

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

PANEL:

David Milne, Chairperson
John Battaglia, Member
Omar Farouk, Public Member
Robert Vezina, Member
Ed Viveiros, Member

BETWEEN:

COLLEGE OF OPTICIANS OF ONTARIO)	
)	<u>Rebecca Durcan</u>
)	College of Opticians of Ontario
- and -)	
)	
)	<u>Robert Moffatt</u>
)	Self Represented
ROBERT MOFFATT, C-267)	
)	
)	<u>Luisa Ritacca</u>
)	Independent Legal Counsel
)	
)	
)	Heard: April 20, 2015

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on April 20, 2015 at the College of Opticians of Ontario (“the College”) at Toronto.

The Allegations

The allegations against Robert Moffatt (the “Member”) as stated in the Notice of Hearing dated December 11, 2014, are as follows.

1. Robert Moffatt (“Mr. Moffatt”) has been a member of the College of Opticians of Ontario (“the College”) since approximately 1970.
2. At all material times, Mr. Moffatt operated the optical store, Eyes on Richmond located at 613C Richmond Street, North, London, Ontario.

3. On April 23, 2007, Mr. Moffatt was administratively suspended from the College. As a result, Mr. Moffatt was prohibited from using the title “optician”, performing the controlled act of dispensing subnormal vision devices, contact lenses or eye glasses and holding himself out as a member of the College.
4. Despite being suspended from the College, Mr. Moffatt continued to use the title “optician”, perform the controlled act of dispensing subnormal vision devices, contact lenses or eye glasses and hold himself out as a member of the College.
5. In or around March 2010, Mr. Moffatt hired NWE as an optician to dispense eyeglasses at Eyes on Richmond.
6. Mr. Moffatt was aware that NWE had also been suspended by the College.
7. Mr. Moffatt and NWE were the only employees at Eyes on Richmond. At all material times, registered opticians did not work at Eyes on Richmond.
8. While working at Eyes on Richmond, Mr. Moffatt performed the controlled act of dispensing subnormal vision devices, contact lenses or eye glasses and held himself out as a member of the College.
9. While working at Eyes on Richmond, Mr. Moffatt permitted, counseled or assisted NWE to perform the controlled act of dispensing subnormal vision devices, contact lenses or eye glasses.
10. On April 9, 2014, Mr. Moffatt confirmed with the College that there were no registered opticians in good standing working at Eyes on Richmond.
11. As a result of the above, the College alleges that Mr. Moffatt engaged in the following acts of professional misconduct as set out in Ontario Regulation 828/93, section 1:
 - a. *Withdrawn*;
 - b. He permitted, counseled or assisted NWE, who was not registered under the Act, to perform an act which should be performed by a member (paragraph 5);
 - c. He inappropriately used a term, title or designation (paragraph 17);

- d. He contravened a provision of the *Opticianry Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts (paragraph 26); and
 - e. 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).
12. Further particulars of the specified allegations of professional misconduct relied upon by the College are contained in the documentary disclosure provided to Mr. Moffatt in support of the allegations in the Notice of Hearing.

Member's Plea

The Member admitted to the allegations as set out in the Agreed Statement of Facts, described below. The panel conducted a plea inquiry and was satisfied that the Member's admissions as based in the Agreed Statement of Facts were voluntary, informed and unequivocal.

The Evidence

The parties presented an Agreed Statement of Facts, which was marked as Exhibit #2 and provided as follows:

The parties agree that the following facts may be accepted as true:

The Member

1. Robert Moffatt ("Mr. Moffatt") has been a member of the College of Opticians of Ontario ("the College") since approximately 1970.
2. At all material times, Mr. Moffatt operated the optical store, Eyes on Richmond located at 613C Richmond Street, North, London, Ontario.
3. Mr. Moffatt does not have a previous discipline history with the College.

Suspension

4. On April 23, 2007, Mr. Moffatt was administratively suspended from the College. As a result, Mr. Moffatt was prohibited from using the title "optician", performing the controlled act of dispensing subnormal vision devices, contact lenses or eye glasses and

holding himself out as a member of the College. Attached at **Tab “A”**ⁱ is a copy of the suspension letter sent by the College to Mr. Moffatt.

5. If Mr. Moffatt were to testify he would state that while he was suspended he continued to attend continuing education programs and wanted to work with the College on his reinstatement. Attached at **Tab “B”** are copies of the letters sent to Mr. Moffatt regarding his reinstatement inquiries.
6. Despite being suspended from the College, Mr. Moffatt continued to use the title “optician”, perform the controlled act of dispensing subnormal vision devices, contact lenses or eye glasses and hold himself out as a member of the College.

Working at Eyes on Richmond

7. In or around March 2010, Mr. Moffatt hired NWE as an optician to dispense eyeglasses at Eyes on Richmond.
8. Mr. Moffatt was aware that NWE had also been suspended by the College.
9. If Mr. Moffatt were to testify he would say that he hired NWE with the impression that he would work on his reinstatement.
10. On March 11, 2014, the London Free Press published an article featuring Eyes on Richmond, Mr. Moffatt and NWE. Attached at **Tab “C”** is a copy of the London Free Press Article.
11. On April 9, 2014, the College spoke with Mr. Moffatt over the phone and he indicated that there are no registered Opticians in good standing associated with Eyes on Richmond. Attached at **Tab “D”** is a copy of the information form signed by Mr. Moffatt on May 8, 2014, which indicates that there were no registered Opticians working at Eyes on Richmond.
12. On May 8, 2014, the College spoke to Mr. Moffatt and he indicated that he had fired NWE.

ⁱ The Panel has not included the appendices as found in the Agreed Statement of Facts here.

13. On May 26, 2014, Mr. Moffatt advised the College that an Optician had been hired effective June 2, 2014 to work at Eyes on Richmond.
14. While working at Eyes on Richmond, Mr. Moffatt performed the controlled act of dispensing subnormal vision devices, contact lenses or eye glasses and held himself out as a member of the College.
15. While working at Eyes on Richmond, Mr. Moffatt permitted, counseled or assisted NWE to perform the controlled act of dispensing subnormal vision devices, contact lenses or eye glasses.
16. If Mr. Moffatt were to testify he would state that he is actively working with the College to fix the mistakes he's made.
17. Mr. Moffatt has been complying and working with the College during the investigation process.

Acts of Professional Misconduct

18. As a result of the above, it is agreed that Mr. Moffatt engaged in the following acts of professional misconduct as set out in Ontario Regulation 828/93, section 1:
 - a. He contravened a standard of practice of the profession (paragraph 2);
 - b. He permitted, counseled or assisted NWE, who was not registered under the Act, to perform an act which should be performed by a member (paragraph 5);
 - c. He inappropriately used a term, title or designation (paragraph 17);
 - d. He contravened a provision of the *Opticianry Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts (paragraph 26); and
 - e. 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).

Decision

The College bears the onus of proving the allegations in accordance with the standard of proof, that being the balance of probabilities and based upon clear, cogent and convincing evidence.

Having considered the evidence set out in the Agreed Statement of Facts, the Member's admissions, and the onus and standard of proof, the panel finds that the Member committed acts of professional misconduct as alleged in Notice of Hearing, as agreed by the Member.

Reasons for Decision

The panel reviewed the evidence provided by the counsel for the College, which was admitted to by the Member without dispute. In particular, the panel reviewed the Agreed Statement of Facts (Ex#2) and was satisfied that the Member had indeed provided his agreement on this matter without any coercion, and in no way while under any duress.

Then the panel went on to review the relevant sections set forth in the RHPA, the Code and the relevant regulations, and found that there was a preponderance of evidence to indicate that the Member had committed professional misconduct as set forth in the in the Notice of Hearing. The panel therefore had no difficulty finding that the Member is guilty of professional misconduct pursuant to paragraph 2 (contravening a standard of practice of the profession); paragraph 5 (permitted, counseled or assisted an individual who was not registered under the Act, to perform an act which should be performed by a member); paragraph 17 (inappropriately used a term, title or designation); and paragraph 26 (contravening a provision of the *Opticianry Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts), of section 1 of Ontario Regulation 828/93 under the *Opticianry Act, 1991*, S.O. 1991, c.34.

Penalty

The parties presented the panel with a joint proposal on penalty and costs.

Penalty Submissions

1. The College of Opticians of Ontario ("the College") and Robert Moffatt ("the Member") agree to an order by the Discipline Committee as follows:
 - a) The Member shall be required to appear before the panel to be reprimanded within 30 (thirty) days of the date of this Order;
 - b) When the member's certificate is administratively reinstated:
 - i. The Discipline Committee shall direct the Registrar to suspend the Member's certificate of registration for six (6) months to commence on a date to be set by the Registrar.

- ii. The Registrar will suspend one (1) month of the suspension ordered in paragraph 1(b) if the Member successfully, in the opinion of the Registrar, completes the requirements set out in paragraph 1(d) of this order within 3 (three) months of the date of this order. In any event, the Member must complete the requirements set out in paragraph 1(d) of this order within 1 (one) year of the date of this Order.
- iii. The Discipline Committee shall direct the Registrar to impose a specified term, condition and limitation on the Member's certificate of registration requiring him to successfully complete, in the opinion of the Registrar, a course, approved by the Registrar, in ethics, the cost of which will be borne by the Member.
- iv. The Discipline Committee shall direct the Registrar to impose a specified term, condition and limitation on the Member's certificate of registration for a period of two years commencing from the date of this Order:
 1. The College may, without notice, conduct random inspections of Mr. Moffatt's practice. The inspections shall be conducted at the sole discretion of the College and shall not exceed a total of four (4) over the two (2) year period. Mr. Moffatt must pay to the College, within fifteen (15) days of each inspection, costs in respect of the inspection, to a maximum of \$500 per inspection. Mr. Moffatt will cooperate with the random inspections and instruct his employees to do the same.

- c) The Member is required to pay the College a portion of its costs in this matter in the amount of \$3,000.00 within thirty (30) days of the date of this order.

Penalty Decision

The panel accepted the parties' joint submission and order as follows:

1. The Member shall be required to appear before the panel to be reprimanded within 30 (thirty) days of the date of this Order;
2. When the member's certificate is administratively reinstated:
 - a. The Registrar is directed to suspend the Member's certificate of registration for six (6) months to commence on a date to be set by the Registrar;
 - b. The Registrar will suspend one (1) month of the suspension ordered in paragraph 2(a) if the Member successfully, in the opinion of the Registrar, completes the requirements set out in paragraph 2 (c) of this order within 3 (three) months of the date of this order. In any event, the Member must complete the requirements set out in paragraph 2 (c) of this order within 1 (one) year of the date of this Order;
 - c. The Registrar is directed to impose a specified term, condition and limitation on the Member's certificate of registration requiring him to successfully complete, in the opinion of the Registrar, a course, approved by the Registrar, in ethics, the cost of which will be borne by the Member;
 - d. The Registrar is directed to impose a specified term, condition and limitation on the Member's certificate of registration for a period of two years commencing from the date of this Order:
 1. The College may, without notice, conduct random inspections of Mr. Moffatt's practice. The inspections shall be conducted at the sole discretion of the College and shall not exceed a total of four (4) over the two (2) year period. Mr. Moffatt must pay to the College, within fifteen (15) days of each inspection, costs in

respect of the inspection, to a maximum of \$500 per inspection.

Mr. Moffatt will cooperate with the random inspections and instruct his employees to do the same.

3. Mr. Moffatt is ordered to pay to the College costs in the amount of \$3,000.00 payable within 30 days of the date of the discipline panel's order.

Reasons for Penalty Decision

The panel once finding that Mr. Moffatt was guilty of professional misconduct pursuant to paragraph 2 (contravening a standard of practice of the profession); paragraph 5 (permitted, counseled or assisted an individual who was not registered under the Act, to perform an act which should be performed by a member); paragraph 17 (inappropriately used a term, title or designation); and paragraph 26 (contravening a provision of the *Opticianry Act, 1991*, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts), of section 1 of Ontario Regulation 828/93 under the *Opticianry Act, 1991*, S.O. 1991, c.34. moved on to consider what would be an appropriate penalty that would address the severity of the Member's offences, bearing in mind that any penalty must address the violation to the public, but also address rehabilitation, remediation, specific and general deterrence. Having considered the above factors the panel found that the penalty terms as set forth in the Joint Submission on Penalty (Ex#3) was appropriate in this instance. The proposed terms of the penalty addressed all the specific factors needed to be considered when forming an appropriate penalty.

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:



May 19, 2015

David Milne, Chairperson

Date

John Battaglia, Member
Omar Farouk, Public Member
Robert Vezina, Member
Ed Viveiros, Member