

**DISCIPLINE COMMITTEE**  
**OF THE COLLEGE OF NURSES OF ONTARIO**

<b>PANEL:</b>	Mary MacMillan-Gilkinson	Public Member, Chairperson
	David Edwards, RPN	Member
	Laura Caravaggio, RPN	Member
	George Rudanycz, RN	Member
	Christopher Woodbury	Public Member

**BETWEEN:**

COLLEGE OF NURSES OF ONTARIO	) <u>MEGAN SHORTREED</u> for
	) College of Nurses of Ontario
	)
- and -	)
	)
	)
CHRISTINE NOSEWORTHY-GONDERMANN	) <u>NO REPRESENTATION</u> for
Reg. # II10365	) Christine Noseworthy-Gondermann
	)
	)
	)
	) <u>CHRIS WIRTH</u>
	) Independent Legal Counsel
	)
	)
	) Heard: <u>AUGUST 28, 2018</u>

**DECISION AND REASONS**

This matter came on for hearing before a Panel of the Discipline Committee on August 28, 2018 at the College of Nurses of Ontario (“the College”) at Toronto.

Christine Noseworthy-Gondermann (the “Member”) was not present or represented. Counsel for the College informed the Panel that an e-mail had been received from the Member’s Counsel on August 13, 2018 stating that the Member did not want to admit the allegations and would not be present at the hearing. The Panel deliberated and made a decision to proceed with the hearing without recessing to wait for the Member to appear.

Counsel for the College provided the Panel with evidence that the Member had been sent the Notice of Hearing on July 20, 2018. The Panel was satisfied that the Member had received adequate notice of the hearing and therefore proceeded with the hearing in the Member’s absence.

## **The Allegations**

The allegations against the Member as stated in the Notice of Hearing dated July 19, 2018 are as follows.

### **IT IS ALLEGED THAT:**

1. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act, 1991*, S.O. 1991, c. 32, as amended, and defined in subsection 1(18) of *Ontario Regulation 799/93*, in that you contravened a term, condition or limitation on your certificate of registration, imposed pursuant to s. 1.5(1)1.i. of *Ontario Regulation 275/94*, by failing to report a finding of guilt to the Executive Director of the College of Nurses (the “College”), on and after October 3, 2016, on which date you were found guilty of the following offence:
  - a. On or about the 7<sup>th</sup> day of January 2016 at the Township of Champlain in the said region did being at large on her undertaking given to an officer in charge and being bound to comply with a condition of that undertaking directed by the said officer in charge fail without lawful excuse to comply with that condition to wit: abstain from communicating directly or indirectly with [Individual #1] or from going to [ ], Embrun, Ont., or place of employment contrary to section 145(5.1) of the *Criminal Code of Canada*; and/or
2. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act, 1991*, S.O. 1991, c. 32, as amended, and defined in subsection 1(18) of *Ontario Regulation 799/93*, in that you contravened a term, condition or limitation on your certificate of registration, imposed pursuant to s. 1.5(1)1.ii. of *Ontario Regulation 275/94*, by failing to report charges relating to any offence to the Executive Director of the College, from and after September 2015, as follows:
  - a. On September 15, 2015, you were charged with the following offence, which you did not report:
    - i. On or about the 30 day of August, 2015, at the Township of Russell in the said region did commit an assault on [Individual #1], contrary to section 266 of the *Criminal Code of Canada*; and/or
  - b. On January 7, 2016, you were charged with the following offences, which you did not report:
    - i. On or about the 7<sup>th</sup> day of January 2016 at the Township of Champlain in the said region did being at large on her undertaking given to an officer in charge and being bound to comply with a condition of that undertaking directed by the said officer in charge fail without lawful excuse to comply with that condition to wit: abstain from communicating directly or indirectly with [Individual #1] or from going to [ ], Embrun, Ont., or place of employment contrary to section 145(5.1) of the *Criminal Code of Canada*;
    - ii. On or about the 7<sup>th</sup> day of January 2016 at the Township Champlain in the said region did resist Provincial Constable Luc Turgeon, a police officer for the Ontario Provincial Police, Russell Detachment engaged in the execution of his

duty by resisting arrest contrary to section 129(a) of the *Criminal Code of Canada*; and/or

- c. On March 19, 2016, you were charged with the following offences which you did not report:
- i. On or about the 4<sup>th</sup> day of February in the year 2016 at the City of Ottawa in the East Region did steal an IPAD of a value not exceeding five thousand dollars, the property of [Individual #2], contrary to Section 334, clause (b) of the *Criminal Code of Canada*;
  - ii. Between the 4<sup>th</sup> day of February in the year 2016 and the 18<sup>th</sup> day of February in the year 2016 at the City of Ottawa in the East Region did possess property or a thing, namely an IPAD of a value not exceeding five thousand dollars, the property of [Individual #2], knowing that all or part of the said property or thing had been derived directly or indirectly from the commission in Canada of an offence punishable by indictment, contrary to Section 355, clause (b) of the *Criminal Code of Canada*;
  - iii. On or about the 5<sup>th</sup> day of March in the year 2016 at the City of Ottawa in the East Region did, being at large on a recognizance entered into before a justice and being bound to comply with a condition thereof, namely “reside at [ ]”, fail, without lawful excuse, to comply with that condition, contrary to Section 145, subsection (3) of the *Criminal Code of Canada*;
  - iv. On or about the 18<sup>th</sup> day of March in the year 2016 at the City of Ottawa in the East Region did, being at large on a recognizance entered into before a justice and being bound to comply with a condition thereof, namely “notify the Officer in Charge (or designate) at Russell County OPP Detachment of your address in writing within 24 hours of any change in your address”, fail, without lawful excuse, to comply with that condition, contrary to Section 145, subsection (3) of the *Criminal Code of Canada*; and
  - v. Between the 1<sup>st</sup> day of December in the year 2015 and the 8<sup>th</sup> day of February in the year 2016 at the City of Ottawa in the East Region did, having entered into an undertaking given to a peace officer or an officer in charge pursuant to subsection 499 (2) or 503 (2.1) of the *Criminal Code* and being bound to comply with a condition thereof, namely notify Prov Cst Turgeon of any change in my address, employment or occupation, fail, without lawful excuse, to comply with that condition, contrary to Section 145, subsection (5.1) of the *Criminal Code of Canada*; and/or
3. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act, 1991*, S.O. 1991, c. 32, as amended, and defined in subsection 1(19) of *Ontario Regulation 799/93*, in that you contravened a provision of the *Nursing Act, 1991*, the *Regulated Health Professions Act, 1991*, or the regulations under either of those Acts, and in particular, section 85.6.1 of the *Health Professions Procedural Code*, by failing to report a finding of guilt to the Registrar (being the Executive Director) of the College, on and after October 3, 2016, on which date you were found guilty of the following offence:

- a. On or about the 7<sup>th</sup> day of January 2016 at the Township of Champlain in the said region did being at large on her undertaking given to an officer in charge and being bound to comply with a condition of that undertaking directed by the said officer in charge fail without lawful excuse to comply with that condition to wit: abstain from communicating directly or indirectly with [Individual #1] or from going to [ ], Embrun, Ont., or place of employment contrary to section 145(5.1) of the *Criminal Code of Canada*; and/or
4. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Nursing Act, 1991*, S.O. 1991, c. 32, as amended, and defined in subsection 1(37) of *Ontario Regulation 799/93*, in that you engaged in conduct or performed an act, relevant to the practice of nursing, that, having regard to all the circumstances, would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional, by failing to report charges and/or findings of guilt to the Executive Director of the College, from and after September 2015, as follows:
  - a. On September 15, 2015, you were charged with the following offence, which you did not report:
    - i. On or about the 30 day of August, 2015, at the Township of Russell in the said region did commit an assault on [Individual #1], contrary to section 266 of the *Criminal Code of Canada*; and/or
  - b. On January 7, 2016, you were charged with the following offences, which you did not report:
    - i. On or about the 7<sup>th</sup> day of January 2016 at the Township of Champlain in the said region did being at large on her undertaking given to an officer in charge and being bound to comply with a condition of that undertaking directed by the said officer in charge fail without lawful excuse to comply with that condition to wit: abstain from communicating directly or indirectly with [Individual #1] or from going to [ ], Embrun, Ont., or place of employment contrary to section 145(5.1) of the *Criminal Code of Canada*;
    - ii. On or about the 7<sup>th</sup> day of January 2016 at the Township Champlain in the said region did resist Provincial Constable Luc Turgeon, a police officer for the Ontario Provincial Police, Russell Detachment engaged in the execution of his duty by resisting arrest contrary to section 129(a) of the *Criminal Code of Canada*; and/or
  - c. On March 19, 2016, you were charged with the following offences which you did not report:
    - i. On or about the 4<sup>th</sup> day of February in the year 2016 at the City of Ottawa in the East Region did steal an IPAD of a value not exceeding five thousand dollars, the property of [Individual #2], contrary to Section 334, clause (b) of the *Criminal Code of Canada*;
    - ii. Between the 4<sup>th</sup> day of February in the year 2016 and the 18<sup>th</sup> day of February in the year 2016 at the City of Ottawa in the East Region did possess property or a thing, namely an IPAD of a value not exceeding five thousand dollars, the

property of [Individual #2], knowing that all or part of the said property or thing had been derived directly or indirectly from the commission in Canada of an offence punishable by indictment, contrary to Section 355, clause (b) of the *Criminal Code of Canada*;

- iii. On or about the 5<sup>th</sup> day of March in the year 2016 at the City of Ottawa in the East Region did, being at large on a recognizance entered into before a justice and being bound to comply with a condition thereof, namely “reside at [ ]”, fail, without lawful excuse, to comply with that condition, contrary to Section 145, subsection (3) of the *Criminal Code of Canada*;
  - iv. On or about the 18<sup>th</sup> day of March in the year 2016 at the City of Ottawa in the East Region did, being at large on a recognizance entered into before a justice and being bound to comply with a condition thereof, namely “notify the Officer in Charge (or designate) at Russell County OPP Detachment of your address in writing within 24 hours of any change in your address”, fail, without lawful excuse, to comply with that condition, contrary to Section 145, subsection (3) of the *Criminal Code of Canada*;
  - v. Between the 1<sup>st</sup> day of December in the year 2015 and the 8<sup>th</sup> day of February in the year 2016 at the City of Ottawa in the East Region did, having entered into an undertaking given to a peace officer or an officer in charge pursuant to subsection 499 (2) or 503 (2.1) of the *Criminal Code* and being bound to comply with a condition thereof, namely notify Prov Cst Turgeon of any change in my address, employment or occupation, fail, without lawful excuse, to comply with that condition, contrary to Section 145, subsection (5.1) of the *Criminal Code of Canada*; and/or
- d. On October 3, 2016, you were convicted of the following offence, which you did not report:
- i. On or about the 7<sup>th</sup> day of January 2016 at the Township of Champlain in the said region did being at large on her undertaking given to an officer in charge and being bound to comply with a condition of that undertaking directed by the said officer in charge fail without lawful excuse to comply with that condition to wit: abstain from communicating directly or indirectly with [Individual #1] or from going [ ], Embrun, Ont., or place of employment contrary to section 145(5.1) of the *Criminal Code of Canada*

### **Member’s Plea**

Given that the Member was not present nor represented, the Member was deemed to have denied the allegations in the Notice of Hearing. The hearing proceeded on the basis that the College bore the onus of proving the allegations in the Notice of Hearing against the Member.

### **Overview**

The Member first registered with the College as a Registered Practical Nurse (RPN) in July 1999. She practiced as a RPN from July 1999 until February 2017, when her certificate of registration was put on an Administrative Suspension for non-payment of fees. The Member's registration expired in March 2017.

Between September 15, 2015 and October 3, 2016, while a registered member of the College and employed as a nurse, the Member was charged with 8 separate criminal offences and convicted of 1 criminal offence. The Member failed to disclose this information as part of her self-reporting obligations required for all members of the profession.

The Panel heard evidence from one witness, and received 10 exhibits to review. Having considered the evidence and the onus and standard of proof, the Panel found that the Member committed acts of professional misconduct as alleged in paragraphs: 1(a); 2(a)(i), 2(b)(i)(ii), 2(c)(i)(ii)(iii)(iv)(v); 3(a); 4(a)(i), 4(b)(i)(ii), 4(c)(i)(ii)(iii)(iv)(v), 4(d)(i) of the Notice of Hearing and determined that the Member engaged in conduct that would reasonably be considered by members of the profession as disgraceful, dishonourable and unprofessional.

### **The Evidence**

Counsel for the College filed ten documents into evidence, including the Notice of Hearing, the Member's registration history with the College, the Mandatory Reporting Guide and self-reporting form from the College's website, certified copies of documents from the Ontario Court of Justice and the e-mail exchange between Counsel for the College and Counsel representing the Member in the Ontario Court of Justice. In addition, the College called one witness to testify and submitted an affidavit from the Prosecutions Clerk for the College.

#### **Exhibit 2**

The Panel reviewed the sworn Affidavit of [ ], Prosecutions Clerk for the College. In her affidavit, she stated that the original documentation regarding the discipline hearing was sent to the address that the College had on file for the Member. The correspondence was returned as undeliverable. However, the College's investigator was able to find the current address for the Member through the Ontario Court of Justice documents, which had the Member's updated address. Accordingly the documentation was sent to the Member's address set out in the Court documents.

#### **Witness 1- [College Investigator]**

[ ] is an investigator on the Reports Team for the College. [The College Investigator] stated that the Reports Team investigates reports of professional misconduct made by members of the College or employers. [The College Investigator] identified Exhibit 3: CNO Registration history for the Member. She detailed the information found in the document, which is available online for the public to view. This information included the Member's initial registration with the College, her administrative suspension for non-payment of fees from February 22, 2017 to March 24, 2017, and the date her registration expired, March 24, 2017.

[The College Investigator] identified Exhibit 4 which was the self-reporting form found on the College's website. She stated that the form could be found in two ways: under the Maintain your Membership tab or under the Protect the Public tab through the College's website. She explained that questions 1-4 on the form must be completed by a nurse upon registration and renewal. These questions require a nurse, among other things, to disclose whether he/she has been charged with, or found guilty of, an offence. If a nurse were to answer yes to any of the questions they are instructed to complete more detailed information on pages 2 and 3 of the form. [The College Investigator] stated that the Member's record was reviewed in December 2016 and there were no reports showing. She also reviewed the Member's record several times during the investigation and at no time were there any reports filed by the Member.

[The College Investigator] identified Exhibits 5 and 6. The College's published Mandatory Reporting Guide, Exhibit 5, was published in 2018 and is the most current version, but the Member would have had access to Exhibit 6, the guide published in 2012, which was available to members until 2016. Therefore, Exhibit 6 was the guide used by the College and the Panel in this case. This states that "All regulatory health professionals are subject to mandatory reporting". [The College Investigator] explained that this means that any member of the College must report any findings of guilt or charges to the College. Referring to the guide, [the College Investigator] explained what a nurse must report to the College and the timeframe in which to report. The guide, also states that a nurse must report if they are charged or found guilty of an offence in any jurisdiction. [The College Investigator] confirmed that there was no indication of a self-report submitted by the Member.

[The College Investigator] identified Exhibit 7: Ontario Court of Justice Documents. It showed that two charges had been brought against the Member, and were not reported to the College. She identified Exhibit 8 which is a sworn information form from the Ontario Court of Justice that showed a charge of assault which was not reported to the College. [The College Investigator] identified Exhibit 9: Ontario Court of Justice, Information of Ana Weber, Ottawa Police Service, pages 163 and 166. It showed 5 total counts (charges) which had been laid against the Member and which were not reported to the College.

Counsel for the College asked [the College Investigator] whether there had been any communications with the Member during the investigation process. [The College Investigator] testified that there had been multiple attempts to contact the Member. There was a phone call at the beginning of the process advising the Member that an investigator had been appointed and providing information on how to deal with the matter. No further contact was made by phone. Written documentation was sent to the address on file with the College for the Member and was returned as not being a valid address. Information was then found in the Court documents (Exhibits 7-9) of a current address and all further written documentation was sent to that address, and not returned. No responses from the Member were received for any communication sent out.

#### Exhibits 7, 8 and 9

The Panel reviewed the certified copies of the Ontario Court of Justice documents which were included in Exhibit 7. This document showed that the Member was charged with two criminal offences on January 7, 2016 and that there was a conviction against the Member on one of those charges signed by a Judge of the Ontario Court of Justice on October 3, 2016 (page 216). The Member was sentenced to 12 months of probation. The remaining charge was withdrawn by the Crown.

The Panel reviewed the document provided in Exhibit 8: A sworn information from the Ontario Court of Justice. It showed that the Member was charged on September 15, 2015 with assault and that it was subsequently withdrawn by the Crown.

The Panel reviewed the document provided in Exhibit 9 which was a sworn information from the Ontario Court of Justice. This was a certified true copy detailing 5 criminal charges against the Member, from March 19, 2016, which were not reported to the College. Counsel for the College pointed out that charges had been laid, and not reported to the College as was evidenced in Exhibits 7-9.

### **Final Submissions**

Counsel for the College submitted as follows:

Allegation 1: The Member's failure to report findings of guilt.

Exhibit 7 shows proof of conviction of the Member on October 3, 2016 in the Ontario Court of Justice. The Member was found guilty and did not report this conviction to the College.

Allegation 2: The Member's failure to report charges relating to any offence to the Executive Director of the College.

The Member did not report any charges at any time up to the expiration of her registration. The Mandatory Reporting Guide (Exhibit 6) states that members have 30 days within which to report to the College. The Member failed to report any charges relating to any offence. Exhibits 7-9 showed proof of charges which had been laid against the Member on three occasions in 2015 and 2016. The evidence of [the College Investigator] shows that the Member did not report any charges prior to the Member's registration expiring.

Allegation 3: The Member's failure to report to the Registrar when she was found guilty of an offence.

A report had to be filed as soon as possible with the College within a 30 day period. Exhibit 7 shows a finding of guilt and a conviction on October 3, 2016. No report of this was filed with the College by the Member, from the time of this conviction until the expiry of the Member's registration.

Allegation 4: Disgraceful, Dishonourable and Unprofessional conduct.

The Member's failure to report the charges and the conviction are relevant to the practice of nursing. The obligation to report is mandated by legislation and the College. All members have conditions on their certificates, which require them to report charges and convictions to the College. This is necessary so that the College can regulate its members in the public interest. The Member showed a serious disregard for her professional obligation to report. This casts serious doubt on her moral fitness and inherent ability to discharge the higher obligations that the College and the public expect nurses to meet.



Counsel for the College asked for findings of all three of disgraceful, dishonourable and unprofessional.

For unprofessional, the Member's conduct shows a serious and persistent disregard for her professional obligations.

For dishonourable, there is an element of dishonesty and deceit by failing to report.

For disgraceful, the Member's conduct has the effect of shaming the Member and the profession, and casts serious doubt on her moral fitness to discharge her higher obligations.

## **Decision**

The College bears the onus of proving the allegations in accordance with the standard of proof, that being the balance of probabilities, based upon clear, cogent and convincing evidence.

Having considered the evidence and the onus and standard of proof, the Panel finds that the Member committed acts of professional misconduct as alleged in paragraphs 1(a); 2(a)(i), 2(b)(i)(ii), 2(c)(i)(ii)(iii)(iv)(v); 3(a); 4(a)(i), 4(b)(i)(ii), 4(c)(i)(ii)(iii)(iv)(v) and 4(d)(i) of the Notice of Hearing. With regard to allegation 4, the Panel finds that the Member engaged in conduct that would reasonably be regarded by members of the profession as disgraceful, dishonourable and unprofessional.

## **Reasons for Decision**

The Panel deliberated and found that the Member, by failing to report multiple criminal charges and a criminal conviction over an extended period of time showed a continued disregard for her professional obligations and the safety of the public.

As evidenced by the Ontario Court of Justice documents provided to the Panel during the hearing, the Member was charged on three different occasions with eight offences and convicted of one of them. The Member did not report any of the charges or the conviction as evidenced by the testimony of [the College Investigator]. The Panel found this witness to be credible.

As the Member had been a nurse registered with the College since 1999, the Member would have had multiple chances to read through the Standards of Nursing, and was given multiple chances to report any charges or findings of guilt during the annual registration process. This section of the annual registration must be completed each year before registration is confirmed for the following year. The College's website also provides two separate paths to the Mandatory Reporting Guide. They are simple to follow and would not have been difficult for the Member to find and complete.

Since the charges and conviction took place over several years, the Member had multiple chances to report, and multiple reminders to report by the College as well. By choosing to not answer honestly, and not report, the Member showed an unwillingness to be governed. By choosing to re-offend after the initial charges had been laid, she showed a disrespect for both the law and the profession of nursing.

The Member's failure to report any of the charges or the conviction demonstrates a disregard for her personal and professional integrity and speaks poorly of her ability to be governed by the College. The failure to report is a breach of legislative requirements and is not what is expected of a nurse in Ontario.

The Panel found that the Member engaged in conduct that would reasonably be regarded by members of the profession as disgraceful, dishonourable and unprofessional, in that she showed a continued disregard for the legislation and procedures set out by the College by not reporting any charges or the conviction. The Member's failure to self-report the charges and conviction over an extended period of time shows an unwillingness to take responsibility for her own actions. This behaviour falls well below what is expected of members of the profession. The Member's actions or inactions have shamed the Member and by extension the profession. The Panel found this conduct to be disgraceful, dishonourable and unprofessional.

## **Penalty**

### **Penalty Submissions**

Counsel for the College asked that the Panel make an order directing the Executive Director to revoke the Member's Certificate of Registration immediately.

She submitted that the proposed order meets the over-riding goal of protection of the public. The order also helps to maintain the public's confidence in the College by demonstrating its effectiveness in self-regulation.

In terms of mitigating factors, Counsel for the College acknowledged that the Member has no prior disciplinary history with the College. However, she submitted that, because the Member did not participate in the hearing, no other mitigating circumstances were provided that could explain what led the Member to commit these actions. There was also no evidence that showed that the Member was capable of remediation and/or that she was willing to be remediated.

One aggravating factor was the Member's repeated failure to report her charges and her one conviction. This shows a continuous breach of her regulatory obligations. The Member also failed to respond to multiple attempts by the College to contact her.

The proposed penalty provides for general deterrence in that it sends a strong message to all members of the profession that there can be severe and long term consequences when a member does not follow his/her legislative requirement to report charges or convictions.

The proposed penalty provides for specific deterrence to the Member in that her certificate will be revoked.

Counsel for the College provided the Panel with two cases, *CNO v. Hardy* - August 2016 and *CNO v. Halladay* - August 2017, for its consideration. These cases demonstrated that the proposed penalty fell within the range of penalties, from this Discipline Committee, for similar conduct.

### **Penalty Decision**

The Panel makes the following order as to penalty:

The Executive Director is directed to immediately revoke the Member's Certificate of Registration.

### **Reasons for Penalty Decision**

The Panel deliberated and agreed with Counsel for the College that the Member's actions and inactions showed a disregard and disrespect for both the law and the profession. The Member demonstrated a clear unwillingness to be governed, by accumulating multiple charges and by not participating in the hearing process, further demonstrating an unwillingness to accede to the College's jurisdiction.

The Member chose to not disclose relevant information to the College over a period of several years, by not reporting charges and a conviction, despite this being a statutory and practice requirement. The Member's actions violate the cornerstones of the nursing profession, honesty, integrity and trustworthiness.

The Member has no prior disciplinary history. The Member, however, refused to acknowledge the notifications sent. She also chose not to participate in the hearing process. As a result, the Member, was not present to share any information such as mitigating factors that may have assisted the Panel in their deliberations, and shown that she was willing to be governed.

Due to this lack of participation, there is no reason for the Panel to believe that the Member will not engage in similar conduct in the future, and no reason for the Panel to find that the Member will meet her professional obligations necessary to be considered governable.

The Panel concludes that the penalty of revocation is appropriate given the seriousness of the Member's conduct. The penalty acts as a specific and a general deterrent. It prevents the Member from using the protected title of nurse. It protects the public by ensuring that the Member is unable to practice nursing. It also discourages similar conduct by other members, demonstrating that such conduct will be met with severe consequences.

I, Mary MacMillan-Gilkinson, Public Member, sign this decision and reasons for the decision as Chairperson of this Discipline Panel and on behalf of the members of the Discipline Panel.

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Chairperson

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Date