

**DISCIPLINE COMMITTEE  
OF THE COLLEGE OF OPTICIANS OF ONTARIO**

**PANEL:**

Gord White (public member/Chair)  
Ingrid Koenig  
Margaret Osborne  
David Milne (public member)  
Neda Mohammedzadeh

**BETWEEN:**

COLLEGE OF OPTICIANS OF ONTARIO	)	
	)	<i>Rebecca Durcan</i> for
	)	College of Opticians of Ontario
- and -	)	
	)	No one appearing for the Member
BRIAN GARNHUM	)	
REGISTRATION #2630	)	
	)	<i>Luisa Ritacca</i>
	)	Independent Legal Counsel
	)	
	)	Heard: July 19, 2018

**DECISION AND REASONS**

This matter came on for hearing before a panel of the Discipline Committee on July 19, 2018 at Victory Verbatim in Toronto.

The Member was not presented or represented by counsel. At the commencement of the hearing, the counsel for the College of Opticians of Ontario (“the College”) provided the panel with evidence to establish that the Member had been properly served notice of the date, time and location for the hearing. The evidence further revealed that the Member had indicated to the College that he did not intend to appear. In the circumstances, the panel was satisfied that the Member was properly served and that the hearing could proceed in his absence.

The Allegations

The allegations against Brian Garnhum (the “Member”) as stated in the Notice of Hearing dated April 2, 2018, are as follows.

## **STATEMENT OF ALLEGATIONS**

### **The Member**

1. Brian Garnhum (“Mr. Garnhum”) has been a member of the College since 2001.

### Quality Assurance Program

2. Pursuant to the s. 82(1) of the Code and s.9 and s.10 of the General regulation under the Opticianry Act, 1991, members of the College are required to comply with the requirements of the College’s Quality Assurance program. Those requirements include the following:
  - a. Within 30 days of being notified of the request, a member shall provide accurate information to the Committee or an assessor about his self-assessment and continuing education or professional development.
  - b. Each year the Committee shall select at random ... the names of members required to undergo a peer and practice assessment.
3. On or about February 10, 2017, the Quality Assurance Committee notified Mr. Garnhum by e-mail:
  - a. to submit evidence of his annual continuing education and professional development activities (the “Professional Portfolio”), no later than March 31, 2017; and/or
  - b. that he had been randomly selected to undergo a peer and practice assessment and to submit the Multi-Source Feedback (MSF) survey process by April 25, 2017.
4. On or about February 14, 2017, the Quality Assurance Committee sent Mr. Garnhum, by courier/registered mail, a package enclosing the instructions and documentation in order to complete the Professional Portfolio and the MSF (the “Package”).
5. On or about February 28, 2017 the Package was returned to the College as it had been refused by Mr. Garnhum.
6. On or about February 28, 2017 the College contacted Mr. Garnhum, by phone, to confirm his mailing address. Mr. Garnhum advised the College

to only contact him via email and to never call him. Mr. Garnhum hung up the phone in an abrupt manner.

7. On or about March 1, 2017 the College contacted Mr. Garhnum, by email, and asked him to update his mailing address.
8. On or about March 1, 2017, Mr. Garnhum advised the College (which he referred to as the “cuckoo COO”) that his address had not changed, and to contact him only via email.

#### MSF

9. On or about March 10, 2017, the College contacted Mr. Garnhum, by email, and advised Mr. Garnhum that components of the MSF could not be sent by email so the College would resend the Package.
10. On or about March 16, 2017 Mr. Garnhum advised the College, by email, that he had taken the College off his email reception list. Mr. Garnhum also stated the following:
  - a. “Don’t bother saying certain docs can’t be sent by email, we both know that s not true.”
  - b. “How dare you. From your lofty perch at the cuckoo COO/Ministry of Silly Stickers you don t mind offending whom ever you please.”
11. On or about March 13, 2017, the Quality Assurance Committee sent Mr. Garnhum, by regular mail, the Package.
12. On or about March 29, 2017, the Package was returned to the College for a second time, as it had been refused by Mr. Garnhum.
13. On or about March 29, 2017, the College contacted Mr. Garnhum, by email, and advised that components of the MSF could not be sent by email so the College would resend the Package.
14. On or about March 30, 2017 the Quality Assurance Committee sent Mr. Garnhum, by regular mail, the Package.
15. On or about April 4, 2017, Mr. Garnhum advised the College, by email, that he does not “communicate with individuals who offend me.”
16. On or about April 20, 2017 the Quality Assurance Committee contacted Mr. Garnhum, by email, and reminded him of the April 25, 2017 deadline for the MSF.

17. On or about April 25, 2017, Mr. Garnhum advised the College by email and claimed that he had not received the password. The College responded the same day and reminded Mr. Garnhum that he had been provided the password on February 17, 2017.
18. On or about May 2, 2017 Mr. Garnhum advised the College, by email, that he did not have the password and to tell a College employee to “put a hookhah pipe down and FOCUS.”
19. On or about May 15, 2017, the Package was returned to the College for a third time, as it had been refused by Mr. Garnhum.
20. On or about May 16, 2017, Mr. Garnhum advised the College, by email, that he has not received the password.
21. On or about May 29, 2017, the Quality Assurance Committee contacted Mr. Garnhum, by email and regular mail, and advised him that his MSF requirements were outstanding. The Quality Assurance Committee provided Mr. Garnhum with an extension until June 30, 2017.
22. On or about June 29, 2017 Mr. Garnhum contacted the College, by email, and advised he was having difficulty with the MSF and “when the cuckoo COO can get its s—t together, please drop me a note. Until then the MSF is on hold.”
23. As of June 30, 2017, Mr. Garnhum completed six of the required fifteen required surveys as part of the MSF.
24. As of today’s date the remaining required surveys have not been received by the Quality Assurance Committee.

#### Professional Portfolio

25. On or about March 24, 2017, the Quality Assurance Committee contacted Mr. Garnhum, by email, reminding him of the March 31, 2017 due date for the Professional Portfolio. Mr. Garnhum did not respond to this email.
26. On or about April 7, 2017, the Quality Assurance Committee contacted Mr. Garnhum, by email, advising him that his Professional Portfolio was late and asked to contact the College and advise of the status of the Professional Portfolio.
27. As of today’s date the Professional Portfolio has not been received by the Quality Assurance Committee.

#### Referral by Quality Assurance Committee

28. On or about July 24, 2017, the Quality Assurance Committee referred Mr. Garnhum to the Inquiries, Complaints and Reports Committee for failing to comply with the Quality Assurance Committee directions on the Professional Portfolio and the MSF.

Acts of Professional Misconduct

29. As a result of the above, it is alleged that Mr. Garnhum engaged in professional misconduct pursuant to s. 51(1)(c) of the Health Professions Procedural Code, being Schedule 2 to the Regulated Health Professions Act, 1991 (the “Code”), as set out in one or more of the following paragraphs of section 1 of Ontario Regulation 828/93:
- a. He contravened a standard of practice of the profession (paragraph 2);
  - b. He failed to reply without sufficient reason to a registered letter from the College (paragraph 16);
  - c. He contravened any provision of the Act, the Regulated Health Professions Act, 1991 or the regulations under either of those Acts, namely s. 82(1) of the Code and s. 9, s. 10, and/or s. 11(4) of the General Regulation (paragraph 26);and/or
  - d. He engaged in conduct or performed an act, in the course of practicing opticianry that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional (paragraph 28).
30. In addition, it is alleged that Mr. Garnhum engaged in professional misconduct pursuant to s. 51(b.0.1) of the Code as he failed to co-operate with the Quality Assurance Committee.

Member’s Plea

In light of the Member’s absence, the Chair of the panel entered a plea of not guilty on the Member’s behalf.

The Evidence

The College introduced a number of documents in support of its position with respect to the allegations.

The documents, which included an Affidavit from Kristina Formosi, together with the oral testimony of Laura Baird, Manager of Professional Programs established the following:

- Mr. Garnhum has been a member of the College since 2001;
- In February 2017, the Quality Assurance Committee notified Mr. Garhum by e-mail:
  - To submit evidence of his annual continuing education and professional development activities (Professional Portfolio) no later than March 31, 2017; and
  - That he was randomly selected to undergo a peer and practice assessment and to submit the Multi-Source Feedback (MSF) survey process by April 25, 2017.
- Between mid-February 2017 and the end of March 2017, Mr. Garnhum refused on three occasions to receive a courier package with documentation and instructions to complete the Professional Portfolio and the MSF. He sent all three packages back to the College unopened.
- In late-February 2017, Mr. Garnhum advised the College to only contact him by email and never by phone.
- On or about March 16, 2017, Mr. Garnhum advised the College that he had taken the College off his email reception list.
- Mr. Garnhum submitted 6 of the required 15 surveys as part of the MSF. As of the date of this decision, the remaining 9 surveys have not been received by the Quality Assurance Committee.

As of the date of the hearing, the Professional Portfolio has not been received by the College's Quality Assurance Committee.

It is clear from the evidence that Mr. Garnhum failed to submit the necessary information and documentation to the Quality Assurance Committee and the College as required.

While there was no specific allegation before us relating to the manner in which Mr. Garnhum communicated with the College, it is worth noting that in all of his communications, Mr. Garnhum referred the College of Opticians of Ontario as the "cuckoo COO" over 20 times. He referred to the Discipline Panel as a "Kangaroo Kourt" and he suggested that College staff were smoking a hookah pipe.

### Decision

The panel finds that Mr. Garnhum engaged in professional misconduct as set out in the Notice of Hearing.

### Reasons for Decision

The panel deliberated and found that the College had satisfied it on a balance of probabilities that the Member engaged in professional misconduct as alleged in the Notice of Hearing.

On the strength of the documentary evidence, the sworn affidavit and the testimony of the witness, the panel is satisfied that the Member engaged in professional misconduct.

There was no evidence contrary to the College's position available for the panel to consider and in any event, the evidence was not controversial. It was clear that the Member received and ignored or failed to meaningfully respond to requests of both the Quality Assurance Committee and the College.

Members of this College have an obligation to respond to College inquiries and to, in particular, participate fully in reviews/audits by the Quality Assurance Committee. The public must have confidence that the College can regulate its members and that its members accede to and respect the College's jurisdiction over them.

Mr. Garnhum as a registered optician in Ontario failed to comply with the requirements of the Quality Assurance program as required under s. 82(1) of the Health Professions Procedural Code, being Schedule 2 of the Regulated Health Professions Act, 1991 (the "Code"), and s. 9, 10 and 11 of the General Regulation under the *Opticianry Act, 1991*.

Mr. Garnhum failed to provide within 30 days of being notified of the request, accurate information to the Committee or an assessor about his self-assessment and continuing education or professional development. Mr. Garnhum also failed to submit a completed Multi-Source Feedback survey within the required timeframe.

As a result, Mr. Garnhum engaged in professional misconduct pursuant to s. 51(1)(c) of the Code as set out in one or more of the following paragraphs of section 1 of Ontario Regulation 828/93:

- a. He contravened a standard of practice of the profession (paragraph 2);
- b. He failed to reply without sufficient reason to a registered letter from the College (paragraph 16);
- c. He contravened any provision of the Act, the Regulated Health Professions Act, 1991 or the regulations under either of those Acts, namely s. 82(1) of the Code and s. 9, s. 10, and/or s. 11(4) of the General Regulation (paragraph 26);and/or
- d. He engaged in conduct or performed an act, in the course of practicing opticianry that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional (paragraph 28).

Furthermore, the Panel found pursuant of s.51 (b.0.1) of the Code Mr. Garnhum engaged in professional misconduct by failing to co-operate with the Quality Assurance Committee.

### Penalty and Costs

The College filed a submission on penalty and costs wherein it sought an order:

1. Requiring Mr. Garnhum to appear before the panel to be reprimanded within 60 (sixty) days of the date of this Order;
2. Directing the Registrar to suspend Mr. Garnhum's certificate of registration for a period of 4 (four) months, effectively immediately;
3. Directing the Registrar to impose the following specified terms, conditions and limitations on Mr. Garnhum's certificate of registration:
  - a) Within 3 (three) months of this Order, Mr. Garnhum must successfully complete the College's jurisprudence course, which is to be taken at his own expense; and
  - b) Within 6 (six) months of this Order, Mr. Garnhum must complete the outstanding MSF process.
4. Requiring the Member to pay a portion of the College's costs in the amount of \$ 10,000.

### Penalty and Costs Decision

The panel considered the College's submissions on penalty and ordered as follows:

1. Mr. Garnhum is required to appear before the panel to be reprimanded within 60 (sixty) days of the date of this Order;
2. The Registrar is directed to suspend Mr. Garnhum's certificate of registration for a period of 6 (six) months, effectively immediately;
3. The Registrar is directed to impose the following specified terms, conditions and limitations on Mr. Garnhum's certificate of registration:
  - a. Within 3 (three) months of this Order, Mr. Garnhum must successfully complete the College's jurisprudence course, which is to be taken at his own expense; and
  - b. Within 60 days of the order, Mr. Garnhum must submit evidence of completion of his 2015, 2016 and 2017 Professional Portfolio to the Quality Assurance committee for further review.
  - c. Mr. Garnhum shall participate in the College's 2019 Competency Review and Evaluation process, stream # 2 where he will be required to submit his 2018



Professional Portfolio and engage in the Multi-Source Feedback Process. He will be given 30 days' notice before this will be due.


4. Mr. Garnhum is required to pay the College a portion of its costs in this matter in the amount of \$ 10,000 within 90 days of the date of this Order.

The panel concluded that the penalty imposed appropriately addresses the principles governing penalty, which include public protection, general deterrence and specific deterrence.

Mr. Garnhum's non-compliance with the requirements of the Quality Assurance Committee and his failure to co-operate with College demonstrate a clear disregard for the College's mandate to govern its members and protect the public. The penalty proposed by the College did not fully satisfy the panel's concerns with respect to deterrence and remediation. The panel concluded that a lengthy suspension, in addition to the requirement to fulfill the requirements set out by the Quality Assurance Committee were necessary components of the penalty ordered. The Member must not be allowed to flout the College's process and ultimately get away with doing less than other members of the profession are required to do.

As a result, the panel found the penalty to be necessary to uphold the College's mandate to protect the public. It is important that Mr. Garnhum and members of the College understand the seriousness of these actions.

I, Gord White, sign this decision and reasons for the decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel as listed below:

Chairperson 

Date August 9, 2018

Names of panel members  
 Gordon White, Chairperson  
 Ingrid Koenig  
 Margaret Osborne  
 David Milne  
 Neda Mohammedzadeh