IN THE MATTER OF THE HEALTH PROFESSIONS ACT, R.S.A. 2000, c.H-7;

AND IN THE MATTER OF A HEARING INTO THE CONDUCT OF MR. ALTAF ALI, A REGULATED MEMBER OF THE ALBERTA COLLEGE OF SOCIAL WORKERS;

AND INTO THE MATTER OF A COMPLAINT BY DR (16.33), SD (16.43) DD (16.68) INTO THE CONDUCT OF MR. ALTAF ALI PURSUANT TO S. 77(a) OF THE HEALTH PROFESSIONS ACT;

DECISION OF THE HEARING TRIBUNAL

I. INTRODUCTION

1. Hearings were held on Wednesday October 24, 2018, commencing at 9:30 a.m. at the Edmonton offices of Parlee McLaws LLP 1700 Enbridge Centre, 10175-101 Street, Edmonton, Alberta (the "**October 2018 Hearing**") and on Wednesday, March 6, 2019 commencing at 9:30 a.m. at the Alberta College of Social Workers ("**ACSW**") Edmonton offices (the "**March 2019 Hearing**") concerning allegations of unprofessional conduct against Mr. Altaf Ali, a regulated member of the ACSW.

2. This decision sets out the findings, penalty orders and related decisions of the Hearing Tribunal concerning both of the hearings.

II. THE OCTOBER 2018 HEARING: GENERALLY

3. After a number of adjournments, a hearing into the conduct of Mr. Ali was held on Wednesday October 24, 2018 pursuant to the *Health Professions Act*, R.S.A. 2000, c.H-7 as amended (the "**Act**").

4. The members of the Hearing Tribunal were:

Peter J. Baylis, RSW (Chairperson)
Gail Zuk, RSW
Richard Ouellet, RSW
Jim Lees (Public Member)

5. Also present at the hearing were:

Mr. Ali
Ms. Sheryl Pearson (ACSW Complaint Director)
Ms. Karen Smith (ACSW Counsel)

6. Mr. Ali was aware of his right to be represented by legal counsel but did not have legal counsel for the hearing.

7. The hearing was a public hearing pursuant to s. 78 of the Act.

8. The allegations were set out in a Notice of Hearing dated August 17, 2018 (the "**Notice of Hearing**") and arise from complaints from DR (16.33), SD (16.43), and DD (16.68), received by the ACSW and dated respectively June 30, 2016; August 29, 2016; November 30, 2016.

9. The allegations in the Notice of Hearing are as follows:

> WITH RESPECT TO THE COMPLAINT BY DR
>
> Breach of Client Confidentiality
>
> 1. That you breached confidentiality of June 18, 2015 in relation to a child intervention case at a meeting wherein you informed the therapist with the Wellness/Domestic Violence Program who the referral source was with respect to the intervention.
>
> 2. That you breached client confidentiality at a meeting on May 10, 2016 wherein you provided a family with their Parent Capacity Assessment.
>
> Such conduct contravenes ss. D.5(a)(b)(j)(k) of the Standards of Practice 2013, Value 5 of the Code of Ethics 2005 and constitutes unprofessional conduct pursuant to s. 1(1)(pp)(i)(ii) and (xii) of the Health Professions Act.
>
> Professional Responsibility
>
> 3. That you failed to properly accept responsibility for the breach of confidentiality in providing the Parent Capacity Assessment to the parents on May 10, 2016 by suggesting that they were able to give informed consent when that was not possible given that the parents were unaware of the contents of the Parent Capacity Assessment.
>
> Such conduct contravenes ss. G.1(a)(b)(i), G.3(a) of the Standards of Practice 2013, Value 4 of the Code of Ethics 2005 and constitutes unprofessional conduct pursuant to s. 1(1)(pp)(i)(ii) and (xii) of the Health Professions Act.
>
> Such further and other allegations of unprofessional conduct as may be heard at the hearing of this matter and upon which you shall be provided notice.
>
> WITH RESPECT TO THE COMPLAINT BY SD
>
> Failure to Consult with Supervisors
>
> 4. That you failed to consult with your supervisor with respect to the placement of the child JM at a friend's home when that home was known to be inappropriate for placement and had previously given rise to intervention regarding the child.

5. That you failed to consult with your supervisor with respect to the change in a supervision order (or an expiry) with respect to the C family.

Such conduct contravenes ss. E.1(c)(iii), G.1(a)(g) of the Standards of Practice 2013, Value 4 of the Code of Ethics 2005 and constitutes unprofessional conduct pursuant to s. 1(1)(pp)(i)(ii) and (xii) of the Health Professions Act.

Failure to Properly Assess the Safety of the Clients

6. That in or about 2016, you allowed placement of a child JM (who was experiencing significant personal difficulties) at a friend's home when it was known that this home was inappropriate and unstable as there had been previous RCMP intervention and the child had previously been removed from that home.

7. That you allowed a child, JM to leave a secure placement in Edson and return to his parents in Edmonton when you were aware that the parent's home environment was unsafe.

8. You failed to provide for appropriate supervised visits between KR and her child (by utilizing mom's friend as the supervisor) and/or determined no supervision was necessary.

Such conduct contravenes ss. E.1(b)(ii), F.1(b) of the Standards of Practice 2013, Value 6 of the Code of Ethics 2005 and constitutes unprofessional conduct pursuant to s. 1(1)(pp)(i)(ii) and (xii) of the Health Professions Act.

Inappropriate Professional Responsibility

9. When inquiries were made to you regarding the placement of the child JM in the inappropriate home, you deflected questions and refused to accept responsibility for your decision making.

10. That you failed to respond to client telephone calls, follow-up, request for services (see C family) in an appropriate or timely manner.

11. With respect to client AD, you attend attended at court in 2016 and requested an interim custody order as opposed to a temporary custody order which resulted in the loss of jurisdiction for CFS over client AD.

12. That with respect to the client AD your actions caused CFS to lose jurisdiction over a child two days before she turned age eighteen as a result of your failure to undertake the correct steps to obtain the appropriate court order.

13. That with respect to client AD, you failed to undertake any appropriate permanency planning for that client given her pending eighteenth birthday.

14. That you inappropriately deleted portions of a custody agreement with respect to KR and CFS. In addition you did not obtain the appropriate signatures on the agreement. Your actions resulted in the agreement being of no effect.

Such conduct contravenes ss. E.1(a)(b)(c), F.1(b) of the Standards of Practice 2013, Values 4 and 6 of the Code of Ethics 2005 and constitutes unprofessional conduct pursuant to s. 1(1)(pp)(i)(ii) and (xii) of the Health Professions Act.

Failure to Consult or Respect Supervision

15. In your review of August 4, 2016, it was identified that you failed to obtain proper supervisory consultation with respect to the seven cases reviewed your employers.

16. That you failed to follow the direction of your supervisor in applying for the legal status of the client AD who was turning eighteen.

17. That you failed to seek appropriate supervision regarding the KR family and the decisions you made.

Such conduct contravenes ss. E.1 (c)(iii), G.1(a), (g)(i) of the Standards of Practice 2013, Value 4 of the Code of Ethics 2005 and constitutes unprofessional conduct pursuant to s. 1(1)(pp)(i)(ii) and (xii) of the Health Professions Act.

Conflict of Interest

18. That you failed to report potential conflicts of interest with respect to your employment responsibilities to CFS and your private practice providing family therapy.

Such conduct contravenes ss. G.3(d) of the Standards of Practice 2013, Value 4 of the Code of Ethics 2005 and constitutes unprofessional conduct pursuant to s. 1(1)(pp)(i)(ii) and (xii) of the Health Professions Act.

WITH RESPECT TO THE COMPLAINT BY DD

Failure to Consult with Supervisors

19. As a result of direction given to you arising from the disciplinary letters of June 16, 2016 and August 17, 2016, you were obliged to contact an external supervisor, IS On October 31, 2016. You failed to initiate or follow-up on the appropriate contact with IS as directed.

20. That notwithstanding that you were directed not to undertake any CFS intake or assessment without supervision, you proceeded on October 31, 2016 with intake of a matter.

21. That upon receipt of information relating to child sexual abuse on intake you failed to properly record that information in the CFS ISIS record keeping system.

22. That upon receipt of information relating to child sexual abuse, you failed to properly report that sexual abuse as obliged by law.

23. That notwithstanding the direction of your supervisor, IS, upon completing the intake (which was prohibited by terms of your employment at CFS at that time) you were advised to submit the ongoing intake information as logged on CFS ISIS system in accordance with CFS policy. Notwithstanding this direction, the intake information was not entered into CFS ISIS system in accordance with the directive or in a timely fashion.

24. Further, notwithstanding your employment prohibition against intake for CFS without supervision, you undertook the further step of assessment with respect to a phone call of October 31, 2016.

Such conduct contravenes ss. E.1(c)(iii), G.1(a), (g-i) of the Standards of Practice 2013, Value 4 of the Code of Ethics 2005 and constitutes unprofessional conduct pursuant to s. 1(1)(pp)(i)(ii) and (xii) of the Health Professions Act.

10. As the result of negotiations between the parties, the 24 charges in the Notice of Hearing were reworded and combined into five charges as follows:

Breach of Confidentiality

1. That I breached client confidentiality at a meeting on May 10, 2016 wherein I provided a family with their Parent Capacity Assessment.

Professional Responsibility

2. That I failed to properly accept responsibility for the breach of confidentiality in providing the Parent Capacity Assessment to the parents on May 10, 2016 by suggesting that they were able to give informed consent when that was not possible given that the parents were unaware of the contents of the Parent Capacity Assessment.

3. With respect to client AD, I attended in court in 2016 and requested an interim custody order as opposing to a temporary custody order which resulted in the loss of jurisdiction for CFS over client AD.

4. With respect to client AD, my actions caused CFS to lose jurisdiction over a child two days before she turned eighteen as a result of my failure to undertake the correct steps to obtain the appropriate court order.

Supervision

5. I failed to abide by supervision.

Such conduct contravenes ss. D.5(a) of the Standards of Practice 2013, Value 5 of the Code of Ethics 2005 and constitutes unprofessional conduct pursuant to s. 1(1)(pp)(i)(ii) and (xii) of the Health Professions Act.

11. Pursuant to s. 70(1) of the Act, Mr. Ali, provided a written admission of unprofessional conduct to the Hearing Tribunal, signed and dated Wednesday October 24, 2018 concerning the five (5) charges.

12. The following documents were accepted as Exhibits at the October 2018 Hearing:

1. Notice of Hearing to Mr. Ali
2. Notice to Attend to Mr. Ali
3. Investigation Report Complaint 16.33
4. Investigation Report Complaint 16.43
5. Investigation Report Complaint 16.68

6. Affidavit of Service on the Notice of Hearing, Notice to Attend, and Investigation Reports to Mr. Ali

7. Admission of unprofessional conduct, signed October 24, 2018 (the "**Admission**")

8. Consent Order (the "**Consent Order**")

13. Since the October 2018 Hearing proceeded as a consent hearing, the Hearing Tribunal heard from no witnesses at the hearing.

III. THE OCTOBER 2018 HEARING: THE CONSENT ORDER

14. The Consent Order contained agreed upon "Background Facts", "Findings of Unprofessional Conduct", "Acknowledgment of Unprofessional Conduct", "No Right to Appeal" and a "Joint Submission as to Sanction" sections as follows.

A. Background Facts

15. Mr. Ali has been a registered social worker with the ACSW since 2009.

16. At all relevant times Mr. Ali was employed by North Central Alberta Child and Family Services ("**CFS**").

17. On June 16, 2016 Mr. Ali received a letter of discipline arising from a breach of confidentiality imposing a 2-day suspension on June 21 and June 22, 2016.

18. On August 17, 2016 Mr. Ali received a letter of discipline imposing a 7-day suspension arising from his failure to consult his supervisor, failure to follow direction, poor judgment, failure to properly asses the safety of clients and a lack of permanency planning.

19. On November 5, 2016 Mr. Ali's employment with CFS was terminated as a result of his failure to follow direction, appropriately consult with his supervisor, poor judgment and failure to properly assess the safety of clients.

20. CFS reported all three incidents of discipline, suspensions and termination of his employment to the ACSW. These three incidents constituted three separate complaints to the ACSW as against Mr. Ali.

21. The termination of Mr. Ali's employment was revoked and Mr. Ali resigned from CFS.

With Respect to the Complaint by DR (16.33)

22. A Parent Capacity Assessment was prepared with respect to a client family. The practice of CFS was not to distribute the Assessment to parents. A meeting was held on May 10, 2016 with the family about the Parent Capacity Assessment and each parent had been provided with a copy of the Parent Capacity Assessment by Mr. Ali.

23. Mr. Ali was questioned about the issue of providing the Parent Capacity Assessment to the parents on May 10, 2016 and suggested that he had obtained informed consent to provide that document. The parents were unable to give informed consent given that they did not know the contents of the Parent Capacity Assessment. Mr. Ali, in providing this explanation, did not properly accept responsibility for the breach of confidentiality.

With Respect to the Complaint by SD (16.43)

24. AD was a client of CFS who was turning eighteen. Steps were necessary to obtain the appropriate court Order in order for CFS to maintain jurisdiction over AD after turning eighteen to continue to provide support to her.

25. Mr. Ali did not undertake appropriate planning given the pending eighteenth birthday of AD. Mr. Ali attended at court in 2016 and requested an interim custody order as opposed to a temporary custody order which resulted in the loss of jurisdiction for CFS over the client AD.

26. Mr. Ali had been requested to obtain a temporary custody order to maintain CFS jurisdiction over AD until a permanency plan could be developed. That step was not undertaken.

With Respect to the Complaint by DD (16.68)

27. As a result of ongoing complaints and conflict between Mr. Ali and the supervisors in the Edson office, an external supervisor, Mr. Ivan Sproxton, was assigned on October 31, 2016.

28. Mr. Sproxton had no prior involvement with respect to Mr. Ali nor was he aware of the details of the issues as between Mr. Ali and CFS supervisors.

29. Mr. Ali did not abide by the required employer supervision.

B. Finding of Unprofessional Conduct

Breach of Client Confidentiality

30. That Mr. Ali breached client confidentiality at a meeting on May 10, 2016 wherein he provided a family with their Parent Capacity Assessment.

Professional Responsibility

31. That Mr. Ali failed to properly accept responsibility for the breach of confidentiality in providing the Parent Capacity Assessment to the parents on May 10, 2016 by suggesting that they were able to give informed consent when that was not possible given that the parents were unaware of the contents of the Parent Capacity Assessment.

32. With respect to client AD, Mr. Ali attended at court in 2016 and requested an interim custody order as opposing to a temporary custody order which resulted in the loss of jurisdiction for CFS over client AD.

33. With respect to the client AD, Mr. Ali's actions caused CFS to lose jurisdiction over a child two days before she turned age eighteen as a result of Mr. Ali's failure to undertake the correct steps to obtain the appropriate court order.

Supervision

34. Mr. Ali failed to abide by supervision.

35. Such conduct contravenes ss. D.5(a) of the Standards of Practice 2013, Value 5 of the Code of Ethics 2005 and constitutes unprofessional conduct pursuant to s. 1(1)(pp)(i)(ii) and (xii) of the *Health Professions Act*.

C. Acknowledgment of Unprofessional Conduct

36. It is acknowledged by Mr. Ali and the ACSW that Mr. Ali's conduct as described in the Agreed Statement of Facts constitutes unprofessional conduct.

D. No Right to Appeal

37. The ACSW and Mr. Ali agreed that there shall be no appeal from this Order notwithstanding s. 87 of the Act.

IV. THE OCTOBER 18 HEARING: REASONS FOR DECISION AND ORDERS CONCERNING SANCTIONS

38. After carefully considering all of the information and new evidence presented during **the** October 2018 Hearing, the Hearing Tribunal accepts all of the admissions of unprofessional conduct by Mr. Ali. Accordingly, the Hearing Tribunal finds that Mr. Ali committed unprofessional conduct concerning the five allegations as described in the Consent Order. The parties also presented a proposed Joint Submission as to Sanctions. The Hearing Tribunal adjourned to consider this proposal and decided to accept the Joint Submission as proposed. The Hearing Tribunal therefore makes the following orders in accordance with s. 82 of the Act:

1. A reprimand shall be issued as against Mr. Ali.

2. Mr. Ali shall be suspended for a period of one week. The suspension will take effect upon the issuance of this decision and beginning on a date selected by the ACSW Complaints Director acting reasonably.

3. Mr. Ali shall practice under supervision for a period of 18 months within or outside his employment. The supervisor shall be provided with a copy of the Hearing

Tribunal's decision. The cost of this supervision shall be the responsibility of Mr. Ali. The individual providing supervision shall be approved by the ACSW. The supervisor shall provide the ACSW with evaluation reports every 6 months addressing the issues raised from these matters herein.

4. On or before December 31, 2019 Mr. Ali shall successfully complete an additional 10 hours of continuing education at his own cost to be approved by the Complaints Director of the ACSW. This additional continuing education shall be in the area of communications in a work environment with clients and staff.

5. Mr. Ali shall pay costs in the amount of $750.00. Such costs shall be payable over a one year period from the date of the Hearing Tribunal's decision.

6. If the Complaints Director deems there to be a violation of these orders, as unilaterally deemed by the Complaints Director, Mr. Ali shall, upon notice of the Complaints Director, be suspended from the practice of social work pending a hearing into allegations of unprofessional conduct resulting from the breach of the Hearing Tribunal's orders. The Complaints Director shall maintain his discretion until such time as all provisions of these orders are satisfied.

7. The Hearing Tribunal's orders shall be published on a names basis.

39. In making its findings of unprofessional conduct and determining the appropriate sanctions, the Hearing Tribunal focused on five main principles:

1. Protection of the public
2. Deterrence (both specific and general)
3. Preservation of the integrity of the profession
4. Rehabilitation of the member
5. The duty of fairness to the member

Protection of the public

40. The ACSW is a self-governing professional body established under the Act and is responsible for regulation of the Social Work profession in the public interest. This includes ensuring that all ACSW regulated members are capable of practicing their profession in a manner that protects the public, including their clients, from unacceptable risk or acts of unprofessional conduct.

41. Mr. Ali's admitted unprofessional conduct demonstrated poor judgement as he shared client information in a manner that breached their confidentiality. Furthermore, initially he did not properly accept responsibility for his actions, suggesting clients were able to give informed consent to disclose information though that was not possible as they did not know the content of the information being released. Such actions create unnecessary risk to clients and warrant reprimand.

42. Mr. Ali's admitted actions in court related to a CFS matter further show poor judgement as he requested the wrong order in the case which resulted in the loss of jurisdiction for CFS over client AD. Such actions created unnecessary risk to clients and warrant appropriate penalties.

43. The Hearing Tribunal feels that in the interest of public protection a reprimand is warranted. Furthermore, the supervision described in order 3 and the additional continuing education described in order 4 are necessary to address identified practice concerns and to provide opportunity for remedial practice with an intended purpose of protecting the public.

Deterrence

44. The objective of specific deterrence is to reinforce with the regulated member the requirement to not engage in further unprofessional conduct. The Hearing Tribunal believes the sanctions imposed on Mr. Ali serve that purpose. Unprofessional conduct has consequences that Mr. Ali will bear as a result of his actions. This is associated with order 2 (one week suspension) and order 5 (financial contribution to the cost of the disciplinary process).

45. General deterrence is intended to communicate to other regulated members that this type of unprofessional conduct is unacceptable. The ACSW will act to address any and all unprofessional conduct by its members. This is reinforced by publishing decisions of Hearing Tribunals related to unprofessional conduct for all regulated members to read.

Preservation of the integrity of the profession

46. The ACSW is self-regulated and, as such, is responsible for ensuring that its Code of Ethics and Standards of Practice are followed by all regulated members, as well as taking disciplinary action in cases of unprofessional conduct. Failure to maintain high professional standards and ethics by the ACSW would serve to undermine public confidence in the profession of social work and its regulated members.

47. The sanctions against Mr. Ali serve to preserve the integrity of the profession, transparently addressing unprofessional conduct in a manner to protect the public's interest.

Rehabilitation of the member

48. The Hearing Tribunal also seeks to ensure an opportunity for rehabilitation as part of the sanctions related to Mr. Ali's unprofessional conduct. Accordingly, orders 3 and 4 serve to create an opportunity for remedial practice through the requirement of 10 hours of continuing education as approved by the Complaints Director of the ACSW and required supervised practice for a period of 18 months. Both sanctions serve to promote social work practice as governed by the ACSW's Standards of Practice, the Canadian Association of Social Workers' 2005 Code of Ethics, and the Act.

The duty of fairness to the member

49. The Hearing Tribunal recognizes the need for fairness in determining sanctions appropriate for the unprofessional conduct admitted to by Mr. Ali. The sanctions proposed by the parties are fair and reasonable.

50. Ordering costs of $750.00, payable over a year, is not severe and is a proportional amount payable by Mr. Ali in terms of a contribution to the cost of the disciplinary process. The Hearing Tribunal believes the sanctions associated with rehabilitation (orders 3 and 4) are essential to address practice concerns identified within the Consent Order and promote professional practice as defined in the Practice Standards and the Code of Ethics.

51. The Hearing Tribunal acknowledges that, pursuant to the Admission and the Consent Order, Mr. Ali has now accepted full responsibility for his actions as indicated by the consent order and the efforts brought to bear to reach said order.

V. THE MARCH 2019 HEARING

A. Background Matters

52. As mentioned above, the October 2018 Hearing dealt with the merits of the allegations relating to Mr. Ali and proceeded as a consent hearing involving an admission of unprofessional conduct by Mr. Ali and a joint submission on penalties from both parties.

53. On Thursday October 25, 2018 Mr. Ali communicated with Ms. Karen Smith that he wanted to withdraw his "agreement" and sought to set aside the Consent Order and Admission signed by him and presented to the Hearing Tribunal on Wednesday October 24th, 2018. Mr. Ali also sought to have the hearing resume as a contested hearing.

54. This necessitated a second hearing to address the new issues raised by Mr. Ali.

55. The hearing was reconvened to hear Mr. Ali's concerns at 9:30 a.m. on Wednesday March 6, 2019.

56. The members of the Hearing Tribunal remained:

Peter J. Baylis RSW (chairperson)
Gail Zuk RSW
Richard Ouellet RSW
Jim Lees (Public Member)

57. Also present at the hearing were:

Mr. Ali
Ms. Smith (ACSW counsel)
Ms. Heather Frydenlund (ACSW counsel)

Mr. Blair E. Maxston (Independent legal counsel for the Hearing Tribunal)
Ms. Sheryl Pearson (ACSW Complaints Director)

58. The following documents were accepted as Exhibits at the hearing:

9. Affidavit of Ms. Sheryl Pearson
10. Summary of the Law – Ability To Set Aside a Consent Judgement
11. Transcript from October 2018 Hearing
12. Mr. Ali's submission binding documents

B. Mr. Ali's Position

59. As part of Mr. Ali's request to have the Consent Order and the Admission set aside, his verbal and written submissions can be summarized as follows:

1. He was pressured by Ms. Smith and Ms. Pearson for over three hours to agree on settlement terms even though he repeatedly expressed that he was not comfortable signing an agreement he did not agree with.

2. He was not given an opportunity to make a fair decision and feels that his decision was done under duress and pressure from Ms. Smith and Ms. Pearson.

3. He repeatedly asked to make submissions to the Hearing Tribunal and felt that his request to face the Hearing Tribunal was not granted and, instead, there was continued pressure to sign the Consent Order.

4. He was never given the opportunity to consult with anyone before entering into the Consent Order.

5. He was not offered an opportunity to make a statement to the Hearing Tribunal.

6. Two days before the hearing he was informed that Mr. Rigutto (his representative) was not going to be present at the October 2018 Hearing. He should have been given the opportunity to either have the October 2018 Hearing postponed or to seek new legal counsel.

60. Mr. Ali argued that Exhibit 10 provides legal justification for circumstances under which a consent order can be set aside, including duress.

C. The Complaint Director's Position

61. Ms. Frydenlund and Ms. Smith both made submissions on behalf of the Complaints Director.

62. As a starting point, Ms. Frydenlund indicated that the Complaints Director was not taking a formal position concerning Mr. Ali's requests and would instead simply be making comments concerning the facts and the law.

63. Ms. Frydenlund then made submissions concerning the long history of settlement negotiations between the parties and emphasized that they did not only occur in the three hours before the October 2018 Hearing. Ms. Frydenlund also stated that the Complaints Director always endeavors to engage in good faith negotiations.

64. Ms. Frydenlund reviewed Ms. Pearson's affidavit and argued that Mr. Ali was aware of the consequences of the Consent Order and the option of proceeding with a fully contested hearing including witnesses. Ms. Frydenlund also noted that, consistent with paragraph 15 of Ms. Pearson's affidavit, the October 2018 Hearing was peremptory.

65. Ms. Frydenlund then reviewed the history of the proceedings including the following:

- A contested hearing was scheduled for October 31 and November 1, 2017, however, Mr. Rigutto requested an adjournment in order to explore a consent hearing. A November 2017 meeting then occurred and there were numerous e-mails exchanged between Mr. Rigutto and the Complaints Director's legal counsel between February and July of 2018.

- As the result of the settlement discussions, a consent hearing was scheduled for August 22, 2018, however, it was adjourned on a peremptory basis, to October 24, 2018 at the request of Mr. Ali.

- The Consent Order was sent to Mr. Rigutto on October 16, 2018 and Mr. Rigutto replied by e-mail that it would be signed by Mr. Ali. Two days before the October 2018 Hearing the Complaints Director was advised that the Consent Order would not be signed.

- The meeting that occurred on the morning of October 24, 2018 between Mr. Ali, Ms. Pearson and, at times, Ms. Smith centred primarily on one allegation and ultimately the charges were significantly narrowed and focused, all of which resulted in the Admission made by Mr. Ali.

66. Ms. Frydenlund then reviewed the law in terms of consent hearings and argued that a document such as the Consent Order has the same effect as though a full hearing had proceeded.

67. Consistent with the case law provided by the Complaints Director, Ms. Frydenlund argued that while the Hearing Tribunal has the discretion to overturn the Consent Order the Courts have indicated that the only way that can occur is in "exceptional circumstances" such as fraud, deceit and mutual mistake.

68. The onus is on Mr. Ali to establish that exceptional circumstances exist.

69. Ms. Smith and Ms. Pearson made comments concerning the nature of the October 16, 2018 meeting.

D. The Hearing Tribunal's Reasons and Decision

70. In considering the issue of duress and whether it constitutes an "exceptional circumstance" the Tribunal considered whether Mr. Ali's participation was voluntary, and whether he was informed and aware of the process and consequences of his choices. In essence, the question is did he freely participate in the process and was he adequately informed throughout?

71. It is important to note the process of reviewing allegations of unprofessional conduct made against Mr. Ali began in June 2016. There was an initial Notice of Hearing setting a hearing for October 31 and November 1, 2017. There were also extensive negotiations between Mr. Ali's representative and the ACSW over a significant period of time to seek resolution through a consent order. There was an agreement to proceed with a hearing by consent based on those negotiations. There were delays in setting the hearing date, which resulted in a peremptory date set for October 24, 2018.

72. In reviewing Mr. Ali's position and the Exhibits for the March 2019 Hearing, the Hearing Tribunal does not find that exceptional circumstances exist to set aside the Consent Order Mr. Ali signed. The Hearing Tribunal recognizes that there is understandable stress associated with the processes of being investigated for unprofessional conduct, and attending hearings but this does not in and of itself constitute "exceptional circumstances". The Hearing Tribunal does not find instances or occurrences in these proceedings of fraud, deceit, or mutual mistake.

73. For the reasons mentioned above, even though the Alberta Courts have not commented on the definition of "exceptional circumstances", the Hearing Tribunal does not believe that the stress Mr. Ali experienced or the negotiations that occurred on the morning of the October 2018 Hearing qualifies as a further type of exceptional circumstance.

74. The Hearing Tribunal also accepts the principles set out in case law that the Courts want to avoid situations where parties agree to consent hearings and then seek to overturn them and that this principle applies even if a party later regrets making an admission, agreeing to a penalty proposal or participating in a consent hearing.

75. In specific response to Mr. Ali's six arguments, the Hearing Tribunal also comments as follows.

I feel I was pressured by Karen Smith and Sheryl Pearson, ACSW for over three hours to agree to your terms even though I repeatedly expressed that I was not comfortable signing an agreement I do not agree with.

76. Mr. Ali had previously agreed to a negotiated Consent Order as indicated by his representative and the agreed to peremptory hearing scheduled for Wednesday October 24th 2018 was not a hearing to proceed with consideration of contrasting evidence and contesting allegations, with witnesses present. It had been previously negotiated as a hearing to present the Consent Order. Mr. Ali negotiated an agreement through his representative, as indicated in the correspondence between the representative and the Complaints Director's legal counsel (Exhibits 9, 11, 12) which occurred over several

months, with many compromises. This reflects a process of informed good faith negotiations by both parties with the agreed intent of moving forward by way of consent on Wednesday October 24, 2018.

77. Although attending a Hearing Tribunal is a stressful experience, with possible pressure to find resolution, the negotiations that occurred on Wednesday October 24th, 2018 do not appear exceptional or unusual. Mr. Ali was informed of the process throughout, and until just before the October 24, 2018 hearing had representation to help negotiate an acceptable agreement prior to that hearing.

78. From the very onset of the process there is nothing to indicate Mr. Ali's decisions were involuntary and/or in response to exceptional duress. In fact Mr. Ali acknowledged how he changed his mind regarding his willingness to negotiate a consent order, when he stated "... I made it very clear to Ms. Smith and Ms. Pearson that I did not want to meet, I would like you to pursue the tribunal hearing. Then when Mr. Rigutto got involved, I did communicate that with him. He did present an offer which I accepted to but the College never accepted" (transcript of the hearing on March 6, 2019, page 118, line 4). This certainly demonstrates an interest in finding a negotiated solution, rather than a steadfast position against entering into a consent order with the ACSW.

79. Both Mr. Ali's actions and words suggest an openness to, and an investment in finding a negotiated settlement (see the letter to Mr. Rigutto – Exhibit 12, noted "Exhibit B"), including Mr. Ali also accepting responsibility for a number of unprofessional behaviours.

80. Furthermore, Ms. Smith noted that on Wednesday October 24, 2018 "the majority of those discussions were focused on the issue of supervision and to the point where, and I quote Ms. Pearson, what is the wording that would be acceptable to you" (Exhibit 11, Page 120, line 7). This suggests the wording on the signed Consent Order was based on Mr. Ali's input, in an effort to find resolution through compromise and negotiation, rather than exceptional duress to comply with the ACSW's position. Nor was it involuntary as indicated by Mr. Ali's repeated willingness to engage in negotiations through his representative, and with the ACSW the morning of the October 2018 Hearing.

Today I feel I was not given an opportunity to make a fair decision. I feel my decision was done under duress and pressure from you both.

81. As noted above, the hearing on Wednesday October 24,2018 was the culmination of a long period of negotiation between the ACSW and Mr. Ali's representative. The signed Consent Order represented a negotiated agreement, with compromise, settling on 5 findings of unprofessional conduct from the initial 24 allegations.

82. As noted in Ms. Pearson's affidavit (Exhibit 9), 11 of the 24 allegations were concerns related to supervision. The ACSW was willing to concede to one finding of unprofessional conduct related to supervision, worded in a manner acceptable to Mr. Ali appreciating the history of interpersonal conflict in his workplace. As Ms. Pearson notes in her affidavit (Exhibit 9, 10.g), the "wording contained in the Consent Order with respect to supervision

was drafted specifically with Mr. Ali and considerable time was invested in ensuring that Mr. Ali was content with the specific wording".

83. Furthermore, Ms. Pearson's affidavit states the "peremptory hearing scheduled for October 24, 2018 proceeded on that date. Prior to the commencement of the hearing, Mr. Ali, Karen Smith and I met together and discussed the content of the Consent Order, Admission of Unprofessional Conduct and Agreed Statement of Facts that had been negotiated to that point. These discussions took place for approximately 2 hours and resulted in various amendments being made to these documents, as requested by and in favour of Mr. Ali".

84. The duration of the negotiations prior to the October 2018 Hearing and that morning indicate measures of due process and fairness in an effort to find suitable resolutions acceptable to both parties.

I repeatedly requested to face the Tribunal Committee and I felt my request to face the Tribunal was not granted but rather you both continued to pressure me to sign the agreement.

85. Mr. Ali did in fact face the Hearing Tribunal. The intent of the settlement meeting was not to go forward with presenting evidence to contest allegations and due process unfolded accordingly and in good faith. As well, Mr. Ali had opportunity to present or discuss any concerns before the Hearing Tribunal on October 24, 2018.

I was never given the opportunity to consult with anyone before entering into an agreement.

86. As noted above, the Consent Order was the result of negotiations with Mr. Ali's representative over several months. On Wednesday October 24, 2018 further amendments were made to the Consent Order, as requested by Mr. Ali and in his favour (Exhibit 9, Ms. Pearson's affidavit). Mr. Ali's submission (Exhibit 12) also indicates consultation with his representative who negotiated an initial consent order with the ACSW. Although Mr. Ali did not retain further representation prior to the hearing on Wednesday October 24,2018, he was not prevented by the ACSW from doing so. Mr. Ali also recognized that he was advised of his right to legal counsel but chose to proceed without legal counsel the day of the hearing as reflected in the following exchange in Exhibit 11, page 14 line 8:

> "Ms. Smith: All right. So you also acknowledge, Mr. Ali, that you were advised of your right to legal counsel and are proceeding without that today?
>
> Mr. Ali: Yes."

I was not offered an opportunity to make a statement to the Tribunal Committee.

87. In fact, Mr. Ali was offered **several opportunities** to make **statements** to the "Tribunal Committee", one of which is reflected in Exhibit 11 (page 14, line 8) as follows:

"The Chair: Thank you. Mr. Ali, do you have anything that you would like to share with us at this point in time as a submission before we break for lunch?

Mr. Ali: Not really."

On Monday, two days before the hearing I was informed that Mr. Rugutto was not going to be present at the meeting on Wednesday. I should have been given the opportunity to either have the meeting postponed or seek council.

88. As the October 24, 2018 hearing was peremptory, rescheduling was not an option. Mr. Ali was not prevented from seeking legal counsel or other representation at his discretion after Mr. Rigutto's withdrawal. As noted above, he was also informed of his right to legal counsel which he acknowledged occurred and he chose to proceed without counsel the day of the hearing (Exhibit 11, page 14 line 8).

89. As noted above, Exhibit 10 sets out legal considerations under which a consent order can be set aside. Still, such orders are not lightly set aside. As Exhibit 10 describes, there need to be exceptional circumstances to set aside a previously agreed to consent order. Factors to consider in such a situation are fraud, deceit, common mistake persuading the parties to enter into an agreement, or duress.

90. In Mr. Ali's request to set aside the Consent Order he suggests exceptional duress occurred to induce his compliance with the Consent Order. The Hearing Tribunal considered whether Mr. Ali freely participated in the process and whether he was adequately informed throughout. As described above, there is extensive evidence establishing that Mr. Ali freely participated in negotiations to reach an agreed upon settlement regarding the allegations of unprofessional conduct.

91. Furthermore, there is evidence indicating that Mr. Ali was informed of the process throughout the duration of the negotiations dating back to October 2017.

92. As evidenced in the transcript of the October 2018 Hearing, Mr. Ali responded affirmatively to Ms. Smith's inquiries about his recognition of due process and the procedural steps associated with addressing allegations of his unprofessional conduct (Exhibit 9, page 12-15).

93. Mr. Ali was also offered opportunity to directly address the Hearing Tribunal and whether he would like to share anything with the Hearing Tribunal members, to which he responded "not really" (Exhibit 11, page 14, line 8).

94. In summary, in reviewing Mr. Ali's concerns, the Exhibits and submissions from both parties, the Hearing Tribunal does not find that "exceptional circumstances" exist that justify setting aside the Consent Order. As a result, the Consent Order Mr. Ali signed remains in effect and the findings and penalty orders of the Hearing Tribunal are unchanged.

Dated this 23rd day of April, 2019.

Peter J. Baylis, RSW,
Chairperson on behalf of the Hearing Tribunal