

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

PANEL:	Catherine Egerton	Public Member, Chairperson
	Laura Caravaggio, RPN	Member
	Dawn Cutler, RN	Member
	Mary MacMillan-Gilkinson	Public Member
	George Rudanycz, RN	Member

BETWEEN:

COLLEGE OF NURSES OF ONTARIO)	<u>EMILY LAWRENCE</u> for
)	College of Nurses of Ontario
- and -)	
)	
COLLETTE E. MACDONALD)	<u>ED HOLMES</u> for
Reg. No. 7203714)	Collette E. Macdonald
)	
)	<u>LUISA RITACCA</u>
)	Independent Legal Counsel
)	
)	Heard: NOVEMBER 22, 2017

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on November 22, 2017 at the College of Nurses of Ontario (“the College”) at Toronto.

The Allegations

The allegations against Collette MacDonald (the “Member”) as stated in the Notice of Hearing dated September 8, 2017 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 (the “Act”), and defined in subsection 1(1) of *Ontario Regulation 799/93*, in that, while registered as a Registered Nurse in Barrie, Ontario, you contravened a standard of practice of the profession or failed to meet the standards of practice of the profession in that:
 - a. in or about 2000 to 2007, you failed to maintain therapeutic boundaries of the nurse-

- client relationship with [the Client];
- b. in or about 2003 to 2007, you entered into a financial arrangement or arrangements with your client, [the Client] during the therapeutic relationship and/or you entered into a financial arrangement or arrangements with your former client, [the Client];
 - c. in or about 2003 to 2007, you entered into a personal relationship with your client, [the Client] during the therapeutic relationship and/or you entered into a personal relationship with your former client, [the Client];
2. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the Act, and defined in subsection 1(26) of *Ontario Regulation 799/93*, in that, while registered as a Registered Nurse in Barrie, Ontario, you practised the profession while in a conflict of interest in that you continued to provide counselling to [the Client] after you had entered into a financial arrangement or arrangements with your client, [the Client], in or about 2003-2007.
 3. You have committed an act of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the Act, and defined in subsection 1(37) of *Ontario Regulation 799/93*, in that, while registered as a Registered Nurse in Barrie, Ontario, 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 as disgraceful, dishonourable or unprofessional in that:
 - a. in or about 2000 to 2007, you failed to maintain therapeutic boundaries of the nurse-client relationship with [the Client];
 - b. in or about 2003 to 2007, you entered into a financial arrangement or arrangements with your client, [the Client] during the therapeutic relationship and/or you entered into a financial arrangement or arrangements with your former client, [the Client];
 - c. in or about 2003 to 2007, you entered into a personal relationship with your client, [the Client] during the therapeutic relationship and/or you entered into a personal relationship with your former client, [the Client]; and/or
 - d. you practised the profession while in a conflict of interest in that you continued to provide counselling to [the Client] after you had entered into a financial arrangement or arrangements with your client, [the Client], in or about 2003-2007.

Member's Plea

The Member admitted the allegations set out in paragraphs 1(a), (b) (c), 2, and 3(a), (b), (c), (d) in the Notice of Hearing. The panel received a written plea inquiry which was signed by the

Member. The panel also conducted an oral plea inquiry and was satisfied that the Member's admission was voluntary, informed and unequivocal.

Agreed Statement of Facts

Counsel for the College and the Member advised the panel that agreement had been reached on the facts and to that end introduced an Agreed Statement of Facts, which reads as follows:

THE MEMBER

1. Collette E. MacDonald (the "Member") obtained a diploma in nursing from Women's College Hospital in 1971.
2. The Member registered with the College of Nurses of Ontario (the "College") as a Registered Nurse ("RN") on January 1, 1972.

THE CLINIC

3. Since 1976, the Member has operated The Growth Group (the "Clinic") where she practises independent psychotherapeutic counselling. Although the Member does not require her registration as a nurse to provide counselling, she acknowledges that she was practising nursing at all relevant times. In particular, she acknowledges that she applied her nursing knowledge, skill and judgment, and the relevant nursing practice standards and guidelines, and had a direct or indirect effect on the Client.
4. The Clinic is located in Barrie, Ontario.

THE CLIENT

5. [The Client] is a registered occupational therapist who works in mental health and addictions.
6. In 1992 or 1993, the Client was experiencing relationship issues and her physiotherapist referred her to the Member for psychotherapeutic counselling.
7. For the next 7–8 years, the Member provided therapy sessions to the Client at the Clinic, at least weekly and sometimes more frequently. This therapy was not funded through the Ontario Health Insurance Program. Any documentation regarding this therapy has been destroyed in compliance with the retention of documents obligations.

INCIDENTS RELEVANT TO ALLEGATIONS OF PROFESSIONAL MISCONDUCT

Renting Space in the Clinic

8. From 1999 to 2004, the Member shared and co-leased the Clinic's premises with [Colleague A] and [Colleague B]. They did not have a partnership and they each paid rent to the landlord independently.
9. In the early 2000s, the Client began renting office space from the Member to conduct her own psychotherapeutic counselling sessions under her company's name, [the Company]. At the time, the Client was working at a mental health care centre as full-time Occupational Therapist but she wanted to provide more individual counselling to clients.
10. The Member proposed that the Client would pay her a nominal hourly fee to use the office space, if the Client brought in her own clients. The rental fees were shared equally amongst the three signatories to the Lease. The fee agreements were not formalized in writing.
11. When the Client began counselling her own clients at the Clinic, the Member increased her sessions with the Client to twice weekly. The Member charged the Client for her sessions. If the Client were to testify, she would state that of these two weekly sessions, one session was for counselling and the other was for mentorship regarding the Client's own counselling practice. If the Member were to testify, she would state that the sessions were solely for mentorship.
12. The Member admits that she benefited financially from the fee agreements, in addition to charging the Client for her sessions with the Member.
13. The Member also acknowledges that the Client believed they continued to have a therapeutic nurse-client relationship during this period of time, and acknowledges that she took no steps to clarify that the relationship with the Client was not therapeutic, nor formally terminate the therapeutic-nurse relationship. She admits that the therapeutic-nurse client relationship continued until 2007, regardless of whether the Member understood the sessions to be for the purpose of mentorship or counselling.

Leasing of Space

14. In 2004, the Member and the Client discussed a co-leasing arrangement when [Colleague A] opted to lease space elsewhere and there was a vacancy on the lease.
15. On May 2, 2004, the Client documented in her journal: "Someone who had been quietly responsible for my path towards counselling and the partnership of the [Clinic]. [] introduced me to [the Member], my therapist forever and now my friend and mentor."
16. The Client, the Member and [Colleague B] all signed the lease with the Landlord. As with the previous arrangements, they each paid rent directly to the landlord.

17. The Member admits that she failed to maintain the therapeutic nurse-client boundaries when she offered to co-lease Clinic space to the Client.
18. If the Client were to testify, she would state that, around the same time, the Member also proposed a partnership agreement to the Client. Specifically, the Member told her that if she paid her \$20,000 to buy-in to partnership in the Clinic, she would be a business partner and the Clinic's business name, The Growth Group, would pass on to her when the Member retired. If the Client were to testify, she would state that the Client understood that after paying the Member \$20,000, she would be considered a full partner in the Clinic and that this partnership agreement was verbal. If the Member were to testify, she would state that there was no discussion about a partnership:
19. Between 2003 and 2007, when the Client was paying the Member amounts of money on a regular basis, the Member provided the Client with receipts for payments made for "Human Relations & Communications" and "Business & Stress Management" in the following amounts: \$7,275 in 2003, \$9,800 in 2006, \$7,800 in 2007.
20. If the Client were to testify, she would say these receipts reflect payment for counselling (until 2006) and partnership buy-in. If the Member were to testify, she would say the payments were for mentoring only and do not reflect payment for therapeutic services or partnership buy-in.
21. The Member and the Client ceased their sessions in 2006 or 2007. If the Client were to testify, she would say that she stopped seeing the Member for mentorship in 2007, when she no longer found the sessions useful or necessary.
22. From 2009 to 2015, the Member and the Client were both signatories to the lease, with other professionals, were both listed on business name records, and shared the cost of overhead.
23. In March 2015, the Member told the Client she was thinking of retiring and selling her stake in the Clinic. This led to the deterioration of the relationship between the Client and the Member and a dispute about the partnership the Client alleges they had.

ADMISSIONS OF PROFESSIONAL MISCONDUCT

24. The Member admits that she failed to maintain the therapeutic nurse-client boundaries by engaging in the following interactions while providing psychotherapeutic services to the Client:
 - a. in approximately the early 2000s, offering to rent Clinic space to the Client and negotiating and entering into the co-lease agreements with the Client until 2004;

- b. in 2004 until 2006 or 2007, entering into a co-leasing relationship with the Client (which continued until 2015); and
 - c. from the early 2000s to 2006 or 2007, maintaining a mentoring relationship with the Client.
- 25. The Member acknowledges and admits that she was in a financial relationship with the Client, through the rental and the referral fee agreements and later the co-leasing arrangement, from approximately the early 2000s to 2007, during which time the Client understood that they were in a therapeutic nurse-client relationship. She acknowledges that from 2007 to 2015, she was in a financial relationship with the Client, now as a former client, through the co-leasing arrangement.
- 26. The Member admits that it was inappropriate for her to engage in a financial relationship with the Client. The Member acknowledges and admits that engaging in a financial relationship with the Client, during the therapeutic nurse-client relationship, which the Client understood continued to exist until 2007, was a breach of the standards of practice.
- 27. The Member admits that she acted in a conflict of interest when she continued to provide sessions to the Client after entering into co-leasing arrangement with the Client from approximately 2003 or 2004 to 2006 or 2007.
- 28. The Member admits that she committed acts of professional misconduct as alleged in paragraphs 1(a), (b), (c) of the notice of hearing as described in paragraphs 5 to 27, in that she breached the boundaries of the therapeutic nurse-client relationship by engaging in therapeutic, financial and mentoring relationships with the client in that the Member:
 - a) From the early 2000s to 2007, the Member failed to maintain therapeutic boundaries of nurse-client relationship with the Client ;
 - b) In or about 2003 to 2007, the Member entered into a financial arrangement or arrangements with the Client; and
 - c) In or about 2003 to 2007, the Member entered into a personal relationship of mentoring with the Client.
- 29. The Member further admits that she committed the act of professional misconduct alleged in paragraph 2 of the Notice of Hearing as described in paragraphs 5 to 27 above, in that she practiced nursing while in a conflict of interest, in that she engaged in a therapeutic nurse-client relationship and provided mentorship to the Client while engaged in a financial arrangement with the Client between 2003 and 2007.
- 30. The Member admits that she committed the acts of professional misconduct as alleged in paragraphs 3(a), (b), (c) and (d) of the Notice of Hearing in that her

conduct was disgraceful, dishonourable and unprofessional as described in paragraphs 5 to 27 above in that the Member:

- a) From the early 2000s to 2007, failed to maintain therapeutic boundaries of the nurse-client relationship with the Client;
- b) In or about 2003 to 2007, entered into a financial arrangement or arrangements with the Client;
- c) In or about 2003 to 2007, entered into a personal relationship with the Client and
- d) Practiced the profession while in a conflict of interest in that she engaged in a therapeutic nurse-client relationship and provided mentorship to the Client while engaged in a financial arrangement with the Client between 2003 and 2007.

Decision

The panel finds that the Member committed acts of professional misconduct as alleged in paragraphs 1 (a), (b), (c) and 2 of the Notice of Hearing. As to allegation 3 (a), (b), (c) and (d), the panel finds that the Member engaged in conduct that would reasonably be considered by members to be disgraceful, dishonourable and unprofessional.

Reasons for Decision

The panel considered the Agreed Statement of Facts and the Member's plea and finds that this evidence supports findings of professional misconduct as alleged in the Notice of Hearing.

Allegation #1 in the Notice of Hearing is supported by paragraphs 5 to 27 in the Agreed Statement of Facts. The Member provided psychotherapeutic counselling to the Client for approximately 7 to 8 years starting in 1992 or 1993. In 2000, the Member first blurred the boundaries of the therapeutic nurse-client relationship when she proposed that the Client set up her own counselling business in the Member's office space. The Member received nominal hourly fees for the hours that the Client utilized the space. In 2004, the Member and the Client entered into a more formal co-leasing agreement with the landlord which lasted until 2015. The Member admits that it was inappropriate to engage in a financial relationship with the Client. Until 2007, while they were sharing office space, the Client also paid the Member for twice weekly sessions. The Client believed they were for counselling and mentorship while the Member believed they were solely for mentorship. The Member, however, admits that she never sought to clarify the relationship or the purpose of the sessions. In 2004, the Client wrote that she saw the Member as a therapist, friend and mentor. The discrepancies between the Member's beliefs and the Client's perception of the relationship were a result of the Member's failure to establish and maintain her professional boundaries. These personal and financial violations of the therapeutic nurse-client relationship persisted for many years and contravened the standards of practice of the nursing profession. Nurses should not enter into personal or business

relationships with Clients, particularly those for whom they are providing ongoing support, counselling and mentorship. From the Client's perspective, the therapeutic relationship did not change from before they entered into their business dealings to after.

Allegation #2 in the Notice of Hearing is supported by paragraphs 5 to 27 in the Agreed Statement of Facts. The Member has acknowledged that it was a conflict of interest when she continued to provide sessions to the Client after she entered into a co-leasing agreement with her. The panel agrees.

With respect to Allegation # 3, the panel finds that the Member's conduct would reasonably be regarded by members of the profession as unprofessional, dishonourable and disgraceful. The Member's conduct was unprofessional in that it demonstrated a serious and persistent disregard for her professional obligations. The Member's personal and financial boundary violations occurred over many years. The Member's conduct showed a lack of good judgement when she initiated, and then entered into, financial arrangements with the Client. The panel also finds that the Member's conduct was dishonourable. It demonstrated an element of dishonesty when she used her position as a nurse in a psychotherapeutic relationship for her financial gain. The Member ought to have known that, as a result of their nurse-client therapeutic relationship, the Client was trusting and potentially vulnerable to suggestions. The Member also ought to have known that it is a conflict of interest to provide one on one sessions to a client while also having a separate financial arrangement with that client. Finally, the panel finds that the Member's conduct was disgraceful as it shames the Member and, by extension, the profession. The Member made significant financial gains as a result of these arrangements with the Client. The Member's conduct casts serious doubt on her moral fitness and inherent ability to discharge the higher obligations the public expects professionals to meet.

Penalty

Counsel for the College and the Member advised the panel that a Joint Submission on Order had been agreed upon. The Joint Submission requests that this panel make an order as follows.

1. Requiring the Member to appear before the Panel to be reprimanded within three months of the date that this Order becomes final.
2. Directing the Executive Director to suspend the Member's certificate of registration for four months. This suspension shall take effect from the date that this Order becomes final and shall continue to run without interruption as long as the Member remains in the practising class.
3. Directing the Executive Director to impose the following terms, conditions and limitations on the Member's certificate of registration:
 - a) The Member will attend two meetings with a Nursing Expert (the "Expert"), at her own expense and within six months from the date of this Order. To comply, the Member is required to ensure that:

- i. The Expert has expertise in nursing regulation and has been approved by the Director of Professional Conduct (the “Director”) in advance of the meetings;
- ii. At least seven days before the first meeting, the Member provides the Expert with a copy of:
 1. the Panel’s Order,
 2. the Notice of Hearing,
 3. the Agreed Statement of Facts,
 4. this Joint Submission on Order, and
 5. if available, a copy of the Panel’s Decision and Reasons;
- iii. Before the first meeting, the Member reviews the following College publications and completes the associated Reflective Questionnaires, online learning modules, decision tools and online participation forms (where applicable):
 1. *Professional Standards*,
 2. *Therapeutic Nurse-Client Relationship*,
- iv. At least seven days before the first meeting, the Member provides the Expert with a copy of the completed Reflective Questionnaires, and online participation forms;
- v. The subject of the sessions with the Expert will include:
 1. the acts or omissions for which the Member was found to have committed professional misconduct,
 2. the potential consequences of the misconduct to the Member’s clients, colleagues, profession and self,
 3. strategies for preventing the misconduct from recurring,
 4. the publications, questionnaires and modules set out above, and
 5. the development of a learning plan in collaboration with the Expert;
- vi. Within 30 days after the Member has completed the last session, the Member will confirm that the Expert forwards his/her report to the Director, in which the Expert will confirm:
 1. the dates the Member attended the sessions,
 2. that the Expert received the required documents from the Member,
 3. that the Expert reviewed the required documents and subjects with the Member, and

4. the Expert's assessment of the Member's insight into her behaviour;
 - vii. If the Member does not comply with any one or more of the requirements above, the Expert may cancel any session scheduled, even if that results in the Member breaching a term, condition or limitation on her certificate of registration;
4. All documents delivered by the Member to the College, the Expert or the employer(s) will be delivered by verifiable method, the proof of which the Member will retain.

Penalty Submissions

Submissions were made by Counsel for the College and the Member.

The parties agreed that the one mitigating factor in this case was that the Member has been registered with the College for many years and has no prior disciplinary history.

The aggravating factors in this case were:

- The Member and the Client had a long-standing relationship where professional lines were repeatedly blurred.
- The Member benefitted financially from her inappropriate business relationship with her Client.
- The psychotherapeutic nature of the relationship created a vulnerability in the Client that made it possible for her to be influenced and taken advantage of.
- The Member, as an entrepreneur, should have been attuned to potential conflicts of interest.

The proposed penalty provides for general deterrence through the publication of the decision, the reprimand and the lengthy suspension. Members of the profession will recognize that the failure to maintain professional boundaries will not be tolerated.

The proposed penalty provides for specific deterrence through the significant suspension of four months. It will provide the Member with time to reflect on the seriousness of her conduct. The oral reprimand will provide an opportunity for the panel to provide comments to the Member so that she can gain greater insight into her actions.

The proposed penalty provides for remediation and rehabilitation through the meeting with the Nursing Expert, the review of College publications and the completion of the Reflective Questionnaires.

Overall, the public is protected because the Member will have the opportunity to reflect on her conduct, gain insight into her actions and improve her practice.

College Counsel did not submit any previous case law to the panel. College Counsel stated that this case is very unique. No case could be found that that was analogous to this one. Counsel assured the panel that the Joint Submission on Order was a product of significant discussions between the counsels. Defense Counsel reminded the panel that a Joint Submission on Order should not be interfered with lightly. He stated that the four month suspension reflected the seriousness of the case and that the broad spectrum of terms, conditions and limitations met general and specific deterrence.

Independent Legal Counsel told the panel that we could take comfort in the fact that experienced counsel negotiated the agreement. She said that the absence of precedent cases should not be concerning to us in the circumstances.

Penalty Decision

The panel accepts the Joint Submission as to Order and accordingly orders:

1. The Member is required to appear before the Panel to be reprimanded within three months of the date that this Order becomes final.
2. The Executive Director is directed to suspend the Member's certificate of registration for four months. This suspension shall take effect from the date that this Order becomes final and shall continue to run without interruption as long as the Member remains in the practising class.
3. The Executive Director is directed to impose the following terms, conditions and limitations on the Member's certificate of registration:
 - a) The Member will attend two meetings with a Nursing Expert (the "Expert"), at her own expense and within six months from the date of this Order. To comply, the Member is required to ensure that:
 - i. The Expert has expertise in nursing regulation and has been approved by the Director of Professional Conduct (the "Director") in advance of the meetings;
 - ii. At least seven days before the first meeting, the Member provides the Expert with a copy of:
 1. the Panel's Order,
 2. the Notice of Hearing,
 3. the Agreed Statement of Facts,
 4. this Joint Submission on Order, and
 5. if available, a copy of the Panel's Decision and Reasons;
 - iii. Before the first meeting, the Member reviews the following College publications and completes the associated Reflective Questionnaires, online

learning modules, decision tools and online participation forms (where applicable):

1. *Professional Standards*,
 2. *Therapeutic Nurse-Client Relationship*,
- iv. At least seven days before the first meeting, the Member provides the Expert with a copy of the completed Reflective Questionnaires, and online participation forms;
- v. The subject of the sessions with the Expert will include:
1. the acts or omissions for which the Member was found to have committed professional misconduct,
 2. the potential consequences of the misconduct to the Member's clients, colleagues, profession and self,
 3. strategies for preventing the misconduct from recurring,
 4. the publications, questionnaires and modules set out above, and
 5. the development of a learning plan in collaboration with the Expert;
- vi. Within 30 days after the Member has completed the last session, the Member will confirm that the Expert forwards his/her report to the Director, in which the Expert will confirm:
1. the dates the Member attended the sessions,
 2. that the Expert received the required documents from the Member,
 3. that the Expert reviewed the required documents and subjects with the Member, and
 4. the Expert's assessment of the Member's insight into her behaviour;
- vii. If the Member does not comply with any one or more of the requirements above, the Expert may cancel any session scheduled, even if that results in the Member breaching a term, condition or limitation on her certificate of registration;
4. All documents delivered by the Member to the College, the Expert or the employer(s) will be delivered by verifiable method, the proof of which the Member will retain.

Reasons for Penalty Decision

The panel understands that the penalty ordered should protect the public and enhance public confidence in the ability of the College to regulate nurses. This is achieved through a penalty that addresses specific deterrence, general deterrence and, where appropriate, rehabilitation and remediation. The panel also considered the penalty in light of the principle that joint submissions should not be interfered with lightly.

The panel concluded that the proposed penalty is reasonable and in the public interest. The Member has co-operated with the College and, by agreeing to the facts and a proposed penalty, has accepted responsibility. The panel finds that the penalty satisfies the principles of specific and general deterrence, rehabilitation and remediation, and public protection. Members of the profession will be reminded that the obligation to enforce therapeutic and professional boundaries ought to be of paramount concern for all nurses. It is up to the nurse – not the client – to maintain appropriate boundaries. Clients are vulnerable to undue influence and harm when those boundaries are breached.

I, Catherine Egerton, 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:

Chairperson

Date