DISCIPLINE COMMITTEE
OF THE COLLEGE OF NURSES OF ONTARIO

PANEL:

Michael Hogard, RPN  Chairperson
Tanya Dion, RN  Member
Carly Gilchrist, RPN  Member
Mary MacMillan-Gilkinson  Public Member
Catherine Ward  Public Member

BETWEEN:

COLLEGE OF NURSES OF ONTARIO  EMILY LAWRENCE for
                                      College of Nurses of Ontario
                                      - and -
SANDRA JEAN JONES  NO REPRESENTATION for
Reg. No. 6910806  Sandra Jean Jones
                                      - and -
                                      LUISA RITACCA and
                                      JOHANNA BRADEN
                                      Independent Legal Counsel
                                      Heard: January 5, 6, 23 and 25, 2017

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) beginning on January 5, 2017 at the College of Nurses of Ontario (“the College”) at Toronto.

As Sandra Jean Jones (the “Member”) was not present, the hearing recessed for 15 minutes past the scheduled start time to allow time for the Member to appear. Upon reconvening the Panel noted that the Member was not in attendance and was not represented.

Counsel for the College provided the Panel with evidence that the Member had been sent the Notice of Hearing on September 6, 2016. The Panel was satisfied that the Member had received adequate notice of the time, date, place and nature of the hearing, and of the consequences of not attending the hearing. The Panel therefore proceeded with the hearing in the Member’s absence.
**Publication Ban**

At the outset of the hearing, the Panel made an Order banning the publication and broadcasting of the identity of the complainant referred to in the Discipline Hearing or any information that could disclose the complainant’s identity, including any reference to the complainant’s name contained in the allegations in the Notice of Hearing and in any exhibits filed with the Panel, pursuant to s. 45(3) and s. 47(1) of the *Health Professions Procedural Code* of the *Nursing Act*, 1991.

**The Allegations**

The allegations made against the Member are as follows.

1. You have committed an act of professional misconduct as provided by subsection 5(k) of the *Nurses Act* RSO 1970 c 30 and defined in subsection 19(2)(b) of *Regulation 621*, in that, while registered as a Registered Nurse, you were guilty of malpractice and in particular,

   (a) you disclosed personal information about yourself to your client, [the Client] during the course of the therapeutic nurse-client relationship, between in or about 1972 and October 1973;

   (b) you breached the therapeutic nurse-client boundaries by:
       (i) engaging in a personal relationship with [the Client] during the course of the therapeutic nurse-client relationship between in or about 1972 and October 1973 and/or after the termination of the therapeutic nurse-client relationship between in or about October 1973 and 1976;

       (ii) engaging in a sexual relationship with [the Client] during the course of the therapeutic nurse-client relationship between in or about 1972 and October 1973 and/or after the termination of the therapeutic nurse-client relationship between in or about October 1973 and 1976;

       (iii) engaging in a financial relationship with [the Client] during the course of the therapeutic nurse-client relationship between in or about 1972 and October 1973 and/or after the termination of the therapeutic nurse-client relationship between in or about October 1973 and 1976; and/or

       (iv) [withdrawn]

   (c) you asked [the Client] to conceal the nature of your personal relationship, during the course of the therapeutic nurse-client relationship between in or about 1972 and October 1973 and/or after the termination of the therapeutic nurse-client relationship between in or about October 1973 and 1976.

2. You have committed an act of professional misconduct as provided by subsection 5(k) of the *Nurses Act* RSO 1970 c 30 and defined in subsection 19(2)(e) of *Regulation 621*, in that, while registered as a Registered Nurse, you demonstrated by one or more negligent
acts or omissions that you are incompetent to practice as a registered nurse, and in particular,

(a) you disclosed personal information about yourself to [the Client] during the course of the therapeutic nurse-client relationship, between in or about 1972 and October 1973;

(b) you breached the therapeutic nurse-client boundaries by:
   (i) engaging in a personal relationship with [the Client] during the course of the therapeutic nurse-client relationship between in or about 1972 and October 1973 and/or after the termination of the therapeutic nurse-client relationship between in or about October 1973 and 1976;
   (ii) engaging in a sexual relationship with [the Client] during the course of the therapeutic nurse-client relationship between in or about 1972 and October 1973 and/or after the termination of the therapeutic nurse-client relationship between in or about October 1973 and 1976;
   (iii) engaging in a financial relationship with [the Client] during the course of the therapeutic nurse-client relationship between in or about 1972 and October 1973 and/or after the termination of the therapeutic nurse-client relationship between in or about October 1973 and 1976; and/or
   (iv) cohabitating with [the Client] during the course of the therapeutic nurse-client relationship between in or about 1972 and October 1973 and/or after the termination of the therapeutic nurse-client relationship between in or about October 1973 and 1976;

(c) you asked [the Client] to conceal the nature of your personal relationship, during the course of the therapeutic nurse-client relationship between in or about 1972 and October 1973 and/or after the termination of the therapeutic nurse-client relationship between in or about October 1973 and 1976.

3. You have committed an act of professional misconduct as provided by subsection 84(3)(c) of the Health Disciplines Act SO 1974 c 47 and defined in subsection 21(m) of O. Reg 578/75, in that, while registered as a Registered Nurse, you engaged in conduct or an act relevant to the performance of nursing services that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional, and in particular,

(a) you engaged in a personal, sexual and/or financial relationship with your former client [the Client] following after the termination of the therapeutic nurse-client relationship in or about October 1973 until in or about 1976.
Member’s Plea

Given that the Member was not present nor represented, she was deemed to have denied the allegations in the Notice of Hearing. The Hearing proceeded on the basis that the College bore the onus of proving the allegations in the Notice of Hearing against the Member.

Overview

The Member is a Registered Nurse. She has been registered with the College since 1969. The Member worked as a nurse at [the Clinic] in the fall of 1972 until she was terminated some time later. The exact date of her termination has not been established but the Member was likely still working at the Clinic in the late summer/early fall of 1974.

The Clinic was housed off-site in a church. It had a day program for approximately 15 clients who ranged in age from teenagers to seniors. The clients in attendance often had chronic mental health issues. The goal of the program was to provide them with the necessary life skills to successfully reintegrate back into society. The clients received both individual counselling and group therapy. They also participated in outings in the community.

[The Client] was 15 years old when [ ] was first admitted into the day program at the Clinic in 1972. [The Client] came from a large, chaotic & dysfunctional family. [The Client] was very troubled. [The Client] was incapable of attending school as a result of [ ] “adolescent anxiety”. [The Client] alleged that, while [ ] was receiving therapy at the Clinic, the Member initiated a personal and sexual relationship with [ ]. [The Client] alleged that the intimate relationship continued after [ ] was discharged from the Clinic and that it further developed into a financial relationship when they lived together. The College argued that this type of relationship breached the boundaries of the therapeutic nurse client relationship in existence at the relevant time.

The Panel acknowledges that this case is over 40 years old. Legislation has changed. Witnesses are unavailable or have died. Memories may have faded and consistency may be harder to achieve.

The issues are as follows:

1. What are the facts of the case? Are the witnesses credible and reliable? Considering the passage of time and allowing for some discrepancies, are their testimonies consistent regarding the core allegations?

2. Do the facts constitute professional misconduct as it was defined in the two different pieces of legislation at the time?

The Panel heard evidence from six witnesses and received 12 exhibits to consider. Even with the passage of time, [the Client] was clear, cogent and convincing when [ ] described [ ] troubled, poverty stricken family life and the escalating intimacy that developed between [ ] and the Member. Other witnesses testified what they personally saw, and heard from others about the unprofessional interactions and boundary violations between the Member and [the Client]. The Panel weighed the credibility and reliability of each witness and discarded any hearsay evidence. The Panel then reviewed the legislation at the time and determined that the Member committed professional misconduct and demonstrated she was incompetent under the Nurses Act RSO 1970, c. 30. The Panel also concluded that the Member engaged in professional misconduct, as provided by the Health
Disciplines Act  SO 1974, c. 47 in that she engaged in conduct relevant to the performance of nursing services that would be reasonably regarded by members as disgraceful, dishonourable and unprofessional.

The Legislation

The temporal scope of the allegations is in and about 1972 to 1977 or 1978. There were two relevant pieces of legislation at the time.

From 1970 until July 1974, the relevant law was the Nurses Act, RSO 1970, c. 30 (the “Nurses Act”). Subsection 5(k) of the Nurses Act provided that the Council established under the Nurses Act could make regulations relating to disciplinary powers. Subsection 19(2) of Regulation 621 under the Nurses Act provided that the discipline committee established under the Nurses Act could suspend or cancel the registration of a registered nurse if it was shown to the discipline committee’s satisfaction that the nurse had been guilty of malpractice, or had demonstrated by one or more negligent acts or omissions that she is incompetent to practice as a registered nurse.

In July of 1974, the Nurses Act was replaced with the Health Disciplines Act, SO 1974, c. 30 (the “Health Disciplines Act”). The Health Disciplines Act continued to give the discipline committee of the colleges established by the Health Disciplines Act the power to find a member guilty of professional misconduct “as defined in the regulations” (subsection 84(3)(c)). The regulation in respect of Nursing provided that “professional misconduct” included conduct or an act relevant to the performance of nursing services that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

The Evidence

Disclosure of Personal Information:

[The Client] was articulate, straightforward and convincing when [ ] testified about [ ] involvement with the Member. [The Client] was fair, thoughtful and balanced in [ ] recollections. [The Client] seemed to have excellent recall and presented as honest and sincere. [The Client] remembers the Member talking about her marriage and the health of her then-husband who was diabetic and losing his eyesight. [The Client] recalls the Member complaining about her own neck strain, discussing her brother who was missing and confessing that her husband had assaulted her. [The Client] testified that these disclosures by the Member made [ ] feel “special” and “chosen” as [ ] knew they were not occurring with the other clients. The disclosures also caused [ ] to worry about the Member because [ ] could not protect her from her husband. This sharing of confidential information also seemed “scary” to [the Client], who knew it shouldn’t be happening. [The Client] saw it as a “double-edged sword.”

The Panel accepted Dr. Ruth Gallop as an expert witness qualified in the standards of the profession with respect to therapeutic nurse client relationship boundaries both, as they existed in the 1970s and continue to exist to the present. Dr. Gallop was provided with a hypothetical set of facts upon which to base her objective and non-partisan opinions. She relied on her own personal experience, her knowledge of the standards of the time as well as various books and publications written in and about the 1970s by experts in the practice of mental health nursing. The Panel believes that Dr. Gallop’s experience as a nurse and an educator from the 1960s until today gives her a unique perspective on, and knowledge of, nursing standards over several decades.
Dr. Gallop testified that in the 1960s and 1970s, a nurse “did not disclose.” She said that it was a breach of the unwritten standards of the time for a nurse to confide in a client about her own personal issues. And, if a client asked a nurse a personal question, the exchange was noted and discussed with colleagues. An answer could only be given if it served a therapeutic purpose. If a nurse were to discuss her own personal matters, Dr. Gallop stated, it was a sign that the balance of the professional relationship was changing. It would cause Dr. Gallop to question whose needs were being met by that disclosure. Dr. Gallop acknowledged the standards in the 1970s were not as developed as they are now in the sense of being clearly reduced to writing and published by a regulatory body, but she testified that professional boundaries were discussed a great deal in the 1970s as the nurse’s role had expanded to one-on-one counselling with clients.

**Engaging in a Personal Relationship**

[The Client] was able to recall several specific instances when [ ] was at the Clinic and the Member treated [ ] more like a friend than a client. [The Client] testified that the Member asked [ ] to record books on tape for her husband. [The Client] recalled the Member sharing information about the other practitioners at the Clinic. [The Client] testified that in July 1973, the Member offered [ ] a loan of money so [the Client] could buy [ ] mother a birthday gift. [The Client] reported that the Member once gave [ ] a gift of a stone drenched in her perfume. The Member also gave [ ] Christmas presents. [The Client] recalled that the Member would compliment [ ] on [ ] hair and clothes.

Dr. Gallop testified that in the 1970s, it was prohibited to accept or give gifts unless they were shared with the unit. Dr. Gallop also stated that a nurse could be friendly, but could never befriend a client. Dr. Gallop stated that “needy clients often feel empty inside”. As a result, they may try to develop a relationship with their nurse. She strongly emphasized that it is always the responsibility of the nurse to maintain professional boundaries.

The Panel accepted the signed affidavit of [Witness A], Exhibit 4, into evidence. It stated that [Witness A] had worked as a head nurse with the Member at [the Clinic] while [the Client] was a client. It stated that she had been interviewed and videotaped under oath on September 23, 2016. The affidavit stated that, due to poor health, she would be unable to attend the hearing to testify in person. The Panel was made aware of the limitations of viewing her videotaped testimony in that there would be no cross-examination and that the Panel would be unable to ask her questions. The videotape would be hearsay evidence. College Counsel directed the Panel to an excerpt from Sopinka’s *The Law of Evidence in Canada*, Fourth Edition. The excerpt addresses that hearsay testimony can be admitted if it meets the criteria of necessity and reliability so that the integrity of the trial process is maintained. The College also relied upon the case of *R. v. Smith*, [1992] 2 S.C.R. 915, which stated that, once the criteria of necessity and reliability are satisfied, then the value of the evidence can be weighed by a “properly cautioned jury” (at p. 935). Finally, the College relied on the case of *R. v. B. (K.G.),* [1993] 1 S.C.R. 740, where the Supreme Court of Canada stated that the definition of necessity should be flexible and able to encompass diverse situations. The Panel weighed the limitations of the videotape but acknowledged its importance to the case. Admitting the videotape into evidence was judged by the Panel to be a fair, practical and efficient solution to the problem posed by [Witness A’s] health. It was viewed in its entirety.

On the videotape, [Witness A] confirmed that the Member was the staff member dedicated to supporting [the Client]. She acknowledged that the program provided group therapy. In addition, one-to-one counselling was provided to the clients behind closed doors. The staff also took day trips into the community. [Witness A] stated that the staff at the Clinic spent a lot of time discussing
professional boundaries as they recognized the challenges of working with clients on an outpatient basis. They talked about what was appropriate professional conduct and what was not. Although there might have been genuine signs of affection between a staff member and a client, there was no hug or touch therapy. [Witness A] testified that the staff was a close-knit team. They became concerned about the amount of time [the Client] was demanding of the Member. The Member and [the Client] were spending time together not just in the Clinic, but staff and other clients had reported seeing them together outside the Clinic as well. There was a concern among the staff that it was fostering dependency in [the Client]. When the Member was approached with these concerns, she was reportedly “defensive”. Eventually the Member was terminated as a result of these professional boundary violations. [Witness A] remembered that there were some staff members who were questioning whether there was a romantic relationship between the Member and [the Client]. [Witness A] felt that there was nothing to substantiate this. [Witness A] recalled that both the Member and [The Client] left the Clinic around the same time. She believed that [the Client] stopped showing up and was discharged.

The Panel found that [Witness A] was articulate and thoughtful in her responses. [Witness A] spoke in a reserved, serious, straight-forward manner. The Panel believed that [Witness A’s] recall was accurate. Her testimony was internally consistent and her recall of the workings of the Clinic corresponded in many ways with [the Client’s] testimony.

[Witness B] is a psychiatrist who is currently in private practice. She testified that she worked at the Clinic in 1973 when the Member worked there and when [the Client] was a client. She stated that she remembered the Member reasonably well and recalled that [the Client] was in the day program. She did not recall anything about [the Client’s] participation in the program. She does recall that the Member had a problem with one of the patients and that “it was messy”. She testified that the relationship was obviously too close but she could not recall the particulars. She recalled that the Member was asked to leave some time after Dec. 31, 1973.

The Panel felt that [Witness B] was able to establish some of the dates when both the Member and [the Client] were at the Clinic together. Her memory, however, of a “messy” relationship regarding the Member was not precise. [Witness B] did not describe what constituted “messy” nor did she recall whom it was with. The Panel was concerned that this aspect of her testimony relied significantly on hearsay evidence.

Engaging in a Sexual Relationship

[The Client] testified that in the early summer of 1973, during a private one-on-one session, the Member asked [ ] if she could hold [ ]. According to [the Client], they stood and embraced for around 5 minutes. To [the Client] it seemed uncomfortably long. Over time, the embraces lasted longer. Instead of standing, they transitioned to sitting on the floor face-to-face. [The Client] would have [ ] back to the door to prevent anyone finding them. The Member reportedly said that it would be very bad for her if they were discovered. [The Client] testified that the Member would be positioned between her legs with her face, at times, buried in [the Client’s] neck and body. There were no therapeutic discussions. There was mostly silence. [The Client] testified that [ ] wanted approval and acceptance but that [ ] knew that this was wrong.

During the summer of 1973 and continuing into the winter of 1974, the sexual acts between the Member and [the Client] progressed from hugging to kissing, to sexual touching, masturbation and oral sex. The locations of these acts included the Clinic, [the Client’s] grandfather’s house and the
Member’s car. [The Client] stated that [ ] and the Member wrote graphic, sexual, fantastical letters to each other and exchanged them when they met at the Clinic. Once they started to have sex in the Clinic, it occurred frequently. No therapy was being conducted. [The Client] testified that the Member told [ ] that [ ] was just what she needed.

[Witness C’s] testimony confirmed that [the Client] and the Member were “lovers”. [Witness C] is a lawyer. She first met [the Client] when [ ] was a camper at [the Camp] in or around 1968/1969. She recalls that [the Client] was a challenging camper as [ ] had difficulty following rules and respecting [ ] roommates. They maintained sporadic contact after [the Client] was in camp. [Witness C] stated that she met with both the Member and [the Client] sometime in the early 1970s. She could not remember the exact year or the specific location but believes that it was prior to 1975, as she was still in law school at the time. She thinks that [the Client] had contacted her because [ ] knew she was heading for a career in law. She believes that [the Client] was worried about potential problems for the Member as a result of their relationship. [Witness C] testified that she saw the physical affection between the two of them and testified that she was “appalled” and felt “powerless”. She knew that [the Client] was very influenced by the Member and was committed to the relationship. She felt the relationship was “grossly inappropriate” as she could see that the Member had over-stepped her role as a health care professional by engaging in a sexual relationship with a very fragile individual. Although [Witness C’s] testimony was vague concerning some dates and locations, she spoke clearly and confidently when she described the physical affection that she saw between the Member and [the Client]. She had no difficulty recalling the emotions she felt when she recognized the inequity in the relationship.

Dr. Gallop testified that any type of sexual touching of a client by a member of the profession is an abuse of power, whether occurring in the 1970s or today. It is a breach of the standards on many different levels, and was so at the time. Actions such as these, she testified, are putting the nurse’s interests ahead of the client’s. Dr. Gallop acknowledged that a hug between a nurse and client might happen once but not repeatedly because, at that point, it has no value as an intervention. She testified that “hug therapy” does not exist, as there is no protocol for it. Hug therapy, she stated, is not just discouraged, it is forbidden. This standard was in effect throughout the 1970s.

Concealing a Personal Relationship

In May 1974, [the Client] testified that [ ] and the Member visited the Member’s home for the purpose of “having sex in a bed.” The Member’s husband returned home unexpectedly; the Member turned off the lights and pushed him out the bedroom door. The Member reportedly told her husband that [the Client] had come over to have dinner. The Member then told her husband that [the Client] was so embarrassed when he came in, that [ ] hid. The Member’s husband reportedly told [the Client] “Don’t be so silly.”

In the summer of 1974, [the Client] testified that [ ] and the Member went away for a week and travelled to various locations in Ontario. They went camping, canoeing, stayed at cottages and visited the Member’s friends. The purpose was to get away from [ ] so they would not have to be so secretive about their relationship. When they visited the Member’s friends, [the Client] testified that [ ] would take [ ] cue from the Member as to how [ ] was to present [ ] and their relationship. [The Client] testified that while visiting the Member’s friends in London, [the Client] became inconsolable. [The Client] heard the Member say to her friends that she was providing direct service to [the Client] and acting in the role of a big sister. The Member then relayed to the group information about [the Client’s] family that was both accurate and embellished. It caused [the
Client] so much humiliation and distress that [ ] became extremely distressed and they had to leave. Upon their return to the city, [the Client] was unable to stabilize and regain [ ] composure. As a result, [ ] needed to be hospitalized in a psychiatric unit for approximately two weeks.

Dr. Gallop testified that in the 1970s, nurses could not have any secrets or special relationships with clients. There was an “absolute boundary”.

[The Client] testified that, once [ ] was discharged from the hospital, the Member told [ ] that [ ] would have to leave the Clinic. The Member said they were going to kick [ ] out and that staying would get the Member in trouble. The Member said that [the Client] would have to get a place of [ ] own and go to school. [The Client] then made an appointment at [ ], was accepted and started school full time in September 1974.

On Labour Day weekend in 1974, [the Client] and the Member rented a basement apartment in [ ] together. [The Client] paid for it with the money that [ ] received from student welfare. Although the Member still spent some of her time with her husband, [the Client] felt that [ ] and the Member were “living like a partnered couple.” However, they could not tell anyone. [The Client] told her family that [ ] and the Member were “just friends”. They didn’t socialize very much as they had to keep their relationship a secret. When the Clinic had a celebration a few months later, [the Client] had to pretend that [ ] had not seen the Member in a while.

Dr. Gallop testified that it is potentially very harmful for a client to be living with her professional caregiver so shortly after being discharged from therapy. She stated that many mental health concerns are chronic in nature. If a client were to relapse, she might not be permitted to return to the previous therapeutic setting due to the relationship. This would put undue hardship on the client.

Engaging in a Financial Relationship

[The Client] testified that in the spring of 1975, the Member’s marriage broke up and she and her husband separated. [The Client] and the Member then rented another apartment on [ ]. They continued to keep the previous basement apartment and used it as a way to hide the fact they were living together, now full-time in the new apartment. This was an effort to maintain the secrecy of the relationship. They did not want it to appear as if they had the same address. [The Client] stated that [ ] continued to pay for the rent on the two apartments as the Member’s money was being given to her husband. [The Client] used [ ] student welfare grant and loans to pay for them. [ ] also taught guitar for additional income.

Exhibit 5 includes grainy photos that show the Member involved in various activities during the time that they lived together. Exhibit 6 confirms that [the Client] lived on [ ] in May 1976. Exhibit 7 is [the Client’s] OMERS insurance policy that lists the Member as [ ] beneficiary. [The Client] testified that [ ] made the Member [ ] beneficiary in 1977.

[The Client] recalled that the Member was fired from her job at the clinic in 1976. The Member had periods of employment when [the Client] testified that [ ] supported both of them. The Member reportedly blamed [the Client] for the fact that she was terminated from her job. She said that people had complained about their relationship.
The End of the Relationship

[The Client] testified that [ ] believes that their relationship ended in 1977 or 1978. This was as a result of the Member’s involvement in another relationship.

Final Submissions

College Counsel reminded the Panel that we are to determine whether the Member committed acts of professional misconduct on the basis of the balance of probabilities. That is, is it more likely than not that the allegations are true. The Member elected not to participate in the hearing and is deemed to have denied the allegations. The Member did not provide a defence or test the evidence. The Panel, however, still needs to assess the quality of the evidence and determine whether it is sufficiently clear, cogent and convincing to meet the standard of proof. The Panel also needs to assess and the credibility and reliability of each witness.

The passage of time plays a role in this case as the incidents that were alleged occurred approximately 40 years ago. College Counsel referred the Panel to the decision of R. v. J.B., [1997] O.J. No. 627 (OCJGD), which acknowledged that it is appropriate for a jury to review all evidence in the context of the lengthy period of time since the incidents were alleged to have happened. Some mistakes and memory lapses are to be expected. In the case of R. v. C. (T.), [2005] O.J. No. 24 (C.A.), where the trial occurred approximately 25 years after the allegations occurred, the Court of Appeal wrote that, “the trial judge was entitled to view dates and times and frequency of occurrences as minor details that one would not expect complainants to remember accurately”. College Counsel submitted that evidence should not be discredited if it is not deemed to be perfect.

College Counsel submitted that [the Client] was a key witness. Although there might have been some discrepancies with other witnesses regarding dates, [the Client] was able to be clear and convincing when [ ] described the nature of the relationship with the Member, how it developed and how it ended. [ ] testimony was internally consistent. College Counsel submitted that it was not surprising that [ ] had such a clear memory of [ ] first romantic and sexual relationship. [The Client] brought forward these allegations because [ ] wanted emotional closure for [ ], [ ] chose the College as the forum for addressing the Member’s conduct. It was in the Member’s role as a nurse that the alleged conduct took place. College Counsel submitted that it is appropriate for the public to pursue these types of allegations with the College.

Both [Witness A] and Dr. Gallop testified that nurses, at that time, often discussed the challenges and importance of maintaining professional boundaries. [Witness A] admitted that the relationship between [the Client] and the Member was perceived as co-dependent and overly close. Ultimately, [Witness A] recalled that the Member was terminated because of their relationship.

College Counsel submitted that there was external consistency between the evidence from [Witness A], [Witness C] and [Witness B]. They independently acknowledged that the relationship between the Member and [the Client] was deemed by people to be contrary to the unwritten standards of practice of the time.

College Counsel reviewed that the first two allegations are under the Nurses Act. Consistent with the regulations in effect at the time, Allegation 1 refers to the professional misconduct as malpractice. Allegation 2 refers to the professional misconduct as incompetence resulting from negligent acts or acts of omissions. Cases reported from the relevant time period are scant, but show that
“malpractice” could include unethical acts. College Counsel also submitted that the definition of “incompetence” was broad enough to include conduct that deviated substantially from the professional standards of the day. College Counsel submitted that Dr. Gallop is uniquely situated to give an expert opinion and address that question. She has had personal experience nursing in the 1960s and 1970s and has educated nurses on the standards of practice for her whole career. Dr. Gallop stated that even in the 1960s and 1970s, the Member’s conduct would be deemed wholly inappropriate. Given Dr. Gallop’s statement, College Counsel stated that the Member’s conduct should be considered to be examples of malpractice and incompetence.

The Nurses Act was replaced on July 1st, 1974 by the Health Disciplines Act. Allegation 3(a) alleges that the Member committed professional misconduct under the Health Disciplines Act by engaging in conduct relevant to nursing practice that would reasonably be regarded by members as disgraceful, dishonourable and unprofessional. This is a form of professional misconduct that has remained more or less intact through to the present day. This form of misconduct is meant to reflect societal norms, and those norms that are relevant to this case have not changed in the last 40 years. College Counsel emphasized that the Member engaged in a sexual and financial relationship immediately after the therapeutic relationship ended. The Member and [the Client] co-habited together in [ ] and on [ ]. Dr. Gallop believes these to be examples of disgraceful, dishonourable and unprofessional behaviour.

As to the precise allegations in the Notice of Hearing, College Counsel recognized that there may be some discrepancies in the dates. College Counsel submitted that the allegations themselves include some flexibility as they include the words “in or about”. College Counsel acknowledged, however, that based on the evidence, the Panel would not be able to find that there was co-habitation during the time that the Nurses Act was in place. College Counsel asked the Panel to dismiss allegations 1(b) (iv) and 2 (b)(iv), but to make findings on all other allegations.

Decision

Having considered the evidence and the onus and standard of proof, the Panel finds that the Member committed acts of professional misconduct as alleged in paragraphs 1(a); 1(b)(i), (ii), (iii); 1(c); 2 (a), 2(b) (i) (ii) (iii); 2(c) and 3(a) of the Notice of Hearing. In particular, the Member displayed incompetence and engaged in malpractice under the Nurses Act, and engaged in conduct that would reasonably be regarded by members of the profession as disgraceful, dishonourable and unprofessional under the Health Disciplines Act.

As to allegations 1 (b)(iv) and 2 (b)(iv), the evidence at the hearing was that co-habitation did not occur until after the Nurses Act had been repealed. Accordingly, the Panel dismisses those allegations.

Reasons for Decision

This was a case that occurred over 40 years ago. In order to come to a decision, the Panel reviewed the Nurses Act and the Health Disciplines Act. The definitions of professional misconduct relating to malpractice and incompetence were quite broad at that time. The Panel reviewed some of the decisions of the day that showed suspensions due to theft, inappropriate documentation, mishandling of monies and misuse of alcohol. Given these examples, the Panel believed that the personal, sexual and financial violations of the Member would definitely have deviated from the standards of the time and constituted both malpractice and incompetence. The Panel also relied on the expert testimony of Dr. Gallop to describe the unwritten professional standards of the late 1960s and early 1970s. The
Panel accepted Dr. Gallop’s testimony that the Member’s conduct was a serious breach of any professional standard at the time or in existence now.

The Panel listened closely to the testimony of [the Client] and evaluated [ ] credibility. The Panel found that [the Client] testified in a detailed, convincing and credible manner. There might have been some minor inconsistencies regarding dates but the central allegations of professional boundary violations were described clearly and cogently. [The Client] has worked in social services for many years helping marginalized [ ] achieve their goals. As a result, [ ] had the vocabulary and the confidence to effectively describe what happened to [ ] as a young, troubled and vulnerable client. [ ] vividly described [ ] conflicted feelings as [ ] interaction with the Member transitioned from a professional relationship into a complex personal, sexual and financial relationship.

[The Client] described how [ ] felt special and needed. The Panel believes the emotional costs of this relationship with the Member were very high. The Panel finds the relationship with the Member put extra burdens on [the Client], which exacerbated [ ] already unstable life. At such a young age, [the Client] was made to feel responsible for hiding their relationship and ensuring that the Member kept her job. Later, [the Client] had to bear the responsibility, both personal and financial, for causing the Member to be unemployed. [The Client] was able to provide the Panel with photographs that showed the Member’s participation in family events when they lived together. [The Client] provided the Panel with [ ] OMERS insurance policy, which listed the Member as [ ] sole beneficiary. This demonstrated to the Panel the close relationship that [ ] had with the Member post-discharge from the clinic.

The Panel determined the credibility of the other witnesses and then determined whether they were able to confirm or deny [the Client’s] narrative and allegations. Although [Witness A] did not believe there was any sexual impropriety occurring between the Member and [the Client], she recognized that the Member’s relationship with [the Client] was not therapeutic. Ultimately, the Member was fired because of her professional boundary violations. [Witness B’s] testimony was vague and constituted hearsay when she described what she had heard from her colleagues regarding a “messy relationship” between the Member and one of her patients. [Witness B’s] testimony did, however, confirm some of the dates when the both the Member and [the Client] were together at the clinic. [Witness C’s] testimony was important because it confirmed [the Client’s] allegations that the relationship between [ ] and the Member was personal and sexual. She was convincing when she described her outrage at what she personally saw and recognized as a violation of professional standards and an abuse of power.

The Member chose not to attend. As a result, she did not provide the Panel with a competing narrative that would address the allegations or provide any additional mitigating factors. The Panel did not receive any evidence from any witnesses that contradicted the core allegations of [the Client]. The Member was not in attendance to refute, nor was there any evidence that negated, [the Client’s] allegation that [ ] paid for their apartments out of [ ] student welfare funds.

The Panel concluded that the Member’s conduct was unprofessional in that she showed a serious and persistent disregard for her professional obligations when she shared personal and private information with a client. Her conduct was dishonourable when she used deceit to hide her relationship with [the Client] from her colleagues, family and friends. The Member also demonstrated dishonesty when she encouraged [the Client] to leave the Clinic. This was self-serving as it was to prevent their relationship from being exposed and compromising her job at the clinic.
The Member’s actions were disgraceful in that she targeted a young, needy, fragile and troubled teenager and used [ ] to satisfy her own personal, financial and sexual needs.

**Penalty Submissions**

The College requested that the Panel make an order as follows:

1. Requiring the Executive Director to immediately revoke the Member’s Certificate of Registration.

2. Requiring the Member to appear before the Panel to be reprimanded within three months of the date that this Order becomes final.

College Counsel stated that the conduct of the Member was egregious and disconcerting. As such, College Counsel submitted that it warrants the most severe penalty. In spite of the passage of time, it is important to maintain trust and public confidence in the nursing profession. The penalty sends a strong message to the public, the profession and the brave complainant that this type of behaviour is incompatible with the profession. It will not be tolerated. The proposed penalty would fulfill the mandate of public protection as well as both general and specific deterrence. The Member’s decision not to participate demonstrates that she cannot be remediated and that she is unwilling to be held accountable for her actions. A reprimand will provide the Panel with an opportunity to speak to her directly. This will help her to understand and accept the devastating consequences of her conduct, which occurred over 40 years ago. The reprimand will begin to address the rehabilitation aspect of penalty.

College Counsel submitted that the College considered both mitigating and aggravating factors were considered. It is noteworthy that the allegations in this Notice of Hearing are the only complaints that have been raised about the Member in her long career. However, the aggravating factors are numerous. The Member’s conduct was an extreme breach of trust and an abuse of power. Her actions were deliberate and deceptive. They showed a serious disregard for her professional obligations.

College Counsel referred the Panel to *CPSO v. Ruggiero* 2017 ONCPSD 1 (CanLII), a decision of the Discipline Committee of the College of Physicians and Surgeons of Ontario. This was a case where the allegations dated from the 1980s and the hearing occurred in 2016. It involved a doctor having non-consensual sex with a girl in her late teens. The patient, like [the Client], did not raise the issue for many years. In the decision, the concept of proportionality was raised. It stated that the “the most severe penalties should be imposed for the most serious transgressions.” The case also referred to the Ontario Court of Appeal’s decision in *R. v. J.R.* 2003 CanLII 57443 (ON CA), where the Court stated, “the passage of time does not diminish the need for a denunciatory sentence given the seriousness of these crimes.” College Counsel submitted she would substitute the term “deterrent” for “denunciatory sentence”.

College Counsel also provided the Panel with the decision of *CNO v. Albert Kwan* (Discipline Committee, October 2015). This case related to a nurse who became involved with a client post discharge. He moved in with his former client. He initiated a personal, romantic, sexual and financial relationship with her. His penalty (which in that case was a joint submission) included a reprimand, and revocation of his certificate of registration. He was also required to reimburse the
College for funding up to $5,000 provided for the client under the program required by s. 85.7 of the Health Professions Procedural Code, if the client were to access the fund. Although this case is under different legislation, it demonstrates the serious consequences of a nurse having a post-discharge relationship with a client.

Penalty Decision

1. The Executive Director is directed to immediately revoke the Member’s Certification of Registration.

2. The Member is required to appear before the Panel to be reprimanded within three months of the date that this Order becomes final.

3. The Member is required to pay a fine in the amount of $5,000.00 to the Minister of Finance.

Reasons for Penalty Decision

The Panel deliberated on College Counsel’s submissions. The Panel acknowledged that revocation and the required reprimand will protect the public and enhance public confidence in the ability of the College to regulate nurses.

The Panel, however, concluded that an additional order was necessary. [The Client’s] life has been impacted in many ways over many years because of [ ] abuse at the hands of the Member. [The Client’s] interactions with [ ] partner, [ ] trust in others and [ ] belief in [ ] have been continually and detrimentally affected because of the Member’s actions. At the same time, the Member has been able to move on with her life and continue working as an RN. [The Client] testified that when they lived together and leased the apartment in [ ], [the Client] was supporting them both with [ ] student welfare. It was clear to the Panel that there was a financial benefit to the Member as a result of her misuse of power. The fine of $5,000.00 is compatible with the penalties allowed under subsection 5(e) of the Health Disciplines Act.

The fact that the Member did not appear means there is no evidence of remorse or capacity for remediation. She was not present to contradict any evidence or testimony. The Panel wants to send a strong message that the Member’s acts were a profound misuse of power, including but not limited to sexual abuse and financial abuse. The Member’s conduct was egregious and deplorable. This type of behaviour is incompatible with the profession. It will not be tolerated.
I, Michael Hogard, RPN, sign this decision and reasons for the decision as Chairperson of this Discipline Panel and on behalf of the members of the Discipline Panel as listed below:


Names of Panel Members
Tanya Dion, RN
Carly Gilchrist, RPN
Mary MacMillan-Gilkinson, Public Member
Catherine Ward, Public Member