

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

AND THE MATTER OF A HEARING INTO THE CONDUCT
OF MR. EVAN KAY, A MEMBER OF THE
ALBERTA COLLEGE OF SOCIAL WORKERS;

AND INTO THE MATTER OF A COMPLAINT BY CATHERINE HILL
INTO THE CONDUCT OF MR. EVAN KAY PURSUANT TO S.77(a) OF
THE *HEALTH PROFESSIONS ACT*.

REASONS FOR DECISION

Pursuant to a public hearing held on December 19, 2019 at the Edmonton offices of Parlee McLaws, LLP, the Alberta College of Social Workers Hearing Tribunal is issuing its reasons for its decisions.

A hearing into the conduct of Mr. Evan Kay was held on December 19, 2019 pursuant to the *Health Professions Act*, R.S.A. 2000, c.H-7 as amended (the "Act").

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

The members of the Hearing Tribunal were:

Glenn Lantz, RSW, Chair
M. Richard Ouellet, RSW
Hugh Campbell, Public Member

At the outset it is noted that there has been a delay in the completion of the written Reasons for Decision. More specifically, the Alberta College of Social Workers Hearings Director was informed in late July 2020 that the Tribunal Chairperson was unable to complete the written report due to unanticipated medical issues. As a result, the other registered member on the Tribunal was asked to prepare the written Reasons for Decision contained herein.

The allegations in the Notice of Hearing arise from complaints made by CH (18.68) received by the ACSW September 13, 2018. .

The allegations in the Amended Notice of Hearing are as follows:

Professional Accountability

1. That you did sexually harass, harass and/or demonstrate threatening behaviour against a co-employee, CJ, as follows:

Crossed personal boundaries by:

- Frequently visiting her office;
- Making comments about her appearance;
- Invading her physical space and being unduly focused on her;
- Made sexual advances requesting sex on two occasions;
- Discussed threesomes with her on two different days;
- Continued to ask her to go work out with you;
- Continued inviting her to lunch with you.

Engaged in intimidating Behaviours by:

- Attending at her residence in the early morning hours;
- Ran behind her on the treadmill at the gym;
- Threatened to have her removed from her work unit;
- Frequently visiting her assigned work unit;
- Stared at her from your assigned work unit; and/or
- Called her a "bitch" 3 times to a co-worker

2. That you sexually harassed a co-employee, JC, by:

- Repeatedly asking her to work out with you;
- Repeatedly asking her to go for drinks with you;
- Repeatedly making references to her appearance;
- Invading her personal physical space; and/or
- Asking her if she was interested in certain women and inquiring whether they were "hot";

3. That you sexually harassed BW,VL,CY when they were social work students by;

- Making flirtatious passes;
- Asking about sexually explicit song lyrics;
- Inviting students to the bar;
- Making comments about a co-worker and speculating whether the co-worker and her partner would have a threesome; and/or
- Messaging on Facebook requesting to work out;

4. That you sexually harassed and harassed a co-employee, SF by:

- Bragging about a threesome you had;
- Asking her in a threatening manner who was responsible for your reassignment in the workplace.

Such conduct contravenes s. F2(a), F.3(c), G.1 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*.

The investigated member, Mr. Kay, signed the proposed Consent Order that is included and an Acknowledgement of Unprofessional Conduct on December 19, 2019. The Hearing Tribunal accepts all the admissions of the investigated member as provided.

The Hearing Tribunal heard from no witnesses.

Present at the hearing were Sheryl Pearson ACSW Complaints Director and Karen Smith ACSW Counsel. Mr. Kay was also present as was his legal counsel Anthony Cook.

The following documents were accepted as Exhibits at the Hearing:

- Notice of Hearing to Mr. Evan Kay
- Investigator's Report 18.68 re. Mr. Evan Kay
- Emails Confirming Service of Documents
- Mr. Kay's signed Admission of Unprofessional Conduct dated December 19, 2019.
- Mr. Kay's signed Consent Order dated December 19, 2019.

CONSENT ORDER

AGREED STATEMENT OF FACTS

1. Mr. Kay has been a Registered Social Worker with the Alberta College of Social Workers ("ACSW") since 2012.
2. Mr. Kay was employed as a social worker at the Glenrose Hospital in Edmonton Alberta from 2010 until September 2018.
3. On September 7, 2018, Mr. Kay was terminated from his employment with Glenrose Hospital.
4. That Mr. Kay crossed personal boundaries with CJ by:
 - Frequently visiting her office;
 - Making comments about her appearance;

- Invading her physical space and being unduly focused on her;
 - Discussed threesomes with her on two different days;
 - Continued to ask her to go work out with you;
 - Continued inviting her to lunch with you.
5. That Mr. Kay engaged in intimidating behaviours with CJ by:
- Threatened to have her removed from her work unit;
 - Frequently visiting her assigned work unit;
 - Stared at her from your assigned work unit; and/or
 - Called her a “bitch” 3 times to a co-worker
6. Mr. Kay commenced a consensual sexual relationship with CJ and CH. Eventually those relationships concluded. Mr. Kay transferred units in 2016 but was unhappy with the transfer.
7. That Mr. Kay sexually harasses BW, VL and CY when they were social work students by :
- Making flirtatious passes;
 - Asking about sexually explicit song lyrics;
 - Inviting students to the bar;
 - Messaging on Facebook requesting to work out;
8. That Mr. Kay sexually harassed and harassed a co-employee, SF by :
- Bragging about a threesome you had;
 - Asking her in a threatening manner who was responsible for your reassignment in the workplace.
9. Mr. Kay did sexually harass, harass and/or demonstrate threatening behaviour against a co-employee, CJ.

AGREED FINDINGS

Professional Accountability

1. That Mr. Kay did sexually harass, harass and/or demonstrate threatening behaviour against a co-employee, CJ.
2. That Mr. Kay crossed personal boundaries with CJ by:

- Frequently visiting her office;
 - Making comments on her appearance;
 - Invading her physical space and being unduly focused on her;
 - Discussed threesomes with her on two different days;
 - Continued to ask her to go work out with him;
 - Continued inviting her to lunch with him.
3. That Mr. Kay engaged in intimidating behaviours with CJ by:
- Threatening to have her removed from her work unit;
 - Frequently visiting her assigned work unit;
 - Staring at her from your assigned work unit; and/or
 - Called her a “bitch” 3 times to a co-worker.
4. That Mr. Kay sexually harassed BW, VL, and CY when they were social work students by:
- Making flirtatious passes;
 - Asking about sexually explicit song lyrics;
 - Inviting students to the bar;
 - Messaging on Facebook requesting to work out.
5. That Mr. Kay sexually harassed and harassed a co-employee, SF by:
- Bragging about a threesome he had;
 - Asking her in a threatening manner who was responsible for his reassignment in the workplace.

ACKNOWLEDGEMENT OF RESPONSIBILITY

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

NO RIGHT TO APPEAL

The ACSW and Mr. Kay agree that there shall be no appeal from this Order notwithstanding s.87 of the *Health Professions Act*, R.S.A 2000, cc.H-7.

Following a review of the detailed Investigator’s Report, evidence provided during the hearing and Mr. Kay’s own admission the Tribunal unanimously finds the conduct and behaviour of Mr. Kay to be unprofessional. As noted in the agreed findings Mr. Kay confirmed that he has sexually harassed, harassed and engaged in intimidating behaviour with several of his co-employees while employed as a Social Worker at the Glenrose Hospital. The serious nature and content of his actions constitutes a breach of several

sections of the Alberta College of Social Workers Standards of Practice and the Code of Ethics and is unacceptable for a member registered to practice Social Work in the province of Alberta.

REASONS FOR DECISION ON SANCTION

As noted previously the Hearing Tribunal accepts all of the admissions of unprofessional conduct by Mr. Kay, the investigated member, and the information supporting allegations of unprofessional conduct by Mr. Kay presented during the Hearing on December 19, 2019. The Parties also presented to the Hearing Tribunal a proposed Joint Submission as to Sanctions. It is noted that during the hearing Mr. Kay made a request that consideration be made to amend sanction 9 and asked the Tribunal to consider publication of the Consent Order on a "no-names" basis. The Hearing Tribunal carefully considered this proposal and given the serious nature of the acknowledged unprofessional conduct unanimously rejected the request and confirmed the proposed Joint Submission as presented. The Hearing Tribunal makes the following orders in accordance with s. 82 of the Act.

In 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

JOINT SUBMISSION AS TO SANCTION

1. A Reprimand shall be issued as against Mr. Kay.
2. Mr. Kay shall be suspended from the practice of social work for a period of one (1) month, retroactive to the date of the termination of his employment.
3. Mr. Kay's permit to practice social work shall be subject to supervision for a period of 1 year from the date of this Order. The suspension shall be in place when Mr. Kay's employment responsibilities are within the scope of social work practice. The cost of supervision will be the responsibility of Mr. Kay. This supervision may be within or outside the context of Mr. Kay's employment. The supervisor shall be approved by the ACSW, and the ACSW shall be entitled to such reporting and disclosure from the supervisor as the ACSW deems necessary from time to time.

4. Mr. Kay shall be prohibited from the responsibility of supervising of female students for a period of 2 years from the date of this Order.
5. Mr. Kay shall successfully complete a course (Ethics related) approved by the Complaints Director within 1 year of the date of this Order at his own cost.
6. Mr. Kay shall be obliged to undertake six (6) consultations over a period of one (1) year with a senior RSW practitioner, to be approved by the Complaints Director. The cost of these consultations shall be the responsibility of Mr. Kay. The ACSW shall be entitled to any such reporting as deemed necessary from time to time.
7. Mr. Kay shall pay costs in the sum of One Thousand Dollars (\$1000.00) within one (1) year of the date of this Order.
8. The Complaints Director shall maintain the discretion to suspend Mr. Kay pending a Hearing should the Complaints Director in his/her sole discretion conclude that Mr. Kay has breached the provisions of this Order.
9. There shall be publication of this Consent Order on a "with names" basis on the ACSW website.

A Reprimand shall be issued as against Mr. Kay.

This sanction serves as a stern reminder to Mr. Kay and addresses the objective of individual deterrence and satisfies the "fairness test" when compared to sanctions imposed on other members for similar unprofessional conduct.

Mr. Kay shall be suspended from the practice of social work for a period of one (1) month, retroactive to the date of the termination of his employment.

The ACSW is a self-governing professional 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 serious nature of the charges brought against Mr. Kay demonstrate a significant lack of judgement on his part and loss of trust in Mr. Kays practice. The Hearing Tribunal believes that the interest of public protection is paramount and that this sanction is warranted. It further serves to maintain the integrity of the profession by reflecting how seriously the ACSW takes its responsibility for ensuring that the Code of Ethics and Standards of Practice are followed by its members. The Tribunal believes that failure to do this would serve to undermine public confidence in the profession of social work and its registered members.

Mr. Kay's permit to practice social work shall be subject to supervision for a period of 1 year from the date of this Order. The suspension shall be in place when Mr. Kay's employment responsibilities are within the scope of social work practice. The cost of supervision will be the responsibility of Mr. Kay. This supervision may be within or outside the context of Mr. Kay's employment. The supervisor shall be approved by the ACSW, and the ACSW shall be entitled to such reporting and disclosure from the supervisor as the ACSW deems necessary from time to time.

This sanction will provide Mr. Kay a level of support that will allow him to effectively work within the profession of social work. The rehabilitative nature of this sanction should allow Ms. Kay to resume competent practice.

Mr. Kay shall be prohibited from the responsibility of supervising of female students for a period of 2 years from the date of this Order.

Mr. Kay's admission to his failure to exercise appropriate professional accountability and boundaries with his female co-workers and students underlies the need to impose this sanction to ensure public safety and maintain the integrity of the profession. It is the Tribunal's view that this sanction, in conjunction with the "rehabilitative sanctions" identified through additional course work and skilled supervision, will assist Mr. Kay in developing competence as a professional social worker.

Mr. Kay shall successfully complete a course (Ethics related) approved by the Complaints Director within 1 year of the date of this Order at his own cost.

It is noted that in other cases where social workers have been found to have demonstrated unprofessional conduct the requirement to attend an Ethics based course or prepare a specific research paper addressing issues related to their individual circumstances is a common sanction. Mr. Kay's participation in the type of course meets the fairness and rehabilitative objective for Mr. Kay and also serves to reflect the overall integrity of the profession.

Mr. Kay shall be obliged to undertake six (6) consultations over a period of one (1) year with a senior RSW practitioner, to be approved by the Complaints Director. The cost of these consultations shall be the responsibility of Mr. Kay. The ACSW shall be entitled to any such reporting as deemed necessary from time to time.

As noted in sanction #3 the introduction of a senior RSW practitioner in providing direction and support to Mr. Kay serves to protect the public, preserve the integrity of the profession and assists in the rehabilitation of the registered member.

Mr. Kay shall pay costs in the sum of One Thousand Dollars (\$1000.00) within one (1) year of the date of this Order.

The Hearing Tribunal recognizes the need for fairness in determining sanctions appropriate for the unprofessional conduct admitted by Mr. Kay. The cost provision of \$1000.00 payable forthwith is not excessive and is consistent with the amount asked of the disciplined member in terms of a contribution to the costs of the disciplinary process. In addition, imposing a financial cost may serve as a deterrent to other members of the profession and serve as a reminder that registered social workers are accountable to the ACSW and each other. Expenses for the disciplinary process are part of the annual fees paid to the college.

The Complaints Director shall maintain the discretion to suspend Mr. Kay pending a Hearing should the Complaints Director in his/her sole discretion conclude that Mr. Kay has breached the provisions of this Order.

The extremely serious and sensitive nature of Mr. Kay's admission of unprofessional conduct warrants heightened concern on behalf of the Alberta College of Social Workers. Protection of the public and the Integrity of the Profession underly this sanction and the Hearing Tribunal fully supports its inclusion as part of the joint submission.

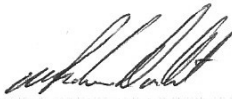
There shall be publication of this Consent Order on a "with names" basis on the ACSW website.

This sanction is consistent with previous cases in which the professional misconduct resulted in a suspension of the practice of social work. In addition to serving as a deterrent for Mr. Kay and other members of the profession it also maintains the integrity of the profession. Protection of the public is heightened through the publication "with names".

On behalf of the Hearing Tribunal

M. Richard Ouellet, RSW

Per:



M. Richard Ouellet, RSW,



Glenn Lantz, RSW Chair



Hugh Campbell, Public Member