



which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

**S. Nakatsuru J.**

[1] Dominic Carrasco has been a massage therapist practicing at a Burlington clinic for over thirty years. His certificate of registration to practice was revoked for the alleged sexual abuse of one of his clients.

[2] Credibility was the pivotal issue at the hearing before a panel of the Discipline Committee of the College of Massage Therapists (the “Panel”) that heard this allegation of sexual abuse. The client, W.R. testified that on February 24, 2020, Mr. Carrasco reached under the draping covering her body and touched her nipples during a massage therapy appointment. Mr. Carrasco testified and denied this happened. The Panel accepted W.R.’s testimony. They rejected Mr. Carrasco’s denial.

[3] Mr. Carrasco appeals from the decisions rendered by the Panel on November 11, 2024, that found he sexually abused the complainant as defined under the *Health Professions Procedural Code* (the “Code”), which is Schedule 2 to the *Registered Health Professions Act, 1991*, S.O. 1991, c. 18, and revoking his registration on February 6, 2025.

[4] Before the Panel, the appellant admitted to an improper record keeping allegation arising out of his treatment of W.R. on February 24, 2020, when he offered her a cash discount after the appointment and failed to record the reduced fee and the reason for it. He does not appeal this finding.

[5] For the reasons that follow, I allow the appeal on the basis that the Panel erred in law in their treatment of prior consistent statements made by the client and remit the matter back for a rehearing.

**A. FACTUAL BACKGROUND**

[6] W.R. began receiving massage therapy from the appellant in 2017. He treated her every six to eight weeks for a total of approximately 20 appointments. At some point during this time span the appellant began treating W.R.’s chest wall, and this became a regular part of her treatment.

[7] On January 29, 2019, W.R. completed a Consent for the Assessment and Treatment of Sensitive Areas form. The circumstances of her signing were disputed, as were the circumstances of further signings at subsequent appointments.

[8] On February 24, 2020, W.R. testified that the massage proceeded as usual until the appellant moved on to massaging W.R.’s chest. He reached under the draping and touched both of W.R.’s nipples in an aggressive and vigorous manner. She did not say anything, testifying that she was shocked and scared. After the massage ended, W.R. got dressed, paid \$80 in cash, and left.

[9] The appellant denied the allegation of sexual abuse. He testified that on February 24, 2020, he applied a deep pressure technique, “cross-frictions”, to W.R.’s chest wall for the first time as it was his view that a more intensive approach was required. The cross-frictions technique was more

likely to cause bruising. The appellant never treated the complainant underneath the draping.

[10] The receptionist of the clinic testified for the defence that on that day, W.R. appeared relaxed, happy, and in no rush to leave after the appointment. She recalled a light-hearted conversation between herself, W.R., and the appellant.

[11] After the appointment, W.R. testified that she texted her son's girlfriend telling her to cancel her upcoming appointment with the appellant, but did not explain in her text why. That day, she testified that she told two friends at her gym that the appellant had played with, touched, and pinched her nipples.

[12] W.R. further testified that the next day, she told her son and her husband what happened during the massage. She also contacted her son's girlfriend to fill her in as well. W.R.'s husband contacted Jean MacDonald, another registered massage therapist at the clinic, to complain but he did not reveal any specifics in the call. Ms. MacDonald advised him to contact the clinic owner.

[13] On February 26, 2020, the owner of the clinic, Dr. Jasek, came to W.R.'s home. W.R. told him that the appellant had touched and played with her nipples.

[14] On February 27, 2020, W.R. made a complaint to the College. She told the College investigators that the appellant touched her nipples.

[15] W.R. reported the incident to the police on March 9, 2020, and the appellant was charged with sexual assault.

[16] The theory of the defence at the hearing was that the sexual abuse was fabricated by W.R. because W.R.'s husband became upset after seeing unexplained bruising on his wife's chest the next morning.<sup>1</sup> Ms. MacDonald testified that when W.R.'s husband called the clinic, he was angry about the incident and told Ms. MacDonald that he was looking at a bruise around his wife's rib cage. Both W.R. and her husband testified there was no bruising and that Ms. MacDonald was not told there was.

## **B. THE LIABILITY DECISION**

[17] The Panel acknowledged that credibility was a key issue to decide. Based on their credibility assessments, the Panel preferred the evidence of W.R. over that of the appellant.

[18] In particular, they did not accept the bruising theory of the defence. They accepted W.R. and her husband's evidence that there was no bruising. They found W.R. to be credible. There were some reliability concerns about her testimony regarding whether she signed the consent form for touching more sensitive areas of the body on each occasion of her treatment, but this was not an obstacle to the acceptance of her testimony. They determined neither she nor her husband had any

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<sup>1</sup> The appellant was acquitted at his criminal trial based on this defence theory.

bias or animus towards the appellant. The Panel found her demeanour while testifying supported her credibility. They found her to be forthright in her evidence.

[19] On the other hand, the Panel had credibility concerns with the appellant's testimony including inconsistencies in his evidence and the fact he admitted that he did not give the College investigator accurate information about the records of that visit.

[20] Relying on their credibility findings, the Panel accepted W.R.'s testimony that during her massage treatment on February 24, 2020, the appellant reached under the draping and aggressively and vigorously touched her nipples for an extended period of time. The Panel found the appellant therefore committed an act of professional misconduct under s. 51(1)(b.1) of the *Code*.

### **C. THE ISSUES ON APPEAL**

[21] On this appeal, the appellant brought a motion to introduce fresh evidence and raised numerous grounds of appeal including the denial of procedural fairness by the denial of adjournment requests so that he could be represented by counsel of choice, an allegation of an abuse of process, errors of law, and palpable and overriding errors in the credibility findings made.

[22] It is unnecessary to deal with these various grounds of appeal as I find the appeal should be allowed on the ground that the Panel erred in their treatment of the prior consistent statements made by W.R.

[23] However, before turning to the analysis of this ground of appeal, I will briefly deal with the contention that there was effectively an abuse of process committed in the prosecution of the appellant and by the conduct of the hearing, as this may affect the remedy on appeal.

[24] This issue is being raised for the first time on appeal. Moreover, the particulars of the argument were not set out in the notice of appeal or the factum. They were mainly advanced in oral argument. The appellant seeks to avoid the objection made by the respondent to this ground of appeal being considered, by conflating his abuse arguments with the issue of procedural fairness that he did raise in his materials. In my view, they are not the same. The respondent did not have the opportunity to respond to this allegation of an abuse of process by way of evidence or argument either at the hearing or on the appeal and would suffer prejudice as a result. Accordingly, this issue will not be entertained: *Kaiman v. Graham*, 2009 ONCA 77, 245 O.A.C. 130, at para. 18.

### **D. THE STANDARD OF REVIEW**

[25] The standard of review on this statutory appeal is set out in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235. Errors of law are reviewed on a correctness standard. For errors of fact, there must be a palpable and overriding error. Errors of mixed fact and law also require a palpable and overriding error unless there is an extricable error of law or principle, which is reviewed on a correctness standard.

### **E. ANALYSIS**

[26] Prior consistent statements are presumptively inadmissible: *R. v. Stirling*, 2008 SCC 10, [2008] 1 S.C.R. 272, at para. 5.

[27] The reason for their exclusion is that repetition does not and should not be seen to enhance the value or truth of a witness's testimony; the danger being that similar prior statements can appear to make them more credible: *R. v. Ellard*, 2009 SCC 27, [2009] 2 S.C.R. 19, at para. 31.

[28] Even if properly admissible, a trier of fact cannot use the fact of the consistency of prior statements to bolster a witness's credibility: *R. v. Freedland*, 2023 ONCA 386, at paras. 36-38, 44-45; *R. v. Austin* (2006), 214 C.C.C. (3d) 38 (Ont. C.A.), at para. 33.

[29] The appellant submits that the Panel fell into this error, of relying on consistent prior statements, when assessing what they themselves recognized to be the "key" issue of what happened during the massage.

[30] The respondent agreed that prior consistent statements are presumptively inadmissible but submits they did not seek to adduce any such statements, and the Panel did not admit them. In addition, the respondent argues that no prior consistent statements were relied upon. Rather, the appellant argued at the hearing that W.R. had made prior inconsistent statements. In assessing the force of that argument, the Panel assessed the inconsistent statements relied upon by the appellant and found they were not inconsistent. Any comments made by the Panel about consistency were in the context of the Panel addressing the appellant's submission and were not, according to the respondent, used to improperly bolster W.R.'s credibility.

[31] I do not agree with the respondent's submissions for the reasons below.

[32] First, the respondent did in fact adduce prior statements made by W.R. In examination-in-chief, W.R. was asked who she told about the sexual abuse. In response to repeated questioning by counsel for the respondent, W.R. revealed she told her two girlfriends, her son, her son's girlfriend, her husband, Dr. Jasek, and College investigators. Each time, W.R. was specifically asked by the respondent what she told each person(s), eliciting consistent statements of the sexual abuse.

[33] While this evidence was not objected to by the appellant and the disclosure of her complaint was likely admissible as narrative being circumstantial evidence relevant to W.R.'s credibility, the Panel was still not allowed to use these prior consistent statements to confirm the truthfulness of W.R.'s testimony by reason of their consistency: *Freedland*, at para. 32; *Austin*, at para. 30.

[34] The respondent also called W.R.'s husband, a recipient of a prior consistent statement, and asked him the following:

Q. And when you say she explained the situation, what happened the night before, do you recall what she said to you?

A. How explicit would you like me to get?

Q. Whatever your recollection is.

A. She basically, from my recollection, she basically said that the RMT had touched her in her breasts and her nipples quite aggressively.

[35] Regarding the admissibility of this statement, the respondent relied upon its admission as a prior consistent statement to rebut recent fabrication.

[36] Frankly, I struggle to see how this statement could rebut an allegation of recent fabrication. To be capable of that, the prior statement must be made before the existence of a motive or of circumstances leading to fabrication: *Ellard*, at paras. 32-33. The defence theory was that she made up the allegation when her husband saw the bruising on her chest. This statement was made contemporaneously with that alleged motive to fabricate and did not come before. Thus, it had no force in rebutting the allegation.

[37] That said, regardless of whether it was admissible under that doctrine, it was still impermissible to use the consistency of the statement regarding the touching of nipples to support the general reliability of W.R.: *Ellard*, at para. 42.

[38] Second, I find that the Panel did not simply use the consistency of W.R.'s prior statements to address the cross-examination of W.R. and the submission that she had been inconsistent in her prior statements. It is obviously permissible in assessing a witness's credibility to consider whether any prior inconsistencies affected the core of her allegations of sexual abuse.

[39] However, that is not what the Panel did.

[40] While the Panel did deal with some of the alleged inconsistent statements relied on by the appellant, the reasoning in this section of the decision was not limited to that issue. The section was titled "Client's demeanor and forthrightness". The latter term generally meaning her truthfulness or credibility. Under this section, the Panel's decision at paras. 113-114 states:

On the key issue, the client's testimony was unwavering and consistent. She consistently testified, *reported* and *stated* that the registrant had reached under the blankets and touched her nipples in a vigorous and aggressive manner for an extended period of time, trying to obtain a reaction out of her. At various times, she used the terms "fondled," "pinched" and "twisted" but we see no difference in the use of these terms, which all suggest that the registrant's actions were vigorous, aggressive, and lasted for some time. [Emphasis added.]

Overall, the client's testimony was emotional and she was visibly upset. It was apparent that the incident has had a lasting negative impact on her.

[41] By referring to W.R. having consistently "reported" and "stated", the Panel was not confining themselves to her testimony at the hearing. They were incorporating her prior statements to a host of other persons including her husband, whom the Panel also found to be credible and reliable. In my opinion, the Panel fell into significant error by impermissibly supporting W.R.'s credibility with the fact she had been consistent in her description of the sexual abuse in her prior out-of-hearing statements.

[42] Third, the respondent, in their written and oral submissions, took the Panel to commonly used factors to assess credibility, as set out in *Stefanov v. College of Massage Therapists of Ontario*, 2016 ONSC 848 (Div. Ct.), at para. 65. This included whether the “witness’s evidence was internally consistent”. But in dealing with W.R.’s “internally consistent evidence”, rather than dealing with her testimony before the Panel in examination-in-chief and cross-examination, the respondent incorporated repeated and lengthy references to prior statements that W.R. gave to others. No doubt, this was likely intended to show that W.R. had not been impeached by prior inconsistent statements as alleged by the appellant. However, by including these prior statements under W.R.’s “internally consistent evidence”, a factor strongly relied upon by the respondent in their submissions, the respondent may have unwittingly misled the Panel in viewing these prior statements and their consistency regarding the sexual abuse as a “make-weight” in support of a positive finding on W.R.’s credibility. In the respondent’s written and oral submissions, these prior consistent statements made to various individuals were highlighted. No reference was made to the fact that consistency of the statements could not generally be used to support the credibility of W.R.

[43] Put differently, though not intended, these submissions may have had the effect of inviting the Panel to look at the consistency of all her previous statements about the sexual abuse, as showing “internal consistency” that supported her credibility.

#### **F. DISPOSITION**

[44] For these reasons, the appeal is allowed. The matter is remitted to the Discipline Committee of the College for a rehearing before a differently constituted panel.

[45] Although the appellant admitted the record keeping misconduct and did not appeal that finding, given the factual nexus to the sexual abuse allegation, it is best that the sanction for this be determined by the panel of the Discipline Committee after resolution of all the allegations.

[46] The appellant seeks his legal costs that he paid to his counsel who represented him at the tribunal hearing. There is a limited jurisdiction under s. 53 of the *Code* for the Discipline Committee to award costs against the College. It is only when “the commencement of proceedings was unwarranted”. While this Court has the power under s. 70(3) of the *Code* to order such costs, I decline to do so.

[47] A referral to the Discipline Committee is warranted if any one element of the allegations, if proven, would have been sufficient for the panel to find that the member had engaged in one of the acts of professional misconduct alleged: *Truman v. Association of Professional Engineers of Ontario*, 2016 ONSC 472 (Div. Ct.), at para 17.

[48] As there is no dispute that the appellant engaged in professional misconduct by improper record keeping, on that basis alone, the commencement of the proceedings was warranted. Moreover, as the sexual abuse allegation could only be determined by the assessment of credibility, the sexual abuse allegation needed to be heard by the Panel.

[49] The parties are encouraged to come to an agreement as to costs. In the absence of an agreement, the appellant will have 10 days from the date of this decision to make costs submissions

no greater than two pages in length. The respondent will have 7 days to respond with submissions of a similar length.

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Nakatsuru J.

I agree:

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P. Sweeny R.S.J.

I agree:

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S. Shore J.

**Released:** October 17, 2025

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**DIVISIONAL COURT**

**P. Sweeny R.S.J., S. Nakatsuru, S. Shore JJ.**

**BETWEEN:**

DOMINIC CARRASCO

Applicant

**- and -**

COLLEGE OF MASSAGE THERAPISTS OF  
ONTARIO

Respondents

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**REASONS FOR JUDGMENT**

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