

Discipline Committee of the College of Registered Psychotherapists and Registered Mental Health Therapists of Ontario

Citation: ONCRPO v. MOIR, 2020 ONCRPO 2

Date of written reasons: January 19, 2021

Docket: C1920-04

IN THE MATTER OF the *Regulated Health Professions Act, 1991, S.O. 1991, c. 18*, as amended, and the regulations thereunder, as amended;

IN THE MATTER OF the *Psychotherapy Act, 2007, S.O. 2007, c. 10, Sched. R*, as amended and the regulations thereunder, as amended;

AND IN THE MATTER OF a discipline proceeding against Simone Moir, a Registrant of the College of Registered Psychotherapists and Registered Mental Health Therapists of Ontario.

Between: **COLLEGE OF REGISTERED PSYCHOTHERAPISTS AND REGISTERED MENTAL HEALTH THERAPISTS OF ONTARIO**

- and -

SIMONE MOIR (REGISTRATION #005175)

Before: Panel

**Andrew Benedetto (Chair)
Heidi Ahonen
David Keast
Michael Machan
Jane Snyder**

Date of hearing:

March 31, 2020

Written Submissions:

Maya Pearlston,

Counsel for College of Registered Psychotherapists and Registered Mental Health Therapists of Ontario

Mario Delgado,

Counsel for Simone Moir

Jennifer Hunter,

Independent Legal Counsel

DECISION AND REASONS

This matter came before a panel of the Discipline Committee (the “Panel”) of the College of Registered Psychotherapists and Registered Mental Health Therapists of Ontario (the “College”) on March 31, 2020. The hearing proceeded in writing on consent of the parties.

Simone Moir (the “Registrant”) was represented by legal counsel.

The Notice of Hearing, which was issued on November 26, 2019 was filed in the Joint Hearing Brief and sets out the factual and legal issues that must be decided on this matter.

THE ALLEGATIONS

It was alleged that the Registrant attempted to avoid paying tax on psychotherapy services provided by asking a client to pay for the services in cash. It was also alleged that when the client expressed concerns about paying for the services in cash, the Registrant made inappropriate comments to the client. It was alleged that the Registrant’s conduct constitutes professional misconduct pursuant to subsection 51(1)(c) of the *Health Professions Procedural Code* (the “Code”) and is set out in one or more of the following paragraphs of section 1 of Ontario Regulation 317/12 made under the *Psychotherapy Act, 2007* (the “Regulation”):

- a. **Paragraph 1** – Contravening, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession, including but not limited to,
 - i. 1.5 – Professional Practice Standards for Registered Psychotherapists - General Conduct;
- b. **Paragraph 52** – Engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and/or
- c. **Paragraph 53** – Engaging in conduct that would reasonably be regarded by members as conduct unbecoming a member of the profession.

The Registrant admitted to the allegations as set out in the Notice of Hearing, and the College and the Registrant came to an agreement in this matter.

AGREED STATEMENT OF FACTS

The Agreed Statement of Facts was filed in the Joint Hearing Brief and provides (without attachments) as follows:

The Registrant

1. Simone Moir (the “Registrant”) has been a registrant of the College of Registered Psychotherapists and Registered Mental Health Therapists of Ontario (the “College”) in the Qualifying class of membership since approximately March 20, 2017.

Client A

2. It is agreed that Client A was the Registrant’s psychotherapy client from approximately November 2012 until approximately March 2019.

Contravening a Standard of Practice of the Profession

3. The College has published *Professional Practice Standards for Registered Psychotherapists* that states the following:
 - a. **1.5 – General Conduct** – Members at all times refrain from conduct that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, unprofessional, or unbecoming a member of the profession.
4. It is agreed that the Registrant breached these standards of practice of the profession by engaging in the conduct described in this Agreed Statement of Facts.

Attempting to Avoid Paying Tax

5. It is agreed that on March 8, 2019, the Registrant advised Client A that the Registrant would like to be paid in cash, as the Registrant “would like to not have to pay HST on it.”

Professional Misconduct

6. It is agreed that the above conduct constitutes professional misconduct pursuant to subsection 51(1)(c) of the Health Professions Procedural Code, being Schedule II to the *Regulated Health Professions Act, 1991* (the “Code”),

as set out in one or more of the following paragraphs of section 1 of Ontario Regulation 317/12 made under the *Psychotherapy Act, 2007*:

- a. **Paragraph 1** – Contravening, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession, namely, 1.5 – General Conduct;
- b. **Paragraph 52** – Engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and
- c. **Paragraph 53** – Engaging in conduct that would reasonably be regarded by members as conduct unbecoming a member of the profession.

Inappropriate Remarks toward Client A

7. It is agreed that on March 8, 2019, Client A expressed concern to the Registrant about paying in cash. In response, the Registrant made inappropriate comments to Client A, including but not limited to:
 - a. “Do you know when we’ve gone back and forth between the [] clinic and here that’s also not really kosher, and I’ve done that for you. For years we did that.”
 - b. “And that was for your benefit. But it’s not actually kosher. So I did something for you, and yes I am asking you to do something for me.”
 - c. “I didn’t say it was the same thing, but I said you have asked me to do things. To bend the rules on my end for you.”
 - d. “So, I’m saying you have asked me for things. You’ve asked me quite frequently for things. I’ve asked you for this once.”

Professional Misconduct

8. It is agreed that the above conduct constitutes professional misconduct pursuant to subsection 51(1)(c) of the Code as set out in one or more of the following paragraphs of section 1 of Ontario Regulation 317/12 made under the *Psychotherapy Act, 2007*:

- a. **Paragraph 1** – Contravening, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession, namely, 1.5 – General Conduct;
 - b. **Paragraph 52** – Engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and
 - c. **Paragraph 53** – Engaging in conduct that would reasonably be regarded by members as conduct unbecoming a member of the profession.
9. By this document, the Registrant admits to the truth of the facts referred to in paragraphs 1 to 8 above (the “Agreed Facts”).
10. By this document, the Registrant states that:
- a. she understands fully the nature of the allegations against her;
 - b. she has no questions with respect to the allegations against her;
 - c. she understands that by signing this document she is consenting to the evidence as set out in the Agreed Facts being presented to the Discipline Committee;
 - d. she understands that by admitting the allegations, she is waiving her right to require the College to prove the case against her and the right to have a hearing;
 - e. she understands that the decision of the Discipline Committee and a summary of its reasons, including reference to her name, may be published in the College’s annual report and any other publication or website of the College;
 - f. she understands that any agreement between her and the College with respect to any penalty proposed does not bind the Discipline Committee; and
 - g. she understands and acknowledges that she is executing this

document voluntarily, unequivocally, free of duress, free of inducement or bribe, and that she has been advised of her right to seek legal advice and that she has had the opportunity to receive such advice.

11. In light of the Agreed Facts and Admission of Professional Misconduct, the College and the Registrant submit that the Discipline Committee should find that the Registrant has committed professional misconduct.

DECISION

On reading the Notice of Hearing, considering the Agreed Statement of Facts, and on reading the submissions of counsel and counsel for the Registrant. The Panel finds that the Registrant has committed acts of professional misconduct pursuant to:

1. Subsection 51(1)(c) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991* and as defined in the following paragraphs of section 1 of Ontario Regulation 317/12 made under the *Psychotherapy Act, 2007*:
 - a. paragraph 1 (contravening, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession, namely, Standard 1.5 of *Professional Practice Standards for Registered Psychotherapists – General Conduct*);
 - b. paragraph 52 (engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional); and
 - c. paragraph 53 (engaging in conduct that would reasonably be regarded by members as conduct unbecoming a member of the profession).

REASONS FOR DECISION

Having considered the Registrant's admission of professional misconduct and the facts contained in the Agreed Statement of Facts, the Panel concluded the Registrant had committed the acts of professional misconduct. The Panel was satisfied the Registrant's admission was voluntary, informed, and unequivocal.

THE JOINT SUBMISSION ON PENALTY AND COSTS

Counsel for the College and the Registrant agreed and jointly submitted that the following would be an appropriate order as to penalty and costs in the matter:

1. The Registrant is required to be reprimanded by the Discipline Committee in writing following the hearing.
2. The Registrar is directed to immediately impose the following specified terms, conditions or limitations on the Registrant's Certificate of Registration:
 - a. Requiring the Registrant to successfully complete, to the satisfaction of the Registrar and at her own expense, a course in ethics and/or jurisprudence that has been pre-approved by the Registrar, within four (4) months of the date of this Order; and
 - b. Requiring the Registrant to complete, to the satisfaction of the Registrar, a reflective essay of at least 1,500 words setting out what she has learned from this discipline proceeding and remedial courses, within six (6) months of the date of this Order.
3. If the Registrant requests an indulgence to complete the remedial steps in paragraph 2 in light of the COVID-19 pandemic measures, the Registrar shall extend this time to a later date, at a date to be determined by the Registrar.
4. If the Registrant fails to complete the remediation specified in paragraph 2 by the stipulated deadlines, the Registrant is required to pay a fine of not more than \$5,000.00 to the Minister of Finance within seven (7) months of the date of this Order, unless the time for completing the remedial steps in paragraph 2 is extended by the Registrar, in which case, the date on which the fine is owed, if required, shall be adjusted accordingly.
5. The Registrant is required to pay to the College costs in the amount of \$3,000.00, payable over twelve (12) months in monthly installments of \$250.00, starting one month after the date of this Order and continuing every month until paid in full. If the Registrant requests

an indulgence in light of the COVID-19 pandemic measures, the Registrar shall extend this time to a later date, at a date to be determined by the Registrar.

DECISION ON ORDER

The Panel accepted the Joint Submission on Penalty and Costs as submitted by the parties and makes an Order in accordance with the terms set out above.

REASONS FOR DECISION ON ORDER

The panel recognized the Registrant's willingness to cooperate with the College, admit that her conduct was unprofessional, and reach an agreement on a statement of facts and joint submission on penalty and costs. The Panel concluded that the parties' joint submission is both reasonable and in the public interest. It provides for both specific and general deterrence, as well as an opportunity for the Registrant to remediate her practice. With respect to specific deterrence, this will be achieved via the written reprimand, while remediation will be achieved through the specified terms, conditions and limitations as set out in paragraph 2 above. The penalty provides general deterrence in that it demonstrates to the profession that such conduct will not to be tolerated.

REPRIMAND

At the conclusion of the hearing, having confirmed that the Registrant waived any right to appeal, the panel delivered its written reprimand. A copy of the reprimand is attached at Schedule "A" of these reasons.

I, Andrew Benedetto, sign this Decision and Reasons for the decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel as listed below:

Andrew Benedetto, RP Chair, Discipline Panel

January 19, 2021

Heidi Ahonen, Professional Member
David Keast, Public Member
Michael Machan, Professional Member
Jane Snyder, Public Member

Schedule "A"**Written Reprimand**

It is the opinion of the Discipline panel that your conduct has been unprofessional and dishonourable.

Your conduct was unprofessional when you put your interests above that of your client. You not only asked a favour of your client creating an undue burden of obligation and guilt, but the favour involved an invitation to fraudulent activity, which in itself was dishonorable.

Your actions suggest a lack of knowledge regarding the power imbalance inherent in a psychotherapeutic relationship and the effect that you had on that client by crossing a client-psychotherapist boundary. The long-standing nature of the psychotherapeutic relationship with this client suggests the violation of a trust built over time that might be expected to have a considerable effect on any vulnerable individual.

You demonstrated a lack of self awareness and clinical judgement when you did not stop to question your motivation for asking a favour of your client. In future, the panel recommends that you seek clinical supervision when confronted with an issue for which insight regarding your own experience seems elusive and certainly where you find professional practice standards are unclear to you.

The panel was concerned that your actions to counsel and invite your client to engage in fraudulent activity by asking for payment in cash to avoid collecting tax demonstrated poor judgement and unethical behaviour. You did not abide by the standards of practice with respect to record-keeping.

The panel strongly recommends that you review, study, and reflect on the significance of power imbalances in psychotherapeutic work, the significance of maintaining boundaries with clients, the place of transference and counter-transference in psychotherapeutic work, and finally, give close attention to the safe and effective use of self - a hallmark of being a Registered Psychotherapist in the province of Ontario.

The panel recognized your willingness to cooperate with the College, admit that your conduct was unprofessional, and reach an agreement on statement of facts and joint submission on penalty and costs. We hope that this experience before a panel of the Discipline committee and our comments provide guidance to your future practice of the profession.

Discipline Panel:

Andrew Benedetto, RP, Chair, Professional Member

Heidi Ahonen, RP, Professional Member

David Keast, Public Member

Michael Machan, RP, Professional Member

Jane Snyder, Public Member