

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

PANEL: David Milne, Chair
Dorina Reiz
Jay Bhatt
Diana Bristow
Henry Wiersema

BETWEEN:

COLLEGE OF OPTICIANS OF ONTARIO)	
)	<u>Rebecca Durcan &</u>
)	<u>Justine Wong</u>
)	College of Opticians of Ontario
- and -)	
)	
)	Registrant, Dan Heeremans
DAN HEEREMANS)	
)	<u>Luisa Ritacca</u>
)	Independent Legal Counsel
)	
)	
)	Heard: April 28, 2022

DECISION AND REASONS

This matter came for hearing before a Panel of the Discipline Committee the College of Opticians of Ontario (the “College”) on April 28, 2022. This matter was heard electronically, by way of video conference.

The Registrant was self-represented throughout the proceedings.

The Allegations

The allegations against the Registrant, Dan Heeremans as stated in the Notice of Hearing dated June 23, 2021 are as follows:

The Registrant

- Dan Heeremans (the “Registrant”) first registered with the College of Opticians of Ontario

as a Student Optician in 1998. The Registrant transferred to the Registered Optician class in 2003.

- The Registrant has been administratively suspended from the College since 2007.

Practising while suspended

- It is alleged that on or about October 8, 2019 the Client attended an optical clinic and the following occurred:
 - The Client provided her prescription to the Registrant;
 - The Registrant assisted the Client with the selection of frames; and/or
 - The Registrant sold frames and progressive lenses to the Client.
- It is alleged that the Client believed the Registrant was a registered optician.
- It is alleged that on or about October 17, 2019, the Client returned to the optical clinic and the following occurred:
 - The Registrant dispensed eyeglasses to the Client; and/or
 - The Client paid the Registrant for the eyeglasses.
- It is alleged that the Client returned to the optical clinic and advised the Registrant that the eyeglasses were not satisfactory.
- It is alleged that the Registrant communicated with the Client's optometrist about the validity of the prescription.
- It is alleged that in November or December 2019 the Registrant ordered new lenses for the Client.
- It is alleged that in December 2019 and/or January 2020, the Registrant dispensed eyeglasses to the Client.

Allegations of professional misconduct

- As a result of the above, it is alleged that the Member engaged in professional misconduct pursuant to s. 51(1)(c) of the *Health Professions Procedural Code* as defined in the following paragraphs of Ontario Regulation 828/93, section 1:
 - Paragraph 26: Contravening any provision of the Act, the Regulated Health Professions Act, 1991 or the regulations under either of those Acts, specifically, sections 4, and/or 9(3) of the *Opticianry Act* ; and/or
 - Paragraph 28 - Engaging 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.

The Registrant's Plea

The Registrant pleaded no contest to the allegations of professional misconduct set out in the Notice of Hearing. The plea of no contest is permitted under the Discipline Committee's Rules of Procedure.

The Panel conducted a plea inquiry and was satisfied that the Member's plea of no contest was voluntary, informed and unequivocal.

Evidence

The parties advised the Panel that they had prepared a Statement of Uncontested Facts and Plea of No Contest, which was presented as evidence in support of the allegations and the Registrant's plea of no contest.

The Former Registrant

- In 1998, Dan Heeremans (the "Former Registrant") registered with the College of Opticians of Ontario ("the College") as a Student Optician.
- In 2003, the Former Registrant transferred to the Registered Optician class.
- Since 2007, the Former Registrant has been administratively suspended from the College. The Former Registrant was fully aware that he was a suspended registrant since 2007. **Tab "A"** provides a copy of the Former Registrant's profile from the College's Database. **Tab "B"** provides a copy of the Former Registrant's post on the College's Public Register.
- Although the Former Registrant is no longer registered with the College, he remains within the jurisdiction of the College due to sections 13(2) and 14(2) of the *Health Professions Procedural Code* as **Tab "C"** provides:

14 (2) A person whose certificate of registration is suspended continues to be subject to the jurisdiction of the College for incapacity and for professional misconduct or incompetence referable to the time when the person was a member or to the period of the suspension and may be investigated under section 75.
- The Former Registrant does not have a prior history with the College.
- The Former Registrant is not an optometrist or a physician.
- The Former Registrant owns an optical clinic in Orangeville, Ontario (the "Clinic").

The Client

- On or about October 8, 2019, the Client attended the Clinic for the first time. She had a prescription from an optometrist for new eyeglasses. She attended at the Clinic in order to

obtain new eyeglasses. Although she saw other person(s) working in the Clinic, she only interacted with the Former Registrant. At all times, the Client believed that the Former Registrant. If she were to testify, the Client would state that she attended the Clinic and sought professional services from the Former Registrant because she believed that the Former Registrant was a registered optician who held an active certificate of registration that entitled him to provide registered opticians' services.

Practising while suspended

- On or about October 8, 2019, the Former Registrant:
 - Accepted, and interpreted, the prescription from the Client;
 - Assisted the Client with selecting frames; and
 - Sold frames and progressive lenses to the Client. **Tab “D”** provides a copy of the receipt issued by the Former Registrant to the Client dated October 8, 2019 in the amount of \$434.00 for two progressive lenses and a frame.
- On or about October 17, 2019, the Client returned to the Clinic as her eyeglasses were ready. On or about this date, the Former Registrant:
 - Handed the eyeglasses to the Client;
 - Asked the Client to put on the eyeglasses;
 - Adjusted the fit of the frames; and
 - Accepted full payment from the Client for the eyeglasses. **Tab “E”** provides a copy of the receipt issued by the Former Registrant to the Client dated October 17, 2019 indicating that \$434.00 had been paid.
- The Former Registrant dispensed the eyeglasses to the Client on or about October 17, 2019. Dispensing eye glasses is a controlled act authorized to opticians, optometrists, and physicians. **Tab “F”** provides a copy of sections 4 and 9(3) of the *Opticianry Act, 1991* which stipulate that dispensing eyeglasses is a controlled act authorized to opticians.
- When the Client put the eyeglasses on, the Client immediately advised the Former Registrant that something was wrong with the eyeglasses. The Former Registrant told her to take them home and get used to them. Although the Client was skeptical, she did so as she believed the Former Registrant was an optician.
- Some time later, the Client returned to the Clinic and spoke to the Former Registrant. She advised the Former Registrant that she could not use the eyeglasses and asked for a refund. The Former Registrant advised the Client that he had difficulty reading the prescription from her optometrist. The Former Registrant suggested that the Client see the optometrist from his Clinic. The Client did so and provided the Former Registrant with a new prescription. The Former Registrant interpreted this second prescription and ordered new lenses.
- In December 2019, the Client attended at the Clinic to pick up her new lenses. The Former Registrant dispensed the new eyeglasses to the Client.
- Unfortunately, the new eyeglasses were also not successful. On or about January 7, 2020,

the Client returned to the Clinic to advise that she was still not satisfied with the eyeglasses and asked for a refund. The Former Registrant reassured the Client and told her that it would take time to adjust to the new eyeglasses.

- Unfortunately, the Client still did not get used to the eyeglasses. On or about January 13, 2020, the Client sent a text message to “Dan” at the Former Registrant’s secondary phone number as listed on his profile on the College’s Database. In her text, she advised the Former Registrant that she followed his advice. She tried wearing the eyeglasses for 6 hours, but her vision did not improve. The eyeglasses distorted things and made her feel off balance whenever she wore them. The Former Registrant did not respond. **Tab “G”** provides a copy of the Client’s text message to the Former Registrant’s personal phone number.
- On or about January 30, 2020, the Client returned to the Clinic wanting her money back. The Former Registrant refused. That same day, the Former Registrant sent a text message from his personal phone number to the Client with the Client’s outstanding balance for four sets of lenses and an appointment with the Clinic’s optometrist. **Tab “H”** provides a copy of the Former Registrant’s text message sent from his personal phone number to the Client.
- The Former Registrant never identified himself as an optician to the Client. However, the Former Registrant held himself out with authority to the Client and indicative of a person who was an optician. The Former Registrant never advised the Client that he was formerly an optician and had been suspended since 2007. The Registrant dispensed several pairs of eyeglasses to the Client, interpreted her prescription, and communicated with her optometrist.

Plea of No Contest

- The Former Registrant does not admit the above noted facts. However, pursuant to Rule 11.02(1) of the *Rules of Procedure of the Discipline Committee*, the Former Registrant consents that the Discipline Committee:
 - Can accept as correct the facts and the exhibits referred to in paragraphs 1 to 18 above for this proceeding only and pleads no contest in regard to these facts and exhibits introduced (the “Uncontested Facts”);
 - Can accept that the Uncontested Facts constitute professional misconduct for the purpose of his proceeding only and pleads no contest to the allegations of professional misconduct against him, specifically:
 - He contravened a provision of the Act, the *Regulated Health Professions Act, 1991*, or the regulations under either of those Acts specifically sections 4, and/or 9(3) of the *Opticianry Act, 1991* (paragraph 26); and
 - 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 registrants as disgraceful, dishonourable or unprofessional (paragraph 28).
- By this document, the Former Registrant states that:

- he understands fully the nature of the allegations against him;
 - he understands that by signing this document he is consenting to the evidence as set out in the Uncontested Facts being presented to the Discipline Committee;
 - he understands that by pleading no contest he is waiving the right to require the College to otherwise prove the case against him and the right to have a hearing;
 - he understands that the Committee can accept the Uncontested Facts as correct for this proceeding only, and can accept that those facts constitute professional misconduct for this proceeding only;
 - he understands that the Discipline Committee's decision and reasons shall be published on the College's website and register, and that a summary of the Discipline Committee's decision and reasons, including his name, shall be published in the Annual Report of the College;
 - he understands that any agreement between counsel for the College and himself with respect to the penalty proposed does not bind the Discipline Committee; and
 - he understands and acknowledges that he is executing this Statement voluntarily, unequivocally, free of duress, free of inducement or bribe, and has been provided with the opportunity to obtain the advice of legal counsel.
- The Former Registrant provides this plea of no contest pursuant to Rule 11.02 of the *Rules of Procedure of the Discipline Committee* for the purpose of this proceeding only under the *Opticianry Act, 1991* and for no other purpose. The Former Registrant's plea of no contest does not constitute an admission by the Former Registrant as to the facts or an admission by the Former Registrant as to any findings of professional misconduct in this or any other civil, criminal or administrative proceeding.

Decision and Analysis

Based on the evidence received, the Panel finds that the Former Registrant engaged in professional misconduct as alleged in the Notice of Hearing.

After reviewing the evidence submitted by the College and receiving the Former Registrant's position, the Panel was satisfied that the facts presented indeed constituted professional misconduct as set out in the Notice of Hearing. The Former Registrant provided opticianry services and held himself out as an optician when he was clearly not entitled to do so. He led his patient to believe that he was a duly licensed optician in the manner in which he interacted with her. The patient had no reason to believe that the Former Registrant was not permitted to practise opticianry or otherwise hold himself out as an optician. The Panel was unanimous in its decision.

Joint Submission as to Penalty and Costs

Counsel for the College advised the Panel that a Joint Submission on Penalty and Costs had been agreed upon (Exhibit #3). The Joint Submission provides as follows:

- The Former Registrant is required to appear before a panel of the Discipline Committee to be reprimanded immediately following the hearing.
- The Registrar is directed to revoke the Former Registrant's Certificate of Registration, effective immediately.
- The Former Registrant is required to pay to the College costs in the amount of \$20,000.00 in twenty-four (24) monthly installments, with the first payment being due one (1) month after the date of the Order of the Discipline Committee, as follows:
 - Months one (1) to twenty-three (23): \$833.33; and
 - Month twenty-four (24): \$833.41.

Order

The Panel accepted the Joint Submission and advised the parties that it would make an order accordingly

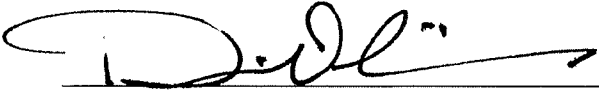
Reasons for Penalty and Costs Order

The Panel recognized that in considering a joint submission, it should not depart from the order requested, unless it was of the opinion that to grant the order would bring this process into disrepute or otherwise be contrary to the public interest.

The Panel is satisfied that the Joint Submission on Penalty and Costs presented represents an appropriate and reasonable penalty in the circumstances. The Former Registrant's flagrant disregard for the College in continuing to practice while suspended, warrants a serious sanction. Revocation is the only appropriate remedy. This will ensure that the public is protected.

At the end of the hearing, the Panel delivered its reprimand to the Registrant, a copy of which is attached hereto as Schedule A.

I, David Milne, 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:



David Milne, Chairperson and Appointed Member

, Date: May 23, 2022

Dorina Reiz
Jay Bhatt
Diana Bristow
Henry Wiersema

SCHEDULE A

COLLEGE OF OPTICIANS OF ONTARIO v. DAN HEEREMANS

As you know, Mr. Heeremans, as part of its penalty order this Discipline panel has ordered that you be given an oral reprimand. You agreed to this term of order as part of your joint submission on penalty filed during the course of the hearing.

The fact that you have received this reprimand will be part of the public portion of the Register and, as such, part of your record with the College.

The panel has found that you have engaged in professional misconduct in different ways, including:

- Contravening the standards of practice of the profession; and
- Engaging in conduct that would reasonably be regarded by members of the profession as disgraceful, dishonourable and unprofessional.

The result of your misconduct is that you have let down the public, the profession, and yourself. Your conduct reflects poorly on the membership and in particular on those who abide by their obligations.

We need to make it clear to you that your conduct is unacceptable.

Of special concern to us is the fact that the professional misconduct in which you engaged has involved a clear and basic disrespect for the public and members of the College. You used your knowledge of opticianry in a manner that clearly led your patient to believe that you were a practicing optician. This put your patient at risk and more broadly the public.

Consequently, it is necessary for us to take steps to impress upon you the seriousness of the misconduct in which you have engaged.

Holding yourself out as optician and your clear disregard for the College and the membership warrants the most significant penalty in our view and as such revocation was the only appropriate penalty. Your conduct was clearly disgraceful, dishonourable and

unprofessional.

This concludes the hearing, we are adjourned.