

**COLLEGE OF MASSAGE THERAPISTS OF NEW BRUNSWICK
("COLLEGE")**

FITNESS TO PRACTISE COMMITTEE DECISION

FEBRUARY 10, 2025

IN THE MATTER OF COMPLAINT #054

RESPECTING

**MARSHALL TINKER (the "Member")
dated December 4, 2023 (the "Complaint")**

Background and Evidence

1. On December 15, 2023, Complaint #054 was filed with the College of Massage Therapists of New Brunswick (the "College") against Marshall Tinker (the "Respondent") alleging professional misconduct (the "Complaint").
2. In the Complaint and the materials supporting the Complaint, the Complainant alleged that she received a massage therapy treatment from the Respondent on December 4, 2023. This was the Complainant's first treatment from the Respondent. The Complainant alleged that, during the treatment, the Respondent made her feel unsafe and made several inappropriate remarks, failed to adjust pressure during treatment, and failed to secure or use appropriate draping. In particular, the Complainant alleged that:
 - (a) The Respondent started with treatment of the Complainant's glutes without appropriate draping, leaving the Complainant's full glute and underwear exposed;
 - (b) The Respondent stated "*whoa, I need a closer look*" in regards to the Complainant's tattoos, including a tattoo that covers her hip extending down her glute and thigh, and traced this tattoo with his finger, and also stated "*holy shit, that's amazing*", and proceeded to bring his face up to glute level to stare at another tattoo;
 - (c) The Respondent used two hands to treat her hamstring, sliding both hands up the Complainant's leg towards her vagina, resulting in bruising on her anterior thigh;
 - (d) When the Complainant expressed that the pressure was too much and was hurting, the Respondent stated that the Complainant usually sees another massage therapist and that "*he's a sadist, so you're fine*". The Respondent continued applying too much pressure and the Complainant had bruising on her upper inner thighs, outer thighs, anterior thighs, glutes, and down her legs;
 - (e) When the Respondent asked the Complainant about her tattoos, the Complainant explained that the tattoos were from a feminist view and the Respondent stopped treatment and stated "*You should read a fucking book before you say stuff, 70% of the world's problems are from women and they manipulate men with sex*", after which the pressure increased and the Respondent began using his elbows;

- (f) While treating the Complainant's back, the Respondent was pushing harder when the Complainant was breathing out and he did not ensure appropriate draping, leaving the sheet down so low that the Complainant's butt was exposed;
 - (g) The Respondent made other comments that made the Complainant uncomfortable including about hating his fiancée, that he cuts his fiancée off from sex when she discusses kids, that he is Norse pagan, that he wants violent scenes as tattoos, that he engages in "*stealth camping*" on private property or Crown land, and about hating the government and conspiracy theories;
 - (h) While the Respondent was treating the Complainant's arms, the Respondent moved the Complainant's arm/hand to his thigh and, when the Complainant pulled her hand away, he aggressively pulled her arm back so that his hand was on his lap;
 - (i) The Respondent went over time and at the end of the session, indicated that he did so and that he hoped the Complainant did not have anywhere to go but if she did, "*tough shit*"; and
 - (j) The Complainant was extremely uncomfortable during the treatment but did not feel safe enough to stop treatment as she was naked. The Respondent appeared angry, and the Complainant's previous requests for less pressure did not work.
- 3. The Respondent was provided with a copy of the Complaint and materials supporting the Complaint. In response, the Respondent denied the allegations in the Complaint.
 - 4. By a decision dated June 4, 2024, the Complaints Committee of the College referred the allegations of sexual misconduct and professional misconduct outlined in the Complaint to the Discipline and Fitness to Practise Committee.
 - 5. On June 27, 2024, a Notice of Discipline Hearing was issued to the Respondent which included the details of the allegations against the Respondent.
 - 6. Prior to the date of the Discipline Hearing, the Respondent and Ms. Sheila Mecking, acting as prosecutor on behalf of the College, agreed to present a joint submission to the Committee on merit and remedy.

Findings and Reasons

- 7. Having regard for the evidence and for the submissions made, the Committee accepts the joint submission. It is the finding of the Committee that the joint submission is appropriate, reasonable, and in accordance with the public interest. Further, the acceptance of the joint submission is consistent with matters heard by prior Committees.
- 8. The Committee accepts the joint submission of the parties in that the parties agree that the actions of the Respondent constitute professional misconduct and finds that the Respondent is guilty of professional misconduct pursuant to subsection 31(c) of the *Massage Therapy Act*, SNB 2013, c 49.
- 9. In particular, based on the admissions in the joint submission, the Committee finds that:

- (a) The Respondent made inappropriate comments to the Complainant during her massage therapy treatment on December 4, 2023;
- (b) The Respondent used unsecured draping;
- (c) The Respondent failed to properly adjust pressure despite the Complainant indicating that the pressure was too much which resulted in bruising;
- (d) The Respondent understands that these actions made the Complainant feel unsafe;
- (e) With regard to the allegations of professional misconduct contrary to subsection 31(c) of the Act, the Respondent engaged in professional misconduct in that:
 - (i) during the course of the appointment on December 4, 2023, the Respondent made various comments which were inappropriate;
 - (ii) the Respondent failed to adjust the pressure of the massage contrary to the instructions of the Complainant and this resulted in bruising; and
 - (iii) the draping of the sheet over the Complainant was not sufficiently secure during the massage;
- (f) The Respondent's actions digressed from established or recognized professional standards of the profession of massage therapy and from the College's Code of Ethics.

Order

- 10. In light of the above and in accordance with the joint submissions of the parties, the Committee hereby orders that:
 - 1. The Respondent's membership be revoked;
 - 2. The Respondent be prohibited from practising massage therapy and from using any title, designation, variation or abbreviation indicating he is a massage therapist;
 - 3. The registration and membership record of the College shall state that the Respondent may not apply for reinstatement of registration in the future; and
 - 4. The decision of the Committee be published on the College's website with the Respondent's name.

Dated at Moncton, New Brunswick, this 10th day of February, 2025.



Jenn Allaert



Ed White



Holley May King



Sarah Brophy



Lissa Michaud