall be published, with the Member's name, in the College's official publication, on the College's website, and on any other outlet for publication that the College deems appropriate.

Reasons for Decision on Penalty

[18] The Panel understands that a penalty order must protect the public and maintain public confidence in the College's ability to regulate its members. An appropriate penalty must serve the goals of general deterrence, specific deterrence and remediation where it is possible and appropriate. The Panel finds that the penalty order set out above achieves these objectives.

[19] A suspension of the Member's certificate of registration for a period of six months, with one month suspended and remitted if she satisfies the stipulated terms, conditions and limitations (discussed further below), is necessary to meet the goals of public protection and both specific and general deterrence. The professional misconduct of the Member in disregarding confidentiality was serious and calls for a suspension.

[20] The six-month suspension falls within the range of appropriate penalties based on previous decisions of this Discipline Committee in similar cases. The *Kline* case included similar allegations of a disclosure of confidential information in contravention of a provincial law which has found to be relevant to the member's suitability of practice. The member in *Kline* received a suspension of 16 months based on a joint submission she had entered into with the College. The Committee's

⁴ For greater clarity, while a client may refuse to sign a consent for the release of personal health information, the Member must maintain documentation, signed by the client, indicating that the request for consent was made and refused, for review by the supervisor.

⁵ For greater clarity, while a client may refuse to sign a consent for the release of personal health information, the Member must maintain documentation, signed by the client, indicating that the request for consent was made and refused, for review by the supervisor.

reasons commented that but for the joint submission, it would have ordered the revocation of her certificate of registration due to the seriousness of the misconduct. In *Barnim*, the member accessed a series of medical records without authorization. The Discipline Committee imposed a penalty that included a six-month suspension of the member's certificate of registration. In *Cullain*, the member released information about child protection proceedings in contravention of a provincial statute. The Committee ordered only a reprimand given that the member had undertaken to permanently resign her certificate of registration and not to reapply for College membership in the future. The member in *Cullain* disclosed only one family's information; in the present case, the Member promoted the dissemination of confidential information of 285 families. All of these cases, albeit with some differences, have relevant similarities to this case with respect to the deliberate act of disclosing, releasing and/or accessing confidential information.

[21] The Panel agreed with the College that it is appropriate to order a six-month suspension but to suspend one of those months for a period of two years from the date of this decision. That remaining month of the suspension will be remitted after two years if the Member demonstrates that she has complied with the terms and conditions of our order relating to the ethics course (paragraph 3), the meeting with the regulatory expert (paragraph 4) and employer notification and/or supervision (paragraph 5). The rationale behind remitting one month of the suspension is that it provides an additional incentive for the Member to comply with the terms, conditions and limitations, and to demonstrate that compliance in a timely manner. The opportunity to reduce the suspension by one month has an obvious benefit for the Member. While the Member is required to comply with paragraphs 3, 4 and 5 of the order regardless, and may not simply elect to serve the full suspension in place of satisfying those terms and conditions, the suspension of one month of the suspension and opportunity to have it remitted recognizes the Member's successful efforts to complete the terms and conditions. The suspension and remittance also benefits the College. Because the term incentivizes the Member to comply with paragraphs 3, 4 and 5 of the order, it makes it more likely that the Member will comply. The terms, conditions and limitations set out in paragraphs 3, 4 and 5 are important for public protection and rehabilitation of the Member. Increasing the likelihood of compliance with those terms thus serves the College's regulatory mandate and protects the public.

[22] The imposition of a term, condition and limitation on the Member's certificate of registration requiring her to participate in and successfully complete an ethics course serves a remedial and rehabilitative function. The ethics course should assist the Member in better understanding the seriousness of her misconduct and the impact of her actions on individuals and families whose information was released and whose privacy was breached. Of special concern in this case is the fact that the Member posted the URL to a Facebook group with a message encouraging people to go to the website, while recognizing the nature and sensitivity of the information on the website. This demonstrates that the breach of privacy was deliberate rather than unintentional and why an ethics course is a necessary part of re-educating the Member. The completion of an ethics course will also serve to re-educate the Member on the College's confidentiality standards, as reflected in Principle V of the College's Code of Ethics and Standards of Practice Handbook. This term, condition and limitation is in line with other cases from this Discipline Committee relied on the College in its submissions. In each of *Kline* and *Barnim*, which involved findings relating to breaches of privacy and confidentiality, the Committee's order required the member to complete further education. In *Kline*, the member was ordered to participate in and successfully complete social work training and/or continuing education with respect to ethical practice, including confidentiality and conflicts of interest. In *Barnim*, the member was required to complete an ethics course acceptable to the College.

[23] A penalty order is not intended to punish the Member or exact retribution but rather to preserve public confidence in the profession and meet the objectives of general and specific deterrence and rehabilitation. The term, condition and limitation requiring the Member to notify her current or new employers of the Discipline Committee decision, or the requirement that her practice be supervised in the event she operates a private practice, meets the objectives of public protection and deterrence in light of the Panel's findings of professional misconduct. In order to deter a reoccurrence of this behaviour, employer notification and supervision are appropriate measures. Notification to the employer ensures that the employer can take additional measures it considers appropriate, if any, to protect the public and assist the Member in ensuring that she maintains standards of practice that are in keeping with the Code of Ethics and Standards of Practice Handbook. Supervision of the Member's practice in the event she operates a private practice will achieve the same goal.

[24] A reprimand demonstrates to the public that the Discipline Committee takes findings of professional misconduct very seriously. A reprimand also serves the goal of specific deterrence, as well as rehabilitation and remediation, by allowing the Panel to communicate directly to the Member its disapproval of her conduct.

[25] Publication of the Discipline Committee's finding and order, together with the Member's name, allows for transparency and accountability of the College's discipline process to the public and with other members. It also operates as a general deterrent. The Member's inappropriate disclosure of confidential information is what led to the finding of professional misconduct. Other members will be able to read and understand the reasons for the Discipline Committee's findings and order, and know the consequences that they can expect to follow if they engage in similar behaviour. Further, by publishing the Discipline Committee's finding and order, members of the public, future clients and employers can be made aware of the Member's conduct. This serves a public protection function.

[26] The Member argues that the Panel should decline to order any penalty because her actions safeguarded others and the public has been made better off by her conduct. The Panel disagrees. The Panel cannot accept that submission. Subsection 26(4) of the Act provides that, upon making a finding of professional misconduct, the Discipline Committee "*shall* make an order" taking one or more of the actions listed in the subsection. The provision gives the Panel no discretion to decline to make a penalty order entirely.

[27] Further, even if the Discipline Committee, had the discretion to decline to make an order, the Panel finds it would be inappropriate to do so in this case. The Panel's findings of professional misconduct, based on the Agreed Statement of Facts, warrant a penalty order based on the principles of public protection, deterrence and remediation. The Panel found in its decision on the professional misconduct allegations that the Member deliberately disclosed private and confidential information to a Facebook group. Those findings are final and are not open to question or reconsideration in this penalty hearing. While the Member might have thought she was helping others, she had other options available to her to address the situation that would not have led to the disclosure of confidential and private records. She could have followed up with Family and Children's Services of Lanark, Leeds and Grenville directly to have the information removed from the public website. Instead, she decided to post the URL on social media and encouraged members of the public to access the website, which constituted professional misconduct. The Member must be held accountable for those actions. The Member's conduct does not engender confidence in her

approach to confidential and sensitive information within the scope of her practice as a social service worker, without a meaningful order from this Discipline Committee.

[28] In arguing that no penalty is warranted in this case, the Member stated that there was evidence called at her criminal trial that was not mentioned in the Agreed Statement of Facts that formed the basis for this Panel's findings of professional misconduct. However, the Agreed Statement of Facts was negotiated between the Member and the College, and was submitted on an agreed basis at the hearing of the misconduct allegations. It cannot be revisited at this stage; neither can the Panel's findings. Our findings of misconduct were linked directly to the Member's conduct of posting and encouraging others to view confidential and private information of 285 families. Further, even if the Panel's findings that the Member contravened provincial law (the *Child and Family Services Act* and privacy legislation) were open to question as a result of her acquittal in the criminal proceedings, the Panel also found that by disclosing confidential records and encouraging others to access to the records, the Member engaged in conduct that other members of the profession would regard as disgraceful, dishonorable or unprofessional. That finding alone supports the penalty that we have imposed.

[29] The Member stated that the penalty must be in the public's best interest. The Panel agrees. The penalty we have ordered demonstrates to the public that the Discipline Committee takes findings of professional misconduct involving privacy breaches very seriously.

Reasons for Decision on Costs

[30] The College seeks an order that the Member pay its costs in the amount of \$7,500. The amount sought is modest considering that the total costs of proceedings incurred by the College was over \$54,000 based on the bill of costs filed at the hear. The amount sought by the College is lower than what the College would typically request in a contested hearing (College counsel advised that the College will generally request two-thirds of its actual costs). The reduced amount claimed appropriately accommodates the Member's financial circumstances. Although the Panel did not receive detailed evidence about the Member's financial position, the Member advised the Panel at the hearing that her income is approximately \$20,000 per year. In the circumstances, the Panel sees no reason not to award the College the modest amount it is seeking of \$7,500.

[31] At the hearing, the Panel asked both parties what payment terms might be appropriate in the circumstances if any costs order were made. College counsel indicated that the College would be amenable to a reasonable payment schedule if paying a costs award in a lump sum would impose financial hardship on the Member. The Member did not propose or object to any specific terms. The Panel determined that giving the Member 36 months to pay the modest amount of \$7,500 that the College has sought is fair in view of the Member's financial situation (which will likely be further impacted by her inability to work as a social service worker while she is serving the suspension) as well as the economic impact on many Canadians of the COVID-19 pandemic. Accordingly, the Member will have a period 36 months from the date of the Panel's order to pay the costs amount in full.

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

Date: _____

Signed: _____

Rita Silverthorn, Chair
Angèle Desormeau
Gerald Mak