

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

**BETWEEN:**

**THE COLLEGE OF AUDIOLOGISTS AND SPEECH-LANGUAGE  
PATHOLOGISTS OF ONTARIO  
("College")**

**- and**

**KAREN MALLET  
("Ms. Mallet")**

Panel Members:	Meg Petkoff	Chair, Professional Member
	Robert Kroll	Professional Member
	Ann Anderson	Professional Member
	Geta Amdestsion	Public Member
	Bryan De Souse	Public Member
Counsel Present:	Mr. Bernard LeBlanc	Counsel for the College
	Ms. Peggy Smith	Counsel for Ms. Mallet
	Mr. Alan Bromstein	Independent Legal Counsel to Panel
Hearing Date:	November 6, 2007	

**DECISION AND REASONS FOR THE DECISION  
of the Panel of the Discipline Committee**

This matter came before a panel of the Discipline Committee ("Panel") at a hearing which was held on November 6, 2007.

A Notice of Hearing containing a Statement of Allegations was filed as Exhibit No. 1.

An Agreed Statement of Facts was filed on the consent of both parties as Exhibit No. 2. It contained the following agreed upon facts:

"1. Karen Mallet was at all material times a speech-language pathologist and a member of the College of Audiologists and Speech-Language Pathologists of Ontario. Ms. Mallet was employed as a speech-language pathologist at the Ottawa Hospital.

2. On various occasions between August 2003 and March 2006, Ms. Mallet inappropriately accessed personal information and personal health information at the Ottawa Hospital in respect of persons not under her care and who did not consent to such access. Ms. Mallet accessed this information for non-employment and non-practice purposes as follows:

<b>Patients' Initials</b>	<b>Date Ms. Mallet Accessed Information</b>
K.J.	18/08/03 10/05/05
A.L.	23/03/06 24/03/06
B.G.L.	24/03/06
W.R.	06/10/05
P.R.	06/10/05

3. On or about January 16, 2007, the College received a telephone call from someone who identified herself as "Karen", who reported that the Ottawa Hospital had suspended her for five days, and she identified two of the five above-noted instances of her having accessed personal health information inappropriately. The caller further advised that the College could expect to receive further information from the Hospital.
4. The mandatory report from the Ottawa Hospital dated February 9, 2007 was received by the College on February 15, 2007 and is attached hereto at Tab A. Ms. Mallet's response dated March 30, 2007 is attached at Tab B.
5. Ms. Mallet admits that by inappropriately accessing personal health information of patients at Ottawa Hospital as hereinbefore described, she engaged in professional misconduct within the meaning of paragraphs 2 (failing to maintain the standard of practice of the profession), 32 (contravening a provincial law, *viz.*, the *Personal Health Information Protection Act, 2004* and a by-law or rule of a hospital, *viz.*, the Ottawa Hospital Policy No. ADM II 260, relevant to the member's suitability to practice) 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 or unprofessional."

An Agreed Book of Documents was filed on consent of both parties as Exhibit No. 3. After giving both Counsels an opportunity to make submissions respecting the finding of professional misconduct, the Panel withdrew to deliberate.

### **DECISION ON FINDING**

## OF PROFESSIONAL MISDCONDUCT

The Panel was satisfied that the conduct described in the Agreed Statement of Facts constituted professional misconduct as defined by paragraphs 2, 32 and 37 of section 1 of Ontario Regulation 749/93, as amended, under the Audiologists and Speech-Language Pathologists Act, 1991. It, therefore, found Ms. Karen Mallet had committed acts of professional misconduct.

### PENALTY

The parties filed a Joint Submission on Penalty and Costs which was marked as Exhibit No. 5. The Joint Submission contained the following statements:

- "1. The College of Audiologists and Speech-Language Pathologists of Ontario and Karen Mallet ("the member") agree and jointly submit that the Discipline Committee make an order:
  - a. Reprimanding the member;
  - b. Requiring the member to pay a fine in the amount of \$1000.00 within three (3) months from the date of this Order.
2. The member acknowledges that this matter will be publicized in the usual manner through, among other things, *CASLPO Today* and the public portion of the register.
3. The member acknowledges that this Joint Submission as to Penalty is not binding upon the Discipline Committee.
4. The member acknowledges that she has had the opportunity to receive, and has in fact received, independent legal advice."

### PENALTY DECISION

The Panel understood from the submissions that where a hearing involved a Joint Submission on Penalty, the Panel should accept the proposal if it is within a reasonable range of penalties for similar conduct. It also understood that it was not its role to make minor changes to a penalty when jointly submitted and that so long as the penalty would not bring the administration of the proceedings into disrepute, it should accept the Joint Submission. This Panel believed that it should not accept a Joint Submission as to Penalty where the penalty would compromise the integrity of the process thereby causing the public to lose trust in the College's ability to self-regulate.

The Panel recognized that Joint Submissions of this type are an important part of all levels of justice and that in the context of a discipline proceeding it is important that members can be reasonably assured when they enter into an agreement with the College that it will be accepted by the Discipline Committee.

The Panel concluded that the penalty being jointly submitted was both a serious and appropriate penalty having regard for the facts of this case.

The Panel, therefore, accepted the Joint Submission on Penalty and Costs and issued that Order.

Before finalizing its Order in that regard, the Panel sought clarification from both parties as to whether it was seeking an Order directing that the results of the proceeding be included in the College's register and the public portion thereof thereby resulting in the publication of the Panel's decision and its reasons or a summary of its reasons, with the Member's name included. The Panel heard from both parties and ultimately directed that the results of the proceeding be included in the College's register and the public portion thereof thereby resulting in the proceeding being published with the name of the Member included.

### **REASONS FOR THE PENALTY**

There are several audiences for this Order on Penalty.

- The public which has to be assured that the College takes this misconduct very seriously and that it is capable of policing the profession and protecting the public. To this end, the Panel determined that entering the member's name and this decision on the public portion of the register would provide the public with access to this decision.
- The profession which must be sent a message, in the strongest of terms, that this type of behaviour is totally unacceptable. Therefore, it was determined by the Panel that the matter will be publicized in *CASLPO Today*. Publishing the decision and relevant facts regarding the case and panel deliberations sends a message to the professions that this type of behaviour constitutes professional misconduct and will be addressed as such. It sends a message to the membership that the College will pursue its obligation to protect the public and to seriously address issues of proven professional misconduct. In this case, the membership will be educated and informed that the College considers the contravention of a provincial law, the Personal Health Information Protection Act, 2004, as well as the contravention of a hospital policy, the Ottawa Hospital Policy No. ADM II 260, to be acts of professional misconduct that have been determined by this Panel to be unprofessional. The membership will also be informed of the consequences of this action with the intent to confirm the seriousness with which the College addresses these issues and to act as a potential deterrent against similar action by other members of the profession.
- The member, who must suffer consequences for her actions to ensure that the behaviour will not occur again and who, at the same time, shall be provided with

an opportunity for rehabilitation. The Panel carefully considered the message it wanted to send Ms. Mallet in regard to her conduct and the impact of it on her personally as well as professionally. The panel acknowledged the fact that the consequences of her actions, have caused Ms. Mallet considerable stress, public embarrassment and financial loss. The Panel acknowledged that in accepting responsibility for her actions, Ms. Mallet appears to understand that her behaviour was wrong and was accepting the consequences of her behaviour.

In considering the appropriateness of the penalty, the Panel took into account the fact that Ms. Mallet had, as a result of her conduct, been suspended by her employer five days without pay. It considered that the reprimand which was ordered would provide a mechanism for the Panel to emphasize to Ms. Mallet the seriousness of her actions and the expectations that the Panel had respecting her future conduct. In the Panel's view, the penalty imposed constituted a fair one which balanced all of the principles of sentencing. The conduct which Ms. Mallet engaged in was a serious breach of her professional and ethical obligations. The Panel also wanted members of the profession to know that conduct of this nature would not be tolerated. At the same time, however, the Panel believed that the penalty gave recognition to Ms. Mallet's remorse, her restitution and her co-operation with the College as well as other mitigating circumstances.

Dated: December 17, 2007

Meg Petry  
Chair,

Panel of the Discipline Committee