



Discipline Hearing Summary – Robert Guertin, RMT (Ottawa, ON), January 28 and 29, 2015

The Discipline hearing before a Panel of the Discipline Committee of the College of Massage Therapists of Ontario (CMTO) was held on January 28 and 29, 2015.

Allegations of Professional Misconduct

Mr. Robert Guertin, a Registered Massage Therapist (RMT), was found to have engaged in the following acts of professional misconduct:

In relation to a complaint:

- Contravening a Standard of Practice of the profession or a published standard of the College; and
- Engaging in disgraceful, dishonourable or unprofessional conduct.

In relation to a Registrar Report Investigation:

- Contravening a Standard of Practice of the profession or a published standard of the College;
- Engaging in disgraceful, dishonourable or unprofessional conduct; and
- Engaging in conduct unbecoming a Registered Massage Therapist.

The Facts

This case proceeded to a full hearing in relation to a complaint and to a Registrar Report investigation. A summary of the evidence considered by the Panel is as follows:

The Notices of Hearing contained the following allegations:

Notice of Hearing #1 dated September 12, 2011

It was alleged that Mr. Guertin committed the following acts of professional misconduct:

1. Sexual abuse of a client, M.T.;
2. Contravening a Standard of Practice of the profession;
3. Engaging in disgraceful, dishonourable and unprofessional conduct; and
4. Engaging in conduct unbecoming a Registered Massage Therapist.

Further particulars of these allegations alleged that Mr. Guertin:

- a. On or about November 26, 2010 provided Massage Therapy treatments to M.T.;
- b. Prior to providing M.T. with the Massage Therapy treatment, advised him to fully disrobe;

- c. During the treatment of M.T., he told M.T. that he prefers to provide treatments to clients who fully disrobe because naked bodies are more attractive;
- d. Failed to employ proper draping to M.T.;
- e. Told M.T. that he likes to take his own shirt off when performing Massage Therapy; and
- f. Removed his shirt for the duration of the treatment.

Notice of Hearing #2 dated December 7, 2011

It was alleged that Mr. Guertin committed the following acts of professional misconduct:

- 1. Contravening a Standard of Practice of the profession;
- 2. Engaged in disgraceful, dishonourable and unprofessional conduct; and
- 3. Engaging in conduct unbecoming a Registered Massage Therapist.

Further particulars of these allegations alleged that Mr. Guertin:

- a. Admitted to a College Investigator that:
 - i. He does not use proper draping for males, and instead drapes male clients with a small hand towel; and
 - ii. He sometimes removes his own shirt during Massage Therapy treatments.
- b. Notations in client files confirmed that he sometimes employs “modified draping” by using a “towel.”
- c. Further particulars of the allegations of professional misconduct relied upon by the College are contained in the documentary disclosure and in the expert report(s) obtained by the College in support of the allegations raised in this Notice of Hearing.

At the commencement of the hearing, the College withdrew the sexual abuse allegations and proceeded with its case in relation to the remaining allegations of professional misconduct.

College’s Case

The College called three witnesses: two College investigators and an RMT qualified as an expert witness.

The College’s first investigator provided evidence on his role, and described his interactions with Mr. Guertin during the investigation.

The second witness, the other College investigator, was assigned to complete an undercover investigation. Here, he attended Mr. Guertin’s practice and received a Massage Therapy treatment. The investigator’s evidence related to the treatment he received from Mr. Guertin and his experience on the occasion.

The last witness called by the College was an RMT qualified as an expert witness to give an opinion on the applicable Standards of Practice as related to the Massage Therapy treatments provided to the complainant and to the College’s investigator. The evidence was based on the standards as they relate to draping, consent and treatment of sensitive areas.

Mr. Guertin's Case

Mr. Guertin was not represented by a lawyer throughout the proceedings. He called two witnesses and provided evidence on his own behalf.

Mr. Guertin's evidence related to his account of the Massage Therapy treatments he rendered to the complainant and the College investigator. He also provided evidence relating to his general practice regarding draping, consent and treatment of sensitive areas.

Mr. Guertin called two Massage Therapy clients to provide evidence on their treatment experiences with Mr. Guertin as related to draping, consent and treatment to sensitive areas.

The College and Mr. Guertin also filed a number of documents as exhibits and made written and verbal submissions to the Panel.

Findings of the Panel

The Panel considered all of the evidence in relation to each allegation. It made a finding for each allegation of professional misconduct, as follows:

Allegation: Contravening the Standards

(a) Draping

With respect to the draping, the Panel noted that Mr. Guertin, during his testimony, admitted to using modified draping by employing a hand towel for the complainant. With the College investigator, he offered a towel but did not use any draping during the course of his treatment. The Panel relied on the evidence of the expert who said that the use of a hand towel alone to drape clients would not allow for full coverage. He also noted that employing no drape for the College investigator would be a breach of the draping standards for the profession.

Accordingly, the Panel found Mr. Guertin failed to appropriately drape both the complainant and the College investigator.

(b) Consent

With respect to the consent issues, the Panel found Mr. Guertin failed to obtain and record consent, with both the complainant and the College investigator. A review of the client health records confirmed there was no consent recorded to treat nor was there any record of obtaining consent for Mr. Guertin to remove his own shirt during treatments.

Additionally, the College investigator testified that no consent was obtained to treat his gluteal and pectoralis regions, and that Mr. Guertin did not seek his consent to mount the Massage Therapy table during the treatment. The Panel considered the evidence of the expert regarding the generally accepted practice for Registered Massage Therapists to

obtain a client's consent and the clinic purpose of getting onto a Massage Table during treatment. The Panel accepted the evidence of the expert and found in the circumstances Mr. Guertin's conduct fell below the standards of the profession.

The Panel further considered Mr. Guertin's testimony stating that he does not request clients' consent in many instances. He said that this is because explaining a treatment and obtaining consent from a client takes too much time.

The Panel concluded that Mr. Guertin contravened the Standards of Practice of the profession.

(c) Treatment of Sensitive Areas

The Panel found the evidence from the College's investigator was credible. It therefore accepted as fact that Mr. Guertin engaged in the following:

- Used only a hand towel for draping, which meant that during the course of the treatment, the investigator's gluteal cleft was exposed while lying on his side during a Massage Therapy treatment;
- Pressed his hip against the investigator while the investigator was on his side facing Mr. Guertin without using a barrier;
- Touched the investigator's nipple several times during the treatment; and
- Removed his shirt during Massage Therapy treatment.

The Panel further considered the College's Position Statement "Treatment of Sensitive Areas," which provides guidance for registrants on how to obtain consent to treat as well as drape sensitive areas, such as the chest, breast tissue, inner thigh and the gluteal region. Additionally, the Panel considered Techniques Standard 15 "Perform Breast Massage."

In light of these facts, the Panel concluded that Mr. Guertin's conduct fell below the Standards of Practice of the profession in relation to this allegation.

Allegation: Engaging in Disgraceful, Dishonourable or Unprofessional Conduct

Mr. Guertin's failure to appropriately drape the complainant and the College undercover investigator seriously concerned the Panel. Mr. Guertin offering clients either a hand towel or no towel would put clients in quite a vulnerable position. The Panel found Mr. Guertin's conduct was deliberate and repeated such that, members of the profession would reasonably regard his conduct as disgraceful, dishonourable and unprofessional.

Allegation: Engaging in Conduct Unbecoming a Registered Massage Therapist

The Panel found Mr. Guertin's shirt removal during Massage Therapy treatments amounted to conduct that would be regarded as unbecoming a Registered Massage Therapist, despite Mr. Guertin's testimony that he does this because the room gets too hot and he receives consent from clients to do so. The Panel noted this conduct to be concerning, contrary to public interest and detrimental to the standing of the profession in the eyes of the public.

Given the Panel's findings in this case a penalty hearing is to be scheduled.