

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

Indexed as: Ontario College of Social Workers and Social Service Workers v Yujia Zhu,
2025 ONCSWSSW 11

Date: 20251006

BETWEEN:

THE ONTARIO COLLEGE OF SOCIAL WORKERS
AND SOCIAL SERVICE WORKERS

- and -

YUJIA ZHU

PANEL:	Charlene Crews	Chair, Professional Member
	Rita Silverthorn	Professional Member
	Molly Luu	Public Member

Appearances: Jill Dougherty, Kelsey Ivory, Gavin Fior, counsel for the College
Ada Jeffrey, Anne Marshall, counsel for the Registrant
Andrea Gonsalves, Edward Marrocco, Fredrick Schumann, Independent
Legal Counsel to the Panel

Heard: September 26, 2023
October 3, 4, 5, 11, 2023
November 1, 7, 2023
January 22, 23, 26, 2024
March 12, 27, 2024

DECISION AND REASONS FOR DECISION

[1] The Ontario College of Social Workers and Social Service Workers (the “**College**”) alleges that the Registrant, Yujia Zhu (the “**Registrant**” or “**Ms. Zhu**”) has engaged in acts of professional misconduct. The allegations came on for hearing by video conference before a panel of the Discipline Committee (the “**Panel**”) of the College between September 2023 and March 2024. The parties originally scheduled a five-day hearing. Ultimately a total of twelve hearing days were required for the parties to enter their respective cases and make oral submissions.

[2] For the reasons set out below, the Panel has found that the College has met its burden of proving some but not all allegations of professional misconduct against the Registrant in the Notice of Hearing.

Overview

[3] In this proceeding the College alleges the Registrant engaged in several acts of professional misconduct arising from an interaction with the Complainant, [C1], in April 2021. [C1] was matched with the Registrant on a third-party platform that seeks to connect individuals seeking counselling with professional service providers. [C1] and the Registrant had a short, free consultation session on April 12, 2021, during which the Registrant told [C1] she could not take her on as a client. However, the Registrant discussed referral options with [C1], including a referral to a non-profit organization founded by the Registrant (called For a Safer Space) that provides free therapy services to members of the Chinese Canadian community through clinical interns supervised by the Registrant.

[4] The parties agree that the Registrant refused to provide services to [C1] but they disagree on the reasons. The College alleges that [C1]’s Chinese race or ethnicity was a factor in the Registrant’s denial of services and that, as a result, the Registrant discriminated against [C1] contrary to the College’s standards and the *Ontario Human Rights Code*. The Registrant claims that she could not take [C1] as a client because she did not have time in her schedule and was not taking any new clients. Hypothetically, if she had time, she would not have accepted [C1] as a client because she had legitimate concerns about boundary problems and conflict of interest due to the Registrant’s advocacy work within the Chinese Canadian community and her use of the social media platform WeChat, which she assumed [C1] also used. The Registrant’s reason for assuming that [C1] uses the platform is because it is popular among those who speak the Chinese language.

[5] After the consultation session, [C1] contacted the Registrant seeking services from her non-profit organization. An intern sent [C1] an email with intake forms, all of which were in simplified Chinese. [C1] gave evidence that Simplified Chinese is a form of written language that is most commonly associated with the Mandarin spoken dialect. [C1] does not speak Mandarin or read Simplified Chinese. The experience left [C1] feeling discriminated against, upset and typecast. She made a complaint to the College.

[6] For the reasons that follow, we find that the College has met its burden with respect to some but not all of the allegations. We find that the Registrant improperly refused services to [C1] based on discriminatory assumptions that [C1] used WeChat because she presents as someone who speaks the Chinese language, and that the Registrant did not adequately explore whether there were, in fact, boundary problems. We also find, however, that the Registrant did offer [C1] suitable referral options. We find that [C1] received the intake communications from the Registrant’s non-profit organization in simplified Chinese not because of any breach by the Registrant of her professional obligations but because of an administrative error, which the Registrant promptly corrected.

The allegations

[7] In the Notice of Hearing dated May 27, 2022, the Registrant is alleged to be guilty of professional misconduct pursuant to the *Social Work and Social Service Work Act*, 1998, SO 1998, c 31 (the “**Act**”) in that she is alleged to have engaged in conduct that contravenes the Act, Ontario Regulation 384/00 (the “**Professional Misconduct Regulation**”), Schedule “A” to By-law No. 66 of the Ontario College of Social Workers and Social Service Workers, being the Ontario College of Social Workers and Social Service Workers Code of Ethics (the “**Code of Ethics**”), and

Schedule “B” to By-law No. 66 of the Ontario College of Social Workers and Social Service Workers, being the Ontario College of Social Workers and Social Service Workers Standards of Practice Handbook (the “**Handbook**”).

[8] The particulars of those allegations are as follows:

1. In or about April 2021, you were registered as a social worker with the Ontario College of Social Workers and Social Service Workers (the “**College**”).
2. During this time, you consulted with and/or provided services to Client [C1] (the “**Client**”).
3. During this time, the Client sought to obtain counselling services from you.
4. The Client identifies as a person of a minority racial and ethnic group.
5. During your initial meeting with the Client, you indicated that you were unable to provide her with counselling services due to her race, ancestry, or ethnicity.
6. During your consultation with the Client, you referred her to a student or intern for counselling services through For a Safer Space (FASS), an organization that you founded and/or indicated that you founded.
7. At the time of your referral, FASS was not providing services in the English language, but was providing services in Mandarin. You did not ask the Client what languages she spoke.
8. The Client was contacted by FASS in Mandarin.
9. The Client did not speak Mandarin.

[9] The College alleges that by reason of engaging in some or all of the conduct outlined above, the Registrant is guilty of professional misconduct as set out in section 26(2)(a) and (c) of the Act:

- (a) In that you violated **Section 2.2 of the Professional Misconduct Regulation** and **Principle I of the Handbook** (commented on in **Interpretation 1.2**) by failing to observe, clarify and inquire about information presented to you by clients;
- (b) In that you violated **Section 2.2 of the Professional Misconduct Regulation** and **Principle I of the Handbook** (commented on in **Interpretation 1.3**) by failing to respect and facilitate self-determination in a number of ways, including acting as resources for clients and encouraging them to decide which problems they want to address as well as how to address them;
- (c) In that you violated **Section 2.2 of the Professional Misconduct Regulation** and **Principle I of the Handbook** (commented on in **Interpretation 1.4**) by failing to demonstrate acceptance of each client’s uniqueness;
- (d) In that you violated **Section 2.2 of the Professional Misconduct Regulation** and **Principle I of the Handbook** (commented on in **Interpretation 1.5**) by failing to be aware of your values, attitudes and needs and how these impact on your professional relationships with clients;

- (e) In that you violated **Section 2.2 of the Professional Misconduct Regulation** and **Principle I of the Handbook** (commented on in **Interpretation 1.6**) by failing to distinguish your needs and interests from those of your clients to ensure that, within professional relationships, clients' needs and interests remain paramount;
- (f) In that you violated **Section 2.2 of the Professional Misconduct Regulation** and **Principle II of the Handbook** (commented on in **Interpretation 2.1.4**) by failing to ensure that your professional recommendations or opinions were appropriately substantiated by evidence and supported by a credible body of professional social work knowledge;
- (g) In that you violated **Section 2.2 of the Professional Misconduct Regulation** and **Principle II of the Handbook** (commented on in **Interpretation 2.2.8**) by failing to avoid conduct which could reasonably be perceived as reflecting negatively on the professions of social work or social service work;
- (h) In that you violated **Section 2.2 of the Professional Misconduct Regulation** and **Principle II of the Handbook** (commented on in **Interpretation 2.2.9**) by failing to assist clients to access necessary information, services and resources wherever possible and by failing to promote and facilitate the client participation in decision making;
- (i) In that you violated **Section 2.2 of the Professional Misconduct Regulation** and **Principle III of the Handbook** (commented on in **Interpretation 3.4 and Footnote 3**) by engaging in discrimination based on race, ethnicity, language, religion, marital status, gender, sexual orientation, age, disability, economic status, political affiliation or national origin and by failing to adhere to the Ontario *Human Rights Code* and the *Charter of Rights and Freedoms* in the provision of services;
- (j) In that you violated **Section 2.8 of the Professional Misconduct Regulation** and **Principle III of the Handbook** (commented on in **Interpretation 3.5 and Footnote 4**) by failing to assist potential clients to obtain other services when you were unable or unwilling to provide the requested professional help and by failing to provide professional help without an appropriate reason;
- (k) In that you violated **Section 2.8 of the Professional Misconduct Regulation** and **Principle III of the Handbook** (commented on in **Interpretation 3.9**) by discontinuing and/or terminating services when such services were needed;
- (l) In that you violated **Section 2.8 of the Professional Misconduct Regulation** and **Principle III of the Handbook** (commented on in **Interpretation 3.10**) by failing to arrange the termination, transfer, referral, or continuation of service in accordance with clients' needs and preferences;
- (m) In that you violated **Section 2.28 of the Professional Misconduct Regulation** by contravening the *Act*, regulations or by-laws;
- (n) In that you violated **Section 2.29 of the Professional Misconduct Regulation** by contravening a federal, provincial or territorial law or a municipal by-law where the purpose of the law or by-law is to protect public health or the contravention is relevant to the member's suitability to practise; and/or

- (o) In that you violated **Section 2.36 of the Professional Misconduct Regulation** by 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, dishonorable or unprofessional.

The Registrant's position

[10] The Registrant denies the allegations of professional misconduct in the Notice of Hearing.

The evidence

Background and uncontested facts

[11] There is no dispute between the parties as to some of the basic facts of this case.

[12] By way of background, the Registrant holds a Master of Social Work degree and has been registered as a social worker in Ontario since October 2019. The Registrant's current practice includes psychotherapy, and she continues to see one long-term client.

[13] The Registrant asserts a dedication to social justice and education. She gives her time pro bono as a practicum supervisor at Toronto Metropolitan University and the University of Toronto, and mentors students at Columbia University. In August 2020, the Registrant founded a non-profit organization, For a Safer Space ("**FASS**"), to address the mental health needs of marginalized communities, particularly the Chinese and BIPOC communities. Both parties referred to FASS at the hearing as the Registrant's "NGO" (or non-government organization). The organization is funded by the Registrant and operates in partnerships with various universities. These partnerships have enabled FASS to provide clinical internships and mental health services, particularly during the COVID-19 pandemic.

[14] FASS operates through two websites: an English platform (forasaferspace.org) and a Chinese platform (forasaferspace.com). The organization emphasizes culturally sensitive therapy and aims to reduce the barriers faced by marginalized individuals in accessing appropriate mental health care.

[15] The Registrant and the complainant in this matter, [C1] (the "**Complainant**" or "[C1]"), met in April 2021 through a virtual therapy platform called Inkblot Therapy ("**Inkblot**"). Inkblot matches clients with practitioners offering therapy services.

[16] Practitioners enrolled on the platform must hold a Masters level degree or equivalent, and a registration in good standing with the practitioner's governing body. The practitioner must provide documentation confirming their qualifications and have liability insurance. In April 2021, the Registrant was enrolled as a therapist on Inkblot and [C1] was enrolled as a client.

[17] A client seeking services through Inkblot enrolls on the platform with basic information such as name, email, and contact information. Once the client profile is set up and the client is ready to seek support, they complete a matching questionnaire which includes their personal preferences, background and any mental health diagnoses. Inkblot's matching algorithm then provides a list of practitioners who match with the client—that is, practitioners whom the algorithm deems suitable to the individual's identified needs. The client can then book a free initial consultation session with a practitioner on the list.

[18] For practitioners on Inkblot, the process is similar. The practitioner identifies their areas of expertise, the modalities used in their practice, their availability, and whether they are able to take on new clients. Practitioners on Inkblot are not employees of the platform, and can self-determine the number of clients they take on. The platform provides the practitioner with a list of clients with whom they are matched. The practitioner can select a particular client and see the client's profile, including their counselling preferences.

[19] There is no dispute between the parties that [C1] matched with the Registrant on the Inkblot platform in April 2021 and a free consultation session was initially booked for April 10, 2021. That session was cancelled and then the two met by video for an initial consultation session on Inkblot on April 12, 2021. Both [C1] and the Registrant spoke English in the consultation session. During that consultation, the Registrant suggested [C1] could receive therapy services through her non-profit, FASS. [C1] and the Registrant had no further interaction on Inkblot but following the consultation, [C1] interacted with the Registrant and FASS by email, as follows:

- (a) On April 12, 2021, Ms. Chang sent an email to the Registrant stating, "Per request I'm sending an email to get referral for therapy on setting personal boundaries and working on need for approval."
- (b) On April 17, 2021, the Registrant responded that she would refer [C1] to interns working with FASS.
- (c) On April 18, 2021, [C1] received an email from FASS with an intake form in simplified Chinese.
- (d) On April 18, 2021, [C1] sent an email to the Registrant stating:

I think I got the email from your NGO but it's all in simplified Chinese and I don't speak mandarin. There is no way I can do therapy in Chinese. Just FYI it might be best to actually clarify these with potential clients before sending them to your NGO right off the bat.
- (e) On April 19, 2021, the Registrant responded to Ms. Chang by email explaining that FASS offers bilingual support. The Registrant wrote "I will ask my intern to communicate with you in English. Sorry for the confusion. My apologies."
- (f) On April 19, 2021, FASS sent an email to [C1] written in English and providing an intern's availability for therapy sessions. [C1] did not respond to that email or obtain services from FASS. Instead, on April 19, 2021, [C1] made a complaint to the College.

[20] Despite their agreement on these basic facts and the brevity of the interactions between [C1] and the Registrant, over the course of a twelve-day hearing the parties presented widely divergent perspectives on what transpired in the Inkblot consultation session on April 19, 2021, and whether the Registrant had engaged in any acts of professional misconduct. We will therefore discuss the evidence presented at the hearing, then proceed to outline the parties' respective positions, our credibility findings, and our findings on the misconduct allegations.

[21] A total of seven witnesses were called to testify at the hearing. The College called four fact witnesses, as follows:

- (a) [C1], who made a complaint to the College regarding the Registrant's refusal to provide her with counselling services based on alleged racial discrimination;
- (b) Francine Reid, Coordinator, Complaints and Discipline at the College;
- (c) Bernadette Santiago, a College Investigator; and
- (d) Julie Lafleche, Senior Manager of the Practitioner Network Operations Team at Inkblot Online Platform.

[22] The Registrant, Yujia Zhu, also testified in her defence. In addition, the College and the Registrant each filed an affidavit from personnel at the law firms of their respective counsel dealing with various disclosure and procedural matters.

[23] The College tendered two expert witnesses: Dr. Charmaine Williams and Ena Chada. For the reasons discussed below, the Panel qualified Dr. Williams as an expert and admitted her evidence, but did not admit Ms. Chada's proposed expert evidence.

[24] We will first summarise the evidence of the fact witnesses and then address the College's proposed expert evidence.

Evidence of the Complainant, [C1]

[25] [C1] is a resident of South Korea and an eCommerce business owner. She speaks Cantonese and English, with limited understanding of Mandarin. She can read English and traditional Chinese but struggles with simplified Chinese. In April 2021, [C1] was living in Canada. She moved to South Korea in May 2021, where she resided at the time of the hearing.

[26] In April 2021 [C1] sought therapy using the Inkblot platform. She completed the necessary enrollment forms on the platform and indicated her need for counselling related to Chinese family relationship dynamics, personal boundaries and need for approval. [C1] testified that ethnicity was an important factor for her in selecting a practitioner given the culturally specific nature of the concerns she was addressing. Although it was not necessary for the practitioner to be Chinese, she was looking for an Asian therapist who would have the relevant cultural understanding of Chinese family dynamics.

[27] [C1] testified that she was matched with the Registrant through the Inkblot platform and met with the Registrant by video on April 12, 2021, for an initial consultation session. She had not spoken to or met the Registrant prior to that first appointment and was not familiar with the Registrant's NGO, FASS. According to [C1]'s evidence, the session lasted five minutes or less. The Registrant abruptly ended the session immediately upon seeing [C1] on her screen and observing that she was of Asian descent. [C1] testified that instead of providing therapy, the Registrant referred her to FASS, the Registrant's NGO. [C1] asked the Registrant why and the Registrant told [C1] that she preferred to separate Chinese clients into the NGO.

[28] [C1] testified that during the session, the Registrant did not ask about her ethnicity and did not provide any other referral options or explanations beyond the referral to FASS.

[29] After the Inkblot session, [C1] emailed the Registrant to get more information about obtaining therapy through FASS. As outlined above, the Registrant replied indicating that she would refer [C1] to an intern. [C1] then received an email from FASS, which was in simplified Chinese. [C1], who does not speak Mandarin, testified that she felt upset, discriminated against and pigeonholed when the Registrant's intern sent her a follow up email in simplified Chinese, assuming she could read it. [C1] informed the Registrant that she could not do therapy in "[M]andarin ... or in Chinese". The Registrant replied to [C1], thanking her for her email and letting her know that FASS offers bilingual support and she would ask her intern to communicate in English. She ended her email with an apology for the confusion.

[30] [C1] testified that she never received services from either FASS or the Registrant. For [C1], obtaining counselling services was time-sensitive, as she wanted support before she moved to Korea in May 2021. [C1] did eventually receive counselling from another platform in that time period.

[31] On April 19, 2021, [C1] filed a complaint with the College, following the last email she received from the Registrant. [C1] described the complaint incident as follows:

I had an initial therapy session scheduled with this therapist, but when she saw me on the video chat and saw that I was of asian descent, she immediately told me she does not take Chinese clients and to email her to get referred to her NGO for free sessions. I asked her why she does not take Chinese clients, and she said that it is to separate them into her NGO. Thinking this is due to Chinese family relationship dynamics differing from that of the west, I obliged with ending the session as she requested. When I emailed her NGO, I got an email in all simplified Chinese. I do not read simplified Chinese and do not speak Mandarin. The therapist had assumed many things within the first minute of seeing me on video chat without confirming any details - nevermind that I was taken back by her "doesn't take Chinese clients" statement (which I having lived in Canada my entire life have NEVER received that statement by any one before, never mind by a Chinese-ethnic therapist!), she didn't even confirm I was Chinese or that I spoke mandarin [*sic*].

[32] [C1] stated her concern on the form as:

The member refused to continue to session based on racial discrimination The member had pre-assumed notions about me, which she did not confirm with me [*sic*].

[33] Along with the complaint form, [C1] included as a supporting document the email she received from FASS on April 12, 2021, in simplified Chinese.

[34] [C1] testified that she filed the complaint because it was the first time she had not been provided service due to being Chinese. She was shocked by how she was treated and was upset that she did not get the services she wanted. [C1] testified that this experience left her feeling labelled and discriminated against.

Evidence of Francine Reid, Coordinator, Complaints and Discipline at the College

[35] The College called Ms. Reid as its second witness.

[36] Ms. Reid is the College's intake coordinator and is responsible for managing incoming complaints, tracking them in a database, and overseeing the complaints process until the complaint is assigned to an investigator.

[37] Ms. Reid testified that the College received a complaint from [C1] in April 2021. It was Ms. Reid's responsibility to log the complaint, acknowledge receipt of the complaint, and ensure the complaint was assigned to an investigator.

[38] On August 11, 2021, Ms. Reid sent an email to [C1] acknowledging receipt of her completed complaint form concerning the conduct of the Registrant. Ms. Reid also sought additional information from [C1], including the name of the Registrant's NGO and, if [C1] ever received an English version of the email she originally received from FASS in Mandarin on April 18, 2021, a copy of that email. Ms. Reid testified that she did not receive a response from the Complainant.

[39] Also on August 11, 2021, Ms. Reid contacted the Registrant to notify her of the complaint. Ms. Reid's letter advised the Registrant that: "No response is required from you at this time. Once an investigator has been assigned to the complaint, you will be provided with a deadline in which to file any response, should you choose. In the meantime, please retain this correspondence for your records."

[40] Ms. Reid testified that the Registrant replied to this email on the same day. The email from the Registrant stated: "Our free session services first started in a Mandarin-speaking Chinese community in February this year, and we did not roll out our English service until May 22 this year. Please see the attached photo of our Instagram post." Ms. Reid received two more emails from the Registrant on August 11, 2021. Ms. Reid acknowledged receipt of those three emails in a reply to the Registrant on August 12, 2021. The Registrant then sent a further email on August 12, 2021, in which she wrote: "Dear Francine, Thank you for your email. Her complaint is an invalid complaint to start with. I have stated eight facts in my attached document with tons of evidence from my end. Thank you." The Registrant sent two more emails to Ms. Reid on August 13, 2021.

[41] In each of her emails, the Registrant denied [C1]'s allegations. Ms. Reid testified that the Registrant questioned the validity of the complaint, stating that there was no therapeutic relationship with [C1] and accusing [C1] of malicious intent.

[42] For example, in the final and most detailed response, which the Registrant sent on August 12, 2021, under the heading "My Defense", she stated that "this client filed a complaint based on two-minute interaction during free consultation session. There was no money involved, no therapy, and psychotherapy skills involved. Just referrals involved. Therefore, this is an invalid complaint to start with." In addition the Registrant wrote:

[C1]'s statement is absolutely one hundred percent untrue, and malicious based on numerous assumptions she made about me with little to no evidence. Based on her outrageous assumptions with no concrete evidence to support, it is clear that the

client needs help with her own internalization, and her own negative core beliefs. I recommend she find a therapist to use CBT to help with her cognitive perception of race, identity and her own internalization of white supremacy and colourism. Her complaint is a textbook version of self-projection. Also, the fact that she is filing this report, is a power play to oppress others.

... she confirmed her Chinese identity with me in our short two-minute free consultation on Inkblot. It was a long time ago and I don't remember the exact wording.

[43] The Registrant explained that she had asked the Complainant if she was Chinese and told the Complainant that because of boundary problems she was not taking Chinese clients. The Registrant stated:

The very reason why I did not proceed the first free consultation session with her on inkblot is because of my professional boundary. Because of my NGO FASS, I use a social media platform that almost every Chinese person in China, US and Canada use - Wechat, and this software could

potentially mess up the professional boundary completely.

...

I don't know if she is on my [WeChat] contact list or any of her relatives on my friend list. I don't have the time and energy to double-check thousands of contacts on my WeChat list. And I don't want to risk my professional boundary. I have to admit this is the assumption I truly made. She has WeChat and I can't see her as my client. Maybe you'll say I think too much but I think, as a helping professional, it is better to be careful than sorry.

[44] The Registrant also denied that she refused to take [C1] as a client because of racial discrimination. She wrote on August 12, 2021:

I am a Chinese Canadian therapist. Why would I racially discriminate against another Chinese Canadian?

[45] Ms. Reid testified that all communications and evidence, including emails, documents and attachments were thoroughly logged and added to the electronic file for investigation.

Evidence of Bernadette Santiago, College Investigator

[46] Bernadette Santiago was assigned to investigate [C1]'s complaint against the Registrant on September 23, 2021, approximately five months after [C1] had filed the complaint.

[47] Ms. Santiago has over 16 years of investigative work experience in regulatory organizations. Ms. Santiago testified that her experience included roles with the College of Nurses of Ontario, the Office of the Integrity Commissioner of Ontario, the Royal College of Dental Surgeons of Ontario and Legal Aid Ontario.

[48] Ms. Santiago testified that on October 18, 2021, she sent a letter to the Registrant with a copy of the complaint [C1] had submitted on April 19, 2021, requesting the Registrant's response to the complaint and informing her that the matter had moved to an active investigation. The letter confirmed receipt of the Registrant's previous communications with Ms. Reid, which had been included with the file, and requested any further response by November 17, 2021.

[49] On the same day, Ms. Santiago sent a similar letter with enclosures to [C1] outlining the investigation process. Ms. Santiago testified that the information provided by [C1] was clear and required no additional clarification.

[50] Ms. Santiago testified that the Registrant did not respond to the request for additional information by the deadline of November 17, 2021, set out in the October 18, 2021, letter. She followed up with a phone call to the Registrant on November 19, 2021. During that call, the Registrant acknowledged receipt of the October 18, 2021, email but explained that she had missed the letter from Ms. Santiago. Accordingly, Ms. Santiago extended the deadline to November 22, 2021 to allow the Registrant more time to respond. Ms. Santiago testified that the Registrant provided additional information in response to this follow up phone call, in an email on November 19, 2021.

[51] Ms. Santiago testified that she conducted no formal interviews during the investigation with either [C1] or the Registrant as the process relied on written submissions.

[52] After receiving the Registrant's submissions on November 19, 2021, and completing the investigation, Ms. Santiago prepared a detailed report for the Complaints Committee, including a summary of complaint and a full record of the investigation.

Evidence of Julie Lafleche, senior manager of the Practitioner Network Operations Team, Inkblot Online Platform

[53] Julie Lafleche holds a senior manager position at Inkblot Therapy.

[54] Ms. Lafleche gave evidence about the process Inkblot used for recruiting practitioners and matching clients to practitioners as of 2021. She explained that the mission of Inkblot platform services is accessibility and affordability. Clients are required to make payment to Inkblot directly and Inkblot pays the required portion to the practitioner.

[55] Ms. Lafleche testified that, as described above, clients register through the Inkblot platform, and enter information such as name, email, contact information, and a matching questionnaire, indicating what type of support the client is looking for and what the client's preferences are in terms of availability and readiness to seek support. The matching algorithm takes all preferences into account and matches with the most appropriate practitioners.

[56] Ms. Lafleche testified that practitioners on the Inkblot platform identify their availability and areas of specialized training that they use in their practice.

[57] Practitioners are able to determine how many clients they can take on and determine their availability in their calendar. Ms. Lafleche indicated that their profile will surface during client searches and when a practitioner's caseload is full they would toggle matching to "off", meaning no client could match with them.

[58] If a client determines the selected practitioner is not a good fit, they are able to un-match with that practitioner immediately and begin the matching process again in order to select someone else. Ms. Lafleche testified that if a client un-matches with one practitioner and rematches with a new practitioner, their profile remains visible to the original practitioner but it is frozen in time as of the date the person unmatched with the practitioner. Even if a practitioner is no longer enrolled with Inkblot, the practitioner still has access to the platform containing client information that is stored for the required amount of time based on regulations of the regulatory body.

[59] Ms. Lafleche testified that in 2021, initial consultation sessions were between 15 and 30 minutes in length and were used to assess whether the issues a client wished to discuss were within the scope of the practitioner with whom the client is matched. Although not mandatory, a practitioner may choose to keep session notes that are stored on the platform. Aside from the practitioner, only a few Inkblot staff members have access to such clinical notes.

[60] Ms. Lafleche testified that [C1] registered with the platform on April 9, 2021 and was matched with a practitioner using an algorithm based on preference and availability.

[61] If a session is cancelled, the Inkblot systems notes the cancellation and records who initiated the cancellation. Ms. Lafleche explained that [C1] had an initial session booked on April 10, 2021, which was cancelled and that the practitioner was responsible for the cancellation.

[62] Ms. Lafleche testified the Registrant left the Inkblot platform in May 2021.

Evidence of Yujia Zhu, Registrant

[63] The Registrant testified on her own behalf. The defendant called no other witnesses to testify at the hearing (apart from the law clerk's affidavit on disclosure and procedural matters).

[64] Ms. Zhu testified that she is a first generation Chinese Canadian, originally from Mainland China. She moved to Canada in 2008. She is trilingual in Cantonese, Mandarin and English. She holds an Honours Bachelor of Arts degree from the University of Toronto in Religion, Sexual Diversity Studies, Women Gender Studies and Jewish Studies. She also holds a Master of Science in Social Work from Columbia University, New York.

[65] The Registrant has been a registered social worker in Ontario since October 2019. She was previously registered in Alberta.

[66] Ms. Zhu testified that since 2020 she has had only one ongoing private practice client. Since 2021, she has declined to take on new clients. Instead, she offers prospective clients alternatives to seek the help they are looking for, including through FASS and her YouTube channel, which offers psychoeducation videos and videos related to social justice, intersectionality, meditation skills, and self-care skills.

[67] The Registrant described FASS, which she founded, as a self-funded, grassroots non-profit mental health service. FASS offers mental health support, psychoeducation programming, and social justice education webinars, as well as a free listing platform for therapists. According to Ms. Zhu's evidence, the clinical interns at FASS are proficient in both Chinese and English. In April 2021, FASS had two websites, one in Chinese and one in English.

[68] The Registrant testified that she first came into contact with [C1] April 2021 through the Inkblot platform, where Ms. Zhu had been enrolled as a therapist since 2020. According to the Registrant, once a client and therapist are matched on Inkblot, an initial free “meet and greet” session is booked to determine whether there is a good therapeutic fit. [C1] initially booked a session with the Registrant on April 10, 2021; however the Registrant testified that she cancelled that session because she did not have the capacity to take on new clients at that time. [C1] subsequently booked another appointment for April 12, 2021, and although Ms. Zhu considered cancelling the second appointment, she decided to proceed with the consultation due to her concern that [C1] may have needed support and could benefit from referral to appropriate resources.

[69] The Registrant testified that prior to the consultation with [C1] on April 12, 2021, she could access [C1]’s profile information through the Inkblot platform and from that information knew that [C1] was seeking help with family dynamics and stress. The Registrant also knew that [C1] spoke English and had no insurance coverage for treatment.

[70] During the initial session, [C1] told the Registrant that she was seeking support for issues related to family dynamics, her need to seek approval from others, and difficulties with establishing personal boundaries. The Registrant testified that she informed [C1] she was not accepting new clients due to scheduling constraints. The Registrant testified that this explanation was consistent with what she told all prospective clients.

[71] The Registrant testified that, in addition to informing [C1] that she was not accepting new clients, she provided several referral options. First, she advised [C1] that she could return to the Inkblot platform to un-match from the Registrant and rematch with other therapists on Inkblot. Second, she offered [C1] the option of reaching out to FASS for unlimited free mental health services offered by her clinical interns. Third, she directed [C1] to PsychologyToday.com, which has an extensive listing of therapists from different countries.

[72] The Registrant testified that she rejected [C1] twice in that first session and told her that she was not accepting her as a client due to scheduling. She testified that [C1] then posed a hypothetical question:

She asked me, if I do have time in the future, will I take her in? So, I first verified if her father is also Chinese to get a sense of her family dynamics through a gender-based analysis lens. I asked her, [C1] is a Chinese name, right? And then I told her I’m concerned about the potential boundary if I take her in as my client in the future.

[73] Ms. Zhu testified that this was a response to [C1]’s hypothetical question regarding future opportunities to be accepted by her as a client, but that when she rejected [C1] as a client in April 2021, it was because she did not have time to take on new clients.

[74] According to Ms. Zhu’s evidence, her session with [C1] was intentionally brief. She estimated the session to have lasted between two and five minutes. The Registrant explained that she kept it short because as the clinical supervisor for all interns at FASS, she might be in a position of supervising a clinical intern who ended up working with [C1] and she wanted to maintain neutrality for future supervision of [C1]’s case.

[75] [C1] agreed to send a request via email to FASS to obtain services. She testified that [C1] left the session appearing happy, especially once she knew there would be unlimited free services available to her through FASS.

[76] The Registrant's evidence was that had she not been running FASS, she would have taken [C1] on as a client but, due to time constraints, she was not in a position to do so.

[77] Ms. Zhu testified that following the consultation meeting on April 12, 2021, [C1] sent her an email requesting services from FASS. The Registrant forwarded [C1]'s email to her clinic intern who is bilingual (Chinese and English) and asked her to send [C1] an intake and consent form in order to arrange the first session with [C1]. The intern reached out to [C1] to schedule an appointment.

[78] The Registrant testified that she did not direct her intern to respond to [C1] in any specific language. Through a mistake or clerical error, the intern sent [C1] the intake form in simplified Chinese. The Registrant knew from the initial Inkblot session and profile that [C1] speaks English and did not make any assumptions about any other language [C1] might speak.

[79] [C1] sent an email to the Registrant indicating that she had received, an email from the NGO in simplified Chinese, which she could not read as she did not speak Mandarin. [C1] expressed that the email upset her.

[80] The Registrant testified that she apologized to [C1] and clarified in her response that FASS offers bilingual support and that she would ask her intern to communicate with [C1] in English. On April 19, 2021, the Registrant's intern sent [C1] the consent and intake email in English. [C1] did not reply to that email.

[81] The Registrant testified that she founded FASS to address the barriers many in the Canadian Chinese community face in accessing mental health services and emphasized the importance of cultural and linguistic sensitivity in mental health support. She explained that in Mainland China, Mandarin is the primary language and many people from Mainland China have difficulty finding therapists who speak Mandarin. The Registrant also explained her motivation for offering free unlimited mental health services through her organization was to establish a sense of trust within the community she wants to serve.

[82] The Registrant testified that the messaging app WeChat is critical to marketing FASS as WeChat is used by Chinese people across the globe. One feature of WeChat is that it allows users to hide their phone numbers from their contacts and communicate through their unique WeChat IDs or QR code instead. The Registrant has a WeChat account with thousands of contacts. She does not know who they are or what their real names are. Ms. Zhu testified that she would not know from a person's name whether she had ever interacted with that person on WeChat.

[83] The Registrant testified that she shares a lot of information about herself on her WeChat account. She identifies herself as a social worker, along with her academic background, experiences, vision and mission. Using WeChat, she has shared a lot of information about herself publicly, including her own struggles, tension between her family and history of mental health issues. She testified that in the timeframe of February to April 2021, she talked to an average of 100 individuals each day on WeChat. Those individuals are not required to add her as a "friend"

on WeChat to view her personal information. The vast majority of those who contacted her on WeChat were potential clients of FASS, seeking unlimited free mental health support.

[84] The Registrant testified about her concerns with boundary issues arising from her engagement on WeChat, acknowledging that it is her responsibility to determine boundaries, be mindful of the slippery slope and not allow boundaries to become blurred. As a result of those concerns, in April 2021 the Registrant was not planning on accepting future new clients.

[85] The Registrant received an email from Ms. Reid at the College in August 2021, four months after [C1]’s complaint. She testified that she felt angry, confused, and frustrated upon receiving the complaint. She was hurt because she wanted nothing but the best for [C1], and had developed FASS to help Chinese Canadians like [C1]. She felt she had to respond to the College immediately, and she sent multiple emails to Ms. Reid with written responses to the points raised in the complaint. The Registrant testified that she thought she was being asked to prove that she did not racially discriminate against another Chinese Canadian and that she was not racist. Her intent was to explain the course of action she took with [C1].

[86] In one response to Ms. Reid, Ms. Zhu stated that FASS “did not roll out our English service until May 22nd.” Ms. Zhu testified that when she made that statement, what she meant was that FASS’s English service web page did not operate until May 22, 2021, but bilingual support was offered to clients prior to that date. She further testified that she provided the College with evidence that showed FASS provided services in English and that the intern who dealt with [C1] is bilingual and had sent English emails to [C1].

[87] The Registrant testified that she had decided to cancel her affiliation with Inkblot some time prior, but had forgotten to do so, which allowed [C1] to sign up for a free consultation with her in April 2021. The last client she took on through Inkblot was in 2020.

Evidence of Dr. Charmaine Williams, proposed expert witness

[88] The College called Dr. Charmaine Williams as an expert witness to provide her opinion on two questions based on hypothetical facts: first, whether a boundary problem or conflict of interest existed between the Registrant and [C1], and second, whether the reasons provided by the Registrant for refusing to take on [C1] as a client were legitimate reasons.

[89] Dr. Williams is a registered social worker and holds a Master of Social Work degree and a PhD in Social Work. At the time of her testimony, she was the Dean of the Faculty of Social Work at the University of Toronto.

[90] The College sought to have Dr. Williams qualified to give expert opinion evidence in the areas of boundaries, conflict of interest and cultural competence in social work practice, particularly as it relates to ethnic and Indigenous communities.

[91] Registrant’s counsel objected to the Panel qualifying Dr. Williams to give expert evidence in the areas identified. Their position was that Dr. Williams is not qualified in issues relating to the Chinese Canadian community. Registrant’s counsel also took the position that Dr. Williams’ evidence was neither relevant nor necessary and that there was a high risk of prejudice to the Registrant from the Panel considering the evidence of Dr. Williams.

[92] Counsel agreed to proceed by way of a *voir dire* to determine the Registrant's objection. The Panel ultimately found Dr. Williams to be properly qualified as an expert in the areas identified by the College, namely: boundaries, conflict of interest and cultural competence in social work practice, particularly as it relates to ethnic and Indigenous communities. The Panel then ruled that Dr. Williams's expert evidence was admissible. The Panel's reasons were as follows.

(i) *Voir dire* and ruling on qualification of Dr. Williams

[93] Dr. Williams testified about her extensive professional qualifications and background. As noted, Dr. Williams holds a Master of Social Work and PhD in Social Work from the University of Toronto, where she completed her doctorate in 2002. Since then Dr. Williams has progressed through academic ranks at the University of Toronto. She now serves as the Dean of the Faculty of Social Work. Dr. Williams has held academic and administrative roles and positions such as anti-racism and cultural diversity officer and Vice-Dean of students at the School of Graduate Studies. Dr. Williams also worked as an advisor on access programs, where she developed initiatives to improve access for under-represented groups at the University.

[94] Dr. Williams worked for ten years as a social worker at the Centre for Addiction and Mental Health. During that time she provided frontline services in general psychiatry, where she established a task force focused on ethno-racial mental health services. This initiative was aimed at improving service accessibility and cultural competence in mental health care for ethnic and racial minority communities. In her role, Dr. Williams led diversity and anti-racism training, laying the foundation for her future academic work in these areas.

[95] In her testimony Dr. Williams described her research as being focused on the intersections of equity, diversity, and effective service delivery. She has published extensively on topics such as cultural competence, anti-racism practices in healthcare, and service equity for marginalized groups, including Black communities and racial-minority women. She explained that her work extended to primary healthcare and mental health service delivery for racial, ethnic, and gender minorities, with emphasis on HIV and mental health.

[96] Dr. Williams testified that she has developed and taught several courses that address boundaries, ethics, and cultural competence within social work. She defines cultural competence to mean how a system serves people across the spectrum of cultural and other diversities effectively, encompassing everything from policies of the system and the organizations in that system to the interpersonal interactions between service providers and their clients.

[97] Dr. Williams discussed the relevance of her work in this case, emphasizing that boundary and conflict of interest considerations are central to ethical social work practice, especially for practitioners serving their own communities. She explained that as the field has become more diverse, more practitioners work directly within the communities they represent, which has increased the need for training and awareness of potential conflicts.

[98] The test to adduce expert opinion evidence is governed by the principles established by the Supreme Court of Canada in *R v Mohan*, [1994] 2 SCR 9, as refined in subsequent cases including *White Burgess Langille Inman v Abbott and Haliburton Co*, 2015 SCC 23. The party seeking to tender the expert opinion must satisfy the following criteria:

- (a) Relevance: The evidence must be relevant to the case.

- (b) Necessity: The evidence must be necessary to assist the trier of fact.
- (c) No Exclusionary Rule: The evidence must not be excluded by any other rule of evidence.
- (d) Qualified Expert: The expert must be properly qualified.
- (e) Independence and Impartiality: The expert must be independent and impartial.
- (f) Gatekeeping Role: The trier of the case must ensure the evidence is reliable and its probative value outweighs any prejudicial effect.

[99] The parties agreed that s. 15 of the *Statutory Powers Procedure Act*, RSO 1990, c. S.22 (“SPPA”) governs the admission of evidence in this hearing. That provision allows for a more flexible approach to admissibility of evidence than the strict rules of evidence that apply in a court proceeding. Subject to ss. 15(2) and (3), a tribunal may admit as evidence at a hearing “any oral testimony” and “any document or other thing” that is relevant to the subject-matter of the proceeding, whether or not admissible as evidence in a court. Relevance is determined by logic and common sense.

[100] Under s. 15 of the SPPA, the test to admit expert opinion evidence under the rules of evidence does not need to be met to admit expert evidence in this discipline proceeding. However, even applying that stricter test, the Panel found that Dr. Williams was properly qualified.

[101] In *Mohan*, the Supreme Court of Canada elaborated on the requirement for a properly qualified expert as follows:

[T]he evidence must be given by a witness who is shown to have acquired special or peculiar knowledge through study or experience in respect of the matters on which he or she undertakes to testify.

[102] The Panel found that Dr. Williams has knowledge through study, research, and experience in respect of boundaries, conflict of interest, and cultural competence.

[103] The College did not seek to call Dr. Williams as a Chinese culture expert but rather as an expert in the areas of boundaries, conflict of interest, and cultural competence. Her research has focused on issues of race, racialization and racism. Her expertise transcends any specific cultural or ethnic communities.

[104] The Registrant raised a lack of private practice experience on the part of Dr. Williams as grounds to deny qualification. The Panel found that Dr. Williams has expert knowledge in area of private practice as a researcher and educator. Dr. Williams testified that she has taught the College’s Standards of Practice as part of the social work curriculum.

[105] Accordingly, the Panel found Dr. Williams to be qualified to give expert opinion evidence in the areas of boundaries, conflict of interest and cultural competence in social work practice, particularly as it relates to ethnic and Indigenous communities.

(ii) *Voir dire* and ruling on admissibility of Dr. Williams’s expert evidence

[106] Having found that Dr. Williams was properly qualified as an expert, the Panel directed the *voir dire* to continue with Dr. Williams testifying as to her expert opinion in this case. The Panel then heard argument and delivered a ruling admitting Dr. Williams’s evidence.

Dr. Williams’s opinion evidence

[107] Dr. Williams prepared a report setting out her opinion on the application of certain College standards to a set of hypothetical facts. In providing her opinion, she focused on the following standards in the College’s Standards of Practice Handbook, as applicable at the time of the events in issue:

- (a) Principle II, Competence and Integrity, as commented on in:
 - (i) Interpretation 2.2.1, which Dr. Williams testified addresses conflict of interest, including providing a definition of conflict of interest, and steps registrants should take if they are concerned there is a conflict of interest;
 - (ii) Interpretation 2.2.9, which Dr. Williams explained indicates that College members promote social justice and advocate for social change on behalf of their clients;
- (b) Principle III, Responsibility to Clients, as commented on in
 - (iii) Interpretation 3.4, which provides that College members should not engage in discrimination on the basis or race, ethnicity, language or other statuses, and should adhere to the Ontario *Human Rights Code*, RSO 1990, c. H.19 (the “Code”);
 - (iv) Interpretation 3.5, which addresses the actions a College member should take if unable or unwilling for appropriate reasons to provide requested professional help;
 - (v) Interpretation 3.10, which addresses the actions a College member must take when there is anticipation of termination or interruption of services to clients.

[108] College counsel asked Dr. Williams to give her opinion on whether [C1] was a client of the Registrant. Dr. Williams gave her opinion that [C1] was a client of the Registrant in that she received services from the Registrant who identified herself as a social worker. The service she received was an assessment. The Inkblot website says a free session can be booked for a free 15-minute consultation, and that the purpose of the consultation is to get to know the therapist selected, ask questions, and ensure it is a good fit. The practice of meeting with a client to get to know each other, establish a relationship, and ask questions of each other is part of an assessment, which falls within the scope of social work practice as defined in the College standards.

[109] Dr. Williams explained that the Handbook sets out the scope of practice for social work and includes, at SW1, “the provision of assessment, diagnostic treatment, and evaluation of services in a relationship between a social worker and a client”. SW1 has two components, both

of which existed here. First, there is a relationship between the social worker and the person who comes to them for service. Second, there is at least an assessment, during which they talked about the client's needs and preferences. The Registrant stated she gave [C1] referrals—that would constitute the outcome of the assessment and would require gathering information from the client. Accordingly, such an assessment would amount to providing services falling within the scope of practice as defined in the standards.

[110] Dr. Williams testified that it is possible that at the end of an initial session, the social worker and the client might determine that there is not a good fit, and the social worker might refer the client elsewhere, but that is an outcome of the assessment, which is itself within the scope of practice of social work. Dr. Williams also testified that in her opinion, whether someone is a client of a registrant is not determined by the exchange of money, but by whether that person is seeking service and receiving service from the social worker.

[111] Dr. Williams also testified as to her opinion that when a decision is made not to provide further services, a practitioner is either terminating service or transferring the client to another practitioner for service—in either case, the person is still a client. The fact that they are not a client after that meeting, does not change the fact that they are a client in the meeting.

[112] Dr. Williams further testified that where only a brief session occurs, it might reflect that the Registrant provided a poor assessment and perhaps had not gathered enough information. It raises the question of how the Registrant could make a referral if an adequate assessment was not completed.

[113] She testified that in the present case, consideration should be given to the fact that in the hypothetical fact scenario presented to her, the client was matched to the Registrant and, based on information provided on the Inkblot website, would have an expectation that they would receive a 15- to 30-minute consultation. This indicates that they were receiving services.

[114] Dr. Williams testified that Interpretation 3.4 of the Handbook provides that registrants are not to discriminate against anyone on the basis of race, ethnicity, language, and other grounds. Accordingly, someone's race, ethnicity, or national origin is not an appropriate reason to refuse service.

[115] Dr. Williams testified regarding the standards of the profession as they relate to conflicts of interest and boundaries. She described conflicts of interest as arising from family relationships, friendships, financial connections, or social connections that compromise a registrant's judgment or place the client at risk. Dr. Williams explained that, in her opinion, a boundary is maintained to preserve the integrity of the therapeutic space. Boundaries must be maintained in order for a social worker and a client to work effectively together.

[116] Dr. Williams opined that there was no boundary problem or conflict of interest between [C1] and the Registrant arising from the Registrant's activity on WeChat or her advocacy work.

[117] Dr. Williams testified that the College's standards provide guidance to a registrant on how to evaluate whether a conflict of interest or boundary problem exists. In her opinion, it is important that a registrant gather information in order to evaluate whether there is a conflict of interest. She referred to Interpretation 2.2.1 of the Handbook, which provides that if a conflict of interest

situation does arise, a College member will take “appropriate steps to address it and eliminate the conflict.”

[118] Dr. Williams was asked in direct examination to assume that a social worker registrant said to a person seeking services: “[C1] is a Chinese last name, right?” and the person seeking services replied “yes”, after which the social worker replied “So you are Chinese, and because of boundary problems I am not taking Chinese clients.” In that scenario, Dr. Williams testified that, in her opinion, the social worker made no effort to seek information to establish if there was a conflict of interest or boundary problem before refusing service. In her opinion, that would not meet the standard. The standard expects that a registrant would discuss the circumstances with the client, ask questions, clarify, and explore. If the social worker has concerns about boundaries or a conflict of interest due to the social worker’s activity on WeChat, the social worker should find out if the client is on WeChat.

[119] Dr. Williams was asked whether there is a legitimate concern about a conflict of interest or boundaries in a hypothetical situation where the person seeking service is from the Chinese-Canadian community, and the registrant is also from that community, is very active in the Chinese-Canadian community and has gained some publicity as a result of that activism. Dr. Williams testified that in her opinion the standards anticipate that social workers are involved in advocacy for the communities of clients that they serve, and that it is part of integrity in practice.

[120] She explained that this is also an area where there needs to be discussion with the client to understand the client’s perspective and assess whether there is actually a boundary problem or conflict of interest.

[121] On the hypothetical facts presented to Dr. Williams, her opinion was that there was not a legitimate reason for the social worker to refuse to continue service with the client. Dr. Williams testified that it would not be appropriate for a social worker to simply say that because the prospective client is Chinese and because of boundary problems, the social worker cannot provide service. Not enough information was gathered to determine whether, in fact, there is a boundary problem, or any thought given to how the boundary issue would be managed.

[122] Under cross-examination Dr. Williams agreed that if the social worker was not taking clients because there is concern that it would put the social worker in a conflict of interest or result in violating legal or ethical requirements, the correct thing to do in accordance with the standards would be to refer the client to another professional. Dr. Williams further agreed that professional boundaries are not “one-size-fits-all” and that they must be determined in relationship with the client. Dr. Williams testified that, in her opinion, how social workers form their boundaries can be impacted by culture and how they form their understanding of those boundaries can be impacted by race.

Panel’s ruling on admissibility

[123] The Panel applied the *Mohan* criteria and admitted Dr. Williams’s expert opinion evidence.

[124] With respect to relevance, Dr. Williams’s opinion aligns with the issues outlined in the Notice of Hearing. In particular, her evidence is relevant to the allegations that the Registrant has failed to meet the standards of practice of the profession, including what the relevant standards are and whether they have been breached on the facts as proven in the hearing.

[125] The parties disagreed as to whether the expert evidence of Dr. Williams met the requirement of necessity. The College argued that case law holds that expert evidence is required to establish the relevant standard of practice of the profession and to determine whether the Registrant failed to meet that standard. The College relied on *Novick v Ontario College of Teachers*, 2016 ONSC 508, *Hanif v College of Veterinarians of Ontario*, 2017 ONSC 497, and *Katsoulakos v Assn of Professional Engineers of Ontario*, 2014 ONSC 5440.

[126] The Registrant argued that expert opinion evidence on the standards of practice is not necessary in this case, as the College has written standards and has specialized expertise to evaluate those standards and apply them to the facts. The Registrant relied on *Sazant v The College of Physicians and Surgeons*, 2011 ONSC 323, in which the Divisional Court held that specialized tribunals do not need expert evidence to determine whether conduct is disgraceful, dishonourable or unprofessional. The Registrant argued that the determination of whether conduct is disgraceful, dishonourable or unprofessional is very similar in this case as to whether that conduct was a breach of the standards of practice of the profession. The Registrant also relied on *Ontario College of Social Workers and Social Service Workers v Denham*, 2019 ONCSWSSW 7, to argue that the proposed expert evidence of Dr. Williams is not necessary. In *Denham*, the Discipline Committee applied privacy legislation in determining whether the registrant failed to meet the College's standards, without the assistance of expert evidence.

[127] The Panel reviewed the cases relied on by the parties. In *Novick* at paras. 54 and 71, the Divisional Court wrote:

[54] In the course of its Reasons, the Committee made rulings on issues that are questions of law of broad application, including: the independent rights of a 16-year-old who has been the victim of a sexual assault; the duties of a teacher to “immediately” report a sexual assault to the police; the consequences of a parental permission form for the rights of a young person; and the proper interpretation of terms of the *Statutory Powers and Procedures Act*. These are not issues directly within the expertise of the Committee and they have broad implications beyond this case and beyond the teaching profession. ...

...

[71] There may be cases where conduct is so egregious that an expert is not required to inform the Committee about it being misconduct. For example, physical or sexual abuse of a student by a teacher, or counselling a student to commit a criminal act, would be clear examples of conduct that is so offside what is acceptable as to be self-evidently misconduct. I do not see the conduct in this case as being anywhere close to that kind of situation. It cannot be said that the requirement to “immediately” contact a parent upon any report of a sexual assault on a student, regardless of the surrounding circumstances, is, in the words of the Supreme Court of Canada, “so notorious or generally accepted as not to be the subject of debate among reasonable persons.” That is a very high standard.

[128] This Panel found itself in the same place as the Committee in *Novick*. Whatever finding this Panel makes in the interpretation of the applicable standards of practice will have “broad implications beyond this case and beyond [this profession]”. See also *Hanif, supra*, at paras. 88-

90. Further, it cannot be said that the standards at play are so egregious as to be self-evidently misconduct.

[129] The Panel found the expert opinion evidence of Dr. Williams to be necessary. Although the College has written standards of practice, in this case the Panel found the opinion evidence as to the interpretation and application of the written standards to be helpful and necessary. Dr. Williams has superior knowledge and expertise in the qualified subject areas as compared to the Panel. The case involves nuanced facts and novel issues for this Committee and the Panel found it would be beneficial to the Panel's understanding of the case, and to the parties, to have expert testimony on the standards and definitions set out in the Handbook.

[130] The Panel did not agree with the Registrant's submission that *Denham* is squarely applicable. That case proceeded on the basis of an agreed statement of facts, but the parties disagreed as to whether those facts constituted professional misconduct. That is not the case here. There are no agreed facts here and therefore, the Panel does not agree that because no expert was required in that case, no expert would be required here.

[131] The Panel's decision was based on the factual and procedural matrix of the current case. The Panel did not purport to make a decision that would impact when an expert would need to be called in all matters involving allegations of a failure to meet the standards of practice.

[132] The Registrant's objections to the admissibility of Dr. Williams's expert evidence focussed primarily on the Panel's gatekeeping function and the Registrant's concern that the prejudicial effect of the opinion evidence would outweigh its probative value. The Panel found that the potential risks of admitting the expert evidence would not outweigh the benefits. The Panel was well aware that if the facts ultimately proven in this case differ from the assumed facts on which Dr. Williams based her opinion, that may be a factor affecting the weight of the opinion evidence. The Panel also remained cognizant of and agrees with the Registrant, citing *R. v. Comeau*, 2018 SCC 15, that the Panel cannot allow its decision-making powers to be usurped. Dr. Williams's opinions were not determinative and the Panel remained the decision-maker. The Panel did not have concerns about the reliability of Dr. Williams's opinion that were so serious that the potential risks of admitting the evidence outweigh the benefits.

[133] The Panel agreed with the Registrant that Dr. Williams was not qualified as a Chinese cultural expert and the Panel did not consider any of Dr. Williams's evidence respecting Chinese culture.

[134] For these reasons, the Panel ordered that Dr. Williams's evidence given in the *voir dire* become part of the evidence of the hearing.

Evidence of Ena Chadha, proposed expert witness

[135] The College called as its final witness Ena Chadha as a proposed expert in human rights, discrimination, disability, and professional conduct. The Registrant did not object to the Panel qualifying Ms. Chadha as an expert in those areas.

(i) Qualification of Ms. Chadha

[136] Ms. Chadha is an Ontario lawyer with over 30 years of experience in human rights law, public policy, and regulatory standards. She holds degrees from the University of Saskatchewan and Osgoode Hall Law School. She also holds certifications in human rights litigation, mental health law, and mediation. She is a lecturer at Osgoode Hall and Schulich School of Business, covering topics related to human rights and legal standards.

[137] Ms. Chadha currently serves as the Chief Commissioner of the Ontario Human Rights Commission. In that role, she is responsible for overseeing the development of critical human rights policies, equity standards, and advocacy initiatives across Ontario. In addition to that role, Ms. Chadha has made significant contributions to several initiatives and organizations relating to human rights and discrimination issues including: (i) co-leader of an in-depth review within the Peel District School Board to address serious allegations of racism, resource mismanagement, and the conduct of Board officers; (ii) chair of the Board of Directors of the Human Rights Legal Support Center, which provides free legal services related to human rights; and (iii) involvement with the ARCH Disability Law Centre's test case clinic, which promotes the enforcement of human rights and equity standards throughout Ontario. Ms. Chadha has contributed to the development of professional and regulatory standards such as the Law Society of Ontario's Equity Advisory Group, where she helped shape human rights standards for lawyers in Ontario, and the Judicial Regulatory Panel, where she assisted in reviewing complaints against provincially appointed judges.

[138] Ms. Chadha testified that she was retained to provide an expert opinion on a hypothetical scenario regarding an online consultation between a registrant and a complainant. She was asked if the interaction between the Registrant and the Complainant fell under the *Ontario Human Rights Code* and whether human rights concepts under the Code apply to professional regulatory standards of practice. Ms. Chadha testified that she was asked to answer two questions in her report: first, based on the assumed facts, did the Registrant breach the *Ontario Human Rights Code*; and second, assuming no boundary issues or conflicts of interest precluded the Registrant from accepting [C1] as a client, did the Registrant breach the *Human Rights Code*. Ms. Chadha testified that in order to answer those hypothetical questions, she had reviewed the standards in College Handbook as they pertain to the *Human Rights Code*. Specifically, she reviewed Principle III, Interpretation 3.4, including footnote 3, which states that College members adhere to the Ontario Code and the *Charter of Rights and Freedoms* in the provision of services.

[139] In light of Ms. Chadha's evidence as to her experience, education and professional involvement, and the absence of an objection from the Registrant, the Panel found Ms. Chadha to be qualified to give expert evidence in human rights, discrimination, disability and professional conduct.

(ii) Objection and ruling on admissibility of Ms. Chadha's expert evidence

[140] The Registrant objected to the admissibility of the proposed expert evidence from Ms. Chadha on the basis that it is an opinion on domestic law and therefore barred by the exclusionary rule against admitting evidence related to domestic law, and that it would be overly prejudicial as it would usurp the Panel's function.

[141] The Panel directed the parties to argue the admissibility objection without the Panel reviewing Ms. Chadha's report, but reserved the right to review the report if the Panel considered it necessary to make an informed ruling on the objection. After hearing submissions, the Panel decided to review the report before ruling on the admissibility of the proposed expert opinion evidence from Ms. Chadha. The Panel then invited further submissions from both parties.

[142] The College argued that in this hearing under s. 15 of the SPPA, the *Mohan* test does not apply strictly, but the Panel can take the factors into consideration in deciding whether to admit the expert evidence. Ms. Chadha's report refers to domestic law, namely the Code and some decisions related to that legislation, but the report is an opinion on the College's standards, not an opinion on domestic law. Interpretation 3.4 of Principle III of the Handbook provides that College members do not discriminate in the provision of services. Embedded within that standard are references to the *Ontario Human Rights Code* and the *Charter*. The proposed expert evidence addresses the relevant standard and, in particular, the concept of discrimination against people seeking services on grounds of race, ethnicity, national origin. That concept is parallel to and taken in large part from the *Ontario Human Rights Code*. The proposed evidence is beyond the expertise of the members of the Panel. The College relied on a number of cases, including *Teskey v Canadian Newspapers Co* (1989), 68 OR (2d) 737 (CA) and *R v Rothmans Inc*, 2009 NBQB 60, in arguing that expert evidence is admissible where the opinion relates to rules or standards of professional conduct, even if it also refers to domestic law.

[143] The Registrant argued that although expert evidence touching tangentially on domestic law might be admissible because it is relevant to standards of practice, Ms. Chadha's report does not merely touch tangentially on domestic law—it is entirely an opinion on domestic law. The Panel does not require an expert witness to know how to interpret the law; the parties and independent legal counsel will assist with that. The Panel is capable of applying domestic law to the facts. The Registrant also argued that a high risk of prejudice arises from the possibility that the Panel will cede its primary role to the expert. The closer an expert's opinion comes to the ultimate issue in the case, the stricter must be the Panel's gatekeeping function.

[144] The Panel reviewed Ms. Chadha's report and considered the submissions of counsel, and found that the expert report is a legal opinion on domestic law that adds no further value to the Panel's appreciation of the issues in this case.

[145] Section 15 of the SPPA governs the admissibility of evidence in this hearing. The Panel considered its general power and discretion to receive evidence under s. 15 of the SPPA, notwithstanding the fact that it would be inadmissible in a court proceeding, and exercised its discretion to not admit the report into evidence. The Panel is not strictly bound by the legal test in *Mohan* and *White Burgess*, but was nonetheless guided by the considerations set out in those decisions. The Panel found the report to be a domestic legal opinion. Domestic legal opinions are captured by an exclusionary rule under the normal rules of evidence. This is relevant as one of the *Mohan* factors.

[146] Exercising its discretion as to the admissibility of evidence, the Panel did not find it necessary or in the interest of a fair adjudication of this case to admit the report. The risk of admitting the report would outweigh any marginal benefit, in light of the fact that the Panel would receive legal submissions at the end of the case and can grapple with the facts and conduct at issue applying the same kind of legal analysis that is set out in the report. Other than explaining the legal

principles, the Panel did not find that the report elaborated on the College standards in any way that would render the report necessary as expert evidence. The Panel determined that it could arrive at an understanding of the relevant standards and their application based on arguments as to the legal principles in the *Human Rights Code*, the legal concept of discrimination, and related legal issues.

[147] Accordingly, Ms. Chadha's report was not marked as an exhibit and she did not testify as to the substance of her opinion.

The parties' submissions

College submissions

[148] The College's theory in this case is that the Registrant engaged in professional misconduct by discriminating against [C1] based on race, ethnicity, and national origin. The Registrant refused to provide [C1] with social work counselling services because [C1] was of Chinese descent.

[149] The College acknowledges that it bears the onus of proof in this case. The College must prove the alleged conduct on a balance of probabilities through evidence that is clear, convincing and cogent.

[150] The College submits that when the Registrant had the initial video consultation with [C1] on April 12, 2021, regarding the counselling services she was seeking, the Registrant had only the information on [C1]'s Inkblot profile. The Registrant had no evidence that [C1] was on WeChat and did not ask [C1] whether she used WeChat. Rather, the Registrant assumed that [C1] used WeChat, given that she is of Chinese descent.

[151] The College submits that the consultation on April 12 was very short, although the appointment was booked for up to 30 minutes. When the Registrant met with [C1] for the consultation, she saw [C1] was of Asian descent and told her that she is not taking Chinese clients. The Registrant in her responses to the College and [C1] both agreed that the Registrant refused to take on [C1] as a counselling client because she is Chinese. While the Registrant shifted in her testimony at the hearing and said that [C1]'s Chinese descent created boundary issues, the Registrant agreed that [C1]'s Chinese descent was one reason the Registrant would not provide her with counselling services through Inkblot.

[152] As discussed further below, the College challenges the credibility and reliability of the Registrant's evidence at the hearing. The College submits that the Registrant's evidence should be given little weight, and where it conflicts with the evidence of [C1], the latter's evidence should be preferred.

(i) The discrimination allegation

[153] Turning to the allegations in the Notice of Hearing, several allege that the Registrant engaged in professional misconduct under s. 2.2 of the Professional Misconduct Regulation by failing to meet the standards of practice of the profession. The relevant standards are Principles I, II and III of the Handbook, as commented on in Interpretations 1.2, 1.3, 1.4, 1.5, 1.6, 2.1.4, 2.2.8, 2.2.9, 3.4, 3.5 and 3.10. Principle III, Interpretation 3.4 states:

3.4 College members do not discriminate against anyone based on race, ethnicity, language, religion, marital status, gender, sexual orientation, age, disability, economic status, political affiliation or national origin.

[154] A footnote to Interpretation 3.4 requires registrants to adhere to the *Ontario Human Rights Code* in the provision of social work. The College submits that the Panel must look to the Code, policies approved by the Ontario Human Rights Commission and human rights jurisprudence, in interpreting the term “discriminate” as found in the standards. Section 1 of the Code states:

Every person has a right to equal treatment with respect to services, goods, and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, or disability.

[155] The Code does not contain a full definition of “services”. The College relies on *Braithwaite v Ontario (Attorney General)*, 2005 HRTO 31, where at para. 22 the Human Rights Tribunal of Ontario explained that “services” means “something which is of benefit that is provided by one person to another or to the public”. The College also cites *FY v. Toronto District School Board*, 2022 HRTO 388, which the Human Rights Tribunal of Ontario held: “In order to claim a Code breach related to or arising from the denial of service on a protected ground, there must be either an existing service relationship between the parties or there must be evidence that such a relationship was sought and denied, in spite of the applicant’s eligibility for accessing the service.”

[156] The College argues that the term “services” under s. 1 of the Code is engaged here because [C1] sought to have a counselling relationship with the Registrant and was denied. The College relies on the expert opinion evidence of Dr. Williams in arguing that the Registrant provided [C1] with social work services consistent with the scope of practice for social work. The initial coordination of the appointment, followed by the video consultation and referral, were part of a process that created a direct service relationship. Pre-service screening is captured by the concept of delivery of “services”.

[157] To establish *prima facie* discrimination under the Code, a claimant must prove:

- (a) they have a characteristic protected from discrimination under the Code (i.e., they are a member of a group protected by the Code);
- (b) they have experienced an adverse impact (treatment) in a category of activity regulated by the Code, such as a service; and,
- (c) the protected characteristic was a factor in the adverse treatment.

[158] Applying that test in this case, the College submits that in order to make out a *prima facie* case of discrimination the College must demonstrate:

- (a) That [C1] is of Chinese descent;
- (b) That [C1] suffered disadvantage or adverse impact causally related to the Registrant, which in this case is related to the Registrant’s refusal to take [C1] on as a client; and

- (c) That [C1]’s Chinese descent was a factor in the adverse treatment that she experienced.

[159] The College argued that the Registrant does not dispute that [C1] was of Chinese descent. The first branch of the test is therefore met.

[160] On the second branch, there is no dispute that the Registrant refused to take [C1] on as a client on the Inkblot platform and instead referred her to FASS. The College submits that the evidence proves [C1] experienced a negative impact and adverse treatment from the Registrant’s refusal to take her on as a client. [C1] maintained that she was very upset and frustrated by the fact that the Registrant assumed many things about her and refused to provide counselling services to her based on her ethnicity. [C1] made it clear that this was a negative experience that left her feeling inconvenienced, misunderstood, misled and “pigeon-holed”.

[161] The impact on [C1] of this adverse event was intensified by the fact that she was seeking therapy on an urgent basis due to her upcoming move to Korea. She initially booked a consultation for April 10, 2021, which the Registrant cancelled. [C1] then rebooked for April 12. When the Registrant told her she could not take her as a client because she is Chinese, the Complainant emailed the Registrant right away on April 12, seeking a referral. The Complainant was not provided with the intake forms—which were in Mandarin—until April 18, 2021. When the Complainant submitted her complaint form on April 19, 2021, she was angry. She did not obtain counselling services until May 1, 2021.

[162] Under the third branch of the analysis for a *prima facie* case of discrimination, the College need not demonstrate a causal relationship between the prohibited ground (i.e., race, ethnicity or ancestry) and the adverse treatment, and the discriminatory factor can be one of many reasons for the adverse treatment. The College need only prove a *connection* between the prohibited ground and the adverse treatment. The connection need not be causal. Further, the connection between the adverse treatment and the prohibited ground can co-exist with other non-discriminatory factors. The prohibited ground need not be the only reason for the adverse treatment, or even the predominant reason. Therefore, the College submits that as long as [C1]’s Chinese identity was one factor in the Registrant’s refusal to take [C1] on as a client, her actions were inconsistent with Interpretation 3.4 of the standards as set out in the College Handbook and were *prima facie* discriminatory.

[163] The College argues that it need not prove that the Registrant acted with racist intent. The legal test for discrimination focuses on the effect the Registrant’s conduct had on [C1].

[164] The College submits that regardless of the version of events ultimately preferred by this Panel, discrimination is made out. Each of the various versions of events ([C1]’s, the Registrant’s initial responses to the College, and the Registrant’s evidence at the hearing) all include the fact that [C1]’s Chinese identity was one factor in the Registrant’s conduct.

[165] The College argues that according to the Registrant’s own version of events as described in the email she sent to the College on August 11, 2021, she refused to provide counselling to the Complainant because of an alleged boundary problem stemming from the fact that [C1] was of Chinese descent. The Registrant acknowledged that once she confirmed that the Complainant’s last name was Chinese in origin, she assumed there was a boundary problem. The College argues that the Registrant established a “no Chinese clients” rule, which barred her from taking the

Complainant on as a counselling client. The College says that by the Registrant's own admission, the Complainant's Chinese identity was a factor in the Registrant's decision to refuse to provide her with counselling services and to instead refer her to FASS.

[166] The College submits that it was not appropriate for the Registrant to create a "no Chinese clients" rule. Boundaries and conflicts ought to be considered on a client-by-client basis, in the context of the information received from the client (or potential client). This is consistent with human rights jurisprudence. For instance, in *Miller v Provincial Health Authority and others (No 2)*, the British Columbia Human Rights Tribunal concluded that it was not *prima facie* discriminatory for a health agency to limit psychological services through a triage system, given that "the approach seems grounded in the actual circumstances of each particular person seeking care."

[167] The College submits that the facts and the Registrant's own admission establish a *prima facie* case of discrimination on the basis of race and ethnicity in the Code-protected social area of services. Once a *prima facie* case of discrimination is made out, the onus shifts to the Registrant to establish, on a balance of probabilities, a statutory defence and/or a credible non-discriminatory explanation for the impugned treatment.

[168] It is not a defence to discrimination to say that there existed a non-discriminatory reason for the adverse treatment. The responding party must show that the non-discriminatory reason was the *sole* reason for the action.

[169] The College submits that the Registrant cannot meet her onus of showing a credible, non-discriminatory reason for the impugned treatment. Although the Registrant offered various explanations for her conduct, those explanations either directly contradicted her past statements or failed to reflect the applicable standards.

[170] The Registrant testified that she had a personal rule of not taking on Chinese clients. The Registrant has claimed that the exclusionary policy was justified and necessary because of the potential for a "boundary problem" or "conflict of interest" arising from her extensive advocacy work in the community and prominence on social media. She said, in an email to the College, that she assumed that the Complainant was on WeChat because she is Chinese.

[171] The College submits that the Registrant needs to demonstrate that she adopted that rule in good faith and that it is reasonably necessary to accomplish its goal of insulating her from professional conflicts of interest or boundary problems. The College submits that there is no evidence presented to establish that the rule was reasonably necessary to accomplish this goal. The Registrant also failed to demonstrate that, when refusing to provide services to the Complainant, she was unable to modify or make an exemption to her rule without incurring undue hardship. The Registrant presumed that because the Complainant was Chinese, she would be knowledgeable of, or affected by, the Registrant's advocacy work and prominence on social media. The Registrant's determination that she could not take the Complainant on as a client was based on impressionistic beliefs that do not establish a rational defence.

[172] The College notes that the Registrant also failed to take any steps to determine if an exception to her rule of not taking on Chinese clients could be made, based on [C1]'s individual circumstances. When evaluating admissibility for service, it is critical that the service provider undertake an individualized assessment that considers the specific conditions of each applicant.

As Dr. Williams testified, the Registrant ought to have asked the Complainant whether she was aware of her advocacy in the community and how she felt about working with someone who was both involved in advocacy and also providing therapy to her. The Registrant failed to perform a preliminary screening which could have involved basic questions.

[173] In response to the Registrant's position that she could not or would not have discriminated against the Complainant on the basis of race because they are both of Chinese descent, the College argues that the Human Rights Tribunal of Ontario has made clear that individuals who share the same race can discriminate against one another. Indeed, the Registrant testified that the Complainant discriminated against her, as someone from mainland China. If [C1] can discriminate against the Registrant, the same can hold true for the Registrant.

[174] The College submits that the evidence, including the Registrant's own admissions, provides that the Registrant racially discriminated against [C1] by withholding or limiting access to benefits that would have been available to others in the same situation. The fact of the Complainant's Chinese identity, and the Registrant's unsubstantiated assumptions about what that meant, were not legitimate reasons to refuse service. This constitutes a failure to meet the standards of the profession and professional misconduct.

[175] The College submits that under section 2.29 of the Professional Misconduct Regulation, it is professional misconduct to contravene a provincial law, including the Code, if the purpose of the law is to protect public health or the contravention is relevant to suitability to practice. If the Panel finds a breach of the Code, it follows that the Registrant also engaged in professional misconduct under section 2.29 of the Professional Misconduct Regulation.

(ii) Allegations regarding other failures to maintain the standards of the profession

[176] Apart from discrimination as defined in the Code, the College argued that the Registrant failed to meet other standards of the profession. The Registrant failed to respect the Complainant's self-determination in making her feel pigeon-holed, and as a result, breached the standard reflected in Principle I, Interpretation 1.3. The Registrant did not encourage [C1] to decide which problems she wanted to address and how to address them. The Registrant told [C1] she could not receive services from the Registrant on Inkblot and that she should get services elsewhere. The Registrant failed to promote and facilitate the Complainant's participation in decision making, with respect to whether the Complainant would receive counselling services, the timing of the services, the cost of the services, and the scope of expertise of her counsellor, and breached the standard in Principle II, Interpretation 2.2.9. The Registrant also failed to arrange the termination and referral of service in accordance with the Complainant's needs and preferences, and breached the standard in Principle III, Interpretation 3.10.

[177] Regarding the Registrant's position that she felt obligated not to take [C1] as a client due to conflicts of interest and boundary problems, the College notes Dr. Williams's opinion that Principle II, Interpretation 2.2.1 requires registrants to evaluate whether a conflict exists that would impair their professional judgment or increase the risk of exploitation or harm to clients. It is not reasonable to expect a social worker's participation on a social media platform—one that the Registrant says is used by almost every Chinese person—to bring her into conflict of interest with a potential client who is not known to be on the same platform. Similarly, the Registrant's engagement in advocacy work that may have been visible to the client whom she judged to be part

of the community in which she was advocating does not, in Dr. Williams's opinion, create a conflict of interest.

[178] The College submits that the Registrant failed to rationally explain the nature of the purported boundary problem and how it was not discriminatory in its impact on the Complainant. She discussed, at length, her own prominence in the community and on social media, without providing any rational explanation for how this could reasonably have created a boundary problem.

[179] Dr. Williams testified that there was no reason for the Registrant to believe that providing services to the Complainant would have violated the Registrant's legal or ethical requirements under the standards. Dr. Williams further indicated that the Registrant did not attempt to clarify information from the Complainant or seek her perspective on what the Registrant said were problems (i.e., WeChat and her advocacy work). The College submits that this is a breach of the standards in Principle I, Interpretation 1.2.

[180] Dr. Williams testified that the standards, including at Principle II, Interpretation 2.2.9, anticipate that social workers are involved in advocacy for the communities they service. Literature has been published to guide social workers in establishing boundaries, including in relation to providing services in ethnic and racial minority populations. The Registrant did not have sufficient information to conclude that any boundary problem existed and made "no effort to seek information to confirm whether there was a boundary problem before refusing service." The Registrant did not have a legitimate reason to refuse service and thereby breached the standards set out in Principle III, Interpretations 3.5 and 3.10. The Registrant's opinion with respect to the existence of a boundary problem was devoid of evidence. The Registrant's presumption that a boundary problem existed demonstrates a failure to ensure that her professional opinion was appropriately substantiated by evidence from the Complainant and breached the standard in Principle II, Interpretation 2.1.4.

[181] The College submits that the Registrant's conduct also fails to demonstrate acceptance of the Complainant's uniqueness, contrary to the standard in Principle I, Interpretation 1.4. The Registrant failed to be aware of her values, attitudes and needs, including her presumptions regarding her own prominence and that all Chinese people are on WeChat. The Registrant failed to be aware of how these assumptions impacted upon her professional relationship with the Complainant. This breached the standards in Principle I, Interpretations 1.5 and 1.6.

[182] Finally, the College argues that the Registrant's conduct engaged in by the Registrant, including her discriminatory conduct, reflects negatively upon the profession of social work and is conduct that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional. The Registrant has breached 2.36 of the Professional Misconduct Regulation and Interpretation 2.2.8 of the standards.

The Registrant's submissions

[183] The Registrant frames this case as being about whether the Registrant committed professional misconduct when she told a potential client she could not take any clients due to her schedule, and later indicated she would not be taking Chinese clients in the future due to potential boundary issues. This case is also about whether inadvertently sending an intake form in a language other than English can amount to professional misconduct, particularly where the error is quickly rectified.

[184] The Registrant submits that the key questions for the Panel to decide are as follows:

- (a) Did the Registrant refuse to take the Complainant as a client because of her race, or because the Registrant was not taking any clients at all?
- (b) Does the Registrant's comment that she would not be taking Chinese clients in the future due to boundary issues a refusal, given one of the referrals provided was to the organization she founded and ran, and if it was, does it meet the test for discrimination at law, and therefore amount to professional misconduct?
- (c) Was FASS able to provide services in English at the relevant time?

[185] The Registrant submits that the evidence shows that: (1) the Registrant was not accepting any clients into her private practice at the time she met the Complainant, regardless of their ethnic background, (2) the Registrant gave [C1] referrals, including one to FASS, which focussed on providing culturally sensitive care to members of the Chinese diaspora, and (3) FASS was capable of providing services in English, Cantonese and Mandarin at the relevant times, and had reached out to the Complainant in English.

[186] The Registrant argues that the College has not proven the allegations of professional misconduct against her. In the alternative, if the Panel does find that some of the Registrant's conduct was not appropriate in the circumstances, the Panel should dismiss the allegations on the basis that the deficiencies in the Registrant's practice are too trivial to amount to professional misconduct. The Registrant also raises procedural fairness and abuse of process arguments, which will be dealt with later in these reasons.

(i) The discrimination allegation

[187] The Registrant submits that the core of the College's case is that the Registrant engaged in racial discrimination by referring the Complainant to FASS, an organization that provides culturally responsive services to the Chinese diaspora/community, which mistakenly provided the Complainant with registration forms in simplified Chinese, 24 hours before the forms were provided in English and the Registrant submits that these facts do not constitute discrimination.

[188] The Registrant submits that in order to establish a *prima facie* case of discrimination, a person must prove all three of the following

- (a) They have a characteristic protected by the Code,
- (b) They have experienced an adverse impact within a social area protected by the Code, and
- (c) The protected characteristic was a factor in the adverse impact.

[189] Discrimination is not simply drawing a boundary or making a distinction in a comment based on race, or other protected ground. The distinction must result in an adverse impact on the Complainant, and there must be a link between group membership and an arbitrary criterion or course of conduct that disadvantages the Complainant. The treatment must truly create a disadvantage for it to amount to an adverse impact. Even where there is an adverse impact, the test

for discrimination will not be met if the person can show, on a balance of probabilities, that their course of action was required or otherwise justified.

[190] The Registrant submits that the facts in this case do not establish a *prima facie* case for discrimination.

[191] The Registrant accepts that [C1] identifies as Chinese (as does the Registrant) and that race and ethnic origin are protected by the Code. The Registrant submits however, that [C1] did not experience any adverse treatment as a result of her race.

[192] When [C1] sought services from the Registrant in April 2021, the Registrant was not accepting any clients into her private practice, regardless of race, due to her schedule. The Registrant did not refuse [C1] the services she was seeking. Rather, she met with [C1] for a brief consultation, during which therapy was not provided. The purpose of the consultation was to determine what [C1] was looking for, assess fit, and provide referrals as required. The Registrant determined what referrals would be a good fit and then referred [C1] to FASS, Inkblot and to Psychology Today. The Registrant did not terminate this consultation; rather, she ended the session after the purpose was met. The Registrant submits that this is not discriminatory—it was consistent with how the Registrant managed any potential client seeking services at the time.

[193] In response to the College’s assertion that a delay in [C1] getting access to therapy was an adverse impact, the Registrant submits that [C1] chose not to pursue services with FASS; FASS did not refuse her services.

[194] The Registrant submits that the comment she made regarding not accepting Chinese clients due to boundary issues was made in response to a hypothetical question [C1] had asked about her future availability and that this question came only after the service relationship had been terminated due to the initial refusal of service due to scheduling issues. Accordingly, the comment does not establish that race was a factor in her decision not to take [C1] as a client.

[195] The Registrant confirmed the Complainant’s Chinese heritage so that she could provide her with additional referrals. A distinction was drawn on the basis of their shared Chinese heritage in order to provide benefit; it did not result in adverse treatment. The Registrant relies on the decision the Court of Appeal for Ontario in *Ontario (Disability Support Program) v. Tranchemontagne*, 2010 ONCA 593 to argue that where a person is directed to a program better suited to their needs on the basis of a protected characteristic, it “does not create a disadvantage by perpetuating prejudice or stereotyping”, and the test for discrimination will not be met, because there is no true disadvantage, regardless of the perception of the claimant.

[196] The Registrant further submits that although [C1] did not appreciate the comment or the mistake of sending a form in simplified Chinese, hurt feelings are not sufficient to establish adverse treatment. Additionally, an intern made the error of sending [C1] the form in simplified Chinese, not the Registrant, and the error was immediately resolved, and does not rise to the level of adverse impact.

[197] The Registrant argues that if the College meets its onus in proving all three factors for *prima facie* discrimination, then the Panel must decide if the impugned action was justified because the Registrant has proven that:

- (a) She adopted the standard for a purpose or goal that is rationally connected to the function being performed.
- (b) She adopted the standard in good faith, in the belief that it is necessary to the fulfillment of the purpose or goal, and
- (c) The standard is reasonably necessary to accomplish its purpose or goal, in the sense that the Registrant cannot accommodate persons with the characteristics of the claimant without incurring undue hardship.

[198] The Registrant submits that her concerns about boundary violations were made in good faith, based on her understanding of her professional obligations under the standards of the profession. She argues that:

- (a) She adopted the boundaries to achieve a purpose rationally connected to the goal, which was abiding by the standards of practice and avoiding boundary violations;
- (b) She adopted the boundaries in good faith, with the belief that it was necessary to ensure she did not act in a conflict of interest, and
- (c) The boundaries were reasonably necessary to accomplish the purpose/goal in that the Registrant could not ensure that [C1] or her relatives had not or would not add her on social media, had not participated in or communicated with her, had not or would not volunteer with her organization or work with her as part of her community organizing, or had not or would not be exposed to her advocacy and opinions on topics related to the services [C1] was seeking.

[199] The Registrant submits that drawing personal and professional boundaries is an individual and personal exercise and what one person may be comfortable with, may be different for another person. The Registrant argues that she had reason to believe she could be in breach of her obligations to the College by providing services to the community with which she also interacted as an advocate outside of her professional life. Although the College may not have chosen to pursue an allegation of misconduct against the Registrant in this context, the Registrant had no way of knowing that.

[200] The Registrant asserts that her boundary of not taking any Chinese clients is rationally connected to the goal of abiding by the College's guidelines. She submits the boundary was necessary, as there was no way for the Registrant to monitor all new followers on her social media pages, and it would have been impossible to determine if a potential or current client was using an alternate name on social media. She genuinely believed it was necessary to draw that boundary, which is what matters for the purpose of the test in the Code.

[201] Accordingly, the Registrant submits that she did not discriminate against [C1], she did not contravene the Code, and she did not fail to maintain the standards of the profession as they relate to discrimination. The corresponding allegations must be dismissed.

(ii) Allegations regarding other failures to maintain the standards of the profession

[202] With respect of the allegations other than discrimination under the Code, the Registrant submits that the College has not met its burden of proof, and all allegations should be dismissed.

[203] The Registrant submits that the Panel must determine if [C1] was a client or merely a potential client because the standards of practice in the Handbook draw a distinction between a “potential client” and a “client”. She submits that [C1] was not her client at any point in time and so the allegations that relate to standards applicable to “clients” only should be dismissed.

[204] The Registrant submits that a potential client attracts different obligations than a client does, and the Handbook contemplates a point of transition where a “potential client” becomes a “client”. It is only when that transition occurs that the obligations of a registrant shift. However, Dr. Williams’s evidence made it clear that even a qualified expert was not aware of where to draw the line, indicating there is no obvious standard that the Registrant could be deemed to have breached.

[205] The Registrant cites the following definition of “client” in an explanatory note of the Code of Ethics and Standards of Practice Handbook:

[A]ny person or body that is the recipient of, or has contracted to receive, social work or social service work services from the member, including an individual, couple, group, family, organization, government agency or community that receives (or contracts to receive) direct or indirect social work or social service work services (as described in the scope of practice).

[206] The Registrant adds that “potential client” is not defined in the Act or the Handbook, but this term is referred to in various places including Principle III, Interpretation 3.5 and footnote 4. It is clear from the legislation that a distinction exists between “client” and “potential client” for the purpose of disciplinary proceedings, and that a potential client is not the same as a client.

[207] The Registrant submits that the evidence shows that [C1] was a potential client, not a client. Where—as in this case—a social worker is evaluating fit, or determining their ability to take on a client, it makes sense that different standards would apply as the social worker has not yet been able to rule out conflicts, fit and ability to provide the required services.

[208] Both the Registrant and the Complainant testified that the April 12, 2021, session was the first time they met. The first session was a free 15-minute consultation to allow therapist and client to determine if they are a good fit. No therapy is provided in these sessions. Both the Registrant and the Complainant testified that no money was ever exchanged between them and the Registrant took steps to ensure the session was kept short (under five minutes) so the Complainant would not be confused about its purpose. The Registrant came to the session knowing she would be providing the Complainant with referral resources because she was not taking on any new clients at the time.

[209] The Registrant argues that Dr. Williams has proposed a novel definition of “client” that requires a “client service event”, which springs in and out of existence during meet and greets. Dr. Williams acknowledged that her definition of “client” would capture any person who spoke with a social worker about receiving services, including romantic partners and others where a clear

conflict existed. The Registrant submits that Dr. Williams's testimony on the interpretation of "client" in the standards should be disregarded as it falls outside the scope of what she qualified to give opinion evidence about, and it is a matter of statutory interpretation, which is a question of law for the Panel to decide.

[210] The Registrant argues that the opinion evidence of Dr. Williams should not be given much weight as it was based upon a set of hypothetical facts that were not supported by the evidence tendered at the hearing. In particular:

- (a) Dr. Williams assumed the Registrant had a "no Chinese clients" rule, when in fact the Registrant's evidence was that she had a "no clients" rule. The Registrant initially explained to the Complainant that she was not taking clients due to scheduling issues;
- (b) Dr. Williams was told to assume that the Complainant was not offered a referral to her chosen resource, when in fact the Registrant referred her to the same resources she had already been using, namely the Inkblot platform;
- (c) Dr. Williams formed her opinion on the premise that the Complainant was offered a referral to inappropriate resources. In fact, FASS is a bilingual organization, operating both in English and Mandarin, and it is likely the Complainant spoke Mandarin;
- (d) The email sent from FASS in simplified Chinese was the result of a clerical error rather than the result of the organization's inability to serve clients in English; and
- (e) Dr. Williams based her analysis on the reasonableness of the Registrant's concerns about a boundary issue on an inaccurate understanding of the reach and functionality of WeChat.

[211] The Registrant submits that the College failed to present the evidence necessary to prove its allegations that she failed to maintain the standards of the profession by:

- (a) Failing to ensure that her professional recommendations or opinions were substantiated by a body of evidence;
- (b) Failing to assist potential clients to obtain other services when she was unable or unwilling to provide the requested professional help;
- (c) Failing to distinguish her needs and interests from those of clients to ensure within professional relationships clients' needs and interests remain paramount;
- (d) Failing to be aware of her values, attitudes and needs and how these impact her clients;
- (e) failed to respect and facilitate self-determination; and
- (f) failing to arrange the termination, transfer, referral, or continuation of service in accordance with clients' needs and preferences.

[212] The Registrant also argues that since the mandate of the College and this Panel is to ensure the public is protected from harm, only the most serious cases should result in a finding of professional misconduct. She asserted that the Panel should be cautious to make findings of professional misconduct where there is no evidence of intent by the Registrant, and that trivial lapses or minor issues of non-compliance are better dealt with through education or advice. The Registrant submits that where the Panel believes the harm done is minimal or non-existent, and there is little or no risk to the public, a finding of misconduct and penalty are not necessary.

Advice of Independent Legal Counsel (“ILC”)

[213] The Panel received advice from ILC, which was shared with the parties. They were given an opportunity to comment on ILC’s advice. ILC set out the legal framework for adjudicating the allegations of professional misconduct in this case.

[214] ILC advised the Panel that the College bears the burden of proving the alleged professional misconduct on a balance of probabilities. The Registrant has no obligation to disprove the allegations. ILC reminded the Panel that each allegation must be assessed on its own merits, and the Panel may conclude that the College has met the burden on all, some, or none of the allegations. If the Panel is satisfied that the evidence supports a finding of misconduct on the balance of probabilities, it must make a finding. However, if the evidence falls short, the Panel must dismiss the allegation.

[215] The Panel received advice from ILC on the approach to weighing the evidence and assessing the credibility and reliability of the witnesses.

[216] ILC also discussed the expert evidence of Dr. Williams. ILC advised the Panel that even though it ruled Dr. Williams’s evidence to be admissible, that ruling does not dictate what, if any, weight should be given to her opinion evidence. The Panel must evaluate the expert evidence and avoid ceding its decision-making role to the expert witness. While expert opinions may be helpful, responsibility for deciding the misconduct allegations rests with the Panel.

[217] ILC outlined the allegations in this case and are categorized based on their nature and legal implications. With respect to allegations that involve an alleged failure to meet the standards of the profession (allegations (a) through (i)), ILC advised that the Panel must first determine the relevant professional standard and then assess whether the evidence proves that the Registrant failed to meet that standard. ILC advised the Panel that the standards of the profession must be proven through evidence, which in this case may be the Handbook and/or the expert evidence of Dr. Williams. The parties disagree on whether the Complainant was a client of the Registrant. The Panel will need to decide that issue, as certain allegations involve standards that are specific to a registrant’s conduct in relation to a “client”. If the Complainant was not the Registrant’s client, those allegations would not be proven.

[218] Allegations (j) through (l) relate to discontinuance of services. ILC advised the Panel that the elements of misconduct under s. 2.8 of the Professional Misconduct Regulation require the College to prove (i) whether the Registrant terminated services to [C1] as her client and, (ii) if so, whether she did so in circumstances that fall within those listed in s. 2.8. These allegations also involve failure to meet the standards of the profession. ILC advised that the Panel should follow the analysis above for that part of the allegations.

[219] ILC advised the Panel that allegations (i) and (n) require the Panel to apply the test for discrimination under the Ontario *Human Rights Code* to the facts of this case. The parties agree on the test but not its application here, particularly in respect of the second and third elements (whether the Complainant experienced deprivation of services or suffered negative consequences and whether race was a factor in that deprivation). ILC advised the Panel that it does not need to determine whether the Registrant is personally racist; rather, it must assess whether the Registrant's actions had a discriminatory effect. If the Panel finds that the College has established a *prima facie* case of discrimination, the onus shifts to the Registrant to prove she had a rational, non-discriminatory explanation.

Decision of the Panel

[220] The Panel recognized that the College bears the onus of proving the allegations against the Registrant on the balance of probabilities, using clear, cogent and convincing evidence.

[221] Having considered the burden and standard of proof, the evidence, and the submissions of the parties, the Panel found that the Registrant committed the acts of professional misconduct alleged in the following paragraphs of the Notice of Hearing: (a), (c), (d), (e), (g), (i), (j), (m), (n) and (o).

[222] With respect to allegation (o), the Panel finds that the Registrant's conduct would reasonably be regarded by members as dishonourable and unprofessional.

[223] The Panel found that the College did not meet its burden of proving allegations (b), (f), (h), (k) and (l).

Reasons for decision

[224] Although the parties agreed on many of the basic facts, some key facts were contested. Witness credibility therefore played an important role in this case, particularly in respect of the interaction between the Registrant and [C1] during the Inkblot consultation on April 12, 2021. The Panel conducted credibility assessments of all the witnesses as part of its fact-finding role.

Credibility assessments

[225] Witness credibility and reliability are distinct concepts. Credibility relates to a witness's veracity, whereas reliability is focused on the accuracy of the witness's testimony. Reliability engages consideration of the witness's ability to accurately observe, recall, and recount the events in issue (*R v C(H)*, 2009 ONCA 56, at para 41). The Panel must consider both credibility and reliability in its assessment of each witness's evidence.

[226] In *Pitts and Director of Family Benefits Branch of the Ministry of Community & Social Services*, [1985] O.J. No. 2578, at para. 33, the Divisional Court provided guidance with respect to the assessment of credibility in the professional discipline context. In weighing the testimony of witnesses, the Panel is not obliged to decide an issue simply in conformity with the majority of the witnesses. The Panel can, if it sees fit, believe one witness against many. The test is not the relative number of witnesses, but the relative force of their testimony. With respect to the testimony of any witness, the Panel can believe all that the witness has said, or part of it, or the Panel may reject it entirely. Discrepancies in a witness's testimony, or between the testimony of one witness and that of others, do not necessarily mean that the witness should be discredited. Failure of

recollection is a common experience and innocent mis-recollection is not uncommon. Two persons witnessing an incident or transaction often will see or hear it differently. Discrepancies on trivial detail may be unimportant, but a falsehood is always serious. In determining the credit to be given to the evidence of a witness, the Panel should use its good common sense and its knowledge of human nature.

[227] The Panel considered the principles set out in the case law and the following factors in assessing the credibility and reliability of the witnesses' evidence:

- (a) The extent of the witness's opportunity to observe the matter about which they testified;
- (b) Whether the witness has any interest in the outcome of the litigation;
- (c) Whether the witness exhibits any partisanship or any undue leanings towards the side that called them as a witness;
- (d) The probability or improbability of the witness's story;
- (e) Whether the testimony of the witness was contradicted by the evidence of another witness or witnesses who the Panel considers more worthy; and
- (f) The appearance and demeanour of the witness, and the manner in which the witness testified.

[228] Applying those factors, the Panel arrived at the following assessments of credibility and reliability.

(i) Credibility assessment of [C1]

[229] In the Panel's assessment, [C1]'s recollection of the events that occurred between her and the Registrant was consistent throughout her testimony and she was sincere in her efforts to recount events accurately. She acknowledged that at the time she made the complaint her recollection of the events that occurred with the Registrant was freshest and most accurate. Her testimony was consistent with her initial complaint and throughout her evidence, including under cross-examination. [C1] relied on her documentary evidence and referred to it for accuracy, when she could not remember. Her manner was thoughtful and her evidence was clearly articulated. [C1] was direct and she did not embellish her evidence or try to evade questions. She openly acknowledged when she could not recall something or that "it was possible" something was discussed in the meeting of which she had no present recollection. The Panel found that [C1] was sincere, consistent and reliable in her testimony.

(ii) Credibility assessment of Yujia Zhu

[230] The Panel had concerns about the credibility and reliability of the Registrant's evidence.

[231] During her direct examination it became apparent that the Registrant (who was testifying over video conference) was reading off a document that had not been shared with the College or the Panel. College counsel objected and the Registrant explained that she was reading "some of

the points I made, just to remind myself how to say certain things in English”. At the Panel’s request, the Registrant produced a copy of the document she was referring to. The document was in the nature of a “script” that set out the Registrant’s responses to questions in direct examination. The Panel instructed the Registrant that she could not read from the document; her answers must be candid and spontaneous, and if she needed to refer to the script for language reasons, she should alert the Panel. The issue arose again later in the Registrant’s examination, as it appeared that the Registrant continued to read from the document but did not alert the Panel to her need to refer to her notes.

[232] At times the Registrant’s words during her testimony were identical to phrases in the document, suggesting that she was reading from document. The Panel agrees with submissions made by the College that the fact that the Registrant continued referring to her notes—without alerting the Panel and after being directed by the Panel not to—reflects poorly on her credibility and reliability as a witness. Throughout the 12-day hearing, neither the Registrant nor her counsel requested the opportunity to engage a qualified Mandarin-English translator for the benefit of the Registrant. The Registrant’s claim of needing assistance with English as her second language was not convincing. The Panel found the Registrant’s written (through documentary evidence) and oral communication in English to be fluent and clear.

[233] The Panel found that the Registrant was relying on scripted notes to testify, which casts doubt on both her ability to recall events accurately and her sincerity in following the Panel’s direction to give spontaneous oral evidence with notification to the Panel if consultation of her notes was necessary. The Registrant’s recall of events was limited. The Panel found that the most reliable and best evidence appeared to come from the complaint form and email exchanges shortly after the events in question.

[234] There was logic to the Registrant’s explanation that she denied service to the Complainant due to scheduling issues. However, the Registrant was not consistent in this explanation. At the hearing the Registrant testified that the reason she refused to provide services to the Complainant was because of scheduling issues and that she was not taking any clients at that time. She also stated that the issues of ethnicity and race were discussed only in the abstract, in response to a “hypothetical” question from [C1], and only after she clarified she would not be providing services. That is not the version of events the Registrant gave to the College in her initial response emails on August 11, 2021. In one email the Registrant said that the reason she did not proceed with the first session on Inkblot was because of her professional boundary and because of her work for FASS. In particular, the Registrant stated that she did not have the time or energy to check thousands of contacts on her WeChat list and she did not want to risk her professional boundary. The Registrant’s oral evidence contradicted the emails she wrote in 2021, shortly after the events in issue. The Panel preferred the documentary evidence over her oral evidence given at the hearing.

[235] In a second email to the College on August 11, 2021, the Registrant stated that she did not recall the exact conversation she had with the Registrant, but thought that she asked the Complainant her last name, and asked if it was Chinese. The Complainant confirmed that it was. The Registrant stated that she then replied to the Complainant that because she was Chinese and because of boundary problems, she was not taking Chinese clients. This was consistent with the Registrant’s first email to Ms. Reid on August 11, 2021, but inconsistent with her testimony in the hearing. The Registrant did not provide a credible explanation for the change in her account.

[236] For these reasons, the Panel was cautious in accepting Ms. Zhu's evidence and, in assessing the interaction between her and [C1] during in consultation session on April 12, 2021, gave greater weight to [C1]'s account and the version of events set out in the complaint form and Ms. Zhu's emails to the College during the investigation.

(iii) Credibility assessment of Francine Reid

[237] Ms. Reid gave non-controversial narrative evidence regarding the College's intake of [C1]'s complaint and related communications with [C1] and Ms. Zhu. The credibility and reliability of her testimony were not in issue. Ms. Reid testified in a neutral and professional manner. She accurately recalled dates and provided a reliable timeline of events.

(iv) Credibility assessment of Bernadette Santiago

[238] Ms. Santiago gave evidence about the College's investigation and communications with Ms. Zhu. Like Ms. Reid, the credibility and reliability of her testimony were not seriously in dispute as between the parties.

[239] The witness was direct and forthright in her testimony. She appropriately referred to contemporaneous documents to accurately recall dates and construct an accurate timeline. Throughout her testimony, Ms. Santiago maintained what appeared to be unbiased and neutral responses, particularly regarding the allegations of discrimination, and her delivery of the facts demonstrated her objectivity, without offering opinions based on emotion.

(v) Credibility assessment of Julie Lafleche

[240] The Registrant challenges the evidence of Ms. Lafleche and argues that none of her evidence should be given any weight for three reasons: (1) it is not relevant to the allegations in the Notice of Hearing; (2) her evidence was not disclosed to the Registrant or was disclosed in breach of the *Rules*; and (3) Ms. LaFleche's evidence was not reliable, as she indicated her evidence was being given for reasons other than to assist the Panel. The first two submissions will be addressed later in these reasons.

[241] With respect to reliability, the Registrant submits that Ms. LaFleche's testimony was biased and was predicated on her belief that the Registrant was a racist due to the incorrect allegations of fact in the Notice of Hearing. Ms. Lafleche indicated that she had reviewed the Notice of Hearing and formed her own opinion about the Registrant prior to testifying. Ms. Lafleche indicated that she believed her role at the hearing was to advocate for the benefits of the for-profit company she worked for and distance Inkblot from the Registrant's conduct.

[242] In the Panel's assessment, Ms. LaFleche appeared to be honest and factual in her testimony, and responded to direction when she was corrected about reading information on her screen, demonstrating transparency. She made an effort to give accurate information about the Inkblot platform, relying on physical documents and files to ensure the information provided was factual. The witness demonstrated a good memory and gave detailed, consistent information. Any difficulty recalling details seemed genuine and not an attempt to avoid answering. Her testimony was consistent with independent evidence and aligned with other witnesses' accounts. There were no significant inconsistencies in her evidence, either on major or minor points. The witness showed no apparent interest in the case's outcome and displayed no favouritism toward either party. Her

manner of testifying was professional and direct, providing facts without defensiveness. Overall, the witness's testimony was credible, consistent, and fact-based. The Panel had no significant reasons to doubt her reliability or credibility.

(vi) Credibility assessment of Dr. Charmaine Williams

[243] Dr. Williams was qualified as an expert and gave opinion evidence based on assumed hypothetical facts. She did not provide fact evidence. In assessing Dr. Williams's evidence, the Panel was alive to relevance of the hypothetical facts and that if the facts of this case differ from the assumed facts on which Dr. Williams based her opinion, it could reduce the weight of her opinion.

[244] As discussed above, the Registrant submits that Dr. Williams's evidence should not be given much weight as it was based upon a set of hypothetical facts that were not proven through the evidence at the hearing.

[245] The Registrant further submits that Dr. Williams based her analysis of the reasonableness of the Registrant's concerns about boundary issues on an inaccurate understanding of the reach and functionality of WeChat. Dr. Williams acknowledged that she does not have expertise in Chinese culture and does not read simplified Chinese. Without that expertise and understanding of the WeChat platform, Dr. William's conclusions on this subject should not be preferred to those of a Chinese person who uses the tool on a regular basis and understands how the platform works—Ms. Zhu.

[246] The Panel found Dr. Williams's expert evidence to be helpful, informed, cogent and reliable. Throughout her testimony Dr. Williams demonstrated honesty and transparency, consistently delivering factual information without any signs of bias or personal interest. She did not exhibit any defensiveness during her testimony. She made reasonable concessions in cross-examination and testified consistent with her duty to assist the Panel rather than advocate for the College. Her testimony was straightforward, with no noticeable inconsistencies, and she appeared to have no personal connection or vested interest in the case. She maintained impartiality and testified within the scope of her expertise. Her testimony was factual and aligned with the professional standards expected of a qualified expert, offering a clear, unbiased presentation of the process without any emotional investment. The Panel did not find any material inconsistency in the facts proven at the hearing and the assumed facts on which Dr. Williams based her opinion that would undermine her opinion.

Findings on allegations of professional misconduct

[247] The Notice of Hearing contains 15 distinct allegations against the Registrant. As stated above, the Panel finds that the College has met its burden on some but not all of the allegations. The allegations will be discussed in turn.

[248] Several of the allegations engage s. 2.2 of the Professional Misconduct Regulation, which provides that it is an act of professional misconduct for the purposes of s. 26(2)(c) of the Act to fail to meet the standards of the profession. For each of these allegations, the Panel first assessed the evidence as to what the relevant standards are, and then considered whether the evidence proves on a balance of probabilities that the Registrant failed to meet those standards. The Handbook, which is a by-law of the College, sets out the standards of practice of the social work profession.

In addition, Dr. Williams gave expert testimony of relevant standards of the profession. For some allegations, the Panel was able to rely on the standards as set out in the Handbook; for others, the Panel considered Dr. Williams's opinion evidence to inform its understanding of the relevant standards.

(i) [C1] was a client of the Registrant for the purposes of the standards

[249] Some of the allegations against Ms. Zhu involve standards of practice in the social work profession that apply when a registrant is dealing with a "client"; others are engaged even when a registrant is dealing with a "potential client". As a threshold matter, therefore, the Panel must determine whether [C1] was a client of Ms. Zhu. If she was not, then the College has not met its burden of proving the Registrant failed to maintain standards of the profession as they relate to "clients".

[250] The Panel finds that [C1] was a client of the Registrant. Dr. Williams gave expert opinion evidence that Ms. Zhu provided social work services to [C1]. At the time [C1] signed up for services through Inkblot, she was a "potential client" of the Registrant, but during the initial consultation session on April 12, 2021, she was Ms. Zhu's client. The Panel agrees. The consultation was in the nature of an introductory session that set the parameters of the relationship. Through discussion with [C1] and her Inkblot profile, the Registrant assessed her needs for services and, ultimately, appropriate referrals. Ms. Zhu collected enough information to consider FASS to be an appropriate referral for her therapy needs, taking into account the Chinese cultural context, timeline for services, and financial needs as a free service. The Scope of Practice for Social Work includes "The provision of assessment, diagnostic, treatment and evaluation services within a relationship between a social worker and a client". That is what occurred during the consultation session even though it was free and brief, and no therapy was provided.

(ii) Allegation (a) – failure to maintain the standards in Principle I, Interpretation 1.2 of the Handbook

[251] In allegation (a) the College alleges that the Registrant engaged in professional misconduct under s. 2.2 of the Professional Misconduct Regulation and Principle I of the Handbook, Interpretation 1.2, by failing to observe, clarify, and inquire about information presented by the client. The Panel found that the College met its burden of proving professional misconduct as alleged in allegation (a).

[252] In her response emails to the College on August 11, 2021, the Registrant admitted to making an assumption about the Complainant's cultural, social background, and social media use, reflecting a failure on the Registrant's part to observe, clarify and inquire about significant information pertaining to the client. Specifically, in recounting her exchange with [C1] during the initial Inkblot consultation, the Registrant told Ms. Reid in one email:

[A]s I recalled the conversation went:

Me: "[C1] is a Chinese Last name right"

C1]: Yes.

Me: "So you are Chinese and because of boundary problems, I am not taking Chinese clients...."

[253] In a second email to Ms. Reid on August 11, 2021, the Registrant wrote:

The very reason why I did not proceed to the first session with her on inkblot is because of my professional boundary. Because of my NGO FASS, I use a social media platform that almost every Chinese person in China, US and Canada use - Wechat, and this software could potentially mess up the professional boundary completely. Also back in the end of March, My NGO is one of the Organizers for Toronto Solidarity Rally (this event was featured on CBC NEWS, CITY NEWS, TORONTO CP24 etc.), due the huge chinese media coverage of my NGO and the reach of my wechat account because of this event, I don't know if she is on my contact list or any of her relatives on my friend list. I don't have that time and energy to double check thousands of contact on my wechat list and I don't want to risk my professional boundary. I have to admit here, this is the assumption I truly make: She has wechat and I cannot see her as my client. Maybe you will say I think too much, but I think as a helping professional it's better to be careful than sorry.

[254] In her testimony at the hearing, the Registrant provided a different explanation for her refusal to provide therapy services to [C1], namely, that she was not taking any clients in April 2021 due to her schedule. However, as set out above, the Panel considers the Registrant's written responses to the College in August 2021 to be more reliable than the version of events she gave in her testimony at the hearing.

[255] In her testimony, the Registrant said she told the Complainant that she could not take her on as a client because of scheduling issues; however, the Registrant also testified that the Complainant then asked the Registrant hypothetically: "Will you take me on in the future if you have time?" The Registrant stated that she answered that question with a second reason for rejecting [C1] as a client: because of boundary issues. When asked why she did not mention scheduling conflicts as a reason for refusing to take [C1] as a client in her responses to the College, the Registrant testified that she had addressed only the issues raised by the Complainant and disclosed by the College. However, if, as the Registrant now claims, scheduling had truly been a reason for her refusal, she would have included that reason in her responses. At no point in her emails to the College, whether to Ms. Reid or to Ms. Santiago, did the Registrant mention that scheduling prevented her from accepting the Complainant as a client.

[256] The Panel finds that at the initial consultation session on April 12, 2021, when the Registrant saw [C1] on video and saw that she was of Asian descent, the Registrant immediately told [C1] she does not take Chinese clients and to email her to get referred to FASS for free sessions.

[257] By her own admission, the Registrant acted on assumptions about the Complainant in the April 2021 consultation session—namely, assumptions as to [C1]'s use of WeChat and the potential for boundary crossings—rather than observing, clarifying, and inquiring about information presented by [C1], as the College's standards required her to do. She ought to have asked questions and explored with [C1] her circumstances before concluding that she could not assist.

(iii) Allegation (b) – failure to maintain the standards in Principle I, Interpretation 1.3 of the Handbook

[258] Allegation (b) is that the Registrant violated s. 2.2 of the Professional Misconduct Regulation and Principle I of the Handbook, Interpretation 1.3, by failing to respect and facilitate self-determination in a number of ways, including acting as a resource for the client and encouraging her to decide which problems she wants to address as well as how to address them. The Panel found that the College did not meet its burden of proving this allegation.

[259] The evidence proved that during the consultation session the Registrant offered the Complainant options, such as accessing services at FASS and other referral options, to pursue the counselling services she sought. The Registrant gave the Complainant agency by inviting her to send an email requesting a referral to FASS if she wanted to engage with its services. After the consultation on April 12, 2021, the Complainant chose to email the Registrant and request the referral. In addition, based on the fact that [C1] used Inkblot to connect with the Registrant, it was reasonable for the Registrant to assume that the Complainant continued to have access to Inkblot and could connect to many other therapists via that platform. The testimony of Ms. Lafleche confirmed that clients could match and un-match with different therapists at their choosing, and the Complainant was familiar with the use of the Inkblot platform.

[260] After the consultation session when [C1] emailed the Registrant to request services through FASS, an intern sent [C1] intake forms and an email in simplified Chinese. Although receipt of the forms in simplified Chinese may have affected the Complainant's self-determination in that she could not initially access FASS services if she did not understand the forms, the Panel is not satisfied that the language of the forms was the result of any breach by the Registrant of her professional obligations. The Registrant and the Complainant participated in the initial consultation session in English, with no evidence of any language barriers. There is no evidence before the Panel that Ms. Zhu directed the intern to send communications to [C1] in simplified Chinese. The Panel notes that in the Registrant's email to [C1] on April 19, 2021, she said "I will ask my intern to communicate with you in English. Sorry for the confusion. My apologies." The Panel accepts the Registrant was sincerely apologizing for a genuine error.

[261] We conclude that it was an error and that Ms. Zhu promptly took steps to correct the mistake by apologizing and having the forms sent to [C1] in English. At that point, [C1] chose not to pursue services with FASS.

[262] Accordingly, the Panel finds that the College failed to prove on a balance of probabilities that the Registrant did not give the Complainant options and agency, and help to facilitate the Complainant's self-determination. Allegation (b) is dismissed.

(iv) Allegation (c) – failure to maintain the standards in Principle I, Interpretation 1.4 of the Handbook

[263] With respect to allegation (c), the College has proven that the Registrant engaged in professional misconduct under 2.2 of the Professional Misconduct Regulation and Principle I of the Handbook, as commented on in Interpretation 1.4, by failing to demonstrate acceptance of each client's uniqueness.

[264] The Registrant admitted to assuming the Complainant used WeChat because she was a Chinese Canadian. In effect, the Registrant made the assumption that [C1] was a Chinese Canadian who uses WeChat. The Registrant was also concerned that the Complainant's relatives could be WeChat users and she would have no way of knowing. In making assumptions about the Complainant's social media platform use, the Registrant failed to regard [C1] as a unique individual and demonstrate respect and acceptance for her uniqueness. Accordingly, this allegation has been proven.

(v) Allegation (d) – failure to maintain the standards in Principle I, Interpretation 1.5 of the Handbook

[265] In allegation (d), the College alleges that the Registrant violated s. 2.2 of the Professional Misconduct Regulation and Principle I of the Handbook, as commented on in Interpretation 1.5, by failing to be aware of her values, attitudes and needs and how they impact professional relationships. The College proved this allegation on a balance of probabilities.

[266] Throughout her interactions with [C1], the Registrant was aware of her own values, attitudes and needs. In particular, she was aware of her advocacy and passion for FASS and increasing the availability of counselling services for the Chinese Canadian community. However, she lacked necessary insight into how her values, attitudes and needs impacted her professional relationships with clients. In the first consultation session, Ms. Zhu refused to take [C1] as a client based on assumptions that as a Chinese person, she must use WeChat, and that it presented boundary problems. The Registrant chose not to explore whether there was in fact a conflict of interest or any boundary problems. It is undisputed that the Registrant did not in fact ask the Complainant if she uses WeChat. The Registrant made the decision not to see this client based on her own values and needs without further considering the needs of the Complainant. These decisions directly impacted the relationship with the Complainant. The Complainant gave evidence that the Registrant's assumptions made her feel pigeonholed because she is Chinese.

(vi) Allegation (e) – failure to maintain the standards in Principle I, Interpretation 1.6 of the Handbook

[267] The College alleges that the Registrant failed to maintain the standards set out in Principle I of the Handbook, Interpretation 1.6, by failing to distinguish her needs and interests from those of her clients to ensure that, within professional relationships, clients' needs and interests remain paramount. The College has proven this allegation on a balance of probabilities.

[268] The Panel accepts that the Registrant had reason to believe she could be in breach of her professional obligations by providing services to the community she also interacted heavily with as an advocate, outside of her work as a registered social worker. The Registrant knew it was not appropriate for her to connect with a client on social media. She also knew that she could not verify the identity of a large number of her followers, as people can use different names on WeChat and Instagram. She testified that she has about 100 conversations a day on WeChat alone related to FASS. However, by relying on assumptions instead of taking even minimal steps to determine whether [C1] used WeChat or was aware of her advocacy, the Registrant prioritized her personal interests and those of her non-profit organization over her professional obligations to the client. Specifically, she denied service to the client based on generalized assumptions about her use of social media due to her Chinese ethnicity. She was "too tired" to make necessary inquiries. The

denial of service was based on her prioritization of the interests of her non-profit, rather than on the needs of her client.

[269] In accordance with the College's standards, a member of the profession must ensure that the client's needs and interests remain paramount—registrants are social workers first, and business owners second. The Registrant failed to demonstrate this understanding in her conduct.

(vii) Allegation (f) – failure to maintain the standards in Principle II, Interpretation 2.1.4 of the Handbook

[270] In regard to allegation (f), the College failed to prove that the Registrant violated s. 2.2 of the Professional Misconduct Regulation and Principle II of the Handbook, Interpretation 2.1.4 by failing to ensure that her professional recommendations or opinions were appropriately substantiated by evidence and supported by a credible body of professional social work knowledge.

[271] During the Inkblot session on April 12, 2021, the Registrant provided referral and consultation services to the Complainant. The Complainant and the Registrant both agreed that FASS was a promising referral, in that it appeared to be a suitable service provider for the Complainant, in light of her financial needs and timeline for services, and its culturally-sensitive approach. Although as discussed below the Registrant inappropriately refused to provide service to the Complainant herself, there was nothing inherently inappropriate about referring her to FASS.

[272] The Registrant's assessment of the suitability of FASS as a referral was supported by a "credible body of social work knowledge". The Complainant chose to reach out to FASS and the Panel infers that she agreed it was worth exploring FASS's services for the therapy she sought relating to Chinese family relationship dynamics. The Panel is satisfied from the Registrant's evidence that the services available at FASS were rooted in evidence and based on a relevant and credible body of social work knowledge. For example, the Registrant explained that FASS offers unlimited mental health support, psychoeducation programming and social justice education webinars and provides a free listing platform for therapists of colour, feminist therapists, and LGBTQ friendly therapists.

[273] The College did not prove that the Registrant's recommendation to the Complainant to consider follow-up with FASS was unsubstantiated by evidence and unsupported by a credible body of professional social work knowledge.

(viii) Allegation (g) – failure to maintain the standards in Principle II, Interpretation 2.2.8 of the Handbook

[274] Allegation (g) in the Notice of Hearing alleges that the Registrant violated s. 2.2 of the Professional Misconduct Regulation and Principle II of the Handbook, as commented on in Interpretation 2.2.8, by failing to avoid conduct which could reasonably be perceived as reflecting negatively on the profession of social work or social service work. The College met its burden of proving this allegation.

[275] As explained above, the Panel has found as fact that the Registrant refused to take the Complainant as a client because she is of Chinese descent. Accepting the Registrant's evidence that she did confirm with [C1] that her last name is Chinese, the Registrant then stated that since

the Complainant is Chinese, and because of boundary problems, she was not taking Chinese clients. Although the Registrant might have felt that she was simply drawing professional boundaries and that doing so was not an act of racial discrimination or racial profiling, her refusal to provide therapy services to [C1] because of her Chinese ethnicity reflects negatively on the profession of social work. Further, as discussed below in the context of allegation (i), the Panel has found that the Registrant's conduct amounts to discrimination under the Ontario *Human Rights Code*.

(ix) Allegation (h) – failure to maintain the standards in Principle II, Interpretation 2.2.9 of the Handbook

[276] The College alleges in allegation (h) that the Registrant engaged in professional misconduct under s. 2.2 of the Professional Misconduct Regulation and failed to meet the standards in Principle II of the Handbook, as commented on in Interpretation 2.2.9, by failing to assist clients to access necessary information, services and resources wherever possible and by failing to promote and facilitate client participation in decision making. The Panel found that the College did not meet its burden of proving allegation (h).

[277] During the consultation session on April 12, 2021, after advising that she could not take on the Complainant as a client, the Registrant assisted the Complainant in accessing other services and resources by providing her with referral options. After that session, the Complainant followed up with an email to the Registrant on April 12, 2021, which demonstrated the Complainant agreed to at least learn more about the referral to FASS. The Complainant made the choice to take steps to pursue the Registrant's referral recommendation. It was also clear to the Panel that the Registrant has made efforts to advocate for Chinese Canadians and was involved in culturally-sensitive social work. The Panel finds that the Registrant believed in good faith that the services she recommended to the Complainant were appropriate for the Complainant and the Panel is satisfied that the Complainant made her own decision about pursuing the referral to FASS. The Registrant facilitated [C1]'s decision making by recommending FASS as a suitable referral with information, services and resources that could meet the client's needs.

[278] The Panel accepts that FASS made an error in sending [C1] the introductory email and intake forms in simplified Chinese on April 18, 2021. That error impacted [C1]'s ability to access FASS's services initially. However, Ms. Zhu acted quickly to correct the error and to apologize for it. The Panel finds that on the same day [C1] did receive English communications from a FASS intern. Based on the evidence, the Panel is not satisfied that the error was a result of any professional breach by Ms. Zhu.

(x) Allegation (i) – failure to maintain the standards in Principle III, Interpretation 3.4 and Footnote 3 of the Handbook

[279] With respect to allegation (i), the College alleges that the Registrant violated s. 2.2 of the Professional Misconduct Regulation and Principle III of the Handbook, as commented on in Interpretation 3.4 and Footnote 3, by engaging in discrimination based on race, ethnicity, language, religion, marital status, gender, sexual orientation, age, disability, economic status, political affiliation or national origin and by failing to adhere to the Ontario *Human Rights Code*. More specifically, the College alleges that the Registrant discriminated against [C1] in respect of social work services based on [C1]'s race, ancestry or ethnicity.

[280] The parties agreed on the legal framework the Panel must apply in deciding whether the Registrant discriminated against [C1], which is well-established in the case law and was reaffirmed by the Court of Appeal for Ontario in *Imperial Oil Limited v Haseeb*, 2023 ONCA 364, at para. 50. First, the Panel must apply a three-step analysis and determine whether the College has established a *prima facie* case of discrimination by showing: (1) that the Complainant has a characteristic protected from discrimination under the *Code* (i.e., she is a member of a group protected by the *Code*); (2) that the Complainant experienced an adverse impact (treatment) in a category of activity regulated by the *Code*, in this case, a service; and (3) that the protected characteristic was a factor in the alleged adverse treatment. See also *Moore v British Columbia (Education)*, 2012 SCC 61, at para. 33; *Ontario (Health) v Association of Ontario Midwives*, 2022 ONCA 458, at para. 101; *Peel Law Association v Pieters*, 2013 ONCA 396, at paras. 55-59. If the College establishes a *prima facie* case of discrimination, then the burden shifts to the Registrant to rebut the *prima facie* case by providing a credible, non-discriminatory explanation for the impugned conduct: *Imperial Oil*, at para 53.

[281] There is no dispute that the Complainant is Chinese Canadian and her race, ancestry and ethnicity are protected grounds under the *Code*. The first part of the three-step analysis is met.

[282] The second step requires the Panel to determine whether [C1] experienced an adverse impact or adverse treatment in respect of a service. The Panel found that [C1] was adversely impacted by the Registrant's decision to deny her services. In her oral evidence and in her written complaint to the College, [C1] expressed that she felt discriminated against and pigeonholed based on her ethnicity. [C1] sought counselling services to deal with specific needs before she moved to Korea in May 2021. She approached the Registrant in a consultation session to explore obtaining those counselling services. The Registrant refused to provide her services. That denial of services caused [C1] to experience an adverse impact or adverse treatment.

[283] At the third step, the College must show that the Complainant's race, ancestry or ethnicity was a factor in the adverse treatment. On this branch of the analysis, the Court of Appeal explained in *Imperial Oil* that the College need only prove a *connection* between the prohibited ground and the adverse treatment. The connection does not need to be causal. Further, the connection between the adverse treatment and the prohibited ground can co-exist with other non-discriminatory factors. The prohibited ground need not be the only reason for the adverse treatment, or even the predominant reason.

[284] The Panel finds on the evidence that the Complainant's Chinese race, ancestry or ethnicity was a factor in the adverse treatment she experienced by virtue of the Registrant's decision not to take her as a social work client. Earlier in these reasons, the Panel explained its finding that the Registrant's emails to Ms. Reid on August 11, 2021, accurately reflected her reasons for refusing to provide therapy to the Complainant. The explanations she provided were:

- (a) as she stated to the Complainant, "you are Chinese and because of boundary problems, I am not taking Chinese clients", and
- (b) "I use a social media platform that almost every Chinese person in China, US and Canada use - Wechat, and this software could potentially mess up the professional boundary completely. ... I don't know if she is on my contact list or any of her relatives on my friend list. I don't have that time and energy to double check thousands of contact on my wechat list and I don't want to risk my professional

boundary. I have to admit here, this is the assumption I truly make: She has wechat and I cannot see her as my client.”

[285] Those two reasons directly implicated the Complainant’s Chinese ethnicity as a factor in the Registrant’s decision not to accept her as a client.

[286] Accordingly, the Panel finds that the Complainant’s Chinese race, ancestry or ethnicity was a factor in the adverse treatment she experienced through the Registrant’s refusal to take her on as a client.

[287] The College has met its onus of proving *prima facie* discrimination and the onus shifts to the Registrant to rebut the *prima facie* case by providing a credible, non-discriminatory explanation for the impugned conduct.

[288] The Registrant argues that if the Panel finds the College has proven *prima facie* discrimination, she had a credible non-discriminatory explanation in that she refused services to the Complainant because of a conflict of interest, and boundary concerns related to her cultural advocacy work in the Chinese community and her social media presence on WeChat. The Panel must determine if the Registrant has proven there is a conflict of interest and potential boundary issues.

[289] Social workers need to establish boundaries in their professional practice. However, if the Registrant believed she could not see clients anymore she should have de-registered from all platforms. Yet the evidence shows that she remained on the Inkblot platform when she agreed to participate in the consultation with the Complainant on April 12, 2021. Indeed, she did not unsubscribe on the Inkblot platform until May 2022. If a therapist is registered on a platform, and accepts a consultation, they have a duty to carry out that service in accordance with professional standards.

[290] Further, the mere fact the Registrant has a wide following on WeChat does not necessarily mean there are conflicts of interest or boundary concerns with every individual who might potentially or even actually encounter her WeChat activity. By analogy, doctors who practise in small communities may be well known to the entire community, but they are able to provide medical services within the community.

[291] If in fact the Registrant was concerned about potential boundary violations arising from her engagements on WeChat, she could have asked the Complainant whether she used WeChat or ever interacted with the Registrant or viewed her content on WeChat. By failing to make any such inquiries, the Registrant’s explanation does not provide a credible-non-discriminatory rationale for the impugned conduct that rebuts the *prima facie* case of discrimination.

[292] The Panel therefore finds that the College has proven allegation (i).

(xi) Allegation (j) – failure to maintain the standards in Principle III, Interpretation 3.5 of the Handbook

[293] Allegation (j) states that the Registrant violated s. 2.8 of the Professional Misconduct Regulation and Principle III of the Handbook, as commented on in Interpretation 3.5 and Footnote 4, by failing to assist potential clients to obtain other services when she was unable or unwilling

to provide the requested professional help and by failing to provide professional help without an appropriate reason. The College has proven that the Registrant failed to provide professional help to [C1] without an appropriate reason, in that her reason for refusing services was discriminatory. However, once she had refused to provide services to [C1], the Registrant did assist her in obtaining appropriate alternative services through the referral to FASS.

[294] For reasons discussed above, the Registrant discriminated against [C1] on the basis of her race, ancestry or ethnicity by refusing to take her as a client due to assumptions about her use of WeChat and potential boundary problems without making adequate inquiries. That was not an appropriate reason to fail to provide [C1] with professional help.

[295] However, once the Registrant determined that she was not able or willing to provide the requested professional help to [C1], she made reasonable efforts to ensure alternative or replacement services were available to the Complainant. For reasons already described above, the Panel finds that the Registrant reasonably assessed FASS as a suitable referral option for [C1] and also reasonably believed that the Complainant still had access to Inkblot services to find another therapist.

[296] Accordingly, the College has proven allegation (j) but only with respect to the Registrant failing to provide professional help without an appropriate reason.

(xii) Allegation (k) – failure to maintain the standards in Principle III, Interpretation 3.9 of the Handbook

[297] The College has failed to meet its burden of proving professional misconduct as set out in allegation (k): that the Registrant violated s. 2.8 of the Professional Misconduct Regulation and Principle III of the Handbook, Interpretation 3.9, by discontinuing and/or terminating services when such services were needed.

[298] Similarly, the Panel finds that after communicating to the Complainant that she would not provide further services, the Registrant made reasonable efforts to ensure alternative or replacement services were in place for the Complainant. The service the Registrant provided was an initial consultation, which did not automatically include any expectation of a continuation of services.

(xiii) Allegation (l) – failure to maintain the standards in Principle III, Interpretation 3.10 of the Handbook

[299] Allegation (l) is that the Registrant violated s. 2.8 of the Professional Misconduct Regulation and Principle III of the Handbook, Interpretation 3.10, by failing to arrange termination, transfer, referral, or continuation of service in accordance with clients' needs and preferences. The Panel dismisses this allegation for the reasons set out above in respect of allegation (k).

(xiv) Allegation (m) – contravening the Act, regulations or by-laws

[300] In allegation (m), the College asserts that the Registrant violated s. 2.28 of the Professional Misconduct Regulation by contravening the Act, regulations or by-laws. This allegation is proven automatically by the Panel's findings in these reasons that the College has proven some of the

allegations of professional misconduct against the Registrant under the Professional Misconduct Regulation, and that she has failed to meet some of the standards set out in the Handbook, which is a by-law of the College.

(xv) Allegation (n) – contravening a provincial law where the contravention is relevant to suitability to practise

[301] With respect to allegation (n)—that the Registrant engaged in professional misconduct under s. 2.29 of the Professional Misconduct Regulation by contravening a federal, provincial or territorial law or a municipal by-law where the purpose of the law or by-law is to protect public health or the contravention is relevant to the member’s suitability to practise—the Panel’s findings in regard to allegation (i) mean that the Registrant contravened a provincial law, the Ontario *Human Rights Code*. Under s. 1 of the Code the Complainant had a right to equal treatment with respect to social work services, without discrimination because of her race, ancestry, or ethnic origin. Section 9 of the Code provides that “No person shall infringe or do, directly or indirectly, anything that infringes a right” under s. 1. By discriminating against the Complainant with respect to her race, ancestry and ethnic origin in refusing to provide her with therapy services, the Registrant contravened the Code.

[302] To prove allegation (n), the College must also satisfy the Panel that the purpose of the Code is to protect public health or the Registrant’s contravention is relevant to her suitability to practise. The Panel finds that the Registrant’s contravention of the Code is relevant to her suitability to practise. Social workers are required to treat all clients and prospective clients with respect and dignity, and without discrimination. This expectation of the profession is set out in the Handbook, Principle III, Interpretation 3.4 and Footnote 3. A registrant’s choice to engage in conduct that discriminates against a client on the basis of race, ancestry or ethnicity is relevant to their professionalism, their judgment, their willingness and ability to respect the dignity of all clients—all of which lies at the core of their suitability to practise the social work profession.

[303] Accordingly, the College has met its burden of proof with respect to allegation (n)

(xvi) Allegation (o) – conduct regarded as disgraceful, dishonourable or unprofessional

[304] Finally, allegation (o) is the “basket clause” of professional misconduct. It alleges that the Registrant violated s. 2.36 of the Professional Misconduct Regulation by 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. The College has proven this allegation.

[305] Unprofessional conduct does not require any dishonest or immoral element to the act or conduct. Courts and panels of this Discipline Committee have found that unprofessional conduct includes “a serious or persistent disregard for one’s professional obligations.” This term recognizes the general traits of good judgment and responsibility that are required of those privileged to practice the profession. Failure to live up to the standards expected of a registrant can demonstrate that a registrant is, simply put, not professional. However, the Panel understands that mere errors in judgment, or discretionary decisions made reasonably (though the Panel might have made them differently), are not properly considered unprofessional conduct.

[306] The Registrant acknowledged in her written submissions that “there may have been an issue with the specific words Ms. Zhu used in her communications with [C1]”. The Panel goes further and concludes that the Registrant exercised poor judgment and, based on our findings above, failed to meet several standards of the social work profession. The Registrant demonstrated a lack of insight into her clinical limitations and professional responsibilities. This conduct was, at a minimum, unprofessional.

[307] It was also dishonourable. We determined that the Registrant had no *bona fide* reason to refuse services and the Complainant’s race, ancestry and/or ethnic origin was a factor in her experience of adverse treatment, even if the Registrant did not intend to discriminate against her. In refusing services to the Complainant based on discriminatory reasons, the Registrant’s conduct had an element of moral failing. It is an undisputed fact that Ms. Zhu is active in promoting the interests of Chinese Canadians and BIPOC. Ms. Zhu knew or ought to have known that it was wrong to refuse services to a client through assumptions formed based on the fact she is a Chinese Canadian. She knew or ought to have known that such assumptions would leave the client feeling pigeon-holed and the target of discrimination.

[308] The Registrant argued in her submissions that the Panel should not make findings of professional misconduct absent evidence of intent by the Registrant, and that trivial lapses or minor issues of non-compliance are better dealt with through education or advice. Where the harm done is minimal or non-existent, and there is little or no risk to the public, a finding of misconduct should not be made.

[309] The Panel has considered this argument but rejects it for two reasons. First, once allegations of professional misconduct are referred to the Discipline Committee, the Committee must conduct a hearing and it will make findings of professional misconduct if the allegations are proven. Trivial slips or minor errors might be dealt with through education or advice at a pre-referral stage, for example through the Complaints Committee’s power under s. 24(4.1) of the Act to refer a matter to alternative dispute resolution. However, once a referral is made, the Discipline Committee must exercise its authority under s. 26 of the Act. The seriousness of the misconduct is a relevant factor in the assessment of penalty.

[310] The second reason the Panel rejects the Registrant’s argument is that the misconduct in this case cannot fairly be considered a “trivial lapse” or “minor issue of non-compliance” and that harm done was not “minimal or non-existent”. Discrimination is a serious matter. All College registrants have an obligation to comply with the Ontario *Human Rights Code* in their professional practice. The preamble to the Code states, in part:

Whereas it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province.

[311] It would undermine the purposes of the Code and diminish the standards of the profession if this Panel were to conclude that a finding of discrimination was a “trivial” or “minor” matter not worthy of any disciplinary consequence.

Registrant's procedural fairness and abuse of process allegations

[312] Distinct from the merits of the professional misconduct allegations made against her, the Registrant argues that she has been denied procedural fairness in this discipline proceeding and that the breaches of procedural fairness amount to an abuse of process. The Registrant raises four specific issues that, when taken together, she says are so serious that any further penalty against the Registrant would rise to the level of an abuse of process, especially in light of the trivial nature of the allegations. She asks the Panel to dismiss the allegations on this alternative basis.

(i) Registrant's submissions

[313] The first issue raised by the Registrant is that the investigation by the College was not conducted in a fair, thorough and unbiased manner, leading to assertions of fact in the Notice of Hearing that were not supported by evidence.

[314] In particular, The Registrant submits that the College investigation failed to test the veracity of [C1]'s complaint. The investigation was one-sided in that Ms. Santiago sought to validate the Complainant's claim rather than approaching the complaint from a neutral standpoint. Ms. Santiago acknowledged in her testimony that she did not ask the Registrant any questions, did not review any of the evidence the Registrant provided to show FASS offered services in English, and did not review the organization's website. Ms. Santiago also did not speak with the Complainant to verify whether she had received an English intake form from FASS, as the Registrant reported. The investigator prepared a report summarizing the key information gathered in the investigation, but it omitted important facts from the Registrant that FASS provided services in English. Ms. Santiago did not mention in her report that the Complainant herself asked for the referral and that the Registrant noted the simplified Chinese forms were sent in error, or that English forms were sent to the Complainant less than 24 hours later.

[315] The Registrant submits that had the investigation proceeded fairly, the allegations likely would not have been referred to the Discipline Committee. The Registrant would not have had to incur significant costs and be subjected to the publication of the Notice of Hearing suggesting she is racist against her own community. She would also not have had to endure the College's assumptions that Mandarin speakers are not capable of providing English services as well.

[316] The second issue raised by the Registrant is an allegation that the College failed to adhere to the *Rules of Procedure* on multiple occasions, impairing the Registrant's ability to meet the case against her.

[317] For one, she alleges unfairness arising from the College's late disclosure of a will-say statement for Ms. Lafleche. The College provided Ms. LaFleche's will-say statement to the Registrant on September 22, 2023. The hearing began on September 26, 2023, and the Registrant points to rule 7.02(1)(a) of the Discipline Committee's *Rules of Procedure* which requires the College to deliver a summary of the expected evidence of each witness to the Registrant least 20 days before the start of the hearing—in this case, by September 6, 2023. A further witness statement for Ms. Lafleche containing what the Registrant describes as "entirely new evidence" was provided to the Registrant on October 2, 2023 at 5:26pm—after the hearing had already begun and the evening before Ms. LaFleche was called to testify. The Registrant argues that the College failed to give any reason why the evidence was not collected and disclosed in accordance with the Rules.

[318] The Registrant also complains that Ms. Lafleche testified while reviewing information on a computer screen in front of her. Ms. Lafleche indicated that her “system” showed Ms. Zhu had a consultation or session on April 27, 2021. Copies of the information displayed on Ms. Lafleche’s screen were never disclosed to the Registrant or to the Panel. The Registrant points to the requirement in 7.01(2)(a) of the *Rules* that the College must produce to the Registrant copies of all documents that the College intends to enter as evidence at the hearing as soon as is reasonably practicable after the notice of hearing is served. She argues that she was significantly prejudiced by the College’s alleged violation of these *Rules*.

[319] Third, the Registrant cites repeated delays in the discipline process resulting in alleged unfairness to the Registrant including by substantially increasing costs and damage to her reputation. In particular, the Registrant submits that the College failed to properly comply with a pre-hearing conference order relating to expert evidence and failed to comply with the *Rules* regarding the notification and production of the proposed expert evidence, causing the hearing to be delayed and the Registrant to incur additional cost.

[320] On September 19, 2022, the Presiding Officer at the prehearing conference in this matter made an order that “Once the hearing dates are secured, the parties will discuss deadlines for the delivery of any expert reports. If they are unable to agree they are to advise me.” The hearing dates were set for February 6, 7, 14 and 15, 2023. The Registrant submits between September 26, 2022 and January 23, 2023, the College did not advise the Registrant it had secured an expert, or that the College anticipated delivering an expert report prior to the hearing. The College also did not advise the Registrant it was having trouble securing an expert, nor did the College confirm it would indeed be adducing expert evidence. The Registrant prepared her case on the understanding that no expert evidence would be called.

[321] On January 30, 2023, one week prior to the hearing, the College sought an adjournment of the hearing as it was having difficulty retaining an appropriate expert. The Registrant opposed the adjournment. On February 3, 2023, a member of the Discipline Committee granted the College an adjournment over the Registrant’s objection.

[322] On February 17, 2023, the College delivered the expert reports of Ena Chadha and Dr. Williams. The College had previously disclosed that it had retained Dr. Williams as an expert. The retainer of Ms. Chadha was new, and resulted from the adjournment order. The Registrant notes that the evidence of Ms. Chada, which was the reason for the adjournment and resulting delay, was ruled inadmissible by the Panel.

[323] The Registrant submits that the College fell below the standard expected of a regulator through its failure to notify the Registrant about the new expert, and failure to comply with *Rules* and the orders of the pre-hearing conference Presiding Officer and of the Chair in respect of the adjournment motion.

[324] The fourth issue is that alleged inadmissible and prejudicial evidence had been tendered on several occasions in the hearing, including references to an agreed statement of facts that the parties attempted to negotiate but did not complete. The Registrant also claims that the College breached settlement privilege in a motion preceding the hearing.

[325] The Registrant submits that together these breaches of procedural fairness amount to an abuse of process that can only be remedied by a stay of proceedings. The Registrant asks the Panel

to set aside any findings of professional misconduct, and instead enter a stay of proceedings due to breaches of procedural fairness.

(ii) College's submissions

[326] The College argues that there was no breach of procedural fairness and no conduct rising to the level of an abuse of process. With respect to the four issues raised by the Registrant, the College's position is as follows.

- (a) The investigation was fair, thorough, and unbiased. The College provided full disclosure to the Registrant. The investigation was conducted in a timely and adequate manner. The College submits that the investigation was completed in five months, which is on the lower end of typical timelines during the pandemic. There was no need to interview the Complainant due to the clarity of the written materials gathered in the investigation and the similarity between [C1] and Ms. Zhu's accounts. The College investigator fairly summarised the material information provided by both parties.
- (b) There was no departure from the Discipline Committee's *Rules of Procedure* resulting in any prejudice to the Registrant. The *Rules* are designed to be flexible and equitable, allowing for waivers in the public interest. The *Rules* are to be liberally construed to ensure just and expedient determinations; that non-compliance with the *Rules* is considered an irregularity, not a nullity. The College fulfilled its disclosure obligations by providing all relevant information to the Registrant in a timely manner. The College made full disclosure early in the process and continued to provide information as it became available. The College complied with the *Rules* regarding witness statements, providing them to the Registrant as soon as it became clear that certain witnesses would be called. In contrast, the Registrant failed altogether to provide her own will say. The College also adhered to the rules regarding the disclosure of expert evidence, providing reports well in advance of the hearing in February 2023. The Registrant raised concerns about the timing of such disclosure only during closing arguments and has demonstrated no prejudice arising from the timing.
- (c) The Registrant has demonstrated no significant delay in this proceeding, nor any prejudice arising from any delay. The Registrant has not proven that there has been any delay affecting the fairness of the hearing.
- (d) The College did not breach settlement privilege. The College made reference to the fact of settlement discussions taking place, as it was necessary to provide clarity on the procedural history. A mere acknowledgment that settlement discussions occurred does not constitute a breach. No substantive details of those discussions were disclosed to the Panel.

[327] The College submits that the high threshold for establishing an abuse of process is not met.

(iii) Decision and reasons

[328] The Panel does not find any abuse of process or breach of procedural fairness. The Registrant had a full and fair opportunity to know the case against her and to present her case in response. The Registrant has not established that the investigation was unfair taking into account the circumstances. She was informed of [C1]’s allegations against her and she had an opportunity to respond—which she did, on several occasions. It was within the investigator’s reasonable discretion not to interview [C1]. Once the Complaints Committee referred the matter to the Discipline Committee, Ms. Zhu was given a notice of hearing detailing the allegations, disclosure, and the opportunity to participate fully in a contested hearing.

[329] We do not agree that the College made any late disclosure resulting in prejudice to Ms. Zhu. The College delivered a second witness statement for Ms. Lafleche after the timeframe required by the *Rules*. However, that timeframe is subject to the discretion of the Panel. The Panel is satisfied that the College delivered the witness statement at the earliest reasonable opportunity, once it learned of new material information from Ms. Lafleche. This is not uncommon; indeed, it is consistent with a prosecutor’s duty. When Ms. Zhu’s counsel raised concerns about the late delivery of Ms. Lafleche’s witness statement during the hearing, the Panel noted that options were available if necessary, including an adjournment or recalling [C1] (who had testified before Ms. Lafleche). The Registrant did not pursue either option and did not articulate any prejudice she would suffer as a result of the late delivery of the witness statement.

[330] The Panel finds no prejudice arising from Ms. Lafleche making reference to information on her computer during her testimony. The Registrant’s counsel had full opportunity to cross-examine Ms. Lafleche about what she was looking at and to require that copies be produced to the parties and to the Panel (as occurred, for example, with the document Ms. Zhu was referencing during her own evidence in chief).

[331] The Panel is satisfied that Ms. Zhu had adequate disclosure of the expert reports, which were delivered to her months before the start of the hearing.

[332] We likewise do not find any procedural unfairness or abuse of process arising from any delay in this case. The Notice of Hearing is dated May 27, 2022, and the hearing began in September 2023. The College obtained an adjournment in February 2023 following a contested motion; it was not open to the parties to reargue that motion in this hearing or for the Panel to revisit the ruling.

[333] Finally, we are not persuaded that the College breached settlement privilege or that prejudicial evidence was improperly admitted. Reference to the fact that parties engaged in discussions toward an agreed statement of fact does not reveal anything about the content of those discussions that could prejudice either party. It is a common expectation in all College hearings that the parties will attempt resolution—if no resolution is achieved, a contested hearing takes place and the Panel will decide the allegations based only on the evidence presented, as we have done here.

[334] Accordingly, we are not persuaded that there has been any procedural unfairness in this case, let alone any circumstances rising to the level of an abuse of process that would warrant the exceptional remedy of a stay of proceedings.

Conclusion

[335] For the reasons set out above, the Panel finds that the Registrant has engaged in professional misconduct as alleged in allegations (a), (c), (d), (e), (g), (i), (j), (m), (n) and (o) of the Notice of Hearing. The Hearings Office is directed to schedule a penalty hearing.

I, Charlene Crews, sign this decision as chairperson of the Panel and on behalf of the Panel members listed below.

Date: October 6, 2025

Signed: _____



Charlene Crews, Chair
Rita Silverthorn
Molly Luu