

**DISCIPLINE COMMITTEE OF THE COLLEGE OF REGISTERED  
PSYCHOTHERAPISTS AND REGISTERED MENTAL HEALTH THERAPISTS OF  
ONTARIO**

**Citation:** *College of Registered Psychotherapists and Registered Mental Health Therapists of Ontario v. Hwang*, 2023 ONCRPO 2

**Date:** June 20, 2023

**File No.:** R1920-36

**BETWEEN:**

College of Registered Psychotherapists and Registered Mental Health Therapists of  
Ontario

- and -

Tae Hwang

**FINDING REASONS**

**Heard:** April 11-13, 2023, by videoconference

**Panel:**

David A. Wright (Chair)  
Steven Boychyn  
Shelley Briscoe-Dimock, RP  
Carol Cowan-Levine, RP  
David Keast

**Appearances:**

Rebecca Durcan and Justine Wong, for the College  
Andrew Furguele and Milica Veselinovic, student-at-law, for the registrant

**RESTRICTION ON PUBLICATION**

The Committee ordered, under ss. 45-47 of the Health Professions Procedural Code, that no one may publish, broadcast or otherwise disclose the name of the client referred to during the hearing or in documents filed at the hearing, or any information that would disclose the identity of the client. There may be significant fines for breaching this order.

## **Introduction**

- [1] Tae Hwang, the registrant, worked as a counsellor at an Ontario community college (the community college). The College of Registered Psychotherapists of Ontario (CRPO) alleges that he committed various acts of professional misconduct, including sexual abuse, in his interactions with a student client over about seven months in 2019. From their phone records, we know that the registrant and the client followed each other on Instagram, communicated through the platform's private messaging function and he liked and commented on her posts, at times making comments about her appearance. The parties also agree that the registrant conducted therapy while walking around a mall near the community college.
- [2] The client makes other allegations that the registrant emphatically denies. The client says that he regularly hugged her, put his hand on her thigh on one occasion and made several inappropriate and sexual comments during their appointments.
- [3] We must decide whether the CRPO has proven on a balance of probabilities that the disputed incidents took place, and whether the facts as we find them amount to professional misconduct. We find that all allegations are established. The Instagram records show that Mr. Hwang inappropriately crossed boundaries, allowing, encouraging and pursuing a personal relationship. While the client's testimony at the hearing was credible and reliable, the registrant's was not. Where their evidence differs, we accept the client's. Mr. Hwang committed sexual abuse, contravened standards of practice of the profession and engaged in disgraceful, dishonourable or unprofessional conduct.

## **The Evidence**

- [4] We begin with a description of the evidence, including the witnesses' contrasting testimony. Then, taking all of that evidence into account, we explain why we have accepted that the client's version of events meets the CRPO's burden to prove the allegations.

## **Background**

- [5] Mr. Hwang is in his 60s and has been a registrant of the CRPO since it began to regulate psychotherapists in 2015. At the time of these events, he had worked at

the community college for just over a decade. He previously worked for a youth social insurance agency counselling teenagers and as a vocational rehabilitation counsellor at the Workplace Safety and Insurance Board. He is the lead pastor at his church, where he has been involved for 27 years and his duties also include various kinds of counselling.

- [6] The community college has several campuses. The registrant was the only counsellor at the campus where he usually saw the client and had a very busy schedule. His scheduled individual counselling sessions were usually booked up several weeks in advance. As well, he was expected to interact with students in less formal settings such as the athletic centre. He organized mental health programs and held group sessions. Due to the restrictions on his time, he would often “check in” informally with his student clients in different places around campus including the halls and coffee shops.
- [7] The client was a 19-year-old international student at the community college. She sought psychotherapy for mental health issues and was assigned to the registrant.
- [8] The registrant was new to Instagram at the time and figuring out how it worked. While he now recognizes and acknowledges that he should not have been interacting with his client on Instagram, he did not see that at the time.

#### Incomplete Records

- [9] The client first saw the registrant in November 2018. Her last session was in September of 2019, with a break between May and September due to summer holidays.
- [10] We do not know exactly how many sessions took place because the chart is incomplete and inaccurate. The client’s recollection of which sessions she attended is different from what is recorded in the electronic file in the community college’s system. The records miss appointments that took place, list appointments that never happened and wrongly document cancellations. Mr. Hwang acknowledges that he did not document at least some of what he called “check ins” – shorter appointments – anywhere in the community college’s electronic records. He testified that he usually took handwritten notes or added a note to the previous session. He claims that when he took handwritten notes, he forgot to put them in

the file. As we discuss in more detail below, we do not accept that evidence and we believe that he failed to document sessions with the client.

### Psychotherapy in the Mall

[11] Beginning in January 2019, many sessions took place at the mall next to the community college. According to the registrant, this was because he agreed to see the client during his lunch hour, which he spent at the mall. He squeezed the client in for a “check in” because his schedule was so full and/or he was concerned she was “in crisis.” During these sessions, they often got drinks at Starbucks and then walked around the mall. We note that in all the written communication between them, there is no mention of a distinction between a “check in” and a regular session nor of lunchtime being a reason for therapy sessions at the mall.

[12] The client testified that when they met off campus, she and the registrant greeted each other with what she described as a “soft hug.” She did not remember who had initiated these hugs. Mr. Hwang emphatically denies there were any hugs. He testified that the client attempted to hug him in his office near the glass door, but he turned away.

[13] The registrant emphasized that because the mall is so close to the community college, many students and staff are present at the mall all the time. He says that inappropriate comments would have been heard or inappropriate hugs or touching seen by others.

### Instagram Follows

[14] On January 25, 2019, the registrant and the client each followed the other on Instagram, permitting them to send each other private messages. They have different versions of who initiated this, but there is no dispute that both willingly agreed to the social media connection.

[15] The client testified that during the therapy session in Mr. Hwang’s office, they were discussing her Instagram posts about poetry. While looking at her phone, Mr. Hwang asked if he could follow her and sent her a follow request. She accepted later and followed him back. She didn’t find this concerning because she had been connected to secondary school teachers on Instagram.

[16] The registrant testified that during the session, they were discussing her posts about cooking and the client showed him her phone. She asked him if he'd like to follow her, picked up his phone, opened Instagram, found her Instagram handle and pressed the follow button. She also followed him during the session.

[17] Instagram messages from the client's and Mr. Hwang's phones show most, but not all the details of their on-line interactions. Instagram doesn't retain all messages, so there is evidence of text or emojis sent in response to a message or photo that was no longer available when the messages were retrieved from the phones.

#### The First Exchanges: January 2019

[18] Most early exchanges were initiated by the client, and she drove the conversation. In the first interaction we have a record of, she wrote to the registrant the day before a scheduled session to say, "I HAVE SO MUCH GOSSIP TO TELL YOU." The next day, she initiated a conversation that appears to follow up on discussions that took place during the session. The conversation ranged from the client sharing song lyrics, to a photo of her cooking, to a reminder by the registrant of strategies they had discussed.

[19] Their next interaction, two days later, included the client recommending a TV show, raising the US presidential election, concerns about her studies and discussing her cat. In the middle of the exchange the registrant commented on a photo (now no longer available) with "classy look, for a classy gal." The client asked the registrant how his week was going, and whether he would be off for reading week. When he said he might be, she said he would "have extra days for your tennis." He replied, "thank you for thinking of me" and "hope you're having a good evening."

[20] In these conversations, in which over 60 messages were exchanged over five days, the client texted the registrant as she might a friend. She was the one introducing new topics and asking the registrant about himself. While the conversation was being driven by the client, the registrant fully engaged, including making comments about the client's appearance and talking about his personal life.

#### After Hours Conversations Start: February 2019

[21] The two exchanged messages on 16 dates in February. The February messages included the following:

- The registrant explained that he was absent from work due to a cold and food poisoning.
- The client showed the registrant a screen shot of someone having called her 77 times and the registrant expressed his concern.
- During one of the scheduling discussions, the client wrote in all caps “ITS BEEN A MONTH WHEN AM I SEEING YOU” and sent a crying emoji. The registrant responded by saying he had booked her an appointment the next week and it had “been a long recovery period.” The client’s response said, “no worries let me know whatever date you can book me in for and what campus it would be in as well.” The registrant didn’t respond, and three days later the client asked whether he would be on campus that day. The registrant responded by suggesting a 1:00 meeting at Starbucks.
- The registrant complimented the client’s photos, saying “Nice!” and “Fabulous! Love it!”
- There were multiple conversations after hours and on weekends, including exchanges on the Saturday, Sunday and Monday of the Family Day long weekend. On the Monday, the client initiated a conversation by asking, “How’s your weekend going.” The registrant sent a response at 10:55 pm that day, which is no longer available, but appears to have been about scheduling an appointment.

#### Distress and Weekend Conversations: February 28- March 4

[22] On February 28, 2019, a Thursday, the client started a conversation in the morning in which she sent a photo, song lyrics and they confirmed an appointment for noon the next day. At 11:45 that evening, she wrote to the registrant expressing distress. The registrant wrote back to the client at 6:30 the next morning to say they would address the issue during their session and ask whether the client would prefer to meet at the mall or his office. When she didn’t answer, he scheduled it for the mall. The afternoon after their meeting, the client started the conversation again, sharing a grade she had received. The client then asked the registrant for assistance with getting an extension in one of her courses. By then it was 9:00 pm and Mr. Hwang sent the client the final message after 10:30 pm.

[23] On Saturday, March 2, the registrant initiated a conversation (the message is no longer available) at 9:06 pm. At 10:41 pm, the client responded, asking about his weekend and telling him about hers. At 8:27 am on Sunday morning, the client initiated a conversation about her personal life.

[24] At 10:41 pm on Monday, March 4, the registrant initiated a conversation with the client to ask her to attend an event he was organizing the next day dealing with consent. He said, "I need smart females there and definitely you're one of them."

#### Expanded Discussions and Compliments: March 2019

[25] Mr. Hwang and the client exchanged texts on at least 20 days in March. There continued to be discussions about scheduling, but now there were more texts initiated by the registrant and more discussions and comments that were unrelated to therapy, including more compliments on photos. These included the following:

- The client sent the registrant a picture of a cocktail at 10:31 pm on a Sunday. He responded, "I want some!" and "Amazing pic!" The conversation continued with the client asking Mr. Hwang about his weekend and him saying that he had played three hours of tennis and just returned.
- The client sent the registrant a picture of herself and he responded, "Love the colours!"
- The registrant responded, on a Saturday afternoon, to a story the client posted with, "Wow, so many nice places to be at. That's a great restaurant!"
- The registrant sent the client a message at 8:15 am saying "Have a wonderful day!"

#### The Registrant Sends a Photo: March 30, 2019

[26] March 30 was a Saturday. The registrant sent the first message at 8:15 am and the client sent the last one at 10:55 pm. The registrant responded to a photo that is no longer available by saying "Wow, you know how to pamper yourself." He sent a picture of himself throwing an axe and said this was at a party for his daughter's

birthday. The client replied with “Oh! It was today? Send her my greetings and will bring her the pretty pearls whenever I see you next.” The registrant responded early the next morning with, “You’re too kind.” The client testified regarding this last comment that she had planned to bring the registrant’s daughter a small inexpensive piece of jewelry.

[27] In one message on that day, the registrant wrote, “It’s a rainy day, but you bring the sun in wherever you go!” While this message came out of the blue during a scheduling discussion, the client’s love of the sun was an ongoing discussion in therapy.

#### Communications from Abroad: April 2019

[28] From April 9 until the end of the month, the client returned to her home country. During that month, the registrant and the client communicated on 20 days, including 14 days when she was outside Canada.

[29] The conversations included the following:

- The registrant responded to a message at 12:18 am with a happy face and thumbs up emoji.
- The client emailed the registrant at 10:36 pm about being unable to stop crying. The registrant responded to ask why but then didn’t answer when she told him.
- In a discussion shortly before the client’s trip, the registrant said “...you’ll be missed, but will connect through Instagram.” The same day the client asked the registrant how his day was,
- The client asked the registrant “How was your day” at 9:15 pm. The registrant responded at 11:12 pm that he had just returned home from playing tennis.
- Shortly after arriving in her home country, the registrant started a conversation with “How are you doing?” and an emoji. The registrant responded with “busy but good.” They then had a conversation about the client’s trip.



- The client sent the registrant a picture of herself, to which he responded “Love the dress!” After she said “Thank you so much” with a happy face emoji, the registrant replied with thumbs up and rose emojis.
- The client started a conversation saying she might need his help a little more in the coming semester. He asked about her school results and “What are you having trouble with currently in your life.”
- The client told the registrant she had a tattoo done, and the registrant responded that he was “looking forward to seeing it.” She then sent a picture of it, to which he responded that it “looks amazing.”
- Mr. Hwang told the client that he was leaving for a southern beach vacation that evening. They continued to message each other while the registrant was on vacation. When the client asked how his trip was going, the registrant responded with five photos, one of which showed him in his bathing suit, shirtless on the beach. These photos had previously been posted to his public feed.
- The registrant told the client that the whiskey and other drinks at his resort were great, and that he had been playing with his “tennis pro” who was “awesome.”

May 17, 2019: Alleged Thigh Touching

[30] The client testified that their session on May 17, 2019, began at Starbucks and lasted 30-45 minutes. They walked around the mall and then sat at high tables in the food court. She was wearing a skirt with a slit in it. She testified that as the session was ending, while still sitting at the high tables, the registrant placed his hand on her thigh just above the knee. The touch lasted less than ten seconds. She said that when this happened, she was confused and felt frozen. She also testified that during this appointment, which occurred after she returned from her trip, he said either that her tan or her skin looked good.

[31] The registrant agrees they had a session at the mall. However, he testified that they never sat down together. He said it would have been hard for them to sit down given the number of people at the mall. He denied ever touching her thigh.

### Instagram after the May 17 Appointment

[32] The evening of the appointment during which the registrant allegedly touched the client's thigh, the registrant reacted to the client's "story" with a "fire" emoji. There was no other conversation until Monday afternoon, which the registrant wrote to the client to say, "Happy Victoria Day!" and "Hope you're having a wonderful day!" The client did not respond. He also responded to a picture the client posted of her shoes with a "hands clapping" emoji. The next day, the registrant shared with the client that he had been in Ottawa with his son all weekend and a conversation ensued about the programs he was considering.

### June-August 2019

[33] We have not been provided with excerpts of any summer conversations. Mr. Hwang periodically responded to the client's stories with a "clapping" emoji.

### September 2019

[34] Conversations resumed in September; it appears they were mostly about scheduling. There was one conversation in September in which they discussed the client's parents' visit.

### September 25, 2019: Alleged Comments

[35] The client had an appointment at noon on September 25. She testified at the hearing that she likely made the appointment with Mr. Hwang directly, probably having run into him in the hall and that she wanted the appointment because she needed a letter related to her student visa. The registrant testified that the appointment would have been made through the booking system, although he may have told the client about it.

[36] She met the registrant at his office. She texted a friend from the waiting room that she "didn't feel like being in therapy for some reason" that she "didn't have a good feeling about it" and that she felt "weird." Her text also said that she "didn't know why" she was there and "I was just booked." She said in cross-examination that she did not literally mean she didn't know why she was there; it was that she didn't know why she had made the appointment given her feelings about therapy.

- [37] The appointment continued at the mall. The client testified that while they were there, the registrant said it was too bad she had thrown away her straw because he would “like some lipstick.” He also said that if they lived together, he would buy her fresh vegetables. He suggested she’d be fun to drink alcohol with.
- [38] After the appointment, the client texted her friend that the session was “creepy,” “messed,” he made “way too many flirtatious comments.” She said she told him she didn’t want more therapy.<sup>1</sup>
- [39] The registrant denies that he made any of these comments. In a statement to the CRPO in 2020, he said that he no longer wanted to give up his lunch hour, so he had told the client during this appointment that she would no longer have access to him through Instagram and would need to make appointments through reception like other students. He speculated that was the reason she had made the allegations. In the same call to the CRPO, he testified that she had said she was “in crisis” before the appointment.
- [40] At the hearing, he first testified under cross-examination that there was no reason to think she was “in crisis” at that time. When reminded that he called it a crisis in his call to the CRPO, he said she was “always in crisis.” He wouldn’t admit the obvious fact that either his earlier statement or his testimony had to be wrong.

#### Other Comments

- [41] The client testified that Mr. Hwang told her not to tell anyone they were meeting off campus. The registrant testified that he told her not to tell anyone they were meeting during lunch hour, so other students wouldn’t ask him to give up his free time.
- [42] The client also testified that while they were appropriately discussing her sex life as part of a session, the registrant asked her if she “finished” during sex and

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<sup>1</sup> The parties agree that we should not rely on this prior consistent statement as a factor suggesting she is more credible and we have not done so. See *R. v. I.W.*, 2022 ONCA 251 at paras. 38-39.

suggested it would be better to have intimate relationships with men older than her. The registrant denies this.

[43] Finally, the client says that at some point the registrant suggested they go on vacation together to Cancun. The registrant denies this.

#### Instagram Communications After the September 25 Appointment

[44] After the client's final meeting with him, the registrant continued to react to the client's publicly posted photos, usually with a clapping hands emoji. These included photos of herself and of alcohol. Once he responded with an emoji with hearts instead of eyes and one with a laughing emoji. Some of these interactions were late at night.

#### **Credibility and Reliability**

[45] We must decide whether the CRPO has proven on a balance of probabilities that the thigh touch and disputed comments happened based on clear, cogent and reliable evidence. Credibility refers to a witness's honesty – whether are telling the truth as they recall it. But a witness can say what they believe and be wrong, because perception and memory are imperfect. We can decide to accept all, some or none of a witness's testimony.

#### The Surrounding Circumstances

[46] The undisputed evidence supports the client's version of events. The therapeutic relationship was overly friend-like and unprofessional. Therapy sessions took place in a shopping mall. The registrant and the client communicated extensively on Instagram, often in the evening or late at night, on weekends and holiday long weekends and during vacations. The registrant shared extensive personal information including about his children and illnesses. He sent pictures of his child's party and his vacation, including one of him in a bathing suit. His comments included compliments on the client's appearance in her photos. He told her that he would miss her during her time away, but they would communicate on Instagram. He sent an emoji with hearts for eyes and a rose. He wrote "I want some" on a photo of a cocktail. He told her she brought the sun wherever she went.

- [47] The registrant, who denies anything inappropriate that is not in writing, would have us believe that the inappropriate interactions only happened online and never in person. The significant crossing of boundaries online lends credibility to the client's allegations of boundary crossings in person.
- [48] The client's actions at the time also support her version of events. Immediately after the May 17 appointment when the thigh touching allegedly occurred, she stopped engaging on Instagram. In contrast, the registrant reached out to her several days later, out of the blue, to wish her a Happy Victoria Day. Having received no response, he engaged again that night and the next day.
- [49] We think this change is significant and supports the conclusion that the client reduced communications because of a touch on May 17. First, they had spent their vacations out of the country in regular communication on Instagram just a month earlier. Second, the registrant reached out to the client several times in the following days, over a long weekend, and the client did not respond at all. This was a significant change in the pattern that supports the inference that something happened on May 17.
- [50] We do not agree with the registrant that we can conclude that the comments and thigh touch are less likely to have happened because the mall was crowded with people from the community college who would have seen and heard. His suggestion that they could not have sat down at the food court because it was too busy doesn't make sense. Even in a busy mall, places to sit become available.
- [51] Moreover, the evidence does not suggest they would have been overheard or the thigh touch seen. Whether classified as a "check in" or not, this was therapy. It is highly unlikely the client would have agreed to discuss her personal life and mental health if it could be overheard. The thigh touch, which was very short, allegedly happened while seated in high-top seats in a food court and would have been covered by the table and the backing. The hugs would have been expected to have been observed, but they were "soft" and on their own others might not have recognized them as inappropriate. The client did not see them that way at the time.

### Other Testimony

[52] Each party relied on aspects of one of the witness's evidence about matters other than the core allegations to suggest they were less credible. We discuss these arguments in this section.

### The Client: Skirt/Dress Issue

[53] The client testified that she had not worn a skirt since May 17, 2019. This was in the context of explaining that she is careful about how she dresses as a result of the thigh touching incident. However, her Instagram profile picture showed her wearing a short dress. Under cross-examination, she testified that there were flesh coloured stockings under the dress that cannot be seen in the picture and that she made a distinction between skirts and dresses.

[54] The registrant relies on this as a reason not to believe the client, suggesting she was caught in a lie. We do not agree. First, we accept her evidence that she was wearing stockings in the photo. The picture is not clear; it appears to have taken in a mirror with a flash, with an open window behind. It would not be possible to tell if she were wearing flesh-coloured stockings. When shown the picture, she immediately mentioned the stockings. Second, she was wearing a dress in the photo, not a skirt, and she made clear she draws that distinction. We should not make assumptions about how a victim would react to sexual abuse, and we accept that wearing a skirt had a different psychological impact on her than wearing a dress. She did not say that she did not wear anything that left her thighs exposed – which would also be the case with shorts or a bathing suit – she said she did not wear skirts. We find she was telling the truth.

### Scheduling the September Sessions

[55] The registrant also relies on some confusing evidence from the client about the scheduling of the sessions in September. The client testified that she only made the appointment because she needed a letter from the registrant that would assist her with her visa extension. We do not accept that evidence; we think it is more likely that she wanted therapy. First, her Instagram texts to the registrant scheduling the appointment made no mention of a visa extension. She had never been reluctant to clearly tell him what she needed before. If she only wanted to see the registrant for the visa extension, we would expect her to have mentioned it. What is more, she

never asked for the letter. She says that is because of the registrant's comments during the session. But she did not explain why she didn't ask for the letter at the beginning of the session, before going to the mall, if that was her intention. Finally, this is inconsistent with the texts to her friend in which she said she did not know why she was there and we are not convinced by her explanation for using those words. In the exchange, the friend suggested she cancel the appointment. Her response was that she couldn't cancel without seeing him because there was no one at the reception desk. If she was there for the letter, she would have told her friend that was a reason why she couldn't cancel. Her insistence she was only meeting the registrant for the letter causes us some concern and, in our view, detracts from her credibility.

[56] There was also confusion about whether she met with the registrant once or twice in September and contradictory statements about whether she had a session in August. Part of the confusion was caused by the registrant's record keeping. His file records a meeting on September 9 and includes notes. However, on that date they had a discussion on Instagram in the morning about whether the client would like to meet if he had a cancellation. When the client asked what time, the registrant said he'd get back to her in an hour but didn't do so. Both agree there was no session on September 9. The client, however, testified there were two sessions in September and that she met the registrant on the stairs at the community college and had a brief conversation.

[57] The registrant and the client ran into each other at Indigo some time in August. In an interview with the CRPO's investigator, she described a therapy session shortly afterward where the registrant spoke to her in a flirtatious tone with a funny accent and said she looked "fine." She didn't testify to this in her evidence-in-chief at the hearing. When confronted in cross-examination with the statement and the fact that the registrant was not at work in August, she suggested that the first post-summer holiday session may have been early September. We do not agree with the registrant that the change in her recollection that the session was in early September and not late August detracts significantly from her credibility. In our view, it reflects understandable confusion about schedules years later. She was consistent about the general time period.

Was the client assuming the worst?

- [58] The registrant argues that the client was quick to assume the worst of the registrant. He points to comments she made to the CRPO investigator like saying he would respond to all her stories and make “weird” comments or that the situation was “horrifying.” This does not trouble us. While it was an exaggeration to say he responded to all her stories, it is entirely logical for the client, in hindsight, to view many of the comments as weird and horrible from a therapist to a teenage client.
- [59] Counsel for the registrant suggested in cross-examination of the client that her perception of the September 25 appointment was coloured by her feeling, conveyed to her friend before the appointment, that she expected something to happen. Given what had happened on May 17 and shortly afterwards, it is understandable for her to have been nervous and we find it more likely that her concerns were justified, rather than influencing her perceptions.
- [60] In her testimony before us, the client did not significantly exaggerate, unlike Mr. Huang. When asked who initiated the “soft hugs” she testified that she didn’t remember, rather than implicating the registrant. The client nearly always readily agreed to counsel’s suggestions to her in cross-examination, whether they supported her version of events or not. There was one exchange, which stood out because it was different in this way from the rest of her testimony, when she refused to acknowledge that she was conveying urgency by the use of capital letters, but overall she was largely unshaken by cross-examination.
- [61] In summary, with the exception of her evidence about the reason for the September appointment or appointments, we find that the client’s evidence about surrounding matters was credible.

The Registrant: Consultation With a Colleague

- [62] Counsel for the CRPO began her cross-examination by taking the registrant to the CRPO’s *Professional Practice Standards for Registered Psychotherapists* (Standards). The standard on “Undue Influence and Abuse” states that one of the ways a registrant demonstrates compliance with that standard is “consulting another [registrant] or the College if the [registrant] finds him/herself in



questionable circumstances.” In cross-examination the registrant testified that he spoke to a colleague about the “excessive communications” before May.

[63] We find that this testimony on this significant issue was not credible. The registrant never mentioned consulting a colleague in any communications to the CRPO before his cross-examination and gave little detail. He initially testified that this conversation happened before May, yet he tried to initiate conversations several times on the long weekend after the May 17 appointment. He would not have done so if he were concerned about “excessive communications.”

[64] When confronted with this, Mr. Hwang said that the conversation with the colleague might have happened after that, but the client’s communications then dropped off so there would have been no reason to consult the colleague. In our view, if he had consulted a colleague, he would have disclosed this to the CRPO in his response and would have stopped communicating with the client on Instagram.

#### Exaggeration

[65] The registrant continually minimized the extent to which he had initiated conversations, which detracts from his overall credibility. This started in his response to CRPO, which wrongly suggested that he had never initiated conversations on Instagram. At the hearing, he denied initiating conversations in May, even after being shown his reach outs on Victoria Day weekend. As discussed above, witnesses are not expected to remember timing with complete accuracy. What detracts from his credibility is that the registrant vigorously denied or minimized what was in writing in his testimony.

[66] The registrant justified “check in” sessions at the mall on the basis that he was concerned the client was “in crisis” and he gave up his lunch hour in order to “stabilize” her. A student had died by suicide at the community college recently and he was concerned about the client’s mental health. However, the examples he gave of “crises” do not show any urgent response or need to meet at the mall. The first example he gave was the screen shot of the many unwanted hang-up calls. However, he did not meet with her after that event because he was absent due to illness, and there is no evidence or indication he referred her to other mental health resources. The second example he gave was her message in all caps noting she had not seen him for a month and crying emoji. He responded to that by saying he

had booked her in the next week and would see if he had a cancellation, mentioning he had a “long recovery period” from his cold and that he had also had food poisoning. The client responded to that by saying “no worries let me know when you can book me in for.” Her “no worries” response did not suggest a crisis and the registrant did not treat it that way, booking her for the next week and sharing his own health issues with her on Instagram. He also relied on what we agree was a clear expression of distress on February 28<sup>th</sup>. However, his actions make it clear there was no need to meet at the mall. He asked her the next morning if she would prefer to meet at the mall or in his office, and when he didn’t receive a response, he chose the mall. There was no “need” to meet outside the clinical setting.

[67] Mr. Hwang relied on the community college’s encouragement to him to meet students “where they were.” However, there is a very big difference between reaching out to students at places like the campus athletic centre to let them know services were available or to advise them of programs and conducting therapy sessions in public settings such as the mall.

#### Who Initiated the Instagram Connection?

[68] The registrant and the client each gave different versions of how they came to follow each other on Instagram. According to the client, she was showing him something on her phone and he asked if he could follow her. She received the message, accepted it and followed him after the session was over. The registrant testified that his phone was on his desk, and when they were discussing her posts on Instagram the client picked up his phone, opened Instagram, found her account which she said would be hard to locate, and followed herself from his phone.

[69] We accept the client’s account. In addition to our general findings on the credibility of the two witnesses, it seems highly unlikely that the registrant would permit a client to pick up and use his phone in the middle of a therapeutic session and that she would do so with no other discussion.

#### Telling the Client Not to Disclose

[70] The client says the registrant told her not to tell others they were meeting off campus. The registrant testified that, in contrast, he told her not to tell others they

were meeting over his lunch hour, so other students would not try to book appointments at that time.

[71] The registrant argues that it would make no sense for him to tell her not to tell others they were meeting off campus, given that there were so many members of the community college community frequently at the mall who would see them. But the same argument could be made about the client's version of the conversation. While it is true that not everyone takes lunch at the same time, someone who saw the registrant and the client walking together at noon at a mall with drinks might equally ask for a session at that time. We accept the client's version of events, in line with our general conclusions about credibility. Moreover, exactly what was said is not significant. Either way, the registrant was telling his client to cover up an aspect of their unconventional and inappropriate therapy meetings. We find that he did so because he knew that the mall meetings were improper and unprofessional.

#### **Lack of Notes**

[72] The registrant testified that he sometimes took notes on paper but "forgot" to put them in the file. We do not believe he took those notes. This was a too-convenient excuse for his lack of notes and the registrant did not explain where those notes went. While he showed a significant lack of professionalism, we do not believe the registrant would have been so careless as to make notes and never put them into the file.

#### **Conclusions on Credibility**

[73] The client's evidence was not perfect, and we outlined some concerns above. However, in general it was more internally consistent, more probable in light of the uncontested surrounding circumstances, and she was less likely than the registrant to exaggerate or make statements inconsistent with the known facts. We accept that evidence, with the exception of why she sought out a session in September, a matter that does not impact the conclusion of misconduct. We find that the CRPO has proven on a balance of probabilities the incidents as described by the client. He greeted her with hugs, touched her thigh on May 17<sup>th</sup> and made the alleged comments, most on September 25<sup>th</sup>.

## Findings

[74] The types, or “heads” of professional misconduct that can lead to a finding are set out in the Health Professions Procedural Code, Schedule 2 to the *Regulated Health Professions Act*, SO 1991, SO 1991, c. 18 (“Code”) and Ontario Regulation 317/12 under the *Psychotherapy Act, 2007*, SO 2007, c. 10, sched. R. (regulation). In this section we consider, in light of the facts we have found, each of the CRPO’s allegations of misconduct.

### Sexual Abuse

[75] Sexual abuse is defined in ss.1(3) and (4) of the Code:

(3) “sexual abuse” of a patient by a member means,

(a) sexual intercourse or other forms of physical sexual relations between the member and the patient,

(b) touching, of a sexual nature, of the patient by the member, or

(c) behaviour or remarks of a sexual nature by the member towards the patient.

(4) For the purposes of subsection (3),

“sexual nature” does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided.

[76] The CRPO alleged that the registrant’s actions, taken as a whole, meet this definition. The registrant did not dispute that if we accepted the client’s evidence it would constitute sexual abuse.

[77] On their own, we might not find many of the registrant’s actions and comments to be of a sexual nature. However, taken together, the thigh touch and the comments about going on vacation together to Cancun, the straw, buying vegetables if they lived together, having sex with older men and that she’d be fun to drink alcohol with all had a sexual character.

[78] As for the “sex with older men” comment, discussions about a client’s sexual relationships are often part of therapy and would fall under s. 3(4) as remarks of a sexual nature appropriate to the service provided. These did not. First, the comment, as described, arose from conversations in therapy about the client’s sex

life, but it was the registrant who brought up the topic of orgasm and suggested she “should” have intimate relationships with older men. Second, the registrant testified the client had a history of sexual abuse, he had no expertise in that area and he was avoiding the topic of sexual abuse. Recommending a sexual relationship with an “older man” to a 19-year-old abuse survivor is in no way appropriate to the practice of psychotherapy.

Contravening or Failing to Maintain a Standard of Practice of the Profession and Disgraceful, Dishonourable or Unprofessional Conduct

[79] We find that in addition to the sexual abuse, the registrant’s conduct contravened the standards of practice of the profession and would reasonably be regarded by registrants as disgraceful, dishonourable or unprofessional (Regulation, ss. 1(1) and (52)). His interactions with the client on Instagram and hugs were inappropriate because of their frequency, times of day, comments on her appearance and lack of connection to the services. It was wrong for the registrant to tell the client not to disclose where sessions were occurring.

[80] We emphasize that, as with the sexual abuse, the misconduct flows from all of the registrant’s actions combined. We do not need to consider whether any of what he did, on its own, would be inappropriate or professional misconduct.

[81] Standard 1.5 of the *Professional Practice Standards for Registered Psychotherapists* explains disgraceful, dishonourable or unprofessional conduct as behaviour that:

... goes beyond legitimate professional discretion, or errors in judgment, and constitutes misconduct as defined by the profession – as opposed to the public. This standard reassures the public that members of the College share a vision of respect for clients, and a commitment to practising with integrity and professionalism.

[82] Standard 1.7 states that registrants “should avoid dual or multiple relationships with clients in addition to their professional one,” including as a friend. The standard notes that such relationships “are prone to cause confusion for both the [registrant] and the client. For example, the therapist or client may not know in which relationship certain information is being provided.” It notes that such relationships “may also affect the [registrant’s] professional judgment, (e.g., the [registrant] might say things to a client who is also a friend that s/he would not otherwise say to a

client.)” Registrants demonstrate the standard by “avoiding the creation of dual relationships with clients, as well as behaviours that may lead to the creation of dual relationships (e.g., inappropriate or non-therapeutic self-disclosure, gift giving, meeting outside the clinical setting).

[83] Standard 1.8 deals with unfair influence and abuse, noting that clients “may be emotionally or otherwise vulnerable,” making them potentially “particularly influenced by the views or suggestions of their therapist.” It prohibits verbal, psychological, emotional and sexual abuse. It requires registrants to “be cognizant of the individual vulnerabilities of clients,” respect their best interests and consult another psychotherapist or the CRPO if they “find him/herself in questionable circumstances.”

[84] From the beginning, the registrant’s messages and “likes” of her posts on Instagram created a dual relationship and were disgraceful, dishonourable and unprofessional. He engaged with her, and allowed her to engage with him, in an on-line friend relationship. Problems included:

- the number and frequency of messages and other interactions;
- messages and other interactions late at night, during holidays and on weekends;
- encouraging the client to “keep in touch” on Instagram while the client and registrant were both out of the country;
- the use of emojis that could be interpreted as conveying affection or romantic interests such as the face with hearts and the rose;
- self-disclosure about his personal life with no connection to therapy, including photos of him on the beach in a bathing suit during his vacation and his son’s birthday party;
- comments on her appearance;
- discussions about drinking alcohol;
- responding to questions about how his day was going;

- continuing to interact with the client's posts after she had said she did not want further therapy at this time. This was improper even though, as the registrant testified, it was still possible she might again seek out therapy later; and
- the general tone that reflected a friendship rather than a professional relationship.

[85] We do not find that the compliment on the client's tan was inappropriate, nor that the registrant intended something sexual by sending the shirtless photo. Mentioning someone's tan after they visited a sunny place is not inappropriate. The shirtless photo was part of a batch of vacation pictures the registrant had already posted publicly, in response to a question about his vacation. While he should not have been sending vacation photos to his client over Instagram while he was away and certainly not a bathing suit picture, we think it is more likely that he intended the update to convey that he was having a good vacation and the beauty of the spot.

[86] The registrant emphasized that the client often initiated the exchanges. However, the registrant was the professional with the power in the relationship and the professional obligations. It was his responsibility to ensure that a dual relationship did not develop by stopping the communications. He did the opposite. That the client initiated many of the exchanges is of minor importance.

[87] Meeting the client outside of a clinical setting and allowing greetings with hugs also significantly contributed to blurring these boundaries. The thigh touching and comments, in addition to being sexual abuse, violate the standards of practice of the profession. All of this behaviour, taken as a whole, would be seen by registrants as disgraceful, dishonourable and unprofessional conduct. Given these findings, we do not need to address the allegation that this falls under the head of misconduct of verbal, physical, psychological or emotional abuse.

## **Conclusion**

[88] The CRPO has proven the allegations of sexual abuse, failing to meet the standards of practice of the profession and disgraceful, dishonourable or

unprofessional conduct. The hearings office will schedule a hearing on penalty and costs.

David A. Wright,  
on behalf of the panel