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 MONIQUE CHRISTENSON, A MEMBER OF THE ALBERTA COLLEGE OF SOCIAL WORKERS;

AND IN THE MATTER OF A PROFESSIONAL CONDUCT HEARING REGARDING THE CONDUCT OF MONIQUE CHRISTENSON UNDERTAKEN VIRTUALLY (COVID 19);

AND INTO THE MATTER OF A COMPLAINT INTO THE CONDUCT OF MONIQUE CHRISTENSON PURSUANT TO S. 77(a) OF THE *HEALTH PROFESSIONS ACT*

REASONS FOR DECISION – SANCTION DECISION

1 A public hearing was held on October 29, 2020, by way of a virtual WebEx Hearing, before the Alberta College of Social Workers Hearing Tribunal (the "Hearing Tribunal") regarding the conduct of Ms. Monique Christenson.

2 The hearing proceeded on the merits of the alleged unprofessional conduct in the absence of Ms. Monique Christenson (the "Member"). On December 2, 2020, the Hearing Tribunal released its findings regarding the allegations of professional misconduct (the "Merit Decision").

3 The Hearing Tribunal found that the Member did engage in sexual abuse within the meaning of s. 1(1)(nn.1) of the Act. The Hearing Tribunal requested in the Merit Decision that the Member and the Complaints Director of the Alberta College of Social Workers (the "College") provide written submissions with respect to sanctions within 21 days of the issuance of the Merit Decision. The Hearing Tribunal invited the parties to make submissions if those timelines were unworkable. The Hearing Tribunal did not hear from either party. The Hearing Tribunal did receive written submissions from the College on March 29, 2021. The College advised that the submissions were to have been made earlier but, due to a miscommunication, were not sent. The Hearing Tribunal also noted the effect of s. 82 (1.1) of the Act which compels the cancellation of the Member's permit and registration. However, it requested the parties' submissions on the substance of any additional sanction orders under s. 82 of the Act. The Hearing Tribunal did not receive any submissions from the Member.

LEGAL QUESTIONS ON SANCTIONS

4 In these proceedings, the outstanding issues are:

1. In addition to the requirement to cancel the Member's registration, are there any additional sanction orders that the Hearing Tribunal finds are appropriate to apply under s. 82 of the Act?

2. In addition to the requirement to cancel the Member's registration, what costs order, if any, is appropriate?

LEGISLATION

The Act

5 The Act continues to govern these proceedings. Specifically, s. 81.1 and s. 82 address the jurisdiction of the Hearing Tribunal as it relates to sanctions. These provisions are set out below:

> ***Tribunal decision re sexual abuse or sexual misconduct***
> ***81.1(1)*** *If the subject-matter of a hearing relates to a complaint alleging sexual abuse, and the hearing tribunal decides that the conduct of an investigated person constitutes unprofessional conduct based in whole or in part on sexual abuse, the hearing tribunal must immediately order the suspension of the investigated person's practice permit until an order is made under section 82.*
> ***(2)*** *If the subject-matter of a hearing relates to a complaint alleging sexual abuse or sexual misconduct, and the hearing tribunal decides that the conduct of an investigated person constitutes unprofessional conduct based in whole or in part on sexual abuse or sexual misconduct, before making an order under section 82 the hearing tribunal must provide the patient with an opportunity to present any written or oral statement describing the impact the sexual abuse or sexual misconduct has had on the patient.*
>
> ***Orders of tribunal***
> ***82(1)*** *If the hearing tribunal decides that the conduct of an investigated person constitutes unprofessional conduct, the hearing tribunal may make one or more of the following orders:*
> *(a) caution the investigated person;*
> *(b) reprimand the investigated person;*
> *(c) impose conditions on the investigated person's practice permit generally or in any area of the practice of the regulated profession, including conditions that the investigated person*
> *(i) practise under supervision,*
> *(ii) practise with one or more other regulated members,*
> *(iii) not practise in an area of the practice of the regulated profession until the investigated person has successfully completed a specific course of studies or obtained supervised practical experience of a type described in the order,*
> *(iv) not practise in an area of the regulated profession, or*
> *(v) report on specific matters to the hearing tribunal, council, committee or individual specified in the order;*
> *(d) direct the investigated person to satisfy the hearing tribunal, committee or individual specified in the order that the investigated person is not incapacitated and suspend the investigated person's practice permit until the hearing tribunal, committee or individual is so satisfied;*
> *(e) require the investigated person to undertake counselling or a treatment program that in its opinion is appropriate;*
> *(f) direct that within the time set by the order the investigated person must pass a specific course of study, obtain supervised practical experience of a type described in the order or satisfy the hearing tribunal, committee or individual specified in the order as to the investigated person's competence generally or in an area of the practice of the regulated profession;*
> *(g) subject to subsection (1.1), suspend the practice permit of the investigated person for a stated period or until*
> *(i) the investigated person has successfully completed a specific course of studies or obtained supervised practical experience of a type described in the order, or*
> *(ii) the hearing tribunal or a committee or individual specified in the order is satisfied as to the competence of the investigated person generally or in a specified area of the practice of the regulated profession;*

(h) subject to subsection (1.1), cancel the registration and practice permit of the investigated person;

(i) if, in the opinion of the hearing tribunal, the investigated person's fees for professional services were improper or inappropriate or the professional services that the investigated person provided were improperly rendered or required the complainant to undergo remedial treatment, the hearing tribunal may direct the investigated person to waive, reduce or repay the fee for professional services provided by the investigated person;

(j) direct, subject to any regulations under section 134(a), that the investigated person pay within the time set in the order all or part of the expenses of, costs of and fees related to the investigation or hearing or both, including but not restricted to

(i) the expenses of an expert who assessed and provided a written report on the subject-matter of the complaint,

(ii) legal expenses and legal fees for legal services provided to the college, complaints director and hearing tribunal,

(iii) travelling expenses and a daily allowance, as determined by the council, for the complaints director, the investigator and the members of the hearing tribunal who are not public members,

(iv) witness fees, expert witness fees and expenses of witnesses and expert witnesses,

(v) the costs of creating a record of the proceedings and transcripts and of serving notices and documents, and

(vi) any other expenses of the college directly attributable to the investigation or hearing or both;

(k) direct that the investigated person pay to the college within the time set in the order a fine not exceeding the amount set out in the column of the unprofessional conduct fines table that is specified for the college in a schedule to this Act for each finding of unprofessional conduct or the aggregate amount set out in that column for all of the findings arising out of the hearing;

(l) any order that the hearing tribunal considers appropriate for the protection of the public.

***(1.1)** If the subject-matter of a hearing relates to a complaint alleging sexual abuse or sexual misconduct, and the hearing tribunal decides that the conduct of an investigated person constitutes unprofessional conduct based in whole or in part on sexual abuse or sexual misconduct, in addition to any order that the hearing tribunal may make under subsection (1),*

(a) in respect of a decision of unprofessional conduct based in whole or in part on sexual abuse, the hearing tribunal must order the cancellation of the investigated person's practice permit and registration, and

(b) in respect of a decision of unprofessional conduct based in whole or in part on sexual misconduct, the hearing tribunal must order the suspension of the investigated person's practice permit for a specified period of time.

***(1.2)** In respect of a decision of unprofessional conduct based in whole or in part on sexual misconduct, if a hearing tribunal orders that conditions be imposed on an investigated person's practice permit generally or in any area of the practice of the regulated profession, a hearing tribunal shall not make any order directing the imposition of any gender-based conditions.*

***(2)** The hearing tribunal may, in an order under subsection (1), stay the order or a portion of the order on conditions set out in the order.*

***(3)** If the complaints director is satisfied that a person has not complied with an order under this section or section 89(5)(b), the complaints director may*

(a) treat the matter as information under section 56,

(b) refer the matter to the hearings director to schedule a hearing before the hearing tribunal, or

(c) in the case of non-payment of a fine described in subsection (1)(k) or expenses described in subsection (1)(j) or section 89(6), suspend the practice permit of the investigated person until the fine or expenses are paid in full or the complaints director is satisfied that they are being paid in accordance with an agreement entered into with the investigated person.

(4) *A fine or expenses ordered to be paid under this section and section 89 are a debt due to the college and may be recovered by the college by an action in debt.*

RSA 2000 cH-7 s82;2001 c21 s16;2006 c19 s2(9);2018 c15 s15

SUBMISSIONS OF THE COLLEGE

6 The College's submissions set out:

(a) The Hearing Tribunal's authority under s. 81.1 and 82 of the Act;
(b) The legal principles that apply to the sanction process; and
(c) The Sanction Order the College submitted was appropriate.

7 With respect to the applicable legal principles, the College noted the following objectives to be served by the sanction process in professional regulatory cases. These are:

a. Protection of the Public – This is the primary obligation of a professional regulatory entity in response to its mandate to govern its members. The Hearing Tribunal must evaluate what risks there are to the public by the professional continuing to practice.

b. Deterrence – In imposing sanctions, with the effect of deterrence, the regulatory body sends a message to the particular member and other members of the profession, generally, that this conduct will not be condoned.

c. Rehabilitation – Steps should be taken by the Hearing Tribunal to foster the member to resume appropriate professional practice.

d. Fairness – The Hearing Tribunal should impose similar consequences on a member comparable to those imposed on other members in similar circumstances, recognizing that each set of facts is typically unique.

e. Integrity of the Profession: The ACSW is mandated with regulating its members and, as such, has obligations in exercising this privilege. It ought to be seen to be properly monitoring the conduct of its members in order to continue that privilege.

8 The College also referred to the list of factors identified in the *Jaswal v. Newfoundland Medical Board*, 1996 Carswell Nfld 32 (TD) at para 26:

a. the nature and gravity of the proven allegations;

b. the age and experience of the member;

c. the previous character of the member and in particular the presence or absence of any prior complaints or convictions;

d. the number of times the office was proven to have occurred;

e. the role of the member in acknowledging what had occurred;

f. whether the member had already suffered other serious financial or other penalties as a result of the allegations having been made;

g. the impact of the incident on the complainant;

h. the presence or absence of any mitigating circumstances;

i. the need to promote specific and general deterrence and, thereby, to protect the public and ensure safe and proper practice;

j. the need to maintain the public's confidence in the integrity of the profession;

k. the degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct; and

l. the range of sentence in other similar cases.

9 The College submitted that the requested Sanction Orders were appropriate because:

- Protection of the public is of utmost importance in the context of self regulating professions. Part of the privilege of being in a self regulated profession is that professional regulatory bodies must take action when their member's conduct is found wanting. These costs may properly be borne by those professionals whose conduct necessitates taking action.

- The breach of trust and power in the social worker profession is most serious. Social workers are placed in positions of trust and power with respect to their clients, who may be particularly vulnerable. Therefore, deterrence of this behavior is important.

- The sanctions sought to be imposed are in line with prior orders as to sanctions.

- The integrity of the profession is upheld where unprofessional behavior that breaches applicable standards of practice or codes of ethics is appropriately sanctioned, including the payment of costs.

10 With respect to a consideration of the factors noted in *Jaswal*, the College submitted:

- The breaches were serious and were ongoing.

- The Member was a mature and experienced social worker who should have understood the importance of boundaries.

- The Member admitted and acknowledged the inappropriate nature of the relationship but actively avoided service of the Notice of Hearing and failed to attend the Hearing.

- The Member continued to counsel her client as part of the client's addictions treatment while engaged in an intimate and personal relationship with that client. This is a breach that goes to the heart of social work ethics which emphasize the importance of boundaries and avoiding inappropriate relationships.

11 Therefore, the College submitted that the sanctions suggested were entirely appropriate.

SANCTION ORDER

1. A reprimand shall be issued against the Member.

1. The Member's practice permit and registration shall be cancelled.

2. Ms. Christenson shall pay costs of $15,000, payable within three years of this decision.

3. This Order shall be published on a "with names" basis.

12 In determining the appropriate sanctions to order in these proceedings, 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

<u>Protection of the Public</u>

13 The ACSW is a self-governing professional body established under the 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.

14 In the Member's letter to the ACSW of November 15, 2019, the Member admitted to having a personal relationship with her client which she knew was inappropriate. When confronted by her employer, the Member did not dispute the allegations of being personally involved with a client, including holding hands and kissing with the client. Ms. Christenson's personal involvement with a client of a program where she was employed created unnecessary risk of harm to the client and warrants a reprimand.

15 The mandatory cancellation of the Member's registration also protects the public. Finally, the "with names" publication of this decision ensures there is a public record of the conduct of the Member which further protects others by identifying the Member whose conduct may create a risk in the future.

16 The Hearing Tribunal notes that throughout the disciplinary process, the Member has failed to clarify the nature of the inappropriate relationship she engaged in with a client. The Member's failure to be forthright about the nature of her relationship with the client demonstrates poor judgement and does

not indicate that the Member has insight into the seriousness of her conduct. Therefore, the Hearing Tribunal feels that the sanction orders do promote public protection.

Deterrence (Specific and General)

17 The objective of specific deterrence is to reinforce with the Member the requirement to not engage in further unprofessional conduct in the future. The Hearing Tribunal believes that the unprofessional conduct demonstrated by Ms. Christenson warrants consequences of paying the costs in the sum of Fifteen Thousand Dollars ($15,000.00) within three (3) year(s) of the date of this Order. This includes deterring the refusal by the Member to participate in the investigation and hearing.

18 General deterrence is intended to communicate to other regulated members that this type of unprofessional conduct is unacceptable and that the College 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. The Hearing Tribunal feels that unprofessional conduct demonstrated by Ms. Christenson warrants publishing this Order on a "with names" basis. Publishing on a with names basis also protects the public.

Preservation of the Integrity of the Profession

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

20 In order to protect the public and preserve the integrity of the profession, the Hearing Tribunal finds it necessary, in addition to the mandatory cancellation of the Member's practice permit and registration, to issue a reprimand and publish its' decision.

Rehabilitation of the Member

21 Based on the Ms. Christenson's November 2019 letter to the College, evidence presented during the hearing and the Member's failure to submit written submissions with respect to sanctions, the Hearing Tribunal does not believe there is an opportunity for rehabilitation related to Ms. Christenson's unprofessional conduct.

The Duty of Fairness to the Member

22 The Hearing Tribunal recognizes the need for fairness in determining sanctions appropriate for the unprofessional conduct of Ms. Christenson. The Hearing Tribunal also recognizes that the cost award in this case is an escalation of the cost awards made in previous decisions.

23 The Hearing Tribunal carefully considered the submission of the Complaints Director with respect to costs. The Hearing Tribunal notes that it was not given examples of previous orders where costs of this magnitude have been ordered by a Hearing Tribunal. On the other hand, in this case, there are factors which weigh in favour of an increased costs order. Firstly, the Member actively avoided service of

documents which required multiple attempts at service. Secondly, the failure of the Member to clarify the nature of her relationship with the client resulted in additional resources being allocated to finding and preparing witnesses and holding a full hearing on the merits of the complaint. This resulted in increased costs to the College and additional hearing time. Ordering costs of $15,000.00, payable over three (3) years, does not represent a full indemnity of the College's costs, but does represent a more sizable share of the costs. The Hearing Tribunal in this case has decided this is appropriate due to the many opportunities given the Member to participate meaningfully in the process.

24 It is important that Members be responsive to, and engage with, the disciplinary process. Otherwise, the profession becomes ungovernable. If a Member will not even engage in the process and, as a result, the costs incurred by the College are increased, this is unfair to the balance of the members that pay dues to support their self-governing system. Therefore, the Hearing Tribunal has concluded that the more significant cost order is appropriate.

Sherri Tanchak

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Sherri Tanchak (Chairperson on behalf of Hearing Tribunal)