

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

PANEL: Ms. Parminder Dhillon, Chair, Elected Optician Member
Mr. Robert Vezina, Elected Optician Member
Mr. Junaide Hakim, Elected Optician Member
Mr. Librado Ibe, Public Member
Ms. Gloria Baltazar, Public Member

BETWEEN:

COLLEGE OF OPTICIANS OF ONTARIO)	
)	Melisse Willems for
)	College of Opticians of Ontario
- and -)	
)	Wade Sarasin for
Mark Ouellette, C-4191)	Mark Ouellette <u>(Not Present)</u>
)	
)	Luisa Ritacca
)	Independent Legal Counsel
)	
)	Heard: May 9, 2012

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on May 9, 2012 at the College of Opticians of Ontario ("the College") at Toronto

The Member was not present. The panel was advised that the Member and his counsel did not intend to be present for the hearing.

Counsel for the College provided the panel with evidence that the Member had been sent the Notice of Hearing on August 8, 2011 (Exhibit 1). Counsel for the College also provided an Affidavit of Service of Katie Chimirri, sworn (date) (Exhibit 2). The panel was satisfied that the Member had received adequate notice and therefore proceeded with the hearing in the Member's absence.

The Allegations

Counsel for the College submitted a copy of the Notice of Hearing (Exhibit I) which set out the allegations against Mr Ouellette. It was alleged that Mr Ouellette committed acts of professional misconduct as defined in section 1, paragraphs 5 and 28 of Ontario Regulation 828/93, as amended, promulgated pursuant to the *Opticianry Act*, S.O. 1991, c.34 in that he:

- (a) Permitted, counselled or assisted someone who is not registered under the *Opticianry Act*, *Optometry Act*, or *Medicine Act* to perform an act which should be performed by a member; and
- (b) engaged in conduct or performed an act, in the course of practising opticianry, that, having regards to all the circumstances, would reasonably be regarded by members of the College of Opticians of Ontario as disgraceful, dishonourable or unprofessional.

Member's Plea

Given that the Member was not present nor represented, he was deemed to have denied the allegations in the Notice of Hearing. The panel entered a not guilty plea on behalf of the Member. The Hearing proceeded on the basis that the College bore the onus of proving the allegations in the Notice of Hearing against the Member.

Overview

Mark Ouellette is a registered member of the College of Opticians. He is the only registered optician at London Family Optical for the period in question. As per the facts provided by an investigator appointed by the Inquiries, Complaints and Reports Committee of the College, the College became aware of the acts of professional misconduct committed by the member where he permitted, counselled or assisted someone who is not registered with the College to perform acts which should only be performed by a member.

Agreed Statement of Facts

Counsel for the College advised the panel that agreement had been reached on the facts in this matter and introduced a Agreed Statement of Facts (Exhibit 3). The Agreed Statement of Facts provided as follows:

- (a) At all material times, Mark Ouellette was an optician member of the College of Opticians of Ontario (the "College").
- (b) At all material times, Mr. Ouellette was the president, owner and operator and a director of 3 for 1 Optical and its successor company London Family Optical, located at 485 Wellington Road, London, Ontario (the "Store").

- (c) At all material times, Cindy Ouellette, also known as Cindy Blackburn, was an employee of London Family Optical and was working at the Store. Mrs. Ouellette is the wife of Mark Ouellette.
- (d) Mrs. Ouellette is not and never has been a member of the College of Opticians of Ontario, the College of Optometrists of Ontario or the College of Physicians and Surgeons of Ontario.
- (e) At about 3:55 p.m. on August 16, 2010, Lorand Sebestyen, an investigator appointed by the Inquiries, Complaints and Reports Committee of the College to conduct an undercover shopping at the Store, went to the Store and was greeted by Cindy Ouellette. Mrs. Ouellette approached Mr. Sebestyen and asked if she could be of assistance. He told Mrs. Ouellette that he had just had an eye examination and was looking to purchase some new glasses for his new prescription. Mrs. Ouellette asked Mr. Sebestyen what type of frames he was looking for and he responded that he was looking for frameless glasses similar to the ones that he was already wearing. Mrs. Ouellette then advised Mr. Sebestyen that all of their frameless eyeglasses were displayed in a display case in the middle of the store. She then proceeded to explain about the various frames, including their prices, design, manufacturer, and what colours they were available in. When Mr. Sebestyen asked what colours a particular frame came in, Mrs. Ouellette obtained a catalogue from a nearby desk and told him that they were available in black, grey and blue.
- (f) Mrs. Ouellette then advised Mr. Sebestyen that these particular frames, which were manufactured by Guess, would cost \$200.00 and that the lenses would cost \$150.00 with anti-glare and anti-scratch coating. When Mr. Sebestyen asked why the lenses were so expensive, she advised him that, since he was purchasing frameless glasses, she recommended that he purchase polycarbonate lenses because they were lighter and more durable. She further explained that polycarbonate lenses were more expensive and with the coatings they would cost \$150.00. Mr. Sebestyen asked her if she could provide him with a better deal and, after some calculations and debating, Mrs. Ouellette said she could sell him the frames and lenses for \$300.00 flat. Mr. Sebestyen told her that price was acceptable and that he would like to purchase the eyeglasses.
- (g) Mrs. Ouellette then directed Mr. Sebestyen to have a seat at a desk at the rear of the Store. She then took his prescription and his personal information from him. Mr. Sebestyen provided this information under the alias "Chris Milanovic" of 730 Wonderland Road North, London Ontario.
- (h) Mrs. Ouellette then measured Mr. Sebestyen's pupillary distance using a digital pupilometer.
- (i) Mrs. Ouellette recorded his pupillary distance and finished filling out all of the paperwork. She then told Mr. Sebestyen that the eyeglasses would be ready in about 10 days and that she would phone him when they were ready.

- (j) Mr. Sebestyen gave Mrs. Ouellette \$80 cash as a deposit on the eyeglasses and received a receipt from her indicating the deposit and balance owing of \$220.00.
- (k) Mr. Sebestyen took a business card from the desk and asked Mrs. Ouellette what her name was. She responded that her name was "Cindy" and that the Store's telephone number was on the business card. Mr. Sebestyen thanked Mrs. Ouellette for her assistance and exited the Store at approximately 4:15 p.m.
- (l) On August 20, 2010, Mr. Sebestyen received a telephone call from Mrs. Ouellette informing him that his eyeglasses were ready for pick-up. Mr. Sebestyen thanked Mrs. Ouellette for the information and told her he would drop into the Store the following week to pick up the eyeglasses. Mr. Sebestyen then ended the call.
- (m) On August 24, 2010, at approximately 11:05 a.m., Mr. Sebestyen returned to the Store to pick-up his eyeglasses.
- (n) Upon entering the Store, Mr. Sebestyen was greeted by Mrs. Ouellette who seemed to remember him as she called him by his alias "Chris". Mrs. Ouellette retrieved his eyeglasses and asked Mr. Sebestyen to have a seat at a desk located at the rear of the Store. She then prompted him to try on the eyeglasses and asked him if the fit was satisfactory. Mr. Sebestyen replied that the eyeglasses seemed a little bit off and handed them back to Mrs. Ouellette. Over the course of the next several minutes, Mrs. Ouellette made several adjustments to the nose piece of the eyeglasses utilizing what appeared to be a specialized set of pliers until Mr. Sebestyen was satisfied with the fit.
- (o) After making the adjustments, Mrs. Ouellette wiped the lenses with a special cleaning cloth and handed the eyeglasses to me. Mr. Sebestyen asked her if the eyeglasses came with one of these special cleaning cloths and she said they did. She walked into the back room of the Store and obtained a cloth for him. When she did so, she left the door to the back room open and Mr. Sebestyen could clearly observe that there was no one in the back room at the time. The back room appeared to serve as a storage space and contained a mini-fridge and microwave.
- (p) Mrs. Ouellette returned from the back room a few seconds later and gave Mr. Sebestyen the special cleaning cloth and the invoice for the eyeglasses.
- (q) Mr. Sebestyen then paid Mrs. Ouellette the balance owing for the eyeglasses of \$220.00, thanked her for her assistance and left the Store at approximately 11:40 a.m. Before leaving, Mrs. Ouellette told Mr. Sebestyen that he could come back at any time if he needed any further adjustments to the eyeglasses.
- (r) Mrs. Ouellette did not wear a visible nametag or badge during Mr. Sebestyen's visits. There was a Certificate of Registration displayed in the Store issued to "Mark Allan Ouellette". This was the only Certificate of Registration displayed in the Store.

- (s) Mrs. Ouellette never told Mr. Sebestyen that she was not an optician, optometrist or physician. She never advised him to see an optician or other health care professional.
- (t) At no time during his visits to the Store was Mr. Sebestyen helped by anyone other than Mrs. Ouellette. There was no one else in the Store during these visits. Mr. Sebestyen never met with or spoke to an optician, optometrist or physician.
- (u) The eyeglasses that were dispensed to Mr. Sebestyen were based on the prescription that he provided to Mrs. Ouellette.
- (v) At all material times, Mr. Ouellette was employed elsewhere. He would leave the Store for his wife to manage and perform all of the dispensing while he was working at his other job. Mr. Ouellette knew that Mrs. Ouellette was not authorized to dispense. He also knew that Mrs. Ouellette was dispensing in his absence and he permitted her to do so.

Decision

Having considered the evidence as set out in the Agreed Statement of Facts and the onus and standard of proof, the panel finds that the Member committed acts of professional misconduct as alleged in paragraphs 1 and 2 of the Notice of Hearing. In particular, the Member engaged in conduct that would reasonably be regarded by members of the profession as dishonourable and unprofessional.

Reasons for Decision

The panel considered all facts presented by College counsel, as contained in the Agreed Statement of Facts. The panel was satisfied that the evidence clearly showed that the Member was guilty of the allegations set forth in the Notice of Hearing.

Penalty

Penalty Submissions

College counsel presented the panel with a Joint Submission on Penalty marked Exhibit 4. The Joint Submission on Penalty stated that the College and the Member agree to an order by the Discipline Committee where:

- a) The Member's certificate of registration is revoked, effective immediately and
- b) The Member shall pay costs to the College in the amount of \$2000.00, with \$1000.00 payable within 15 days and \$1000.00 payable within 45 days.

Penalty Decision

The panel accepts the penalty as set forth in the Joint Submission on penalty. The Member's certificate of registration is revoked, effective immediately and the Member shall pay costs to the

College in the amount of \$2000.00, with \$1000.00 payable within 15 days and \$1000.00 payable within 45 days.

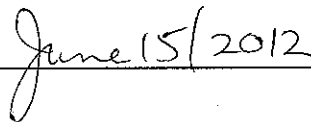
Reasons for Penalty Decision

The panel recognizes that revocation is a serious penalty. While College counsel relied on other cases involving a revocation, in the panel's view those cases were of a different and more serious nature than the one before it. That said, the panel was satisfied that revocation was appropriate in these circumstances, because the panel was advised that the Member no longer wanted to maintain his license and did not intend to ever practice as an optician in Ontario. Further, the panel was advised that the Member consented to the revocation. . In view of this the panel accepted the penalty as set forth in the Joint Submission on Penalty. When making this decision the panel considered the case law where a panel should not depart from a joint submission unless it would offend the administration of justice to accept the Joint Submission. The panel is content that the jointly proposed penalty does not offend the administration of justice. Having a Joint Submission on Penalty accepted by the Member contributed a great deal to this decision as the member accepted this penalty.

I, Parminder Dhillon, 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

Robert Vezina
Junaide Hakim
Librado Ibe
Gloria Baltazar