

**IN THE MATTER OF A HEARING OF THE HEARING TRIBUNAL BY THE  
ALBERTA COLLEGE OF OCCUPATIONAL THERAPISTS  
into the conduct of John Walker, Registration #2404,  
pursuant to the *Health Professions Act*, RSA 2000 c H-7**

**FINDINGS DECISION  
OF THE HEARING TRIBUNAL**

**I. Hearing**

[1] This hearing was conducted virtually pursuant to the *Health Professions Act* (the “HPA”) on November 27 and 28, 2023 as well as on April 2 and 4, 2024 with the following persons participating:

Hearing Tribunal (the “Hearing Tribunal”)

Kerstin Hurd, Chair and Regulated Member  
Anne Beattie, Regulated Member  
Naz Mellick, Public Member  
Glen Buick, Public Member

Taylor C. Maxston, Independent Legal Counsel to the Hearing Tribunal

The Alberta College of Occupational Therapists (the “College”)

Anna Yarmon, Complaints Director

Kimberly Precht, Legal Counsel for the Complaints Director

The Member

John Walker

Eric Appelt, Legal Counsel for the Member

**II. Preliminary Matters**

[2] At the outset of the hearing, Ms. Precht identified a potential conflict of interest in respect of the Hearing Tribunal Chair. Specifically, the Chair previously held the role of Complaints Director for the College and is also the current Complaints Director of another regulatory college. Ms. Precht noted that the latter of these potential conflicts could present the possibility of the Chair having interacted with Ms. Yarmon through the Complaints Directors’ group with the Alberta Federation of Regulated Health Professions.

[3] The Chair confirmed that she was previously the Complaints Director with the College until June of 2021, but that she has no prior knowledge of the complaint file against Mr. Walker in issue. None of the remaining members of the Hearing Tribunal identified a conflict of interest.

[4] There were no objections from the parties concerning the composition or jurisdiction of the Hearing Tribunal.

[5] The Chair provided opening comments.

[6] Mr. Appelt made an initial application to close the entirety of the hearing from the public. With reference to the circumstances outlined in section 78(1)(iii) of the HPA, Mr. Appelt outlined the reasons for his application as being the sensitive nature of the information being shared more generally, as well as there being specific text messages forming part of the evidentiary record that contain highly sensitive information (including conversations about sex, nude photographs, and sexually transmitted diseases) which pertain to the complainant, Mr. Walker and third parties. Ms. Precht objected to having the hearing closed to the public, noting the open-court principle, the importance of transparency in maintaining the public's trust in the profession, and the integrity of its governing organization.

[7] After carefully considering the submissions of each party and the information shared in support of their respective positions, the Hearing Tribunal denied the application to close the hearing. In their deliberations, the Hearing Tribunal referenced the circumstances outlined in section 78(1) of the HPA which justify holding a hearing or part of a hearing in private. The Hearing Tribunal also noted that the complainant's information was also being shared and she was willing to testify openly in the interest of transparency. The Hearing Tribunal concluded that non-disclosure of the specific information noted by Mr. Appelt did not sufficiently outweigh the desirability of having the hearing open to the public and, further, that the reasons offered by Mr. Appelt were not otherwise satisfactory as to justify closing the hearing. The Hearing Tribunal advised the parties that it was open to revisiting the issue at any point during the hearing if either party makes an application to close specific parts of the Hearing and provides their reasons at that time.

[8] The hearing was open to the public.

[9] Immediately following the Hearing Tribunal's deliberations on Mr. Appelt's application to close the hearing, Ms. Precht advised that the Complaints Director's first witness, [REDACTED], had just experienced an unfortunate family event and would not be in a position to testify on the November 27 and 28, 2023 dates. After discussion among the parties and the Hearing Tribunal about how best to proceed, it was determined that Ms. Precht would proceed with the Complaints Director's remaining witnesses on the November 27 and 28, 2023 dates and the hearing would subsequently be adjourned to a later date to allow the remainder of the Complaints Director's case to be presented.

### **III. Allegations**

[10] The allegations in the September 26, 2023 Notice of Hearing and Notice to Attend as Witness are reproduced as follows:

1. In or around the period between September 2020 and December 2022, you exploited your previous client-therapist relationship with [REDACTED]'s child to pursue and engage in a relationship of a personal, intimate, and sexual relationship with [REDACTED], particulars of which include the following:
  - (a) During the relevant period you were contracted by [REDACTED] to provide occupational therapy services;

- (b) Between September 2019 and March 2020 or thereabouts you provided occupational therapy services to [REDACTED]'s child through [REDACTED] Head Start program;
- (c) [REDACTED]. was also a client of [REDACTED] between September 2019 and March 2022 or thereabouts;
- (d) You commenced a personal relationship with [REDACTED]. in or around February 2021;
- (e) You commenced a sexual relationship with [REDACTED] in or around June 2021, which continued until in or around December 2022.

[11] Mr. Walker denied all the allegations.

#### **IV. Exhibits**

[12] The following documents were entered exhibits at the hearing with the consent of both parties:

1. Letter dated September 6, 2023, with the enclosed Notice of Hearing and Notice to Attend as Witness; and
2. Joint Exhibit Book.

#### **V. Opening Statements**

##### **(a) Complaints Director's Opening Statement**

[13] Ms. Precht's opening statement can be summarized as follows.

[14] Ms. Precht reviewed the charge and its particulars, noting that Mr. Walker is alleged to have exploited his previous client-therapist relationship with a participant in [REDACTED]-Head Start program to pursue a personal, intimate, and sexual relationship with the child's mother. She specifically pointed out that the word "exploited" is the main issue in this hearing.

[15] Ms. Precht discussed the Hearing Tribunal's role to review and consider all evidence and determine whether (i) the factual allegations are proven on a balance of probabilities; and (ii) the proven factual conduct constitutes unprofessional conduct as it is defined in the HPA. She further explained that the burden of proof rests with the Complaints Director to meet both onuses.

[16] Ms. Precht confirmed that the Complaints Director would be calling two witnesses: [REDACTED] and [REDACTED], the complainant in this matter.

[17] Ms. Precht noted how the fact that Mr. Walker was in a sexual relationship with the [REDACTED] is not controversial. However, the circumstances in which the relationship came to be are key to the issues in this hearing.

[18] Ms. Precht submitted that the evidence will establish how Mr. Walker failed to set appropriate professional boundaries, using the knowledge and trust that he had from having been the



occupational therapist for ██████'s son, referred to as ██████ throughout this decision, in the Head Start program to pursue what became an intimate and sexual relationship with ██████. Ms. Precht detailed how the evidence would show that:

1. ██████ was in a vulnerable place in 2020 and receiving support from ██████
2. ██████ encountered Mr. Walker at ██████ when she was there to access parent respite services and Mr. Walker offered her support, which she accepted because she trusted him;
3. They began with meetings at ██████ that turned into going for walks from ██████ to a local coffee shop;
4. At some point, the focus of discussions between Mr. Walker and ██████ shifted from focusing on ██████ to focusing on ██████; and
5. The relationship became more personal and eventually turned into a sexual relationship.

[19] Ms. Precht concluded the Complaints Director's opening statement by emphasizing that Mr. Walker's conduct rises to the level of unprofessional conduct, citing provisions of the College's Standards of Practice and Code of Ethics applicable to the charges. Importantly, Ms. Precht confirmed that there is no allegation that Mr. Walker's actions constitute sexual abuse or sexual misconduct as defined in the HPA.

#### **(b) Investigated Member's Opening Statement**

[20] Mr. Appelt's opening statement can be summarized as follows.

[21] Mr. Appelt emphasized that this is an extremely unique case, the crux of which has never been the subject of disciplinary proceedings either before the College or any other college across Canada. Accordingly, the decision of the Hearing Tribunal has precedent-setting potential and needs to be approached with this in mind.

[22] Mr. Appelt identified how the issue in this case is whether Mr. Walker exploited any knowledge that he had concerning ██████'s son to solicit or procure a relationship with ██████. Analyzing the totality of the surrounding context and circumstances is critical in this assessment.

[23] Mr. Appelt concurred with Ms. Precht as far as there being no allegation of sexual abuse or sexual misconduct at issue in this hearing.

[24] Mr. Appelt outlined four key areas that the evidence would touch on in this hearing:

1. The lack of proximity between ██████ and Mr. Walker in the clinical setting, including that ██████ was at no point a patient of Mr. Walker's and the limited knowledge Mr. Walker had of ██████
2. The timing of Mr. Walker's observation of ██████ at the Head Start program and the start of the sexual relationship with ██████;

3. The nature of the relationship between Mr. Walker and [REDACTED], where the primary focus was not on [REDACTED] and both parties mutually consented to taking their friendship to the next level; and
4. The messy and complex end of the relationship.

[25] Mr. Appelt emphasized that the sphere of influence in the therapeutic relationship does not last forever and is informed by the actual services provided by the Occupational Therapist, both in intensity and duration.

[26] Mr. Appelt concluded his opening statement by reiterating that the burden of proof rests with the Complaints Director to prove the facts underlying the charges and that those facts constitute unprofessional conduct. If the Complaints Director fails to meet either of these onuses, there cannot be a finding of unprofessional conduct.

## **VI. Witnesses**

[27] The Complaints Director called two witnesses to testify: the complainant, [REDACTED], and the [REDACTED].

[28] Mr. Walker testified on his own behalf and did not call any further witnesses.

[REDACTED]

### **(a) Direct Examination**

[29] [REDACTED] confirmed that she was the one who submitted the complaint against Mr. Walker.

[30] [REDACTED] outlined the services she and her son received from [REDACTED] which began when [REDACTED] was about three years old in the spring of 2019.

[31] [REDACTED] first met Mr. Walker when he did an Occupational Therapist assessment for [REDACTED] in the spring of 2019. It was [REDACTED]'s understanding that Mr. Walker was an occupational therapist for the Head Start program and that he would be providing services to her son in the classroom.

[32] While the Head Start program was shut down due to the COVID-19 pandemic, it was an extremely stressful time for [REDACTED]. She experienced troubles with her ex-partner, had to leave her home very abruptly, and turned to resources like income support and the food bank. [REDACTED] was a stay-at-home single mom with no family support and limited support from friends.

[33] Eventually, when the COVID-19 pandemic had eased, [REDACTED] started accessing respite services through [REDACTED] dropping her kids off so she could try to get her life back together.

[34] [REDACTED]'s next interaction with Mr. Walker occurred when she dropped her kids off for respite services at [REDACTED]. She testified that Mr. Walker pulled her into a small, dark room at [REDACTED] gave her his phone number, and said that she could contact him if she needed to reach out for support. [REDACTED] described the interaction as intense and awkward, noting that she wanted to get out of the room as soon as possible. Although she could not specify an exact date for the interaction, [REDACTED] believes the interaction occurred during



the summer or near the end of summer when the weather was warm, possibly September of 2020.

[35] ██████████ and Mr. Walker next interacted in front of the ██████████ facility after she dropped off the kids for respite services. ██████████ described herself as being in a state of distress during a difficult time in her life and she opted to share some of the challenges she was going through with Mr. Walker, including that she had reached out to the Glenrose Rehabilitation Hospital (the “**Glenrose**”) to try and get services for █. Mr. Walker offered to have a conversation in one of the back rooms at ██████████ to discuss things and see if he could help. ██████████ agreed, feeling like she had no other options or support in a stressful time for her.

[36] ██████████ and Mr. Walker went to the back room and had a discussion, in which ██████████ felt vulnerable and was crying. Mr. Walker called the Glenrose on ██████████ behalf to see if █ was on their waiting list, as she had tried to get him assessed and formally diagnosed so he would have access to additional support services. Mr. Walker also offered to continue supporting her as a friend and offered support as an occupational therapist given that █ was no longer in the Head Start program.

[37] After one or two meetings at ██████████ Mr. Walker suggested they go for a walk to a coffee shop nearby and they started doing so at that point. When ██████████ would drop the kids off for respite services, she would coordinate with Mr. Walker to go for walks during that time. Conversations began with talking about █ and the support she needed for him, with Mr. Walker offering advice and guidance on how to help █. In April 2021, they decided to meet at a park near her home with █ present so Mr. Walker could assess █. However, the conversations gradually turned more personal, becoming less about █ and more about their own interests and similarities.

[38] ██████████ reviewed several text messages between herself and Mr. Walker as part of her evidence. In the course of this testimony, ██████████ discussed:

1. The text exchanges with Mr. Walker that reference support for █, him giving ██████████ a chew tube and brush as support instruments as well as advice about urination and accidents;
2. The support Mr. Walker gave to her and how she felt that she wanted to reciprocate that by offering support to Mr. Walker as well;
3. A weighted blanket that Mr. Walker had given her that he named “Gordon”, which she later became aware of “Gordon” as being Mr. Walker’s middle name;
4. Other gifts that Mr. Walker gave her, including an air conditioner unit, a sweater, paying for drinks when they went out together;
5. How their relationship became more intimate, and eventually a sexual one, in which they both cared for each other;
6. How the relationship ended; and
7. How she went to a festival and met other women who had been in relationships with Mr. Walker, where they shared their respective experiences with each other.



██████████ and one of these women burned an effigy and sent photos of the effigy to Mr. Walker to show him that they were releasing him from their lives.

[39] ██████████ testified that it was her discussions with the other women who had been in relationships with Mr. Walker that helped her understand the nature of the relationship and his professional responsibilities, ultimately leading to her submitting a complaint to the College.

### **(b) Cross Examination**

[40] Mr. Appelt began his cross examination of ██████████ by confirming some factual details of her testimony. These included how:

1. ██████ received services from Mr. Walker starting in September 2019, which were abruptly stopped around March 2020 when the Head Start program was temporarily shut down due to the COVID-19 pandemic;
2. While ██████ was in the Head Start program, ██████████ typically spoke with teachers or educational assistants and had little interaction with Mr. Walker;
3. The sexual relationship with Mr. Walker began in June 2021; and
4. Mr. Walker did not provide occupational therapist services to her directly.

[41] Mr. Appelt walked ██████████ through various text messages between her and Mr. Walker, where ██████████ explained what she meant by some of the text messages in respect of the nature of their relationship and how it progressed.

[42] ██████████ was examined on the end of her relationship with Mr. Walker, where she stated that it ended because Mr. Walker had broken her trust by not being honest with her about other relationships he was in. She testified to having discussions with other women who had had relationships with Mr. Walker and they realized that Mr. Walker had given them all the same gifts, including the same pair of socks. ██████████ and another woman who Mr. Walker had been in a relationship with burned the socks at an effigy, took pictures of the effigy, and sent the pictures to Mr. Walker as a ceremony to release this part of her life. While she testified to being heartbroken, ██████████ denied feeling angry toward Mr. Walker.

[43] ██████████ was questioned about the leadup to her bringing the complaint, which she submitted to the College on January 9, 2023. Although she did not recall the exact date, ██████████ thought the burning of the effigy occurred around January 2, 2023. She also referred a text message she sent to her family support worker in which she expressed her concerns with Mr. Walker's conduct, which was dated January 3, 2023. She described her reasoning and rationale for wanting to submit a complaint to protect other vulnerable moms from being victimized by Mr. Walker in the same way she felt she had been.

### **(c) Questions from the Hearing Tribunal**

[44] The Hearing Tribunal questioned ██████████ about the park visit which she reported as having occurred in April 2021. ██████████ testified that Mr. Walker had offered to come to her home and do an assessment of her son, but she was not comfortable with him coming to her home at that time so the assessment occurred at a park near her home instead. At the



park, Mr. Walker provided advice and guidance for the behavioral issues with her son and how to manage those behaviors.

[REDACTED]

**(a) Direct Examination**

[45] [REDACTED] opened her testimony by explaining her roles and responsibilities as the [REDACTED] [REDACTED] which role she has occupied since 2018. Prior to that, she was a [REDACTED] [REDACTED] confirmed she has been with [REDACTED] for 19 years.

[46] [REDACTED] elaborated on the programs offered at [REDACTED], including the Head Start program and the parent respite program. During the relevant times, Mr. Walker's was the only contracted occupational therapist for the Head Start program, where he had been with [REDACTED] for over 20 years on this basis. Mr. Walker's role included conducting initial assessments and creating a plan based on the assessment. The plan would then be carried out by the teacher and education workers in the classroom.

[47] As a contracted worker, Mr. Walker would not have access to [REDACTED] database and would only have been given information about families on a need-to-know basis, such as where an occupational therapist would need information about the child and family to provide services in the Head Start program. In [REDACTED] assessment, families would not know whether Mr. Walker was a contracted worker and would likely view him as a [REDACTED] employee given the interdisciplinary team approach to providing services. While Mr. Walker would not have seen the internal [REDACTED] policy document about boundaries with clients, [REDACTED] explained how her understanding was that Mr. Walker would be bounded by similar expectations as a regulated member of the College.

[48] [REDACTED] testified as to Mr. Walker's involvement with [REDACTED], including how Mr. Walker's name was listed as [REDACTED]'s occupational therapist on an individual program plan ("IPP") dated June 5, 2020. [REDACTED] graduated from the Head Start program on June 25, 2020.

[49] [REDACTED] confirmed that [REDACTED] received services across various programs at [REDACTED] from April 25, 2019 to March 24, 2022. Documentation dated April 30, 2021 from a home visit with a family support worker references [REDACTED] seeking support from the previous occupational therapist to support [REDACTED]

[50] [REDACTED] discussed the events surrounding her becoming aware of concerns about Mr. Walker from a family support worker with [REDACTED] who had been contacted by [REDACTED] [REDACTED] attempted to investigate the matter further, where she had a conversation with [REDACTED] directly. Mr. Walker declined to take part in the investigation.

[51] [REDACTED] ultimately notified the College about the reported concerns and Mr. Walker's contract with [REDACTED] was terminated.

**(b) Cross Examination**

[52] Mr. Appelt confirmed that he did not have any questions for [REDACTED]

**(c) Questions from the Hearing Tribunal**

[53] The Hearing Tribunal confirmed that they did not have any questions for [REDACTED]



- Gordon John Walker -

**(a) Direct Examination**

- [54] Mr. Appelt started his direct examination by asking Mr. Walker about his background. Mr. Walker has been practicing as an occupational therapist for 26 years, having obtained two university degrees and never having any previous complaints.
- [55] Mr. Walker worked with ██████████ for 23 years part-time as an independent contractor. He described his role in the Head Start program, where there were 17 children in a classroom setting and he would observe the children who were on his caseload. As he was in the class infrequently, Mr. Walker would regularly communicate with the responsible teacher.
- [56] Mr. Walker reviewed the five documented chart entries referring to ██████████ including the initial 20 to 30 minute assessment, two subsequent encounters involving observations in the classroom setting, and two clerical entries. The chart entry that mentioned discharging ██████████ from the caseload was on February 6, 2020. Mr. Walker confirmed that he did not attend the June IPP meeting regarding ██████████.
- [57] Mr. Walker described his first interaction with ██████████ as occurring on March 17, 2021. He described ██████████ as acting goofy and silly, where she announced that she was newly single, provided him with her phone number, and asked him to reach out to her. Ms. Precht objected to this line of questioning as being information that was not put to ██████████ on cross-examination to give her a chance to respond given the different version of events. The Hearing Tribunal noted Ms. Precht's objection for the record and discussed the possibility of ██████████ being recalled to testify if necessary, ultimately allowing Mr. Appelt to continue with his direct examination.
- [58] Mr. Walker discussed how his friendship with ██████████ developed in the spring of 2021, where they started going for walks and coffee together. The two met on April 8, 2021 and set the tone and direction of their relationship. Specifically, Mr. Walker testified to having reviewed the College's Standards of Practice and Code of Ethics as well as reflecting on his involvement with ██████████. He discussed his review with ██████████ and informed her that they could proceed with a friendship. ██████████'s response was to provide her informed consent to continue with the friendship at that time.
- [59] In response to ██████████'s testimony about the chew tube, Mr. Walker explained that the chew tube came up in conversation because ██████████ had received advice from others in a parents group and he was sharing his thoughts on the particular chew tube that was recommended.
- [60] In response to ██████████'s testimony about the park visit in April 2021, Mr. Walker testified that there was a park visit on April 13, 2021 during which ██████████ was not present, but ██████████ was present with her younger child.
- [61] Mr. Walker described his relationship with ██████████ from the middle of 2021 to the end of 2022 as a loving, caring relationship. When ██████████ sent photos of the effigy to him at the end of the relationship, he testified to feeling threatened and his well-being having been significantly impacted. Mr. Walker reported the situation to the Royal Canadian Mounted Police, informed his neighbors, and installed improved lighting and a security system for his home.

[62] Mr. Walker expressly denied exploiting any previous interactions with [REDACTED] to procure a personal relationship with [REDACTED].

**(b) Cross-Examination**

[63] In the course of Ms. Precht's cross-examination, Mr. Walker denied certain events testified to by [REDACTED]. This included:

1. Denying meeting [REDACTED] at [REDACTED] on any days other than March 17 and April 8, 2021;
2. Denying having any knowledge of the parent respite program or [REDACTED]'s use of that service; and
3. Denying that he gave [REDACTED] a chew tube or brush for [REDACTED]

[64] When pressed to recall details about information in the text messages exchanged between him and [REDACTED], Mr. Walker stated that he did not recall many of the events that were referred to in text messages. When further pressed about his interpretation of the text messages, Mr. Walker was evasive at times and did not provide direct answers to the questions. For example:

*Ms. Precht: Mr. Walker, you have said that you established a barrier or a boundary about talking about [REDACTED]'s children. Here you have just stepped over that boundary, if that was established, to ask about this brush and the chew tube. She responds by asking about urination. You provide her with advice. I am going to put to you that that is within the scope of your expertise and knowledge as an OT.*

*Mr. Walker: Is it?*

*Ms. Precht: I am putting that to you.*

*Mr. Walker: I -- I have knowledge. I also have -- I'm also a parent. I've been through this with my daughters. So to put it exclusively in the realm of expertise, I -- I disagree.*

*Ms. Precht: Okay. And so when you are working with children in the Head Start program, for example, who are having trouble urinating at appropriate times, is that something that in your role as an OT you would ever provide advice about?*

*Mr. Walker: My contract clearly stated fine motor concerns.*

*Ms. Precht: Okay. But in other contexts, as an OT who is working often in pediatrics, this is something that an OT would conceivably provide support for?*

*Mr. Walker: Some OTs perhaps, yeah.*

*Ms. Precht: Okay.*

*Mr. Walker: Feeding was probably one of -- self-regulation in feeding was probably one of the specialties that -- over the years that I got to become familiar with.*



[65] Mr. Walker also stated that he did not have any recollection regarding the timing of when the relationship became sexual, though he testified that he did not want a sexual relationship and ██████████ was the one who pushed for it.

[66] Mr. Walker confirmed his prior testimony that he reviewed the College's Standards of Practice and Code of Ethics and was transparent about this process with ██████████. Once ██████████ knew he did that, she made an informed decision to move forward in friendship which eventually became an intimate relationship.

### **(c) Questions from the Hearing Tribunal**

[67] The Hearing Tribunal focussed its questions on whether events testified to by Mr. Walker were documented. Mr. Walker confirmed that his review of the College's Standards of Practice and Code of Ethics and the conversation with ██████████ about her informed consent to proceed with a friendship were not documented. He also confirmed that his conversation with ██████████ about the chew tube was not documented.

## **VII. Closing Statements**

### **(a) Complaints Director's Closing Statement**

[68] Ms. Precht's closing statement can be summarized as follows.

[69] Ms. Precht reiterated that the charge against Mr. Walker is that between September 2020 and December 2022 he exploited his previous relationship with ██████████ to pursue and to engage in a personal, intimate and sexual relationship with ██████████.

[70] The two witnesses with direct knowledge of what happened, ██████████ and Mr. Walker, have provided two very different accounts of how this relationship came to be. However, Ms. Precht asserted that the five factual particulars in the allegation are proven on a balance of probabilities.

[71] In respect of particular 1(a), Mr. Walker was contracted by ██████████ to provide occupational therapist services at that Head Start program for over 20 years under a series of annual contracts. This covered the entire time when ██████████'s son received services in the Head Start program and the entirety of the relationship between Mr. Walker and ██████████.

[72] In respect of particular 1(b), the first interaction that Mr. Walker had with ██████████ and her son was the occupational therapist assessment that Mr. Walker conducted in May 2019. Once ██████████ was in the Head Start program in September 2019, according to Mr. Walker's evidence, ██████████ was one of four children that Mr. Walker was observing when he was attending the classroom. Those observations are documented in Mr. Walker's case file, which he conceded was not shared with ██████████ prior to these proceedings. Although Mr. Walker testified that he removed ██████████ from his active case list as of February 2020, there is no evidence that establishes ██████████ was aware Mr. Walker had done so.

[73] ██████████'s evidence indicates that ██████████ graduated from the Head Start program at the end of June 2020. ██████████ IPP for ██████████, which is dated June 5, 2020, continued to identify Mr. Walker in his role as an occupational therapist and a member of the IPP team.

- [74] Ms. Precht conceded that there is some fuzziness as to exactly when Mr. Walker ceased to have a formal occupational therapist role with [REDACTED], but submitted that this is not a case that turns on exact dates.
- [75] In respect of particular 1(c), [REDACTED] was a [REDACTED] client from September 2019 to March 2022 or thereabouts, where she received services through various programs. This is corroborated by [REDACTED]'s testimony and her case file.
- [76] In respect of particular 1(d), Ms. Precht emphasized that the language "in or around February 2021" is used. [REDACTED] was not sure of exactly when she ran into Mr. Walker at [REDACTED] around this time, saying she thought it was in February or March of 2021. Mr. Walker was specific in saying that he ran into [REDACTED] at [REDACTED] on March 17, 2021, and that he journalled about that so he knows the exact date. Mr. Walker was also specific in saying they had a discussion about the relationship on April 8, 2021 where, according to Mr. Walker, he discussed his understanding of his professional responsibilities with [REDACTED]. Ms. Precht submitted that, even if the relationship may have started in March rather than February, this particular is established on a balance of probabilities.
- [77] In respect of particular 1(e), [REDACTED] testified that the sexual relationship began in June 2021 when she was at Mr. Walker's house, with there being text messages that helped [REDACTED] pin down the timing. Mr. Walker was unable to confirm the date or even the timeframe in which this became a sexual relationship, as he said that he didn't recall those details. In any event, Ms. Precht asserted that the matters in issue do not turn on exact dates.
- [78] Ms. Precht reviewed Standard of Practice #10, noting that it is not directly relevant in this case and there is no allegation of sexual abuse or misconduct. She then reviewed the College's Code of Ethics and directed the hearing tribunal to principle 2, emphasizing that the commentary to section 2.1 states that a relationship between the occupational therapist and the caregiver for a patient has the potential for a power imbalance.
- [79] Ms. Precht referred to the report from the Ontario Minister's Task Force in prevention of sexual abuse of patients under their legislation, highlighting the insights about the power differential between health care professionals and patients even when an encounter has been brief or even where the parties believe they are mutually agreeing to an equal relationship with no persistent power differential.
- [80] Ms. Precht summarized the testimony of the meeting between [REDACTED] and Mr. Walker that led to the start of the friendship, noting it was at [REDACTED] in the context of [REDACTED] continuing to access services at [REDACTED] for herself. The reason [REDACTED] was willing to engage in ongoing discussion with Mr. Walker was because Mr. Walker was the occupational therapist for Head Start and she was seeking support for herself and her son. Mr. Walker's position, his profession and his familiarity with [REDACTED] were critical in building trust with [REDACTED].
- [81] Ms. Precht's submissions then turned to the issue of credibility. She presented case law and explained the importance of adjudicator's role in assessing credibility. There are a variety of factors that go to credibility, including demeanor, memory, plausibility, internal consistency, external consistency, motivation, and ability to perceive. Ms. Precht then went through examples for each credibility component listed and encouraged the tribunal to consider the seven credibility components for each witness with respect to their testimony.



[82] Returning to her prior objection, Ms. Precht cautioned the hearing tribunal about the weight that can be put on the new evidence presented by Mr. Walker that was not put to ██████████ in cross-examination. This was specifically with regard to:

1. Mr. Walker's statement that when he ran into ██████████ at ██████████ in March 2021 she was goofy, silly, announced she was single, and gave him her number;
2. Mr. Walker's statement about having a conversation with ██████████ about his ethical obligations on April 8, 2021 and that she provided informed consent to proceed with the relationship;
3. Mr. Walker's statement about his meeting at the park near ██████████ home in April 2021, more specifically that ██████████ was not present; and
4. Mr. Walker's statements about trouble he says ██████████ caused him since the relationship ended.

[83] Finally, Ms. Precht listed and reviewed case law submitted by the Complaints Director as being applicable to the case.

#### **(b) Investigated Member's Closing Statement**

[84] Mr. Appelt's closing statement can be summarized as follows.

[85] Mr. Appelt began by emphasizing that the onus of proof lies with the Complaints Director. He then reviewed four general areas of evidence which are vital for the tribunal to consider when determining whether there was exploitation.

[86] The first area is that Mr. Walker's clinical knowledge of ██████████ before his relationship with ██████████ was extremely limited. Mr. Walker played a very limited role at ██████████ only working a few days per month as an independent contractor. His role in the busy classroom setting was a passive one and he did not directly interact with the children. The initial assessment of ██████████ was brief, only lasting about 30 minutes, and there were only two observations of ██████████ in the classroom.

[87] The second area is the gap in timing between the observations of ██████████ and the beginning of the sexual relationship with ██████████. Mr. Appelt disagrees with Ms. Precht's statement that this is not a case that turns on exact dates. Timing is crucial, as it directly informs the sphere of a continuing occupational therapist-patient relationship and the potential for exploitation diminishing over time, a point which is suggested by Standard of Practice #10.

[88] Mr. Appelt submitted that the end of the therapeutic relationship with ██████████ was in January or February 2020, not in June of 2020. Mr. Walker testified that he was not at that June meeting nor was he asked to be there for the IPP meeting. Although there was competing evidence about when the sexual relationship started, it was sometime in the summer or fall of 2021. Either way, there is more than a year from when Mr. Walker stopped providing service to ██████████ and the sexual relationship with ██████████ began.

[89] The third area is the nature of the relationship between Mr. Walker and ██████████, beginning in spring of 2021 and progressing from there as shown in the text messages. The focus of the relationship was not on ██████████, but on getting to know each other as normal

relationships progress: two adults moving forward together in consensual manner, not one person taking advantage of another.

- [90] The fourth area is the end of the relationship and timing of the complaint submission. The text messages and ██████████ testimony confirm that the end of the relationship was emotionally charged. Mr. Appelt reviewed the messages of the burning structure and the timing of the complaint submission, which he asserts gives insight into the motivation behind the complaint and should be strongly considered in assessing the credibility of ██████████
- [91] Mr. Appelt listed and reviewed case law submitted by Mr. Walker as being applicable to the case.
- [92] In closing, Mr. Appelt summarized this case as one where the disciplinary arm of the College reached too far into one of its regulated member's personal lives. Conduct that is outside of the practice of the profession needs to be approached with caution given the risk of regulatory overreach.

### **(c) The Complaints Director's Rebuttal Statement**

- [93] Ms. Precht offered a few comments in rebuttal, including that the text message evidence makes clear that there is nothing conspicuous about the timing of ██████████ complaint and how ██████████'s perception of Mr. Walker and the position he held was critical.

## **VIII. Findings Decision**

- [94] The Hearing Tribunal acknowledged that there is only one standard of proof in civil proceedings such as this: proof on a balance of probabilities. Accordingly, the Hearing Tribunal is tasked with determining whether it is more likely or not that the conduct occurred as alleged. Furthermore, the Complaints Director has the burden of proof to prove that facts occurred on a balance of probabilities and to then establish that proven facts rise to the level of unprofessional conduct as defined in the HPA.
- [95] For the reasons that follow in this decision, the Hearing Tribunal finds the allegations against Mr. Walker as set out in charge one of the Notice of Hearing and its sub-sections have been proven as fact on a balance of probabilities and constitute unprofessional conduct.
- [96] The Hearing Tribunal began by analyzing the particulars set out in the subsections of the charge in the Notice of Hearing, recognizing that these were the factual bases underlying the allegation that Mr. Walker exploited his previous client-therapist relationship with ██████████ to pursue and engage in a personal, intimate, and sexual relationship with ██████████. Ultimately, the Hearing Tribunal found that the particulars set out in subsections 1(a) to (e) in the charge were proven as fact on a balance of probabilities.
- [97] Respecting subsection 1(a), it is not controversial that Mr. Walker was contracted by ██████████ during the relevant period to provide occupational therapy services. The Joint Exhibit Book included multiple Service Agreements between ██████████ and Mr. Walker through his company, Functional Solutions Inc., setting out the terms under which Mr. Walker would provide occupational therapy services for ██████████. The dates of the Service Agreements



span from 2018 to 2023. [REDACTED] and Mr. Walker's verbal testimony further supported that Mr. Walker was contracted by [REDACTED] at the times relevant to the charges.

[98] It is similarly not controversial that Mr. Walker provided occupational therapy services to [REDACTED] through [REDACTED]'s Head Start program between September 2019 and March 2020 or thereabouts, as set out in subsection 1(b). The Joint Exhibit Book included multiple documents to establish this as fact, including:

1. The Occupational Therapy Report dated May 3, 2019. The report indicated that "a referral was made to Occupational Therapy (OT) Services by program staff due to difficulties encountered in fine motor activities". The report was for [REDACTED], and the assessment was conducted at the [REDACTED] facility, where [REDACTED] testified that the occupational therapist was John Walker.
2. The welcome letter from [REDACTED] dated July 2019. The letter confirmed that [REDACTED]. [REDACTED]'s child will attend the Head Start program and regular classes would begin on September 3, 2019.
3. The Release and Gathering of Information Consent Form dated September 3, 2019. This document was for the purposes of the 2019-2020 Head Start Program. In her testimony, [REDACTED] confirmed that she signed and dated the form, where she understood it to mean that [REDACTED] would be able to share information with the [REDACTED]'s occupational therapist.
4. The documented encounter from November 14, 2019. Mr. Walker's testimony confirmed that he did see [REDACTED] child that day and recorded the chart entry: "[REDACTED] was seen in program today. His fine motor skills were observed to be age typical to above average."
5. Mr. Walker's occupational therapist notes for [REDACTED]'s child, which span from May 3, 2019 to February 6, 2020. In particular, the notes from February 6, 2020 state "child removed from writer's active case load... child discharged."
6. The IPP for [REDACTED]'s child dated June 5, 2020. The testimony of [REDACTED] confirmed that Mr. Walker signed this document.

[99] The documentary evidence supports that Mr. Walker was still providing his professional input to provide occupational therapy summary and recommendations for the IPP, which was dated June 2020. His professional opinion was being solicited at that time, therefore the tribunal finds that he continued to provide occupational therapy services to J until that time.

[100] The evidence also establishes that [REDACTED] was a client of [REDACTED] between September 2019 and March 2022 or thereabouts, as set out in subsection 1(c). In addition to [REDACTED] testimony confirming that she received services from various [REDACTED] programs during the relevant dates, the Joint Exhibit Book included multiple documents to reinforce this allegation, including:

1. The Family Intake Screen dated April 25, 2019.
2. Consent to Service Form dated April 25, 2019.



3. C5 Therapy Referral Form dated July 30, 2020.
4. ██████████'s Participant File, which confirmed the date the programs started as April 1, 2019 and ended on March 24, 2022. The chart notes are consistent with the dates noted in the allegation.

[101] Both ██████████ and Mr. Walker confirmed in their testimonies that a friendship developed between them. While their recollections of the exact date somewhat differed, ██████████ believing it to have started in March or April 2021 and Mr. Walker believing it to be April 2021, either of these ranges are consistent with the wording of subsection 1(d) that a personal relationship commenced "in or around February 2021".

[102] ██████████ and Mr. Walker testified that they started meeting one another outside of ██████████, including going on walks together and visiting a park. ██████████ recalled a park visit having occurred in April 2021, where a text exchange between Mr. Walker and ██████████ on April 21, 2022 confirmed that they visited a park by ██████████'s place "about a year ago". The contents and tone of their text messages establish that a personal relationship between ██████████ and Mr. Walker was certainly in place as of May 2021.

[103] Regarding subsection 1(e), it was evident from ██████████ and Mr. Walker's testimonies and through their text messages that a sexual relationship developed between them that ended in December 2022.

[104] ██████████ and Mr. Walker provided conflicting evidence in their testimony as to when the sexual relationship began. ██████████ testified that the sexual relationship began in June of 2021 when she stayed the night at Mr. Walker's home, which range was corroborated by text message exchanges evidencing that she had met with Mr. Walker in person on multiple occasions in that month. Mr. Walker provided evasive responses when asked directly about when the sexual relationship began, stating that he could not recall an exact point in time.

[105] On a balance of probabilities, the Hearing Tribunal accepts ██████████'s evidence regarding the date that the sexual relationship started. Her testimony was internally consistent, corroborated by the documentary evidence, and not undermined on cross-examination.

[106] In addition to finding that the facts supporting the charge in the Notice of Hearing were proven, the Hearing Tribunal unanimously concluded that they rise to the level of unprofessional conduct as defined in the HPA. The proven actions of Mr. Walker clearly harmed the integrity of the profession in the eyes of the public, were inconsistent with the position of trust that an occupational therapist occupies and were extremely troubling in terms of the exploitation of an existing power imbalance between himself and ██████████.

[107] The Hearing Tribunal relied on multiple sources in making its assessment of whether unprofessional conduct should be found on the proven facts, starting with the definition set out in the HPA. The College's Standards of Practice and Code of Ethics also provide insight into the expectations of members of the occupational therapy profession.

[108] Standard of Practice #1.2 requires that an occupational therapist "be knowledgeable of and adhere to all relevant public protection legislation, regulatory and professional legislation, bylaws, standards of practice, and code of ethics applicable to his/her occupational therapy practice".



[109] Code of Ethics principle 2.1 requires occupational therapists to avoid “any activity or relationship which would exploit or cause harm to others or to the profession”. The associated commentary on this principle states that, as occupational therapists, “we should not engage in any form of relationship with our clients or their caregivers that could potentially cause harm or exploit the differential power relationship” created by the client-therapist relationship, as doing so “would be exploiting the original nature of the therapeutic relationship”.

[110] The Hearing Tribunal acknowledges and accepts the parties’ submissions that there is no allegation of sexual abuse or misconduct against Mr. Walker. Accordingly, Standard of Practice #10 which is titled “Maintain Appropriate Boundaries” does not apply to the present case, as it is clearly intended to apply to boundaries in the context of an occupational therapist-client relationship.

[111] Although ██████████ was never a patient of Mr. Walker’s, the evidence clearly demonstrated that there was a significant power imbalance between the two. ██████████ had many ongoing stresses in her life during the relevant period as a single parent of two young children, including experiencing financial pressure evidenced by her reliance on various resources for support. She had a young child in need of formal supports and specialist services for his developmental needs, where her efforts to get him access to those resources led her to ██████████

[112] ██████████ accessed many supports through ██████████, including the Head Start program for her son and several other programs for herself. In respect of the former, ██████████ relied heavily on Mr. Walker for his expertise and advice as an occupational therapist to support her in addressing her son’s challenges. ██████████ trusted Mr. Walker as an expert with specialized knowledge and skills that could help her child.

[113] The Hearing Tribunal considered the submissions of the parties respecting the existence and persistence of a power imbalance. The Hearing Tribunal found the following excerpts from the the report from the Ontario Minister’s Task Force in prevention of sexual abuse of patients contained in the Complaints Director’s authorities to be particularly informative notwithstanding that ██████████ was never a patient of Mr. Walker’s:

“

[P]ower differentials and idealization may continue even for patients who have not been involved in psychotherapy, making them vulnerable to an offer from the [Healthcare Professional, or “HCP”] for an ongoing relationship, or to seek it out on their own. Even if an HCP and a patient believe that they are mutually agreeing to an equal relationship with no persistent power differential, there is no way to predict the outcome. Patients may come to realize they have been caught up by their own idealization and transference.

[...]

It should be emphasized that there is no HCP-patient relationship – no matter how brief – that can be said to be completely clear of any ongoing power differential or idealization of the HCP by the patient... the HCP should be aware of the possibility of ongoing transference, power differentials and vulnerability on the part of the patient.

"

[114] The Hearing Tribunal agrees with the idea that a power imbalance can exist between a patient's caregiver and the occupational therapist and that such a power imbalance remains even after the end of direct service provision to the caregiver's child. An occupational therapist must be cognizant and actively avoid pursuing relationships with caregivers where the power differential persists, particularly where the said caregiver is in a highly vulnerable state.

[115] The evidence establishes that the power imbalance persisted notwithstanding the cessation of [redacted] being treated by Mr. Walker at [redacted]. [redacted] was a caregiver of a former client of Mr. Walker's to whom he provided direct service, highly vulnerable to exploitation given her circumstances and desire to treat her son's developmental challenges. Even after [redacted] was no longer involved in the Head Start program, [redacted] continued to seek occupational therapist services for her son and was, herself, accessing services from various programs at [redacted]. The personal relationship between [redacted] and Mr. Walker included discussions about [redacted]'s son and occupational therapist strategies to support him, where the line between professional and personal often blurred.

[116] Mr. Walker was clearly aware that pursuing a personal relationship with [redacted] could violate his professional obligations as an occupational therapist. Mr. Walker testified to having spoken to [redacted] about his professional obligations and her providing consent to pursue a relationship, although he admitted that his review of the College's documentation on the subject and conversation with [redacted] was not documented when questioned by the Hearing Tribunal. Regardless, consent cannot be valid in a situation where there is a persisting power imbalance in the relationship, as was the case here.

[117] Mr. Walker knew, or at the very least ought to have known, that there were still indications of a power imbalance persisting between himself and [redacted]. [redacted] questioned him in a text message about whether he could get in trouble for pursuing their relationship, which should have been a cue for him to stop and consider his ethical obligations. Instead, he chose to continue with the relationship.

[118] Exploitation can certainly be found where an occupational therapist, a health professional with more power in the relationship, puts their needs ahead of the patient or caregiver. This harms the integrity of the profession by undermining the public's confidence and trust placed in occupational therapists. By not meeting his professional obligations and putting his own needs ahead of [redacted], Mr. Walker's actions have eroded the trust placed in him by his clients, their caregivers, and the public.

## **IX. Concluding Comments**

[119] The Hearing Tribunal finds that Mr. Walker committed unprofessional conduct in respect of charge one in the Notice of Hearing.

[120] The Hearing Tribunal asks that the parties consult and determine the manner in which submissions on penalty will be provided to it regarding the finding of unprofessional conduct.

Signed on behalf of the Hearing Tribunal this 24<sup>th</sup> day of July, 2024.



A handwritten signature in black ink, consisting of a stylized 'KH' followed by a wavy line.

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Kerstin Hurd, Chair

On behalf of the Hearing Tribunal

**IN THE MATTER OF A HEARING OF THE HEARING TRIBUNAL  
BY THE ALBERTA COLLEGE OF OCCUPATIONAL THERAPISTS  
into the conduct of John Walker, Registration #2404,  
pursuant to the *Health Professions Act*, RSA 2000 c H-7**

**SANCTIONS DECISION  
OF THE HEARING TRIBUNAL**

**I. Introduction and Preliminary Matters**

[1] In a written findings decision dated July 24, 2024 (the “**Findings Decision**”), a hearing tribunal (the “**Hearing Tribunal**”) of the Alberta College of Occupational Therapists (the “**College**”) made findings of unprofessional conduct concerning John Walker (“**Mr. Walker**”) as follows:

1. In or around the period between September 2020 and December 2022, you exploited your previous client-therapist relationship with [REDACTED]’s child to pursue and engage in a relationship of a personal, intimate, and sexual relationship with [REDACTED], particulars of which include the following:

- (a) During the relevant period you were contracted by [REDACTED] to provide occupational therapy services;
- (b) Between September 2019 and March 2020 or thereabouts you provided occupational therapy services to [REDACTED]’s child through [REDACTED]’s Head Start program;
- (c) [REDACTED] was also a client of [REDACTED] between September 2019 and March 2022 or thereabouts;
- (d) You commenced a personal relationship with [REDACTED] in or around February 2021;
- (e) You commenced a sexual relationship with [REDACTED] in or around June 2021, which continued until in or around December 2022.

[2] In the Findings Decision, the Hearing Tribunal asked the parties to determine the manner in which penalty submissions would be made. Both parties agreed to proceed with an oral hearing.

[3] The Hearing Tribunal received documentation and case law from the parties in advance of the oral hearing that would be relied upon during their respective oral submissions.

[4] The oral hearing regarding sanctions was conducted virtually on October 24, 2024. The following individuals were present:

Hearing Tribunal

Kerstin Hurd, Chair and Regulated Member



Anne Beattie, Regulated Member

Naz Mellick, Public Member

Glen Buick, Public Member

Taylor Maxston, Independent Legal Counsel to the Hearing Tribunal

For the College

Anna Yarmon, Complaints Director

Kimberly Precht, Legal Counsel for the Complaints Director

For Mr. Walker

John Walker

Eric Appelt, Legal Counsel for the Member

Others

Shelley Blair, Hearings Director for the College

Kelly Cochrane, Court Reporter

**II. Preliminary Matters**

- [5] At the start of the oral hearing regarding sanction, Ms. Precht indicated that both she and Mr. Appelt identified that certain hearing dates for the liability phase of the hearing were incorrect in the Findings Decision. Specifically, paragraph one of the Findings Decision states that the hearing was conducted on “November 27 and 28, 2023 as well as on April 2 and 4, 2024” when the actual dates for the liability phase of the hearing were November 6 and 7, 2023 as well as April 2 and 4, 2024.
- [6] The Hearing Tribunal confirms that the actual hearing dates for the liability phase of the hearing were November 6 and 7, 2023 as well as April 2 and 4, 2024.
- [7] Both parties indicated that they would not be calling any witnesses for the sanction phase of the hearing.

**III. Submissions on Sanction**

- (a) The Complaints Director

[8] Ms. Precht requested that the Hearing Tribunal make the following orders regarding sanction:

1. Mr. Walker shall receive a reprimand for his unprofessional conduct, with the Hearing Tribunal's penalty decision serving as that reprimand.
2. Mr. Walker's practice permit shall be suspended for a period of twelve (12) months, with six (6) of those months being held in abeyance subject to Mr. Walker completing the educational requirements proposed by the Complaints Director. For greater certainty:
  - (a) If Mr. Walker completes the educational requirements proposed by the Complaints Director before the first six (6) months of the suspension pass, the suspension shall be limited to six (6) months total; and
  - (b) If Mr. Walker fails to complete the educational requirements proposed by the Complaints Director before the first six (6) months of the suspension pass, the six months that were held in abeyance will be added to the suspension for a total suspension of twelve (12) months.
3. Mr. Walker is required to complete the John Collins Consulting Inc. ("**John Collins**") course focussing on professional boundaries at Mr. Walker's sole cost and expense. Mr. Walker must complete this course prior to reinstatement of his practice permit.
4. Mr. Walker shall pay costs of the investigation and hearing in the amount of \$55,000.00, which shall be paid in equal monthly instalments over a period of thirty-six (36) months starting on the month after this penalty decision issued.

[9] Ms. Precht outlined the authority of the Hearing Tribunal to make orders regarding sanction under section 82 of the *Health Professions Act*, RSA 2000, c H-7 (the "**HPA**").

[10] Ms. Precht reviewed the factors set out in *Jaswal v. Newfoundland Medical Board* [1986] NJ No 50 (NLSC-TD) ("**Jaswal**") which the Complaints Director submitted are relevant to determining appropriate sanctions. Ms. Precht's submissions can be summarized as follows:

1. Mr. Walker's unprofessional conduct was of a serious nature, noting the Hearing Tribunal's characterization in its Findings Decision and how Mr. Walker's actions took place when he was the only occupational therapist providing services at [REDACTED]
2. Mr. Walker's unprofessional conduct had a significant impact on [REDACTED] especially considering the vulnerable circumstances that she was in at the time when the unprofessional conduct occurred.
3. The sanctions ordered against Mr. Walker should make clear that his unprofessional conduct was extremely troubling and represented a failure to uphold his ethical obligations as an occupational therapist. A significant period of suspension will assist in sending this message.
4. A significant period of suspension will also reinforce general deterrence for other occupational therapists that this type of conduct is unacceptable.

5. The sanctions are imperative to maintaining the public's confidence and trust in the College's ability to properly regulate its members and maintain the integrity of the profession. The suspension and educational requirements are especially important to that end.
6. The John Collins course will require Mr. Walker to take steps to understand his ethical obligations and hopefully address the root causes of Mr. Walker's unprofessional conduct.
7. Although Mr. Walker has no previous findings of unprofessional conduct, Ms. Precht submitted that this does not necessarily move the needle in this case.

[11] Ms. Precht presented several case authorities on behalf of the Complaints Director to demonstrate the appropriateness of the sanctions sought. Ms. Precht admitted that although the cases do not present conduct that is exactly the same as Mr. Walker's, they could nonetheless provide some helpful insights and considerations in determining sanctions.

[12] Ms. Precht submitted that the 12-month suspension unambiguously signals to Mr. Walker, other regulated members of the College, and the public that the College considers Mr. Walker's conduct to be very concerning. Holding in abeyance the six months out of 12 gives Mr. Walker the opportunity to demonstrate that he takes the need for remediation seriously, and he can do so by prioritizing the John Collins course without delay, thereby returning to practice after six months rather than serving the full 12-month suspension.

[13] Specifically on the issue of costs, Ms. Precht discussed four principles in determining the reasonableness of costs awards: success of the parties, seriousness of the charges, conduct of the parties, and reasonableness of the amounts. She clarified that the costs award represents approximately 50% of the total costs of the investigation and hearing with reference to a cost summary prepared by the Complaints Director. According to Ms. Precht, this represents an appropriate costs award given the five-day contested hearing where the Complaints Director was fully successful in proving the serious allegations set out in the Notice of Hearing.

(b) Mr. Walker

[14] Mr. Appelt requested that the Hearing Tribunal make the following orders regarding sanction:

1. Mr. Walker shall receive a reprimand for his unprofessional conduct, with the Hearing Tribunal's penalty decision serving as that reprimand.
2. Commencing fourteen (14) days following Mr. Walker's receipt of the Hearing Tribunal's penalty decision, Mr. Walker's practice permit shall be suspended for a period of six (6) months, with three (3) of those months being held in abeyance subject to Mr. Walker completing the educational requirements he proposes. For greater certainty:
  - (a) If Mr. Walker completes the educational requirements before the first three (3) months of the suspension pass, the suspension shall be limited to three (3) months total; and



- (b) If Mr. Walker fails to complete the educational requirements before the first three (3) months of the suspension pass, the three (3) months that were held in abeyance will be added to the suspension for a total suspension of six (6) months.
3. Mr. Walker is required to complete the following courses at his sole cost and expense and, in any event, prior to resintatement of his practice permit:
  - (a) The John Collins course focussing on professional boundaries; and
  - (b) Either the professional boundaries course offered by PBI Education (the "**PB-24 Course**") or the Professionalism and Ethics for Healthcare Professionals through the Northern Alberta Institute of Tehcnology's continuing education (the "**IPHE201 Course**").

[15] Similar to Ms. Precht, Mr. Appelt reviewed the factors set out in the *Jaswal* decision which Mr. Walker submits are relevant to determining appropriate sanctions. Mr. Appelt's submissions can be summarized as follows:

1. The case falls on the less serious side of the spectrum for unprofessional conduct. Mr. Walker takes these proceedings seriously and has cooperated with all steps in the complaints process, including the investigation and hearing. The case involves differing interpretations of facts, where Mr. Walker did not provide direct treatment to ■■■, nor did he provide intensive or long-term treatment to ■■■ son. Furthermore, the intimate relationship between Mr. Walker and ■■■ began after the services being provided by Mr. Walker to ■■■'s son had ended more than one year prior. ■■■ also contributed to moving the relationship forward and it was not only Mr. Walker who was responsible for progressing the relationship.
2. Mr. Walker acknowledged the majority of facts underlying the case, such as the nature of his observations of ■■■'s son, the nature of his friendship with ■■■ and how the friendship grew into an intimate relationship. The case involves subjective interpretation of the facts rather than any substantive disagreement on what those facts were. Further, this situation would qualify as a single event given there was one relationship and one patient involved, despite the relationship having gone on for a lengthy period of time.
3. While Mr. Walker was an experienced occupational therapist at the time of the unprofessional conduct, Mr. Walker had never been the subject of a prior disciplinary complaint or conviction, which is a mitigating factor.
4. ■■■ was 30 years of age at the time of making the complaint. The age gap between ■■■ and Mr. Walker should not factor into the Hearing Tribunal's analysis with regard to age and mental condition, given that ■■■ noted in her text messages that age was not something she took issue with in the relationship with Mr. Walker. While the Findings Decision referenced ■■■ being under some stress, there is no evidence of an underlying mental health condition, nor was there evidence that ■■■ was relying on Mr. Walker to help support with rent payments or groceries or things of that nature.

5. Mr. Walker has already suffered penalties as a result of the allegations, specifically the termination of Mr. Walker's contractor arrangement with ██████ where he had been working for 23 years.
6. The Hearing Tribunal does not have much evidence as to the impact of the conduct on ██████, nor is there any evidence to suggest that ██████'s son was harmed in any way.
7. The sanctions proposed by Mr. Walker, along with the publication of the Findings Decision and the penalty decision, will have the effect of promoting deterrence and protection of the public.

[16] Mr. Appelt referenced to the range of sanctions in similar cases to provide context for the Hearing Tribunal's consideration.

[17] Mr. Appelt clarified two points concerning Mr. Walker's proposed submissions on penalty. First, the 14-day waiting period for the commencement of the suspension would allow Mr. Walker to coordinate with his clients, especially given that some are in remote communities with limited access to services. Second, the reason for suggesting two courses is that the Complaints Director has suggested that the substance of the sanction should go towards rehabilitation and to ensure there are absolutely no concerns with respect to Mr. Walker's competency in terms of his practice moving forward.

[18] Mr. Appelt then turned to the issue of costs, noting that there is some ambiguity given that the full legal accounts have not been provided or disclosed. He recommended approaching the cost summary provided by the Complaints Director with caution, specifically the bottom line number of \$78,000 on the Field Law invoice, given that it seems high to him. Mr. Appelt referred to case law to argue that the onus is on the Complaints Director to establish that the costs are reasonable, with the disclosure of detailed invoices important for that purpose.

[19] Mr. Appelt referenced several decisions in support of the argument that a costs award would be inappropriate. He submitted that the Alberta Court of Appeal's decision in *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336 (CanLII) ("**Jinnah**") establishes a set of limited circumstances in which costs awards should be made by Hearing Tribunals, none of which apply here. However, if the Hearing Tribunal decides to award costs, Mr. Appelt submitted that they should be capped at \$20,000.00.

(c) Reply from the Complaints Director

[20] Ms. Precht began by stating that Mr. Appelt's submissions on costs walk a tenuous line in terms of disclosing some without prejudice discussions and suggesting that privileged legal accounts should be disclosed. In effect, Mr. Appelt has asked the Hearing Tribunal to presume that the Complaints Director's legal accounts are unreasonable based on the Complaints Director's refusal to provide the details to Mr. Walker. The reason they were not disclosed is because of solicitor client privilege. Further, the starting point regarding these accounts should be a presumption that they are reasonable because (i) lawyers are professionals and presumed to charge reasonably for their services; and (ii) these are accounts that have been paid by the College and, presumably, the College would not pay legal accounts that is considered to be unreasonable. Lastly, a hearing tribunal typically does not have the expertise to assess specifically whether or not it's reasonable that certain tasks

listed in a legal account took a given amount of time, so having those legal accounts would not necessarily put anyone in a position to determine whether those costs were reasonable.

- [21] In respect of the *Jinnah* decision, Ms. Precht submitted that a costs award in the amount sought by the Complaints Director is appropriate given the seriousness of the unprofessional conduct. Ms. Precht referenced the Findings Decision and the text messages being evidence supporting that Mr. Walker's interpretation of how the relationship progressed was different than what could be considered a reasonable interpretation and, when pressed to answer questions about those facts, Mr. Walker was evasive at times and did not provide direct answers. Despite Mr. Appelt urging the Hearing Tribunal to consider his interpretation of how the relationship came about, the Hearing Tribunal found that he was exploitative in his conduct with respect to the relationship with [REDACTED]. This included the vulnerable circumstances of [REDACTED].
- [22] Ms. Precht submitted that a number of the decisions referenced by Mr. Appelt are distinguishable from Mr. Walker's case, including those cases involving joint submissions regarding penalty that were agreed to by the parties.

(d) Questions from the Hearing Tribunal

- [23] The Hearing Tribunal asked multiple questions of the parties.
- [24] In response to a question concerning when the proposed suspension would take effect, Ms. Precht indicated that the Complaints Director had no objection to the timeline proposed by Mr. Walker about the 14-day waiting period from the date of service of the penalty decision.
- [25] The Hearing Tribunal also asked whether the parties took any position on publication, specifically with regard to Mr. Walker, [REDACTED], and [REDACTED]'s son. Both parties agreed that publication with Mr. Walker's name was appropriate and, further, that [REDACTED]'s son's full name should be redacted. With respect to [REDACTED], Ms. Precht requested that her full name be redacted while Mr. Appelt took no position. Ms. Precht also referred the Hearing Tribunal to sections 119(1.1) and 135.93 of the HPA as well as section 26 of the College's bylaws which provide the registrar with the authority to make the decision on what information to publish.
- [26] Lastly, the Hearing Tribunal asked about which specific courses are being suggested by the parties and, further, how they believe they will be rehabilitative for Mr. Walker. The parties described the specific courses being suggested, noting that the John Collins course has been used by various regulatory colleges with positive reviews. Mr. Appelt added that the IPHE201 Course contains an assessment component with feedback from an instructor, and he would encourage the Hearing Tribunal to look up the course's syllabus.

**IV. Orders of the Hearing Tribunal**

- [27] The Hearing Tribunal is authorized under s. 82(1) of the HPA to make orders in response to findings of unprofessional conduct. The Hearing Tribunal makes the following orders pursuant to section 82 of the HPA:
1. Mr. Walker is hereby reprimanded for his unprofessional conduct, with the Hearing Tribunal's decision serving as the reprimand.



2. Mr. Walker's practice permit is suspended effective fourteen (14) days from the date that Mr. Walker is served with a copy of this penalty decision.
3. Mr. Walker shall complete the CPEP PROBE Ethics & Boundaries Course (the "**PROBE Course**") with an unconditional pass at his sole cost and expense. Mr. Walker shall immediately report the results of the PROBE Course to the College upon receipt. Irrespective of the length of suspension noted below in these penalty orders, Mr. Walker's practice permit shall not be reinstated until he passes the PROBE Course with an unconditional pass.
4. The suspension of Mr. Walker's practice permit shall be for a period of nine (9) months, with six (6) of those months held in abeyance subject to Mr. Walker completing the educational requirements specified in this penalty order #4. Specifically:
  - (a) If Mr. Walker completes the PROBE Course with an unconditional pass before the first three (3) months of the suspension pass, the suspension shall be limited to three (3) months total; and
  - (b) If Mr. Walker fails to complete the PROBE Course with an unconditional pass before the first three (3) months of the suspension pass, the six (6) months that were held in abeyance will be added to the suspension for a total suspension of nine (9) months.
5. Mr. Walker is ordered to pay \$30,000.00 in costs to the College, representing a portion of the costs of the investigation and hearing. However, if:
  - (a) Mr. Walker enrolls in the PROBE Plus monitoring program following his obtaining an unconditional pass from the PROBE Course, at his sole cost and expense; and
  - (b) Within one (1) year from the date of this penalty decision, Mr. Walker provides confirmation satisfactory to the College of successfully completing the PROBE Plus monitoring program,

the costs award shall be reduced to \$20,000.00. For greater certainty, the \$30,000.00 is payable to the College forthwith, although the Complaints Director and Mr. Walker are at liberty to come to an agreement concerning a payment schedule. Should Mr. Walker satisfy the conditions to reduce the costs award, the excess \$10,000.00 will either be refunded by the College to Mr. Walker (if Mr. Walker has already paid same to the College) or not be required to be paid by Mr. Walker (if Mr. Walker has not already paid same to the College).

[28] The Hearing Tribunal also makes the following directions concerning disclosure of Mr. Walker, ■■■, and ■■■'s son's names to the public including, but not limited to, in the transcripts/exhibits of these proceedings, the Findings Decision, and this penalty decision:

1. Mr. Walker's name will have no restrictions on disclosure to the public.

2. █████ shall be identified as the “Complainant”, █████, and/or “█████” and any references to █████’s full name shall be redacted to the extent necessary to comply with this direction.
3. █████’s son shall be identified as “█████’s son”, “█████’s son”, and/or “█”, and any references to █████’s son’s full name shall be redacted to the extent necessary to comply with this direction.

#### **V. Reasons for Decision on Penalty**

[29] As a preliminary comment, the Hearing Tribunal recognizes its orders with respect to sanction must be fair, reasonable and proportionate, taking into account the facts of this case.

[30] The Hearing Tribunal carefully considered the parties’ submissions on penalty, including the oral submissions and authorities presented. The Hearing Tribunal specifically noted that, despite some overlap in the orders sought, the proposed sanctions were not presented as a joint submission regarding penalty, meaning that the high standard to depart from such a joint submission was not applicable in this case.

[31] In making its decision on sanction, the Hearing Tribunal considered a number of factors identified in the *Jaswal* decision, including the following:

- **The nature and gravity of the proven allegations.** – The nature and gravity of Mr. Walker’s proven conduct is very concerning and of a serious nature. The Findings Decision sets out the Hearing Tribunal’s assessment of the seriousness of Mr. Walker’s conduct in detail. Ethical transgressions such as Mr. Walker’s call into question the integrity of the regulated member and erode the public’s trust in the profession as a whole.
- **The age and experience of the investigated member.** – Mr. Walker is an experienced occupational therapist who had an extensive history working for █████. The unprofessional conduct found to have occurred in this case cannot be attributed to inexperience on Mr. Walker’s part.
- **The previous character of the investigated member and in particular the presence or absence of any prior complaints or convictions.** – There were no prior incidents or complaints involving Mr. Walker.
- **Whether the investigated member has already suffered other serious financial or other penalties as a result of the Allegations having been made.** – As a result of the allegations, Mr. Walker’s contractor arrangement with █████, where he had been working for 23 years, was terminated.
- **The presence or absence of any mitigating circumstances.** – As noted above in this penalty decision.
- **The need to promote specific and general deterrence and, thereby to protect the public and ensure the safe and proper practice.** – See comments below.
- **The need to maintain the public’s confidence in the integrity of the profession.** – Any failure of a regulated member to practice and act with integrity

will undermine public confidence in the profession for all members. That said, Mr. Walker's unprofessional conduct was very serious and represented a marked departure from the professional and ethical obligations of an occupational therapists, especially with the power imbalance between a healthcare provider and the parent of a minor patient.

- **The range of sentence in other similar cases.** – The Hearing Tribunal considered the case law provided to it.

[32] The Hearing Tribunal concluded that a reprimand is necessary for transparency purposes and to promote general and specific deterrence. It is also important to demonstrate the College's commitment to maintaining its integrity in the eyes of the public by holding members of the profession accountable.

[33] The Hearing Tribunal also determined that suspension of Mr. Walker's practice permit and educational requirements are necessary orders. Both parties identified their preference for having the penalties be remedial in nature more so than punitive, which the Hearing Tribunal took into consideration. The Hearing Tribunal recognized the importance of Mr. Walker's ability to practice and balanced that with the public protection mandate in the HPA, ultimately finding that an approach to sanctions which incentivizes Mr. Walker to take steps for his rehabilitation is more appropriate than outright punishing him for his unprofessional conduct.

[34] The Hearing Tribunal does not believe that the courses proposed by the parties would be sufficient to ensure the desired rehabilitative outcome. The Hearing Tribunal is of the view that the educational component should include opportunities for Mr. Walker to reflect on his conduct, engage with other participants, receive feedback from other learners and course facilitators, and be assessed on his engagement in the learnings and their application. The courses suggested by the parties are targeted at entry-level practitioners. Given that Mr. Walker was not an entry-level practitioner, his lapse in judgment represents a more serious transgression. Therefore, the Hearing Tribunal determined that a higher level of intervention is necessary to achieve the desired outcomes in the public interest. The PROBE Course is a more rigorous and robust course, with components of self-reflection, participant engagement, and interaction along with an assessment or evaluation of results and learnings.

[35] With respect to the suspension, the Hearing Tribunal determined that Mr. Walker's completion of the PROBE Course with an "unconditional pass" is a pre-requisite to his practice permit being reinstated. Separate and apart from this, the Hearing Tribunal took into account both parties' positions and ultimately found a nine month suspension, with the first three months being mandatory and an additional six months being held in abeyance, to be appropriate. As noted in the penalty orders, the additional six months will be held in abeyance pending Mr. Walker's completion of the PROBE course with an "unconditional pass". It was the Hearing Tribunal's perspective that, as an experienced professional, Mr. Walker should be able to demonstrate the ability to think critically and ethically about his conduct and achieve the level required to pass unconditionally. This will enable Mr. Walker to reflect on his conduct and hopefully gain increased understanding and insight into what led to his ethical lapse.

[36] With respect to costs, the Hearing Tribunal determined that some amount of costs are warranted. As set out in its Findings Decision, the evidence establishes that Mr. Walker engaged in serious unprofessional conduct. Mr. Walker's conduct was intentional and self-



serving, which he knew was in violation of his ethical responsibilities as a member of a regulated profession. Accordingly, and consistent with the exceptions set out in the *Jinnah* case, the Hearing Tribunal found that this is a case where a compelling reason exists to impose costs on Mr. Walker. The Hearing Tribunal considered both parties' positions on costs and determined that the costs amount should be dependent on Mr. Walker's accountability and ownership in taking remedial steps to foster increased safety in his practice. Should he choose to engage in the PROBE Plus monitoring program as ordered following successful completion of the PROBE Course, the costs order would be lowered. This represents the Hearing Tribunal's determination that remedial measures are of higher priority in terms of penalties than more punitive ones.

[37] The sanctions ordered in this case are intended, in part, to deter Mr. Walker from engaging in similar or any other unprofessional conduct in the future. Having his permit to practice suspended for a minimum of three months, having to complete the PROBE Course with an unconditional pass, and incurring significant financial costs will collectively serve as a deterrent to Mr. Walker. In addition, the sanctions will demonstrate to the profession that actions and unprofessional conduct such as this are not tolerated, and will in part, act as a deterrent to others in this profession.

[38] The Hearing Tribunal believes its orders for sanction adequately balance the *Jaswal* factors and are consistent with the overarching mandate of the Hearing Tribunal, which is to ensure that the public and the public interest are protected.

Signed on behalf of the Hearing Tribunal this 30th day of January, 2025.



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Kerstin Hurd, Chair  
On behalf of the Hearing Tribunal