



College of
Massage
Therapists of
Ontario

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Discipline Hearing Summary – Alana Grace Nahdee, RMT (Ottawa, ON) October 26, 2015

The Discipline hearing before a Panel of the Discipline Committee of the College of Massage Therapists of Ontario (CMTO) was held on February 19, 2014, April 16, 2014, July 2, 2014 and October 26, 2015.

Allegations of Professional Misconduct

Ms. Alana Grace Nahdee, a Registered Massage Therapist (RMT), was found to have engaged in the following acts of professional misconduct:

- Receiving a benefit from the practise of Massage Therapy while suspended without prior approval; and
- Engaging in disgraceful, dishonourable and unprofessional conduct.

The Facts

This case proceeded to a full hearing and a summary of the evidence considered by the Panel is as follows:

The Notice of Hearing contained the following allegations:

1. Receiving any form of benefit from the practise of Massage Therapy while under suspension unless full disclosure is made by the registrant to the College about the nature of the benefit and prior approval is obtained from the Executive Committee, in accordance with Section 26, Paragraph 13 of Ontario Regulation 544/94, as amended.
2. Engaging in conduct or performing an act, in the course of practising the profession that would reasonably be regarded by registrants as disgraceful, dishonourable or unprofessional, in accordance with Section 26, Paragraph 44 of Ontario Regulation 544/94, as amended.

The particulars of the allegations are summarized as follows:

- a) Ms. Nahdee's Certificate of Registration was suspended on March 31, 2011 and was reinstated effective July 27, 2011;
- b) Ms. Nahdee practised Massage Therapy while under suspension;
- c) Ms. Nahdee signed and issued receipts for Massage Therapy treatments that failed to reveal that she was not allowed to practise;
- d) Ms. Nahdee received benefits from the practise of Massage Therapy while under suspension; and;
- e) Ms. Nahdee knew or ought to have known that she could not practise Massage Therapy while under suspension.

College's Case

The College called two witnesses: the College investigator and the Director of Professional Practice.

The investigator provided evidence on her role, and described her interactions with Ms. Nahdee during the interview. She also provided a collection of the relevant appointments and financial records relating to Ms. Nahdee's practice for the period when her Certificate of Registration was suspended.

The College's Director of Professional Practice provided evidence regarding the College's Quality Assurance Program and its components. In particular, she provided details regarding the requirement to submit a Continuing Education Unit (CEU) Reporting Form and specific information about Ms. Nahdee's interactions with the Professional Practice Department.

Ms. Nahdee's Case

Ms. Nahdee was not represented by a lawyer. She was the only witness in her case, representing her side.

Ms. Nahdee's evidence included her recollection of events leading up to learning of the suspension of her Certificate of Registration. She also testified about her address information that is registered with the College and her interactions with the College investigator.

In addition to hearing evidence from witnesses (cited in the College's case above), the College and Ms. Nahdee filed a number of documents as exhibits and made submissions to the Panel.

Findings of the Panel

The Panel considered all of the evidence in relation to each allegation and made the following findings:

Allegation - Receiving a benefit from the practise of Massage Therapy while suspended without prior approval from the Executive Committee.

The Panel accepted as fact:

- a) The evidence of the College investigator that established that Ms. Nahdee did, in fact, receive and review the College's Notice of Default relating to her failure to submit her CEU Reporting Form;
- b) The Canada Post documents confirmed the Notice of Default was mailed to Ms. Nahdee's last address registered with the College; and
- c) Ms. Nahdee's appointment and financial records evidenced the degree to which Ms. Nahdee was practising while her Certificate of Registration was suspended.

In light of these facts, the Panel found there was sufficient evidence to support that Ms. Nahdee benefitted from the practise of Massage Therapy while suspended without seeking prior approval from the Executive Committee.

Allegation - Engaging in disgraceful, dishonourable or unprofessional conduct

Given their findings of the first allegation, the Panel found that there was sufficient evidence to satisfy that Ms. Nahdee's conduct would reasonably be regarded by registrants as disgraceful, dishonourable and unprofessional.

Penalty Order and Cost Award Imposed

Ms. Nahdee was represented by a lawyer during the Penalty phase of the hearing. The College and Ms. Nahdee's lawyer presented submissions about an appropriate penalty.

College's Submissions

The College did not call any evidence in relation to the penalty but presented a penalty proposal deemed to be appropriate in the circumstances of this case.

On behalf of Ms. Nahdee, her lawyer entered as evidence:

1. An affidavit of Ms. Nahdee detailing the impact of Canada's residential school system on her family and her; and
2. A series of excerpts regarding the residential school system and its legacy, taken from multiple sources including the *Truth and Reconciliation Commission Summary of the Final Report*.

Submissions were also presented for a penalty proposal deemed appropriate in the particular circumstances relating to Ms. Nahdee.

After considering the evidence and submissions of the Parties, the Panel imposed the following Penalty Order:

1. Suspension of Ms. Nahdee's Certificate of Registration for two months, to commence on November 16, 2015 with one month to be reduced if Ms. Nahdee complies with the Terms, Conditions and Limitations imposed on her Certificate of Registration as outlined in term (3) by no later than April 16, 2016. If Ms. Nahdee fails to comply with the Terms, Conditions and Limitations as required, the additional one month suspension will take effect as of April 16, 2016 and will remain in effect for the full month.
2. A public and recorded reprimand that Ms. Nahdee will attend in person.
3. Imposition of the following Terms, Conditions and Limitations on Ms. Nahdee's Certificate of Registration:
 - Ms. Nahdee must complete a presentation at the Odawa Friendship Centre in Ottawa (or a comparable location) regarding the importance of increasing the number of Aboriginal persons working in healthcare in Ontario, and discussing her journey in overcoming her personal difficulties in order to become an RMT. She must provide satisfactory evidence of the same.
 - Ms. Nahdee must prepare a two-page written reflective submission to the Registrar.

4. The Discipline Committee's decision will be published in the usual course, including publication in CMTO's *Annual Report*, a Discipline Hearing Summary posted on CMTO's website, and a summary of findings and penalty order on CMTO's public register.

Cost Award

The Panel imposed a cost award in the amount of \$250 for partial payment toward the College's investigation and prosecution costs to be paid in full by December 31, 2015.

Reasons for Decision

The Panel considered carefully the submissions of the parties and determined that the length of suspension imposed – while somewhat on the lower end of the range of penalties imposed in similar College cases – was appropriate for the unique and mitigating circumstances involved in this case.

The unique circumstances considered in this case related to the request to consider *R v. Gladue (1999)*. This was a landmark decision by the Supreme Court of Canada that advises that lower courts should consider an Aboriginal offender's background and make sentencing decisions accordingly. In keeping with these principles, the Panel believed that the length of suspension, as well as the requirement for Ms. Nahdee to present within the Aboriginal community, was in keeping with the *R v. Gladue (1999)* principles.

The Panel noted that the penalty imposed serves a dual purpose: to protect the public and provide the opportunity for reflection for Ms. Nahdee. It also sends a message to the profession, in general: professional obligations must be met despite socioeconomic situation.

The Panel underscored Ms. Nahdee's failure to meet one of the basic requirements of regulation: updating contact information with the College. Panel members stated that throughout the case, they did not feel that Ms. Nahdee accepted that she was ultimately responsible for what transpired. They were disappointed that she chose to leave the penalty hearing before it was adjourned. While they appreciated this was a difficult situation, respect for one's regulatory body is an integral part of being a regulated health professional.

The Panel imposed costs of \$250 finding the amount to be reasonable considering the particular factors of this case.

Ms. Nahdee is to appear before a Panel of the Discipline Committee to receive his oral reprimand.