

The Discipline Committee of the College of Audiologists and Speech-Language Pathologists of Ontario

In the matter of a hearing under the *Regulated Health Professions Act*, S.O. 1991, Chapter 18

And in the matter of a complaint regarding the conduct of

S. Carol Hayter

A member of the College of Audiologists and Speech-Language Pathologists of Ontario

BETWEEN:

The College of Audiologists and Speech-Language Pathologists of Ontario and

S. Carol Hayter

A Panel of the Discipline Committee of the College of Audiologists and Speech-Language Pathologists of Ontario (CASLPO) met in the offices of the College on March 18, 2004, to hear allegations of professional misconduct contained in Section 1 under Ontario Regulation 749/93 of the *Audiology and Speech-Language Pathology Act*, 1991, against S. Carol Hayter, a member of CASLPO (hereinafter referred to as “Ms. Hayter”).

Members of the panel included:

Mr. Robert Dobson, Chair (Public Appointee)
Ms. Dana Storms, Member (Professional Member of Council)
Mr. Robert Kroll, Member (Professional Member)
Mr. Stuart Brandon, Member (Public Appointee)
Ms. Karen Luker, Member (Professional Member of Council)

Both CASLPO and Ms. Hayter were represented by legal counsel: Mr. Bernard Leblanc represented CASLPO, Ms. Kate Hughes represented Ms. Hayter. Independent legal counsel, Mr. Alan Bromstein, was in attendance for the Panel of the Discipline Committee.

Ms. Hayter pleaded guilty to the allegations of professional misconduct, which were outlined in the Agreed Statement of Facts presented to the Panel on March 18, 2004. These appear below:

Agreed Statement of Facts

1. S. Carol Hayter (“Ms. Hayter”) was at all material times a speech-language pathologist registered to practice speech-language pathology in the province of Ontario.
2. On September 20, 2002, Susan Bakyta-Culver (“Ms. Bakyta-Culver”) filed a complaint with the College of Audiologists and Speech-Language Pathologists of Ontario (“CASLPO”) against Ms. Hayter in connection with the care and treatment that Ms. Hayter provided to Ms. Bakyta-Culver’s father (“the first complaint”).
3. On or about June 19, 2003, after investigating the first complaint, the Complaints Committee of CASLPO determined that no action should be taken.
4. Shortly after the decision in the first complaint was sent to each of Ms. Bakyta-Culver and Ms. Hayter, Ms. Hayter initiated a number of magazine subscriptions in the name of Ms. Bakyta-Culver without Ms. Bakyta-Culver’s knowledge or consent. Ms. Hayter obtained Ms. Bakyta-Culver’s home address from the original letter of complaint forwarded to her by CASLPO.
5. Ms. Hayter’s conduct constitutes professional misconduct within the meaning of paragraph 37 of section 1 of Ontario Regulation 749/93, under the *Audiology and Speech-Language Pathology Act, 1991* (engaging in conduct or performing acts, relevant to the practice of the profession that, having regard to all of the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional).

By reason of the facts set out above, the Panel agreed that Ms. Hayter is guilty of professional misconduct as set out in Section 1 of the Act.

Penalty

Counsel for CASLPO advised the Panel that a Joint Submission as to Penalty had been agreed upon. The parties jointly requested that the Panel impose the following penalty:

1. The member will appear before the panel and be reprimanded. However, the result of this proceeding is directed not to be included in the register. Accordingly, a summary of this proceeding shall be published. However, the member’s name shall not be published.
2. The member shall pay to the College its costs fixed in the amount of \$1,500.00 within three months of the date of this order.

3. The member undertakes to the College that she will apologize to Ms. Bakyta-Culver. The panel does not, however, have the authority to require such an apology to be made.

Counsel for CASLPO indicated that the member did not wish to have her name published and distributed among her peers in light of her many years of service to the profession, the embarrassment she would face, and given the fact that this was her first offence. Furthermore, the nature of the offence was regarded as “minor” and the member admitted the violation. CASLPO counsel then stated that it is common practice to publish names following a finding of professional misconduct and that there is a risk inherent in not publishing it, given the presence of the media at the proceedings. Counsel for CASLPO concluded that the penalty was sufficient to serve the member, the profession and the public interest.

Counsel for the member stated that Ms. Hayter was extremely remorseful and that this lapse in judgment was an isolated incident in an otherwise unblemished 40-year career. Ms. Hayter was described as nearing the end of her career, providing limited relief-type work in one employment setting. Publication of her name would compromise her ability to effectively support her colleagues in her relief role. Ms. Hughes further requested that the Panel consider the precedent it would be creating in ordering publication of the member’s name. Finally, she suggested that the public interest would be appropriately protected through the terms of the Joint Submission as to Penalty as agreed between her client and CASLPO.

The Discipline Panel then heard a request submitted by Ms. Bakyta-Culver’s counsel, Mr. Michael Fraleigh, to participate in the proceedings. Mr. Fraleigh noted that Ms. Bakyta-Culver did not agree with the Joint Submission on Penalty and that she wished to present a victim impact statement as well as evidence which lead to her latest complaint. Mr. Fraleigh argued that he should be granted standing based on Section 41 of the Regulated Health Professions Procedural Code, which permits participation of a witness, should this be deemed to be of assistance to the panel.

Ms. Hughes presented the following arguments against granting Mr. Fraleigh standing:

- a) This action should only be undertaken if it can provide the panel with *assistance* rather than additional information;
- b) There is concern that the witness’ information may not be presented in context and that it might create bias in the media report;
- c) The information presented might call into question the validity of the work which went into preparing the Statement of Facts and the Joint Submission on Penalty;
- d) As the College would have considered the witness’ evidence prior to forwarding the complaint to the Discipline Committee, granting Mr. Fraleigh’s request would be the equivalent of telling CASLPO it had not fulfilled its mandate.

Counsel for CASLPO stated that the College had no position on this request for standing, and that it did not disagree with Ms. Hughes. Mr. Leblanc noted that the Code is broad and that it was at the panel’s discretion to determine if the evidence would be of

assistance. He also reminded the panel the College's mandate is to protect the public at large and that it is highly unusual for a complainant to request an audience at this phase of the process.

Mr. Fraleigh further argued that the information to be presented would not create a need for extensive deliberations on the part of the panel, and that because the evidence is in the public interest, it should be heard.

DECISION AND REASONS

Following deliberations, the panel did not grant Mr. Fraleigh's request for standing as it felt:

- (a) That the evidence to be presented would likely constitute information which was included and considered in the complainant's submission to the College;
- (b) That the panel's decision should be based on the Agreed Statement of Facts. Any additional information would potentially bias the panel and place the defendant at a significant disadvantage. The panel did not feel it could consider this evidence in isolation without considering all of the information which was collected and exchanged during the complaints process.

Further, the panel rejected the Joint Submission as to Penalty and ordered that the member appear before the Panel and be reprimanded, and that the result of this proceeding be included in the register (and therefore in the summary as well). The order to reimburse CASLPO costs in the amount of \$1,500.00 was accepted.

The panel considered the request to omit the member's name from the register and this summary, and determined that Ms. Hayter's name should appear for the following reasons:

- (a) The public has a right to know that this member has been found guilty of professional misconduct;
- (b) The member set out to do harm to a member of the public and we, as representatives of the College, are accountable to this public;
- (c) The appearance of the member's name will serve as a general deterrent to other members;
- (d) The publication of the member's name is consistent with information to be reported to the public through the media.

The panel therefore ordered:

1. That the member appear before the panel and be reprimanded. The name of the member shall appear in the register. A summary of this proceeding shall be published, and include the member's name.
2. The member shall pay to the College its costs fixed in the amount of \$1,500.00 within three months of the date of this order.

3. The member undertakes to the College that she will apologize to Ms. Bakyta-Culver. The panel does not, however, have the authority to require such an apology to be made.

The panel concluded that the imposed penalty is reasonable and in the public interest, and that it addresses the needs of general and specific deterrence in the circumstances of this case. Finally, in the panel's view, this penalty would send the appropriate message to the profession that this form of professional misconduct will not be tolerated.

Dated on August 13, 2004

Robert Dobson
Panel Chair