

**DISCIPLINE COMMITTEE OF THE  
COLLEGE OF AUDIOLOGISTS AND  
SPEECH-LANGUAGE PATHOLOGISTS OF ONTARIO**

THE COLLEGE OF AUDIOLOGISTS  
AND SPEECH-LANGUAGE PATHOLOGISTS OF ONTARIO (“College”)

- and -

KERRY ERLE (“Ms. Erle”)

Panel Members:	Scott Whyte <sup>1</sup>	Chair, Public Member
	Deb Zelisko	Chair, Audiologist
	Tina D’Agnillo	Speech-Language Pathologist
	Ferne Dezenhouse	Public Member of Council
	Satpaul Singh Johal	Public Member of Council
Present:	Bernie Le Blanc	Legal Counsel for the College
	Courtney Campbell	Director of Professional Conduct
	Kerry Erle	Present in person on all hearing dates except November 26, 2015 when present by teleconference
	Alan L. Bromstein	Independent Legal Counsel to the Panel
Hearing Dates:	October 6, 7 and 13, 2015; November 26, 2015	

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<sup>1</sup> Scott Whyte ceased to be the Chair and a member of the Panel prior to the hearing continuing on November 26, 2015.

## DECISION AND REASONS

### Decision

This matter came for hearing before a Panel of the Discipline Committee of the College of Audiologists and Speech Language Pathologists of Ontario (“Panel”) on October 6, 2015 and was continued on October 7 and 13, and November 26, 2015 at Toronto, Ontario. On November 26, 2015, the Panel adjourned the hearing sine die at the request of the College and with the consent of Ms. Erle.

### Overview

Ms. Erle, who practised as a Speech-Language Pathologist was the subject of a Notice of Hearing, which contained specified allegations of professional misconduct which are detailed hereinafter.

The hearing was conducted on October 6, 7, and 13, 2015 and concluded on November 26, 2015. On the first day of the hearing the College and Ms. Erle, who represented herself, presented opening submissions. The College also called two witnesses. The second witness had not yet been completed after the second day and was scheduled to return to complete her cross-examination. On the third day, (October 13, 2015), Ms. Erle introduced Patrick James as her newly appointed Counsel and he requested an adjournment. The hearing was adjourned on certain agreed upon terms until November 26, 2015.

On November 26, 2015 the hearing continued. The Panel was advised that Ms. Erle was no longer represented by legal counsel and that she would be participating by teleconference. Additional evidence was presented (Exhibit 6) which included correspondence dated November, 20, 2015 from Ms. Erle to legal counsel for the College and others in which Ms. Erle notified the College Counsel of her decision to close her practice and resign from the College.

### The Notices of Hearing and Statement of Allegations

The allegations against Ms. Erle were set out in the Notice of Hearing which was filed as Exhibit 1. The statement of allegations contained in the Notice read as follows:

- “1. Kerry Erle was, at all material times, a speech-language pathologist registered with the College of Audiologists and Speech-Language Pathologists of Ontario. Ms. Erle practised at, and was the owner of, the London Speech & Language Centre (“LSLC”) in London, Ontario.

**Failure to Supervise Support Personnel**

2. Between approximately December 2009 and September 2011, Ms. Erle permitted support personnel to render services without adequate supervision.
3. In particular, Ms. Erle failed to adequately prepare for the use of support personnel in that,
  - a. she failed to ensure that speech-language services provided by support personnel occurred only under the supervision of a registered speech-language pathologist;
  - b. she failed to initially assess clients and provide written goals or develop patient/client intervention plans;
  - c. she failed to ensure that other team members and parents/caregivers had sufficient awareness of the role of support personnel when they were used;
  - d. she failed to adequately train and supervise support personnel; and,
  - e. she failed to ensure that patients/clients consistently gave informed consent to services provided by support personnel and that the consent was consistently documented in the patient/client record.
4. Ms. Erle failed to meet her continuing service responsibilities in that,
  - a. when using support personnel to augment speech-language pathology services, she inappropriately assigned monitoring patient/client progress and/or modifying intervention plans, and,
  - b. she failed to maintain sufficient direct contact with patients/clients assigned to support personnel.
5. Ms. Erle failed to ensure that support personnel had knowledge of their intended role.
6. Ms. Erle failed to appropriately use support personnel in that,
  - a. she assigned the task of documenting patient/client progress to support personnel without developing protocols that specified the assigned tasks and without ensuring that tasks assigned were within the competence of support personnel,
  - b. she failed to ensure that support personnel had training and/or demonstrated specific knowledge or skill to:
    - i. appropriately identify the need for additional input from Ms. Erle,
    - ii. keep appropriate clinical records, and,
    - iii. complete data entry tasks,

- c. she failed to ensure that support personnel clearly understood all instructions provided in oral and/or written form, and,
  - d. she failed to establish the model of supervision to be used based on the type and complexity of the intervention plan and her own familiarity with the competence of support personnel.
7. Ms. Erle failed to determine the appropriate amount of supervision required for support personnel in that,
- a. she failed to directly and regularly supervise support personnel to provide sufficient feedback, coaching/training and instruction,
  - b. she failed to monitor the accuracy of support personnel implementing intervention procedures and recording data,
  - c. she failed to provide regular feedback to support personnel regarding their performance and failed to retrain or increase direct supervision of support personnel when warranted, and,
  - d. she failed to ensure that adequate time was available to properly supervise support personnel.
8. For each of these reasons, Ms. Erle engaged in professional misconduct within the meaning of paragraphs 2 (failing to maintain a standard of practice of the profession), 3 (delivering to a patient or client a service without such consent), and 37 (engaging in conduct or performing an act, relevant to the practice of the profession, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional) of section 1 of Ontario regulation 749/93 under the *Audiology and Speech-Language Pathology Act, 1991*, S.O. 1991, c. 19.

### **Irregular Billing Practices**

9. Between February 2010 and April 2011, Ms. Erle billed insurance companies for travel expenses of support personnel that exceeded the actual travel expenses incurred.
10. Ms. Erle also submitted invoices to insurance companies for services that were not in fact performed and for travel expenses that were not in fact incurred, in relation to services allegedly provided between in or about December 2009 and in or about September 2011.
11. For each of these reasons, Ms. Erle engaged in professional misconduct within the meaning of paragraphs 2 (failing to maintain a standard of practice of the profession), 19 (failing to keep records as required), 20 (falsifying a record relating to the member's practice), 22 (signing or issuing, in the member's professional capacity, a document that the member knows contains a false or misleading statement), 23 (submitting an account or charge for services that the member knows is false or misleading), 24 (charging a fee that is excessive in relation to the services charged for), and 37 (engaging in conduct or performing an act, relevant to the practice of the profession, that, having regard to all the

circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional) of section 1 of Ontario regulation 749/93 under the *Audiology and Speech-Language Pathology Act, 1991*, S.O. 1991, c. 19.

## **Failure to Keep Appropriate Records**

### ***Financial Records***

12. Between in or about December 2009 and in or about September 2011, Ms. Erle failed to ensure that her financial records contained an accurate statement of each treatment, service or clinical product provided to the patient/client and the date provided, including the number of hours billed and administrative work performed.
13. Between in or about December 2009 and in or about September 2011, Ms. Erle failed to ensure that her financial records contained an accurate statement of the fee charged or received relating to each treatment, service or clinical product provided to the patient/client.

### ***Patient/Client Health Records***

14. Ms. Erle failed to maintain accurate or complete patient/client health records in relation to services allegedly provided between in or about December 2009 and in or about September 2011, in that she:
  - a. failed to maintain patient/client health records that consistently contained the date and purpose of each professional contact, and,
  - b. failed to maintain patient/client records that consistently contained a notation of every refusal of a treatment or service by a patient/client.

### ***Supervision Records***

15. Between in or about December 2009 and in or about September 2011, Ms. Erle failed to make or retain appropriate records, in that,
  - a. she failed to consistently and/or adequately document the work of support personnel in her patient/client records,
  - b. she failed to consistently and/or adequately document the amount and type of supervision provided to support personnel in her patient/client records or elsewhere, and,
  - c. she failed to consistently and/or adequately document direction given to support personnel.
16. For each of these reasons, Ms. Erle engaged in professional misconduct within the meaning of paragraphs 2 (failing to maintain a standard of practice of the profession), 19 (failing to keep records as required), and 37 (engaging in conduct or performing an act,

relevant to the practice of the profession, that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional) of section 1 of Ontario regulation 749/93 under the *Audiology and Speech-Language Pathology Act, 1991*, S.O. 1991, c. 19.”

### **Reasons**

The Panel was satisfied that an indefinite adjournment of the hearing was appropriate in the circumstance for the following reasons:

1. Ms. Erle confirmed that she has ceased practicing and would not be re-applying to the College for membership in the future. This statement was supported by the letter from Ms. Erle which was marked as part of Exhibit 6 and which the College advised it had accepted as her resignation. Given she would no longer be able to practise, there was no need to make finding on the allegations in order to ensure that the public would be protected. Counsel for the College explained that an adjournment sine die ensured that, should Ms. Erle decide to re-apply to the College, the College would be able to continue the hearing regarding the allegations of professional misconduct, should it consider it necessary. As a result, the Panel was of the view that there was no public interest in continuing the hearing.
2. Both parties agreed to the adjournment and Ms. Erle clearly indicated she did not want to continue with the hearing.

Prior to making its decision, the Panel ruled on three issues brought forward by Ms. Erle, namely:

- 1) Had Ms. Erle resigned and, if so, could the hearing be continued?
- 2) Ms. Erle maintained that she did not resign on the date the College had posted her resignation. Ms. Erle asked the Panel to decide on the issue of whether or not she had resigned. Ms. Erle also requested the Panel reinstate her registration until the end of December 2015 to allow her to complete reports and other business matters.
- 3) Ms. Erle requested that the Panel order that the allegations of professional misconduct be withdrawn and the notice of allegations posted on the College’s public register be removed. Ms. Erle stated that she would no longer practice Speech-Language Pathology and should be allowed to retire with dignity. She argued that her human rights were violated and that if the allegations were withdrawn she would promise in writing never to practice again.

The Panel considered the submissions of Ms. Erle and of counsel for the College as well as the advice provided by its Independent Legal Counsel.

The Panel’s unanimous decision on each issue and reasons for the decision was as follows:

1. The Panel had jurisdiction to continue the hearing whether or not Ms. Erle had resigned. Ms. Erle was a member of the College during the time referred to in the specified allegations and subsection 14(1) of the Health Professions Procedural Code of the

Regulated Health Professions Act, 1991, (“Code”) provides that Panel with continuing jurisdiction despite the resignation of a member.

2. The Panel determined it would not make any ruling regarding the date of Ms. Erle’s resignation and/or request for reinstatement, as this was not relevant to the matters before the Panel.

3. The Panel determined it could not consider Ms. Erle’s request to order the allegations of professional misconduct be dismissed without the consent of the College. The College was specifically asked whether it would consent to an order dismissing the allegations and it refused to provide that consent. Without the consent of the College, the Panel had no authority in the context of this case to order a dismissal of the allegations. The Panel also determined that it did not have the authority to order the allegations be removed from the College’s register. Subsection 23(2), paragraph 6 of the Code stipulates that the register must include a, “notation of every matter that has been referred by the Inquiries, Complaints and Reports Committee to the Discipline Committee under section 26 and has not been finally resolved, until the matter has been resolved.” Paragraph 15 of that same subsection requires the register to have in it “Information that is required to be kept in the register in accordance with the by-laws” of the College. Further, the College by-law 2011-6, article 7.1.16 states:

“7.1.16 Any of the information in respect of a former member that was on the Register just before the membership terminated, for a period of at least two years after the termination of registration, except for any information related to discipline proceedings in Ontario, in which case it shall be entered on the Register for a period of fifty years after the termination of registration.”

The Panel, considering that Ms. Erle had no legal representation, requested that Mr. Bromstein (ILC) provide Ms. Erle with a detailed explanation regarding the decision that the Panel had made in relation to the register, which explanation was given.

The Panel advised Ms. Erle that there were, therefore, only two options left to consider.

1. Ms. Erle accept/consent to the College’s request to adjourn sine die; or
2. Continue with the hearing to determine whether the allegations of professional misconduct were proven and if so to decide what penalty, if any, ought to be ordered.

The Panel then requested that Mr. Bromstein provide Ms. Erle with the details of what each scenario entailed and the implications therein, which he did.

Ms. Erle indicated that she did not want to continue with the hearing and that faced with the two options would agree to the adjournment sine die. Ms. Erle also requested that the Panel consider making comments on the issue of removing the allegations of professional misconduct from the public record and regarding her request to continue as a member of the College until the end of December 2015.

The Panel recessed to deliberate.

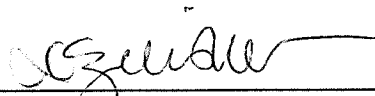
After lunch Ms. Erle was asked whether she required more time to obtain legal advice or to decide whether to agree to the adjournment sine die. She made it clear that she had no interest in obtaining any legal advice but rather than answer whether she needed more time before agreeing to the adjournment sine die, Ms. Erle attempted to re-address the decisions previously made by the Panel. Ultimately Ms. Erle also re-stated that she did not need more time and did not want to continue with the hearing. Ms. Erle went on, however, to urge the Panel to ignore the limits of its jurisdiction because she felt her rights and dignity would otherwise be violated. The Panel reiterated its position on the decisions made and enlisted Mr. Bromstein's assistance in providing Ms. Erle with additional explanations.

College Counsel provided to Ms. Erle the College by-law information as it related to what must be contained in the College's register. When asked by the Panel, he submitted that the College was satisfied that Ms. Erle had indicated she did not wish to have more time, did not want the hearing to continue and although she did not want anything on the register, had in fact agreed to an adjournment of the hearing, sine die.

Ms. Erle repeated her requests to re-visit the decision the Panel made and further requested that the Panel ignore the limits of its jurisdiction. The Panel reminded Ms. Erle that the decisions in these areas were made already and were and not open to further discussion. Ms. Erle accused the Panel chair of making the decision to ignore her requests to revisit her issues without the input of the entire Panel, at which time the Panel members were asked to confirm if they wished to continue with the Panel issuing the decision on the adjournment. The Panel unanimously confirmed its decision to continue and issued the decision, to adjourn the hearing sine die.

I, Deb Zelisko, sign this order as Chair of the Panel of the Discipline Committee on behalf of the members of the Panel that heard this matter.

December 19, 2015  
Date signed

  
Chair, Discipline Committee Panel