

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

Citation: ONCRPO v. O'BRIEN, 2020 ONCRPO 4

Date of written reasons: April 14, 2021

Docket: R1819-13

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 Robert O'Brien, 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 -

ROBERT O'BRIEN (REGISTRATION #003392)

Before: Panel

**Shelley Briscoe-Dimock (Chair)
Heidi Ahonen
David Keast
Michael Machan
Jane Snyder**

Date of hearing:

November 23, 2020

Appearances:

Rebecca Durcan,

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

Robert O'Brien, Member/Registrant

Michelle Gibbs, Counsel for Robert O'Brien

**Jennifer Hunter
Anna Matas**

Independent Legal Counsel

NOTICE OF PUBLICATION BAN

This is notice that the Discipline Committee ordered that no person shall publish, broadcast or otherwise disclose the name of the client referred to during the hearing or in documents filed at the hearing that commenced on November 23, 2020, or any information that would disclose the identity of the client. This order was made pursuant to subsection 45(3) of the Health Professions Procedural Code (the "Code"), which is Schedule 2 to the [Regulated Health Professions Act, 1991, S.O. 1991, c. 18](#), as amended.

Subsection 93(1) of the Code, which is concerned with failure to comply with these orders, provides that:

Every person who contravenes an order made under section 45 is guilty of an offence and on conviction is liable,

- (a) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or
- (b) in the case of a corporation to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence.

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 November 23, 2020. The hearing proceeded via videoconference on consent of the parties.

The hearing was uncontested. It proceeded by way of an Agreed Statement of Facts ("ASF") and a Joint Submission on Penalty and Costs, which were jointly proposed by the counsel for the College and the Member, Robert O'Brien (the "Member").

At the conclusion of the hearing, the Panel delivered its finding and penalty order orally, with written reasons to follow. These are those reasons.

THE ALLEGATIONS

The allegations of professional misconduct against the Member were listed on the Notice of Hearing, dated May 24, 2019, which was filed as Exhibit 1, and read as follows:

The Member

1. Robert O'Brien (the "Member") has been a member of the College of Registered Psychotherapists of Ontario (the "College") since approximately August 24, 2015.

Client A

2. The Member provided psychotherapy treatment to Client A on or about October 2 and/or 16, 2018.
3. The psychotherapy treatment sessions were over the phone.

Member's Alleged Conduct During and Between Sessions

4. [Withdrawn].
5. [Withdrawn].
6. In the course of providing psychotherapy treatment to Client A on October 16, 2018, it is alleged that the Member did one or more of the following:
 - a. [Withdrawn];
 - b. Told Client A she sounded like a “bag of fun” and/or that he wouldn’t mind spending the night with her.
7. The behaviour and/or remarks described in paragraphs 4, 5 and/or 6 were not of a clinical nature appropriate to the service provided.

Professional Misconduct Alleged

8. It is alleged that the above conduct constitutes professional misconduct pursuant to section 51(1)(b.1) of the Health Professions Procedural Code, being Schedule 2 to the *Regulated Health Professions Act, 1991* (the “Code”), namely that the Member sexually abused Client A by engaging in behaviour or remarks of a sexual nature.
9. It is alleged that the above conduct also constitutes professional misconduct pursuant to section 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. [Withdrawn],
 - i. 1.5 – General Conduct;
 - ii. [Withdrawn]; and/or
 - iii. [Withdrawn];
 - b. [Withdrawn];
 - c. **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
 - d. [Withdrawn].

At the outset of the hearing, counsel for the College advised the panel that the College sought to withdraw the allegations contained in the following paragraphs of Exhibit #1: 4, 5, 6(a), 9(a)ii, 9(a)iii, 9(b) and 9(d). The Member, through his counsel, advised the panel that he consented to the College's request to withdraw the allegations.

The panel made an order at the hearing, orally, that the allegations contained in paragraphs 4, 5, 6(a), 9(a) ii, 9(a)iii, 9(b) and 9(d), be withdrawn.

AGREED STATEMENT OF FACTS

The Agreed Statement of Facts was filed as Exhibit 2 and provides (without attachments) as follows:

The Member

1. Robert O'Brien (the "Registrant") has been a member of the College of Registered Psychotherapists and Registered Mental Health Therapists of Ontario (the "College") since August 24, 2015. Attached as Tab "A" is an excerpt of the Registrant's profile on the College Public Registry.

Client A

2. The Registrant provided psychotherapy treatment to Client A on October 2 and 16, 2018. Client A was seeking counselling for marital issues.
3. The psychotherapy treatment sessions between the Registrant and Client A were provided over the phone.

The Registrant's Conduct During and Between Sessions

October 16, 2018

4. In the course of providing psychotherapy treatment to Client A on October 16, 2018, it is agreed that the Registrant did the following:
 - a. Told Client A she sounded like a "bag of fun" and that he wouldn't mind spending the night with her.
5. If the Registrant were to testify, he would state that he was not attempting to make a sexual comment to Client A. He would state that his remark was an ill-advised attempt to be humorous. Nevertheless, he appreciates that this remark is of a sexual nature, regardless of his intent. It is agreed that this behaviour or remark was not of a clinical nature appropriate to the service provided. Registrants of the College must be mindful of all comments at all times. This is especially true when therapy is provided over the phone.

6. The Registrant deeply regrets both his remark and having made the client feel uncomfortable, and he wishes to extend his apologies to Client A and to the College for his behaviour.
7. It is acknowledged that as a result of Client A contacting the Registrant's employer about the comment described in paragraph 4a, the Registrant lost his job.

Admission of Professional Misconduct

8. It is agreed that the above conduct constitutes professional misconduct pursuant to section 51(1) (b.1) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991* (the "Code"), namely that the Registrant sexually abused Client A by engaging in behaviour or remarks of a sexual nature.
9. It is further agreed that the above conduct constitutes professional misconduct pursuant to subsection 51(1)(c) of the *Code*, as set out 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), including the following:
 - 1.5 – General Conduct;

Attached as Tab "B" is a copy of the relevant Standard; and
 - 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).
10. By this document, the Registrant admits to the truth of the facts referred to in paragraphs 1 to 7 above (the "Agreed Facts").
11. By this document, the Registrant states that:
 - a. He understands fully the nature of the allegations against him;
 - b. He has no questions with respect to the allegations against him;
 - c. He admits to the truth of the facts contained in this Agreed Statement of Facts and Admission of Professional Misconduct and that the admitted facts constitute professional misconduct;
 - d. He understands that by signing this document he is consenting to the evidence as set out in the Agreed Facts being presented to the Discipline Committee;

- e. He understands that by admitting the allegations, he is waiving his right to require the College to prove the case against him at a contested hearing;
 - f. He understands that the decision of the Discipline Committee and a summary of its reasons, including reference to his name, will be published in the College's annual report and any other publication or website of the College;
 - g. He understands that any agreement between him and the College with respect to the penalty proposed does not bind the Discipline Committee; and
 - h. He understands and acknowledges that he is executing this document voluntarily, unequivocally, free of duress, free of bribe, and that he has been advised of his right to seek legal advice.
12. 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.

SUBMISSIONS OF THE PARTIES ON FINDING

Counsel for the College submitted that the facts and admissions contained in the Agreed Statement of Facts made out all of the acts of professional misconduct admitted to by the Member.

Ms. Gibbs, counsel for the Member, submitted that she echoed College Counsel's submissions namely that the facts admitted in the Agreed Statement of Facts support a finding of professional misconduct as set out therein.

REGISTRANT'S PLEA

The Member admitted the acts of professional misconduct as set out in the ASF.

The Panel received a written plea inquiry which was filed as Exhibit 3. The plea inquiry was signed by the Member. The Panel also conducted an oral plea inquiry and was satisfied that the Member's admissions were voluntary, informed, and unequivocal.

DECISION

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

1. Subsection 51(1) (b.1) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991* (the “Code”), namely that the Member sexually abused Client A by engaging in behaviour or remarks of a sexual nature.
2. Subsection 51(1)(c) of the *Code*, as set out 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), including the following:
 - i. 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 and unprofessional).

REASONS FOR DECISION

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

THE JOINT SUBMISSION ON PENALTY

The Joint Submission on Penalty was filed as Exhibit 4. 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 appear (virtually) before a panel of the Discipline Committee to be reprimanded immediately following the hearing.
2. The Registrar is directed to suspend the Registrant’s Certificate of Registration for a period of three (3) months, on a date to be selected by the Registrar.
3. The Registrant is required to reimburse the College for funding provided to the Client in the amount of up to \$3,000.00 under the program required under section 85.7 of the *Health Professions Procedural Code* being Schedule 2 to the *Regulated Health Professions Act, 1991*.

The Panel was provided with a Brief of Authorities which contained prior decisions, including cases involving sexual abuse of a

Counsel for the College submitted that the joint submission on penalty fulfilled the objectives of specific and general deterrence and public protection. Counsel for the College provided the Panel with a Brief of Authorities which included case law corroborating that the penalty is in keeping with dispositions previously ordered by other regulatory bodies under similar circumstances.

The Panel received a written Impact Statement which was made pursuant to s. 51(6) of the *Health Professions Procedural Code* and was filed as Exhibit 5. Client A also read her impact statement during the hearing. The statement expressed the harm done to Client A by the sexual abuse by Mr. O'Brien.

DECISION ON ORDER

The Panel accepted the Joint Submission on Penalty as submitted by the parties and makes an Order in accordance with the terms set out above. The Panel found that the proposed penalty served the objectives of specific and general deterrence and public protection.

REASONS FOR DECISION ON ORDER

The panel recognized the Registrant's readiness to cooperate with the College, admit that his conduct was disgraceful, dishonourable and unprofessional, and reach an agreement on a statement of facts and joint submission on penalty. The Panel concluded that the joint submission is reasonable, in the public interest and provides for both general and specific deterrence.

The suspension provides general deterrence in that it demonstrates to the profession that such conduct will not be tolerated. With respect to specific deterrence, this will be achieved via the oral reprimand.

In addition to the reprimand and suspension, the Panel also found it appropriate to order that the Registrant reimburse the College for funding provided for the Client for therapy and counselling.

REPRIMAND

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

I, Shelley Briscoe-Dimock, 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:

Shelley Briscoe-Dimock, RP Chair, Discipline Panel

April 14, 2021

Heidi Ahonen, RP, Professional Member

David Keast, Public Member

Michael Machan, RP, Professional Member

Jane Snyder, Public Member

Schedule "A"**Written Reprimand**

Mr. O'Brien the panel members have serious concerns about your actions that have brought your case before us. Your conduct is totally unacceptable to your fellow Registered Psychotherapists and to the public. Of particular concern to us is the fact that your misconduct involved making a sexual comment to a vulnerable client whose statement clearly demonstrates the harmful impact you have placed upon her. It is necessary for us to impress upon you the seriousness of your misconduct.

By your actions you have caused significant damage to the reputation of the profession. The practice of psychotherapy is a privilege that carries with it significant obligations to the public, the profession and to oneself. We agree with the joint order between the College and yourself as this sets a precedent that is a clear communication of the College's stand on sexual abuse.

In conclusion, Mr. O'Brien you have engaged in egregious behaviour that has disgraced our profession and put the public at risk. By your actions you have caused significant damage to the reputation of the profession as a whole and have cast a shadow over your own integrity.

Discipline Panel:

Shelley Briscoe-Dimock, Chair

Heidi Ahonen

David Keast

Michael Machan

Jane Snyder

6937571.1