

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. RUDOLPH KUTAMA, A MEMBER OF THE ALBERTA
COLLEGE OF SOCIAL WORKERS;

AND INTO THE MATTER OF A COMPLAINT BY CST. J.
GAGNON, RCMP INTO THE CONDUCT OF MR. RUDOLPH
KUTAMA PURSUANT TO S. 77(a) OF THE HEALTH
PROFESSIONS ACT

REASONS FOR DECISION

Pursuant to a public hearing held on March 8, 2019 at the Edmonton offices of Parlee McLaws, the Alberta College of Social Workers Hearing Tribunal is issuing its reasons for decision.

A hearing into the conduct of Mr. Rudolph Kutama (Mr. Kutama) was held on March 8, 2019 pursuant to the *Health Professions Act*, R.S.A. 2000, c.H-7 as amended (the "Act").

The members of the Hearing Tribunal were:

- Joyce Crandall (Chair)
- Glenn Lantz
- Tracy King, Public Member

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

The investigated member, Mr. Kutama, provided a written admission of unprofessional conduct to the Hearing Tribunal dated February 20, 2019 pursuant to s. 70(1) of the Act.

The Hearing Tribunal accepts all of the admissions of the investigated member.

The allegations in the Notice of Hearing arise from a complaint from Constable J. Gagnon, RCMP dated March 3, 2018.

The allegations in the Notice of Hearing are as follows:

1. That Mr. Kutama was in a position of conflict of interest by referring vulnerable clients he met through his employment as a social worker at the Misericordia Hospital to a residential building he owned and operated for profit in Lavoy, Alberta.
2. That Mr. Kutama exploited his relationship with his clients who had significant health needs to promote his own self-interest.

Such conduct contravenes ss. F.3(b), F.5(a), (b), (e), (f) and (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*.

3. That Mr. Kutama put his clients interests at risk by placing them in circumstances that were inappropriate and/or unsafe by lodging them at the residential location in Lavoy, Alberta.

Such conduct contravenes ss. F.5(a)(b) of the Standards of Practice 2013, Values 1 and 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*.

4. That Mr. Kutama left a client "JD" in an at-risk position at this residential location unable to obtain assistance.
5. That Mr. Kutama left a client "BM" residing on the second floor of this residential location for a considerable period of time when "BM" was not physically able to remove himself from that residence in case of emergency.
6. That Mr. Kutama left a client "BM" in a medical condition that rendered him physically unable to leave that residence.
7. That Mr. Kutama failed to ensure that the clients in this residential location had appropriate medications.
8. That Mr. Kutama left clients in a rural and isolated location without the ability to obtain proper assistance.

Such conduct contravenes ss. F.1(g), G.1(a), G.6(1) of the Standards of Practice 2013, Values 1 and 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*.

9. That Mr. Kutama allowed individuals to reside in living premises that had been condemned by Alberta Health Services.
10. That Mr. Kutama provided clients with no locks on the doors placing clients in a vulnerable position.

Such conduct contravenes ss. C.2(a), G.1(b) and G.6(a) of the Standards of Practice 2013, Value 1 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*.

The hearing proceeded on March 8, 2019 and was open to the public.

No motions were made on the part of the Hearing Tribunal.

The Hearing Tribunal did not hear from any witnesses as part of the Hearing Tribunal.

The following documents were accepted as Exhibits at the Hearing:

- Notice of Hearing
- Notice of Complaint
- Investigation Report
- Affidavit of Service
- Admission of Unprofessional Conduct
- Consent Order
- Renters Month to Month Reports (from Mr. Kutama)

GENERAL FINDINGS OF FACT

1. Mr. Kutama has been a Registered Social Worker with the Alberta College of Social Workers ("ACSW") since 2012.
2. Mr. Kutama works at the Misericordia Hospital doing discharge planning since 2016.
3. Mr. Kutama owns a rental property that he operates for profit in a rural and isolated location at Lavoy, Alberta.
4. Mr. Kutama rented for income said property to previous clients he met in his role as a social worker.
5. That said rental property had been condemned by Environmental Public Health - Alberta Health Services with a Notice to Vacate premises on or before March 12, 2018.
6. That rental premises were not vacated and clients remained in a residence putting them at risk.
7. That clients in this rental property were known as vulnerable clients with significant health needs many requiring medication and/ or with mobility issues.
8. Based on complaint calls received by the RCMP regarding the rental property and concerns for the clients residing in said property, the RCMP submitted a complaint to the ACSW with regard to Mr. Kutama.
9. Mr. Kutama acknowledged that his conduct as per the allegations constitutes unprofessional conduct and signed an Admission of Unprofessional Conduct dated February 20, 2019.

It is the decision of the Hearing Tribunal members that the conduct of Mr. Kutama does constitute unprofessional conduct.

Based on the investigation report, admission of unprofessional conduct on the part of Mr. Kutama and the Hearing Tribunal process, the members of the Hearing Tribunal have reasonable and probable grounds to believe and accept the finding of unprofessional conduct.

Further to this and relative to the obligations of a social worker as per the *Health Professions Act (RSA 2000)*, the following are applicable as violations of mandated practice and contravenes sections: 1(1) (pp)(i)(ii) and (xii);

- Whereas a social worker is found to display a lack of knowledge of or lack of skill or judgement in the provision of professional services;
- Contravenes the Health Professions Act, Social Work Code of Ethics and Standards of Practise and
- Displays conduct that harms the integrity of the regulated profession.

Further to this and relative to the obligations of a social worker as per the *Canadian Association of Social Workers Social Work Code of Ethics (2005)* the following are applicable as violations of mandated practice and contravenes sections:

- Value 1; Respect for the Inherent Dignity and Worth of persons
- Value 4; Integrity in Professional Practise

Further to this and relative to the obligations of a social worker as per the *Alberta College of Social Workers Standards of Practice (2013)* the following are applicable as violations of mandated practice and contravenes sections:

- **F.3(b)** whereas a social worker will not exploit a professional relationship to obtain a position or otherwise advance the social worker's own interests.
- **F.5(a)** whereas a social worker will act to ensure that the difference between professional and personal relationships with clients is explicitly understood and respected, and that the social worker's behaviour is appropriate to the difference.
- **F.5(b)** whereas a social worker will be aware of the potential for harm in entering or continuing a professional relationship when the social worker and the client also have a present or previous familial, social, sexual, emotional, financial, supervisory, administrative or legal relationship.
- **F.5(e)** whereas a social worker who continues to provide professional services when a dual/multiple role relationship may exist must seek regular consultation/supervision with another social worker regarding the dual/multiple role relationship and subsequent provision of professional services to the client and include the contents of the consultation in the clients record.
- **F.5(f)** whereas a social worker in all cases when a dual/multiple role relationship exists the social worker is solely responsible for ensuring that appropriate professional boundaries are maintained and that the nature of the client-social worker relationship is protected.
- **F.5(g)** whereas a social workers personal circumstances result in frequent contact with clients outside the practice setting, a social worker will take reasonable measures to discuss with all clients how contacts outside the professional context will be managed to protect the client's interests.
- **F.1(g)** whereas a social worker will recognize when the services being provided are no longer effective, necessary, or in the client's best interest and will discuss the options available with the client.

- **G.1(a)** whereas a social worker is legally and ethically obligated to adhere to *the Health Professions Act*, the Social Workers Profession Regulation, the ACSW Bylaws, the Code of Ethics and the Standards of Practice, regardless of workplace policies.
- **G.6(a)** whereas a social worker will not include false or misleading information in statements concerning professional services offered by the social worker.
- **C.2(a)** whereas a social worker will not exploit a client by charging a fee that is excessive for the professional services performed.
- **G.1(b)** whereas a social worker relative to within the profession will not act in a manner that may reduce the public trust in social work and social workers.

The Hearing Tribunal accepts the admissions of Mr. Kutama, the investigated member, and the evidence supporting allegations of unprofessional conduct by Mr. Magee during the hearing on March 8, 2019.

REASONS FOR DECISION ON SANCTIONS

As a result of the findings of the Hearing Tribunal of unprofessional conduct by Mr. Kutama, the Parties presented to the Hearing Tribunal a proposed Joint Submission as to Sanctions. The Hearing Tribunal adjourned to consider this proposal, and decided to accept the Joint Submission on Sanctions as proposed. The Hearing Tribunal makes the following orders in accordance with s. 82 of the Act.

1. A written reprimand shall be issued by the ACSW against Mr. Kutama.
2. Mr. Kutama shall be suspended from the practise of social work for a period of one (1) month on April 1, 2019 to April 30, 2019.
3. Mr. Kutama shall practice under clinical supervision by an RSW social worker (either within his employment or outside of his employment) for a period of one (1) year. The cost of this supervision shall be the responsibility of Mr. Kutama. The individual providing supervision shall be approved by the Complaints Director of the ACSW. The terms of this supervision shall be agreed upon between Mr. Kutama and the supervisor, with disclosure to the ACSW as required.
4. Mr. Kutama shall be obliged to undertake four (4) consultations with a senior RSW social worker practitioner approved by the ACSW within one (1) year from the date of this Order. The cost of these consultations will be the responsibility of Mr. R. Kutama. The ACSW shall be entitled to any such reporting as it deems necessary from time to time.
5. Mr. Kutama is prohibited from providing any tenancy to any client or individual by which contact occurred by virtue of his position as a social worker (unless he is the owner/operator of an approved licensed facility).
6. Mr. Kutama shall pay costs in the amount of \$750.00 payable within one (1) year from the date of this Order to the ACSW.

7. The Complaints Director of the ACSW shall maintain the discretion to suspend Mr. Kutama pending a Hearing should the Complaints Director in his/her sole discretion conclude that Mr. Kutama has breached or failed to satisfy this Order.
8. This Order shall be published on a “with names” basis.

The Hearing Tribunal makes its orders as set out above for the following reasons:

- A. In deciding whether to accept the Joint Submission as to Sanction, the Hearing Tribunal was guided by *R. v Anthony-Cook*, 2016 SCC 43, where the Court determined that a joint submission should not be departed from unless the proposed sentence would bring the administration of justice into disrepute, or is otherwise not in the public interest.

To assess whether the joint submission will bring the administration of justice into disrepute the Hearing Tribunal examined the five objectives in sanctioning principles, namely:

- **Protection of the Public** as vulnerable people against the unwarranted use of professional power and authority – The ACSW is a self-governing body established under the Health Professions Act, and is responsible for regulation of the profession in the public interest. This includes ensuring that all registered practitioners are capable of practicing their profession in a manner that protects the public, including their clients, from unacceptable risk or acts of unprofessional conduct. The Hearing Tribunal sees protection of the public as a primary consideration, and found that Mr. Kutama had, during the course of his employment, exercised poor judgment by providing residence to former vulnerable clients of which he operated for profit. His actions in doing so fell below the Standards of Practice and Code of Ethics for his profession, and constitute unprofessional conduct.

The prohibition levied against Mr. Kutama from providing any tenancy to any client or individual by which contact occurred by virtue of his position as a social worker (unless he is the owner/operator of an approved licensed facility) will protect the public, and more specifically, the vulnerable population impacted by his past actions. The supervision and consultations Mr. Kutama must undergo, as well as the ability of the two RSWs to communicate with each other, will assist Mr. Kutama in realizing that extent and scope of his professional responsibilities as a social worker, both within his employment, and that they extend beyond his employment.

- **Deterrence** to ensure that recurrence of unprofessional practise is prevented. The objective of specific deterrence is to reinforce the requirement that the regulated member not engage in further unprofessional conduct in the future. The sanctions imposed on Mr. Kutama will serve to guide Mr. Kutama in the future when he is practicing as a social worker that unprofessional conduct has consequences which he would bear in the event of any future instances of unprofessional conduct. General deterrence has a similar objective with a broader audience. This sanction will communicate to other professionals in the profession that unprofessional conduct is unacceptable and will be dealt with by ACSW in accordance with the Act. This objective is reinforced by publishing decisions

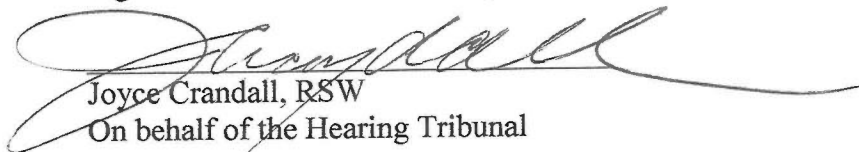
of Hearing Tribunals involving findings of unprofessional conduct, which are available for all members to read.

- **Rehabilitation** in order to improve the practise of and to support the social worker. The Hearing Tribunal noted Mr. Kutama understands why his actions were unprofessional and the impact this had on others, and believes that a period of supervised practice, and four consultations will serve Mr. Kutama well in the future.
 - **Fairness** as related to consequences of unprofessional conduct. The Hearing Tribunal recognizes the need for fairness in determining sanctions that are appropriate for the unprofessional conduct Mr. Kutama has admitted to. The written reprimand and assignment of costs are at the low end of the spectrum in terms of severity; however, the one-month suspension recognizes the impact Mr. Kutama's actions have had upon a vulnerable population. The period of supervised practice and continuing education are both fair and appropriate given the nature of the unprofessional conduct which Mr. Kutama has admitted to.
 - **Integrity** in terms of ensuring that the integrity of the Social Work Profession is upheld and protected. The ACSW is self-regulated, and as such is responsible for ensuring that the Code of Ethics and Standards of Practiced are followed by all registered members, as well as taking disciplinary action in cases of unprofessional conduct by a regulated member. 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 registered practitioners.
- B. When considering the proposed sanctions in relation to the unprofessional conduct by Mr. Magee, the Hearing Tribunal also took into consideration factors relevant to determining appropriate sanctions as found in *Jaswal v Medical Board (Newfoundland)*23:1:
1. The nature and gravity of the proven allegations – Mr. Kutama's unprofessional conduct was serious, as it was in relation to matters related to vulnerable individuals who put their trust in his hands as a professional social worker with power and control.
 2. Experience of the offending practitioner – Mr. Kutama is an experienced RSW, with nearly 7 years as a practitioner.
 3. The nature of the impact on the clients – most of the clients involved in this matter were disappointed and distrustful with the actions of Mr. Kutama.
 4. The role of the practitioner in acknowledging what happened – Mr. Kutama cooperated fully in the investigation and resolution of this complaint, and this allowed the matter to proceed as an uncontested hearing. During the investigation he expressed remorse for his actions.

5. Whether the practitioner had already suffered other serious financial or other penalties as a result of the allegations being made – the Hearing Tribunal was not made aware of any financial or other penalties incurred by Mr. Kutama.
6. The presence or absence of any mitigating circumstances – the Hearing Tribunal noted that Mr. Kutama was an experienced practitioner who has expressed remorse, and in retrospect, has gained an appreciation of how and why his conduct was unprofessional.
7. The need to promote specific and general deterrence and thereby, to protect the public and ensure the safe and proper practice of social work – this is discussed earlier under “Deterrence”.
8. The need to maintain the public confidence in the integrity of the social work profession – this is also discussed earlier under “Integrity”.
9. The degree to which the unprofessional conduct that was agreed to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside of the range of permitted conduct.
10. The range of sentence in other similar cases – the Hearing Tribunal was not presented with any information on sanctions applied in comparable cases.

Therefore, this Hearing Tribunal has determined that the proposed Joint Submission on Sanctions would not bring the administration of justice into disrepute, and are not contrary to the public interest. The Hearing Panel accepts the Joint Submission on Sanctions agreed to by the parties as proposed.

Signed on behalf of the Hearing Tribunal by the Chair on the 7th day of May, 2019.



Joyce Crandall, RSW
On behalf of the Hearing Tribunal