

**COMPLAINTS COMMITTEE OF THE
ONTARIO COLLEGE OF SOCIAL WORKERS
AND SOCIAL SERVICE WORKERS**

In the matter of a complaint made under section 24 of the
Social Work and Social Service Work Act, 1998

BETWEEN:

Naomi Jacobs

Complainant

- and -

David Starkman, RSSW

Reg. No. 837523

Registrant

PANEL MEMBERS PRESENT:

Sue-Ellen Merritt, RSSW, Chair

Carrie McEachran, Public Member

Alexia Polillo, Public Member

Marinna Read, RSW

Beatrice Traub-Werner, RSW

DECISION AND REASONS

On March 28, 2022, the College received a complaint about David Starkman, RSSW (“the Registrant” or “the Member”¹) from Naomi Jacobs (“the Complainant”). The Complaints Committee considered and investigated the complaint, and examined all the information and documents it has that are relevant to the complaint.

The Complaints Committee’s role is to decide if the matters complained about should be referred to a hearing before the College’s Discipline Committee or Fitness to Practise Committee, or if some other action should be taken.

When carrying out its role, the Complaints Committee considers complaints in view of the definitions of professional misconduct, incompetence and incapacity in the *Social Work and Social Service Work Act, 1998*, the *Professional Misconduct Regulation* O. Reg. 384/00 and the *Code of Ethics and Standards of Practice Handbook, Second Edition – 2008*.

¹ The terms “Registrant” and “Member” have the same meaning and can be used interchangeably.

DECISION

The Committee will not refer any of the matters complained about to the College's Discipline Committee for adjudication. However, we have several concerns about the Registrant's practice and provide advice to assist him.

BACKGROUND

At the relevant time, the Registrant operated a private counselling practice under the name Supportive Counselling Services in Thornhill, Ontario.

The Complainant and her former spouse, Josiah Evans, are separated. They have a daughter, Ariella, who was approximately eight years old at the time that is relevant to this complaint.

In March 2022, the Registrant provided a counselling session to the Complainant, and a joint session to the Complainant and Mr. Evans.

The Complainant was not satisfied with the Registrant's behaviour during sessions and after sessions, which she describes as critical and unsupportive of her.

The Registrant appears to have terminated services to her after the individual and joint sessions, but continued to see Mr. Evans.

COMPLAINT

Allegation # 1

The Complainant alleges that the Member displayed unprofessional conduct and communication in his interactions with the Complainant, as follows:

- a) The Member told and/or texted the Complainant that she was "disgusting" and "argumentative" and to "stop playing the victim."
- b) The Member texted the Complainant that he would continue to see her partner because he was "a pleasure to deal with."
- c) The Member threatened the Complainant and told her he would call the police if she did not delete a negative post/review of him from a Facebook page.

Registrant's Response

The Registrant submitted the following in response to this allegation:

Re 1. a)

At no point did I ever say that Ms. Jacobs was disgusting. Please see our text message correspondence. Ms. Jacobs assumes what people say and continuously gets things incorrect. She also wrote and said that she has difficulties understanding things and gets things wrong. Ms. Jacobs also said that that she was diagnosed with learning disabilities and gets easily frustrated. Please also see our text correspondence on why I said she was acting argumentative and to stop playing victim (please see our text correspondence that proves this).

Re 1. b)

Ms. Jacobs was very inconsiderate, rude and expected sessions to be free for her. She called and sent me text messages all hours of the night. She constantly changed her mind about literally everything and attempted to pick arguments with me. What I told Ms. Jacobs was... "I wanted to help you, but you wouldn't let me. Josiah has been very respectful towards me, doesn't me contact me all hours of the night, he doesn't constantly change his mind on how to proceed and doesn't accuse me of siding with anyone. I will gladly continue to work with him because he is a pleasure to deal with".

Re 1. c)

They were not negative post/reviews. They were outright illegal lies that are slander and deformation of character according to the police/law. Ms. Jacobs also had complete strangers including her friends (that I have never met or even spoken to) pose as clients of mine and post false reviews about me. I simply asked Ms. Jacobs to stop making up and encouraging strangers to post false and harmful things about me. I explained to her that this was illegal and why; and if it didn't stop, I would have to report her to protect myself against this illegal activity.

Decision and Reasons

The Committee will not refer any of these matters to a hearing before the College's Discipline Committee. However, we have concerns about the Registrant's manner of communication with the Complainant and provide advice to guide his practice.

Re 1. a)

According to the record the Complainant provided of her text message exchange with the Registrant on or about March 24, 2022, the Complainant wrote "u seem to be siding with Josiah saying that it's disgusting for me not to allow Ariella to go somewhere where I'm disliked and not allowed." The Committee did not find evidence that the Registrant described the Complainant, or her behaviour, as disgusting, and, when interviewed, Mr. Evans did not support that the Registrant did so. Accordingly, the Committee does not believe this allegation could be proven.

However, the same text message exchange, which occurred well outside normal professional hours, indicates that the Registrant's messages included the statements "Stop playing the victim"

and “See how argumentative you are!” In the Committee’s opinion, these statements are representative of a casual, disrespectful, and unprofessional style of communication with the Complainant. We believe such communications could potentially be considered a failure to “establish and maintain clear and appropriate professional boundaries in professional relationships,” as required by Interpretation 2.2 of Principle II and a failure to avoid “conduct which could reasonably be perceived as reflecting negatively on the professions of social work or social service work” contrary to Interpretation 2.2.8 of Principle II.

Re 1. b)

The Committee does not believe that telling the Complainant that he would continue to see her partner because he was “a pleasure to deal with” as alleged in 1. b) could be considered professional misconduct.

Re 1. c)

On March 25, 2024, the Registrant sent the following text message to the Complainant:

It has been brought to my attention that you are on Facebook trying to get others to leave me bad reviews. If this doesn’t stop here and now and you make things right, I will be contacting police regarding this.

The Committee is not aware of any provision in the *Professional Misconduct Regulation*, the *Code of Ethics* or the *Standards of Practice* that would prohibit registrants from commencing a civil action against a former client for defamation. However, we believe that threatening to report the Complainant to the police if she did not “stop trying to get others to leave [him] bad reviews” could potentially be considered professional misconduct. The relevant Standard of Practice is Principle II (Competence and Integrity), which requires members “to avoid conduct which could reasonably be perceived as reflecting negatively on the professions of social work or social service work [Interpretation 2.2.8].” Based on our understanding that the primary concerns of the police are the commission of criminal and provincial offences, the Registrant’s threat to involve the police in a relatively minor civil dispute appears extreme and unprofessional.

We do not believe the issues addressed in allegations a) and c) are so serious as to require referral to a hearing before the College’s Discipline Committee. This is particularly so since there have been no prior complaints or reports made to the College about similar behaviour by the Registrant. However, we believe the Registrant should be given an opportunity to refine his practice and provide advice to assist him starting on page 19.

Allegation # 2

The Complainant alleges that the Member inappropriately terminated their counselling in that he did not provide a referral to another counsellor.

Registrant's Response

The Registrant submitted the following in response to this allegation:

I did not inappropriately terminate our counselling and did not need to provide a referral to another counsellor or something similar, as Ms. Jacobs found me and hired me without the need of a referral.

Decision and Reasons

The Committee will not refer this matter to the College's Discipline Committee. However, we have concerns about the Registrant's understanding of his professional obligations regarding termination of services and provide advice to guide his practice.

The Registrant appears to admit that he did not provide the Complainant with referrals after he terminated services to her. His explanation is that he was not required to do so given that the Complainant found and hired him without a referral. The Committee believes the Registrant's admitted behaviour could be considered professional misconduct and suggests a troubling ignorance of his professional obligations under the Standards of Practice.

When registrants decide to terminate services to clients, Principle III, Responsibility to Clients, requires that "reasonable efforts are made to arrange alternative or replacement services" or "the client is given a reasonable opportunity to arrange alternative or replacement services [Interpretation 3.9]."² The only exception is in cases where "continuing to provide the services would place the member at serious risk of harm," which does not appear to be the case here. In the Committee's opinion, providing the Complainant with a referral for alternative services would have been a minimal way of meeting those obligations and the failure to do so would likely be considered a breach of Principle III if this matter were considered by the Discipline Committee.

The Committee would have expected that, in his response to the regulator of his profession about this matter, the Registrant would have demonstrated his awareness of his professional obligations under Principle III. The fact that he did not do so raises the troubling possibility that he is unaware of those obligations, and possibly of the other professional obligations set out in the

² 3.9 College members terminate professional services to clients when such services are no longer required or requested. It is professional misconduct to discontinue professional services that are needed unless:

- i) the client requests the discontinuation,
- ii) the client withdraws from the service,
- iii) reasonable efforts are made to arrange alternative or replacement services,
- iv) the client is given a reasonable opportunity to arrange alternative or replacement services, or
- v) continuing to provide the services would place the member at serious risk of harm,

and in the circumstances described in subparagraph i, ii, iii, or iv, the member makes reasonable efforts to hold a termination session with the client.

Standards of Practice. This is despite the fact that registrants are required to confirm that they have reviewed the *Code of Ethics* and *Standards of Practice* annually to renew their registration.

Since there is no evidence the Complainant was seriously harmed by the Registrant's behaviour and there have been no prior complaints or reports made to the College about similar behaviour on the part of the Registrant, we will not refer this matter to the College's Discipline Committee. Instead, to assist the Registrant to refine his practice we provide the advice starting on page 19.

Allegation # 3

The Complainant alleges that the Member failed to discuss or provide documentation in relation to the terms of service (service agreement), and limits of confidentiality and failed to give her invoices or receipts.

Registrant's Response

The Registrant submitted the following in response to this allegation:

That is completely untrue. I most definitely did provide Ms. Jacobs with a full service agreement which she also signed on March 17, 2022 (please see and view our service agreement). I also provided Ms. Jacobs with receipts for all of her sessions (please see and review the receipts that I provided Ms. Jacobs with). I originally informed Ms. Jacobs that the session was \$150 plus tax but she only sent \$150 (and did not include extra for the taxes). I asked Ms. Jacobs to please send me the difference, but she refused. I even asked her to pay the taxes and then I would provide her with a receipt, but she still refused. I ended up not only providing Ms. Jacobs with the receipt, but also having to paying the difference.

Decision and Reasons

The Committee does not believe this allegation could be proven and will take no further action.

The Committee is unaware of any requirement in the *Code of Ethics*, *Standards of Practice*, or the *Professional Misconduct Regulation* for registrants to provide clients with a written service agreement. Nevertheless, the Registrant provided a copy of his Informed Consent & Confidentiality Agreement for the Provision of Online Counselling (or service agreement) that the Complainant appears to have signed on March 17, 2022. This document describes limits to the Complainant's confidentiality, including where he suspects child abuse or neglect or is required to comply with a court order.

Principle VI, Fees, of the Standards of Practice requires that registrants "explain in advance or at the outset of a service the basis for all charges, giving a reasonable estimate of projected fees and disbursements, pointing out any uncertainties, so that clients may make informed decisions with regard to using a member's services [Interpretation 6.1.1]." However, the Complainant appears to acknowledge that the Registrant disclosed his hourly fee at the outset of services.

The Committee accepts that failing to provide a client with receipts when requested to do so could potentially be considered a breach of Principle III, Responsibility to Clients, which requires registrants to “deliver clients services, and respond to client queries ... in a timely and reasonable manner [Interpretation 3.2].” However, given that the Committee was provided with copies of receipts made out to the Complainant for the sessions on March 19 and 21, 2022, the Committee does not believe this allegation could be proven.

Allegation # 4

The Complainant alleges that the Registrant wrote a letter dated July 5, 2023, which contained the Complainant’s personal information as discussed in counseling sessions without obtaining her consent to release. The letter was provided to the Complainant’s ex-partner to be used in court. The personal information in the letter includes, but is not limited to, information about the Complainant’s health and health history, diagnoses, medications, treatment and/or care providers, personal relationships and personal conduct.

Registrant’s Response

The Registrant submitted the following in response to this allegation:

I was asked by the courts to provide this information so I did because I simply had to. Failure of me not doing so would have been an offence and I could have gotten into serious trouble. I also have a specific detailed clause in my agreement that states I may have to provide all patient/client information if asked to for legal purposes. Also, please read the clause in my consent and confidentiality agreement that Ms. Jacobs signed. It specifically states, “By signing this agreement, you agree that we have the right to share this information should we be asked to and are required to for legal purposes”.

...

The court ordered me to provide this information.

The Registrant asked the investigator to note the following:

- Jeff Hart, Mr. Evan's lawyer, demanded that he provide a letter regarding the counselling sessions. The Registrant indicates that it wasn't a request, it was a must – that he had to provide it.
- Mr. Hart said it was “a must” by the courts, and the Complainant’s lawyer was also expecting it.
- The Registrant cannot recall if he was provided a court order or formal documentation.

Decision and Reasons

The Committee will not refer this matter to the Discipline Committee. However, we have significant concerns about the Registrant's understanding of his obligations to maintain client confidentiality and provide advice to guide his practice.

The Registrant appears to admit that he provided Mr. Evans' counsel, Jeff Hart, with a letter dated July 5, 2023, that contains extremely personal and potentially damaging information about the Complainant, a copy of which was provided to the Committee. The Registrant states that "the court ordered [him] to provide this information," that it would have been "an offence" for him to refuse to do so, and that the following text in the service agreement the Complainant signed permitted him to share the information:

Confidentiality

All information you share with us is strictly confidential and will not be released without your voluntary and written consent. As part of routine practice, we may, on occasion, consult a clinical supervisor on your case in order to provide you with the best care. Your confidentiality will be strictly maintained and your name will not be used. There are limitations to the confidentiality described above and these include:

- Reporting of suspected child abuse or neglect
- Complying with the requirements of a child protection investigation
- Complying with a court order
- Responding to a threat of harm to self or others

*by signing this agreement, you agree that we have the right to share this information should we are asked to and are required to for legal purposes.

In the Committee's view, the disclosure of the information about the Complainant contained in this letter represents without her consent a substantial breach of her confidence and privacy and could be considered professional misconduct. The relevant Standards of Practice include Principle V, Confidentiality, which requires registrants to "obtain consent to the collection, use and disclosure of client information including personal information, unless otherwise permitted or required by law [Interpretation 5.1, emphasis added]," and Principle IV, The Social Work and Social Service Work Record, which states, "Members may disclose information from the record to third parties without the client's consent only if the disclosure is required or allowed by law [Interpretation 4.4.1, emphasis added]."

The Committee also believes the Registrant's admitted behaviour could be considered a breach of his duty to "maintain the best interest of the client as the primary professional obligation" as set out in paragraph 1) of the Code of Ethics.

The Committee accepts that if the Registrant received a formal notice or summons from a Canadian court requiring him to testify about the Complainant and/or disclose her social work record in a legal proceeding, he would not have been required by Principles IV and V to obtain her consent before doing so.³ Although the Registrant indicates he was ordered by a court to provide Mr. Evans' lawyer with a letter describing the Complainant's sessions, he cannot recall if he was given a court order or formal documentation, and has not provided any evidence indicating that he was. Rather, the Registrant stated that Mr. Evan's lawyer, Jeff Hart, "demanded" that he provide a letter about the Complainant's counselling sessions, and states "It wasn't a request. It was a must," and he "had to provide it."

Based on the evidence, the Committee is not satisfied that the Registrant received a formal notice or summons from a court requiring him to provide extremely personal and unflattering information about the Complainant to a third party. Rather, it appears that the Registrant provided this information after simply being pressured to do so by Mr. Hart, who is not a judge and would not have the authority of a court to summons records.

Although the Committee accepts that the Registrant would not require the Complainant's consent to disclose information about her under the four conditions described as limits to confidentiality in his service agreement (complying with a court order, reporting child abuse, cooperating with a child protection investigation, and responding to a threat of harm to self or others), none of those conditions appear to have applied. Accordingly, we are not satisfied that the Registrant was "permitted or required by law" to disclose information about the Complainant without her consent. Troublingly, the Registrant appears not to have complied with his own service agreement regarding the stated limits of confidentiality.

Finally, we do not accept the Registrant's submission that the Complainant's signature on the service agreement was sufficient to allow the disclosure of information about her in the Registrant's July 5, 2023 letter for the following reasons:

1. Principle V indicates that registrants are required to "have clients sign completed consent forms prior to the disclosure of information" and that "a separate consent form is required to cover each authorization for disclosing client information [Interpretation 5. 3.7, emphasis added]." Accordingly, when client consent is required for the disclosure of information, the Registrant's service agreement cannot operate as a blanket consent for such disclosures.
2. The Registrant's service agreement does not contain the following information that Principle IV indicates that a client's written consent form must provide:
 - i. "the information that is to be disclosed, for example a partial record, the entire record, or a summary of the member's contact with the client,

³ The Committee notes that Interpretation 4.4.3 of Principle IV requires that registrants "who are served with a formal notice or summons to produce client records before a court" should "advocate for non-disclosure to the court" if they "are of the opinion that disclosure would be detrimental to the client."

- ii. the party or parties to whom the information is to be disclosed, and
- iii. the term of validity of the consent [Interpretation 4.4.1].”

The Committee strongly believes that clients should not have to fear that, if they attempt couples counselling, their therapist might subsequently disclose personal information they provided in confidence for use in litigation against them.

Since there have been no prior complaints or reports made to the College about similar behaviour by the Registrant, we will not refer this matter to the Discipline Committee. However, given our concerns about the Registrant’s understanding of his professional obligations regarding client confidentiality, we provide advice to guide his practice starting on page 19.

Allegation # 5

The Complainant alleges that the Registrant’s letter dated July 5, 2023 contained false and/or misleading information, specifically with respect to the following statements:

- a) “Naomi was diagnosed with Borderline Personality Disorder, Paranoia, Impulsive Personality, and severe learning disabilities, by CAMH in or around May 31, 2022.” Ms. Jacobs indicates that she attended CAMH in May of 2022 and was found to have some symptoms of Borderline Personality Disorder but was not diagnosed with BPD. She was also not diagnosed with Paranoia, Impulsive Personality or severe disability.
- b) “She was prescribed mental health medication and ongoing counselling, but Naomi has refused treatment and has never followed anything to the end. Naomi told me that she has never filled her script once.” Ms. Jacobs indicates it was recommended that she engage in DBT therapy, which she did do. They recommended to continue with her medication which she did. Ms. Jacobs does not believe she spoke with the Registrant about the above. Ms. Jacobs did not give the Registrant consent to speak with her doctors.
- c) “On March 19, 2022, Naomi informed me that she has been previously diagnosed by a psychiatrist with: Depression, anxiety, personality disorder, and ADHD. She was prescribed 20 mg of Trintellix daily (which is a very strong antidepressant) but refused to take it properly or at all. Naomi refuses all treatment recommended to her by all health care professionals.” Ms. Jacobs indicates that she takes medication for depression/anxiety and ADHD. She has never been diagnosed with a personality disorder. She was prescribed Trintellix daily and has always taken this medication as directed. She indicates that there were some days previously when she wouldn’t take her ADHD medication because it gave her anxiety, however, she currently takes her ADHD medication every day. Ms. Jacobs indicates that she does not refuse all treatment recommended to her by all health care professionals as demonstrated by her taking the appropriate medications and obtaining health services.

- d) “Ariella is duplicating Naomi’s horrific behaviour at school by disrobing herself in front of other students (the principal got involved).” Ms. Jacobs indicates that she has never disrobed herself in a public place.
- e) “Ariella has stolen money from her mom because Naomi constantly steals money from her.” Ms. Jacobs states that she has never stolen money from Ariella.
- f) “There is constant fighting between Naomi and Ariella (on average 5 times per day). Naomi yells, swears, breaks things, smashes her hands, and threatens Ariella that she will never see her father or his entire family ever again.” Ms. Jacobs states that she does not fight with Ariella 5 times per day and has does not yell, swear, break things, smash her hands or threaten Ariella.
- g) “Naomi put Ariella in an afterschool program solely so she could sleep in and to have more free time for herself.” Ms. Jacobs indicates that this is untrue and points out that putting a child in an afterschool program in order to sleep in does not make sense. Ms. Jacobs indicates that she enrolled Ariella in an afterschool program so that she could be in a learning environment and be active after school.
- h) “Ariella has been left alone by her mom in the house multiple times” . Ms. Jacobs states that she has never left Ariella alone in the house.
- i) “Naomi has admitted to me on March 19, 2022 that she sells naked pictures of herself and prostitutes herself for money.” Ms. Jacobs indicates that she does not sell naked pictures of herself and prostitute herself for money.
- j) “Naomi was negotiating prices with me just prior to March 19,2022 and actually asked me if she could get a session free if she were to provide me with sexual favours!” Ms. Jacobs indicates that she did attempt to negotiate the price of counselling with the Registrant, but never offered the Registrant sexual favours.
- k) “Naomi admitted to me that she has a drinking problem and is frequently intoxicated. She also does drugs (Ecstasy, Oxy Cotton, various edibles, and Marijuana.” Ms. Jacobs indicates that she did admit to the Registrant that approximately 10 years ago she used recreational drugs and alcohol. However, she does not have a drinking problem currently. She may also have told the Registrant that she used drugs approximately 10 years ago, but she does not currently use drugs.
- l) “She is often intoxicated in front of Ariella and when she is along with her.” Ms. Jacobs indicates that she has never been intoxicated in the presence of Ariella.
- m) “She also has a gambling addiction”. Ms. Jacobs indicates that she struggled with a gambling addiction when she was in her early 20’s, but stopped gambling completely when she was 24. She is now 36 years old.

Registrant's Response

The Registrant submitted the following in response to this allegation:

Re 5. a) and b)

Everything that I wrote and all the facts that I got were directly from Ms. Jacobs. It says, "Ms. Jacobs does not believe that she spoke with the Registrant about above". It does not say, that she did not speak with me about this. I also never spoke to any of Ms. Jacobs's doctors and don't even know who they are. I fail to understand how a doctor could speak to me without a properly signed consent form.

Re 5. c)

Again, this is the information Ms. Jacobs provided me with.

Re 5. d)

Peel Children's Aid, Ariella's school Principal, me, and another counsellor Ms. Betty Stockley all say otherwise and that is a large part of the reason why the Office of the Children's Lawyer has been appointed by the courts.

Re 5. e)

Ariella would occasional [*sic*] come on Mr. Evans's Zoom call sessions to say hello to me. Ariella is not my client, as I do not have written consent from both parents. Ariella appeared to be upset one day and when I asked her what was wrong, she personally told me that her mother stole money from her again.

Re 5. f)

The other Counsellor Ms. Betty Stockley and I had a conversation pertaining to this prior to me reporting the matter to Children's Aid. Ms. Stockley told me in great detail exactly what she witnessed and it was all of those things as well. Ms. Jacobs has told me that she argues with her daughter "all the time" and estimated on average 5 times per day. Ms. Jacobs also told me all of those things.

Re 5. g)

These are all points that Ms. Jacobs informed me of. Ms. Jacobs does not insure that Ariella's homework is complete or views it as important. Ariella's attendance at school was also horrific.

Re 5. h)

Ariella is left alone the home by her mother. Ariella told both me and Peel Children's Aid that. This is one of the main reasons why I reported this to Children's Aid.

Re 5. i)

That is exactly what Ms. Jacobs told me.

Re 5. j)

That is simply not true and what I wrote was what happened.

Re 5. k)

I am going with Ms. Jacobs told me. Ms. Jacobs specifically informed me that she does drink and does the specific drugs that I outlined. It is interesting however, that Ms. Jacobs does admit to doing drugs ten years ago. If Ms. Jacobs did drugs before, clearly, she could be doing them again now. When did she supposedly stop doing them? How could I possibly know this information, for she didn't even know Mr. Evans ten years ago?

Re 5. l)

Again, I am going with what Ms. Jacobs told me.

Re 5. m)

This is what Ms. Jacobs told me. How could I possibly have known she had a gambling problem unless she told me? Even Mr. Evans didn't know her at that time. It has been brought to my attention that Ms. Jacobs is banned from all the major casinos across Ontario for starting fights with other guests and staff as well as cheating and causing mischief due to her being intoxicated there.

Decision and Reasons

The Committee will not refer these matters to the Discipline Committee. However, we have significant concerns about the Registrant's practice and provide advice.

The Committee's primary concern with the Registrant's July 5, 2023 letter to Mr. Evans' lawyer is that it appears to be a substantial breach of the Complainant's privacy and confidentiality as addressed in the reasons for allegation # 4.

As a secondary matter, however, if the Registrant knowingly provided false or misleading information about the Complainant in the letter, the Committee believes that such behaviour could also potentially be considered professional misconduct. The relevant Standards of Practice include Principle II, Competence and Integrity, which requires registrants to "ensure that any professional recommendations or opinions they provide are appropriately substantiated by evidence ... [Interpretation 2.1.4]," and Principle IV, The Social Work and Social Service Work Record, which states "members do not make a statement in the record, or in reports based upon the record ... that the member knows or ought reasonably to know is false, misleading, inaccurate or otherwise improper [Interpretation 4.1.2]."

With respect to the accuracy and reliability of the information in the letter, the Committee's concerns are the following:

1. The Registrant's letter makes significant and potentially damaging statements about the Complainant that are not supported by the Registrant's entries in the Complainant's social work record. For example, the letter indicates that the Complainant was diagnosed with "Paranoia" and "Implosive Personality". However, the Committee found no basis for those statements in the Registrant's entries in the social work record regarding his session with the Complainant on March 19, 2022 or his joint session with the Complainant and Mr. Evans on March 21, 2022.
2. The letter includes information that appears to have been provided to the Registrant by others without identifying that fact, including the following:
 - a. "Their 6 year old daughter Ariella gets very upset because she is losing all of her friends due to her mom's behaviour."
 - b. "Ariella is duplicating Naomi's horrific behaviour at school by disrobing herself in front of other students (the principal got involved)."
 - c. "Ariella has also stolen money from her mom because Naomi constantly steals money from her."
 - d. "To date, Ariella's school attendance is 30 days absent and 28 days late."
 - e. "Naomi is unable to get Ariella to school on time and takes her out of school for no reason (e.g. to go to the mall or simply didn't feel like waking up)."

In his response, the Registrant confirmed that some of the statements in his letter are based on information he obtained from the Complainant, Ariella, Ariella's principal, Peel CAS and the Complainant's prior counsellor, Ms. Stockley. The inclusion of such statements without identifying their source implies that they are based on the Registrant's personal knowledge, and that he can confirm their accuracy. While the Registrant is able to confirm his own observations and accurately state his own opinions, the Committee finds no reason to believe he is able to confirm the truth of information he receives from others. Accordingly, the Committee believes the Registrant's inclusion of information in the letter that he received from others without identifying them as sources could be considered inaccurate, misleading and improper.

3. The letter makes broad unflattering statements about the Complainant's behaviour that the Registrant's brief relationship with her does not appear to allow him to confirm, including the following:
 - "Naomi has never followed anything to the end."

- “Naomi refuses all treatment recommended to her by all of her health care professionals.”
- “Naomi constantly steals money from [Ariella].”

In the Committee’s opinion, such behaviour could potentially be considered misleading and improper. We also believe such behaviour also suggests that the Registrant may have failed in his obligation to carry out his professional duties with “objectivity” as required by paragraph 3) of the Code of Ethics.

4. The letter describes the Complainant’s behaviour as “horrific,” i.e., “Ariella is duplicating Naomi's horrific behaviour at school by disrobing herself in front of other students.” In the Committee’s opinion, the use of “horrific” is not a neutral observation but a moral judgement and could also potentially be considered a breach of the Registrant’s obligation to carry out his professional duties with “objectivity” as required by paragraph 3) of the Code of Ethics.

Since there have been no prior complaints or reports made to the College about similar behaviour by the Registrant, the Committee does not believe these matters should be referred to the College’s Discipline Committee. However, given our concerns about the Registrant’s behaviour, we provide advice to guide his practice starting on page 19.

Allegation # 6

The Complainant alleges that the Registrant’s letter dated July 5, 2023 (excerpt below) was biased and/or contained opinions not supported by the evidence.

Naomi is extremely unstable, acts highly erratic, uses very poor judgment and in no way should she be left alone with a young child for any duration of time on her own. I highly recommend that Naomi’s parenting time with Ariella be in a supervised access centre where Naomi would be under surveillance cameras, monitored by a trained staff and have someone there at all times to prevent Naomi from saying or doing the wrong things to Ariella.

Registrant’s Response

The Registrant submitted the following in response to this allegation:

My statement on Ms. Jacobs is not in any way biased and it is certainly not my opinion. It is solely based on what I observed and what I was told directly from Ms. Jacobs. Ms. Jacobs’s words, tone, choice of stories that she told me, her facial expressions, body language, and odd behaviour all fully demonstrated what I wrote and why in my sworn Affidavit.

Decision and Reasons

Despite the Registrant's submission to the contrary, the Committee believes the statement "Naomi is extremely unstable, acts highly erratic, uses very poor judgment" in his July 5, 2023 letter to Mr. Evan's counsel is a statement of his professional opinion. Although we accept it is unflattering to the Complainant, we do not agree it could be considered professional misconduct.

Provided that registrants are operating within their competence and do not violate client confidentiality, they are entitled to provide professional opinions and recommendations that are "appropriately substantiated by evidence and supported by a credible body of professional social work knowledge or social service work knowledge [2.1.4]." This includes opinions about clients that are unflattering or are disagreed with by clients or others.

Since the evidence indicates that the Registrant had the opportunity to interact with and observe the Complainant during two counselling sessions, and had extensive additional telephone and text message exchanges with her, the Committee believes he had an adequate basis to form his opinion that the Complainant was "extremely unstable," etc. While we appreciate that the Complainant disagrees with the Registrant's opinion about her, we do not believe it could be proven that this opinion was unsupported by evidence or that it results from bias rather than the Registrant's appraisal of the Complainant's behaviour and statements.

However, since it appears the Registrant did not conduct a custody and access assessment, the Committee believes the following recommendations in his letter about the Complainant's parenting time with her daughter are beyond the scope of his competence and could be considered professional misconduct:

- Naomi ... in no way should she be left alone with a young child for any duration of time on her own.
- I highly recommend that Naomi's parenting time with Ariella be in a supervised access centre where Naomi would be under surveillance cameras, monitored by a trained staff and have someone there at all times to prevent Naomi from saying or doing the wrong things to Ariella.

The relevant Standard of Practice is Principle II, Competence and Integrity, which states that registrants "are responsible for being aware of the extend and parameters of their competence ... and limit their practice accordingly ...[Interpretation 2.1.1]."

According to the College publication, *Practice Guidelines for Custody and Access Assessments*, conducting custody and access assessments and providing recommendations is a specialized area of practice that requires broad knowledge of child development, family dynamics, the effect of conflict and family breakdown, and conflict resolution as well as knowledge of relevant legislation and case law. The *Practice Guidelines* indicate that conducting a custody and access assessment is a complex process that involves interviewing each parent, the relevant child or children and significant others, observing the child interacting with each parent, obtaining

information from professional and non-professional collaterals such as physicians, teachers, and grandparents, reviewing documents and preparing a report.

As indicated in the *Practice Guidelines*, “Recommendations for custody/access should generally not be made outside a custody/access assessment,” and “A social worker who has acted as a therapist to parent/parents or to the child, or has had a personal relationship with a parent or a child, should generally not conduct a custody/access assessment.”⁴

Since the Registrant was not retained to conduct a custody and access assessment, and there is no evidence suggesting that he was qualified to do so, we believe he could potentially be considered to have breached his obligation under Principle II to be aware of the “extend and parameters of [his] competence” and to “limit [his] practice accordingly. In our view, it is particularly concerning that the Registrant provided these recommendations to Mr. Evan’s lawyer in the context of custody and access litigation where they could be used against the Complainant.

Since there have been no prior complaints or reports made to the College about similar behaviour by the Registrant, we do not believe this matter should be referred to the Discipline Committee. However, given our concerns about the Registrant’s behavior, we provide advice to guide his practice starting on page 19.

Allegation # 7

The Complainant alleges that the Registrant failed to fulfill his duty to report to CAS if he believed Ariella was at risk of harm, as indicated in his July 5, 2023 letter as follows:

- Ariella had been left alone by the Complainant in the house multiple times.
- The Complainant has a drinking problem and is often intoxicated in front of Ariella and when the Complainant is alone with her.
- The Complainant does drugs.
- The Complainant has a gambling addiction.
- The Complainant is extremely unstable, acts highly erratic, uses poor judgement and in no way should be left alone with a young child for any duration of time on her own.
- The Registrant recommended the Complainant’s parenting time with Ariella be in a supervised access centre where she would be under surveillance cameras, monitored by a trained staff and have someone there at all times to prevent the Complainant from saying or doing the wrong things to Ariella.

⁴ Ethical Considerations, page 14.

Registrant's Response

The Registrant submitted the following in response to this allegation:

That is completely untrue, as I most definitely did call and report Ms. Jacobs to CAS in and around that time as well.

Decision and Reasons

If the Registrant had a duty under subsection 125 (1) of the *Child, Youth and Family Services Act, 2017*, to report his suspicion that Ariella was in need of protection to a CAS, and failed to do so, the Committee believes such behaviour could be considered professional misconduct.

Paragraph 29 of section 2 of the *Professional Misconduct Regulation* defines professional misconduct to include contravening a provincial law “where the contravention is relevant to the member’s suitability to practise.” In the Committee’s opinion, failing to report that a child is in need of protection as required by the *Child, Youth and Family Services Act, 2017*, an Ontario law, would be relevant to his suitability to practise social service work.

However, the Committee does not believe this allegation could be proven.

The following statement from the March 20, 2024 *Report of the Children’s Lawyer* regarding the Complainant’s daughter confirms that the Registrant reported his concerns about Ariella’s welfare to the CAS:

Peel CAS and JF&CS verified Caregiver Capacity - Caregiver with Problem – Caregiver has problem causing Risk that the child is likely to be harmed regarding Ms. Jacobs. The decision was based on the reports from David Starkman and Betty Stockley outlining concerns regarding Ms. Jacobs' mental health and lack of treatment such as not taking medication or engaging in services.

Allegation # 8

The Complainant alleges that the Registrant threatened her in that the Registrant told her ex-partner, Josiah, that the Complainant needed to withdraw the complaint or else things would get bad for them and referenced the Children’s Aid Society and the police.

Registrant's Response

The Registrant submitted the following in response to this allegation:

That couldn’t be further from the truth and is absolutely disgusting.

Decision and Reasons

If the Registrant threatened that he would be involving the police or the CAS if the Complainant did not withdraw her complaint about him, the Committee believes such behaviour could potentially be considered professional misconduct. The relevant definition of professional misconduct in section 2 of the Professional Misconduct Regulation is “36. Engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.”

However, the Committee found no evidence to support that the Registrant behaved as alleged and does not believe this allegation could be proven.

Allegation # 9

The Complainant alleges that the Registrant told Mr. Hart (the Complainant’s ex-partner’s lawyer) that the Complainant had sent two people to beat him up which was untrue.

Registrant’s Response

The Registrant submitted the following in response to this allegation:

That is very untrue and I am still suffering the effects of this. Ms. Jacobs stated to the courts that she knew about this but didn’t have anything to do with it. How could Ms. Jacobs possibly have known about it if she was not involved? The police said that I had no way of proving who did this unless someone properly identified them or at least their license plate. I now have surveillance cameras due to this incident.

Decision and Reasons

If the Registrant told Mr. Hart that the Complainant sent two people to attack him when he knew or reasonably ought to have known that statement was untrue, the Committee believes such behaviour could potentially be considered professional misconduct. However, the Committee was not provided with any information that indicates the Registrant lied, and does not believe this allegation could be proven.

COMMITTEE’S ADVICE TO REGISTRANT

The Committee advises the Registrant as follows:

1. Carefully read all provisions of the *Code of Ethics and Standards of Practice*,⁵ with particular emphasis on Principles II, Competence and Integrity; III, Responsibility to Clients; IV, The Social Work and Social Service Work Record; and V, Confidentiality.
2. Carefully read the following College publications:⁶
 - i. For allegation #1,
 1. *Practice Notes: Boundary Violations*,⁷ and
 2. *Practice Notes: Communication Technology & Ethical Practice: Evolving Issues in a Changing Landscape*.⁸
 - ii. For allegation #2,
 1. *Practice Notes – Termination: Managing Clients and Moving Forward*,⁹ and
 2. *Practice Notes: Early Endings – Addressing the Challenges of Termination*.¹⁰
 - iii. For allegation #4,
 1. *Privacy Toolkit for Social Workers and Social Service Workers*,¹¹
 2. *Practice Notes: Meeting Professional Obligations and Protecting Clients’ Privacy: Disclosure of Information Without Consent*,¹² and
 3. *Practice Notes: Confidentiality and Disclosure of Information without Client Consent*.¹³
 - iv. For allegation #6, “Knowledge and Training” and “Ethical Considerations” in *Practice Guidelines for Custody and Access Assessments*.¹⁴
3. With the information contained in the resources listed above and the Committee’s comments in mind, make a written plan for his own records of how he would currently respond to the situations that resulted in allegations 1, 2, 4, 5 and 6 that would be

⁵ *Code of Ethics and Standards of Practice Handbook*, <https://www.ocswssw.org/sop/>

⁶ All College publications can be obtained from the Resource Room tab of the College’s website under the heading “Practice Resources.”

⁷ http://www.ocswssw.org/wp-content/uploads/PN-Boundary_Violations-revised-20180710.pdf

⁸ https://www.ocswssw.org/wp-content/uploads/PN-Communication_Technology_and_Ethical_Practice.pdf

⁹ <https://www.ocswssw.org/wp-content/uploads/PN-Termination.pdf>

¹⁰ https://www.ocswssw.org/wp-content/uploads/PN-Early_Endings.pdf

¹¹ <https://www.ocswssw.org/ocswssw-resources/hipa-toolkit/>

¹² <https://www.ocswssw.org/wp-content/uploads/Meeting-Professional-Obligations-and-Protecting-Clients-Privacy-Disclosure-of-Information-Without-Consent-final-revised-20180430.pdf>

¹³ https://www.ocswssw.org/wp-content/uploads/PN-Confidentiality_and_Disclosure.pdf

¹⁴ <https://www.ocswssw.org/wp-content/uploads/OCSSWSSW-Custody-Access-Guide-2014-E.pdf>

consistent with his professional obligations in the *Code of Ethics and Standards of Practice*.

4. When questions arise about professional boundaries, termination of services or client privacy and confidentiality, including responding to requests for client information from third parties or other clients, consider consulting with the College's Professional Practice Department.

USE OF THIS DECISION

Although this matter is now concluded, information relating to this complaint, including this decision, will be kept on file and may be considered by the College if it receives a future report or complaint concerning the Member's conduct. In particular, the information may be considered by the College if it receives a further complaint or report concerning events or issues to which this complaint relates, or concerning different events or issues that the College views as relevant to the issues raised by this complaint.

Pursuant to section 50 (6) of the Act, no information or document received in the course of the complaints process, including this decision, is admissible in any court proceeding outside of the College.

Sue-Ellen Merritt

Sue-Ellen Merritt, RSSW, Chair

May 1st, 2024

Date