

IN THE MATTER OF *THE PSYCHOLOGISTS ACT, 1997* AND BYLAWS AND IN THE  
MATTER OF A COMPLAINT AGAINST KENNETH HARDY, OF REGINA,  
SASKATCHEWAN

DECISION

of

**Saskatchewan College of Psychologists**

DISCIPLINE COMMITTEE

Discipline Committee Members:

Mary Hampton, EdD, Chair  
Wayne Schlapkohl, PhD  
Angelina M. Baydala, PhD  
Patricia Crassweller, MA  
Gordon Glaicar, Public Representative

Karen Prisciak, Q.C., appearing on behalf of the Professional Conduct Committee  
Shelley Joyce, appearing on behalf of Kenneth Hardy  
Merrilee Rasmussen, Q.C., legal counsel for the Discipline Committee

INTRODUCTION:

[1] The Discipline Committee convened on May 6, 2009 by conference call, as agreed to by the parties, for the hearing in this matter.

[2] Kenneth Hardy is a Member of the Saskatchewan College of Psychologists (hereinafter referred to as the College) and at all times material to the complaints against him was a Psychologist registered and licensed to practice in the Province of Saskatchewan. The formal complaint against him alleges that Mr. Hardy is guilty of professional misconduct and/or professional incompetence, within the meaning of *The Psychologists Act, 1997*, based on the following particulars:

1. He swore an Affidavit dated March 14, 2007, in the lawsuit between Mr X and Ms X, and in doing so provided professional interpretation and diagnostic impressions regarding Mr X's personality and behaviour based on the observations of others and without conducting a psychological assessment and without having any personal contact with Mr X, contrary to the Canadian Code of Ethics for Psychologists, 3<sup>rd</sup> ed., 2000, and more specifically sections I.12, I.13, II.5, II.30 and III.33.

[3] An Agreed Statement of Facts and Documents was submitted to the Discipline Committee. Mr. Hardy admitted the facts to which the formal complaint, as set out above,

related, and in effect pled guilty to the charge. Counsel for Mr. Hardy and counsel for the Professional Conduct Committee also made a joint submission with respect to penalty.

#### FACTS:

[4] The following summarizes the events that occurred, based on the Agreed Statement of Facts filed with the Discipline Committee:

[5] Mr X and Ms X separated after 22 years of marriage in 2006. They jointly operated two <businesses> in Regina. Mr X was served with legal documents prepared on behalf of Ms X in February 2007 terminating his employment and banning him from the NameOne Business premises where he was working as manager. He initiated a legal proceeding to obtain an injunction that would permit him to return to that job. Kenneth Hardy swore an affidavit that was filed in the Court of Queen's Bench in those legal proceedings in support of Ms X. In that affidavit he made an assessment of Mr X's personality based on reports provided to him by staff at NameOne Business. Mr. Hardy did not interview Mr X nor did he request that Mr X submit to any psychological testing. He did not advise Mr X that he would be conducting an assessment of his personality characteristics based on the information provided by others.

[6] Mr X made a complaint to the College dated June 25, 2007. On November 3, 2008, Mr. Hardy was served with the formal complaint referred to in paragraph [2], and on November 26, 2008 he was served with the Notice of Hearing. This matter was originally scheduled to be heard on March 13, 2009, but was adjourned by consent to May 6, 2009, to accommodate the fact that the parties were very close to concluding an Agreed Statement of Facts and a joint submission as to penalty.

#### LEGISLATION:

[7] *The Psychologists Act, 1997* defines professional misconduct and professional incompetence in the following manner:

**Professional misconduct**

25 Professional misconduct is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonourable, that:

- (a) is harmful to the best interests of the public or the members of the college;
- (b) tends to harm the standing of the profession;
- (c) is a breach of this Act or the bylaws; or
- (d) is a failure to comply with an order of the professional conduct committee, the discipline committee or the council;

is professional misconduct within the meaning of this Act.

**Professional incompetence**

26 Professional incompetence is a question of fact, but the display by a member of a lack of knowledge, skill or judgment, or a disregard for the welfare of a member of the public served by the profession of a nature or to an extent that demonstrates that the member is unfit to:

- (a) continue in the practice of the profession; or
- (b) provide one or more services ordinarily provided as a part of the practice of the profession;

is professional incompetence within the meaning of this Act.

[8] The Bylaws require adherence to the Code of Ethics:

14 Every member shall comply with the *Canadian Code of Ethics for Psychologists*, 3<sup>rd</sup> edition (2000).

[9] The Act also provides the Discipline Committee with the authority to impose penalties where it finds that a member is guilty of professional misconduct or professional incompetence:

**Disciplinary powers**

32(1) Where the discipline committee finds a member guilty of professional incompetence or professional misconduct, it may make one or more of the following orders:

- (a) an order that the member be expelled from the college and that the member's name be struck from the register;
- (b) an order that the member be suspended from the college for a specified period;
- (c) an order that the member be suspended from the college pending the satisfaction and completion of any conditions specified in the order;
- (d) an order that the member may continue to practise only under conditions specified in the order, which may include, but are not restricted to, an order that the member:
  - (i) not do specified types of work;
  - (ii) successfully complete specified classes or courses of instruction;

(iii) obtain treatment, counselling or both;

(e) an order that reprimands the member; or

(f) any other order that to it seems just.

(2) In addition to any order made pursuant to subsection (1), the discipline committee may order:

(a) that the member pay to the college within a fixed period:

(i) a fine in a specified amount not to exceed \$5,000; and

(ii) the costs of the investigation and hearing into the member's conduct and related costs, including the expenses of the professional conduct committee and the discipline committee and the costs of legal services and witnesses; and

(b) where a member fails to make payment in accordance with an order pursuant to clause (a), that the member be suspended from the college.

#### ANALYSIS:

[10] It is alleged by the Professional Conduct Committee that the acts complained of constitute professional misconduct and/or professional incompetence. In the context of *The Psychologists Act, 1997*, professional misconduct and professional incompetence are two distinct things.

[11] As is evident from the term as defined (as set out above), professional incompetence relates to a lack of skill, knowledge or judgment in the provision of professional services, or a disregard for the welfare of the recipient of such services, to the extent that it is demonstrated either that the member's practice should be limited or that the member should be expelled from the profession. The standard of skill, knowledge, judgment or regard to be applied in any given situation is the standard considered appropriate by members of the profession of good repute and competency.

[12] As Mr. Justice Cory (now of the Supreme Court of Canada but then a member of the Ontario Court of Appeal) observed, speaking for the majority in *Re Milstein and Ontario College of Pharmacy et al (No. 2)*:

The power of self-discipline perpetuated in the enabling legislation must be based

on the principle that members of the profession are uniquely and best qualified to establish the standards of professional conduct. Members of the profession can best determine whether the conduct of a fellow member has fallen below the requisite standards and determine the consequences. The peers of the professional person are deemed to have and, indeed, they must have special knowledge, training and skill that particularly adapts them to formulate their own professional standards and to judge the conduct of a member of their profession. No other body could appreciate as well the problems and frustrations that beset a fellow member.<sup>1</sup>

[13] In this case, Mr. Hardy has admitted that he inappropriately made and communicated an assessment of Mr X's personality without interviewing him, without administering any psychological tests, and without obtaining his consent to do so or even informing him. He has acknowledged through his counsel that he is guilty of the formal complaint made against him. Mr. Hardy has acknowledged his failure to meet the required standard of professional practice in relation to the making and communication of an assessment of an individual's personality characteristics, and to that extent is guilty of professional incompetence. In addition, in so doing he has breached the provisions of the Code of Ethics referred to in the formal complaint. Pursuant to section 14 of *The Saskatchewan College of Psychologists Regulatory Bylaws, 2004* a breach of the Code of Ethics is a breach of the bylaws of the College and as such his conduct also constitutes professional misconduct pursuant to clause 25(c) of *The Psychologists Act, 1997*.

[14] The courts have laid out a list of factors to which regard should be had in coming to a conclusion about the appropriate consequences resulting from a finding of professional incompetence or professional misconduct, which includes the following:

1. The nature and gravity of the proven allegations;
2. The age of the offending member;
3. The age of the offended client or patient;
4. Evidence of the frequency of the commission of the particular acts of misconduct;
5. The presence or absence of mitigating circumstances, if any.
6. Specific deterrence;
7. General deterrence;
8. Previous record, if any, for the same, or similar, misconduct; the length of time that has elapsed between the date of any previous misconduct and conviction thereon; and, the member's (properly considered) conduct since that time;

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1 (1976), 13 O.R. (2d) 700, at p. 707.

9. Ensuring that the penalty imposed will, as mandated by the Act, protect the public and ensure the safe and proper practice of psychology;
10. The need to maintain the public's confidence in the integrity of the College's ability to properly supervise the professional conduct of its members;
11. Ensuring that the penalty imposed is not disparate with penalties previously imposed in this jurisdiction, particularly, and in other jurisdictions in general, for the same, or similar acts of misconduct.<sup>2</sup>

[15] In this case, the Discipline Committee has the benefit of a joint submission as to penalty. Although a joint submission is not binding, it is a very important consideration for the Committee to take into account. The Committee notes that Mr. Hardy has no prior discipline record and has taken responsibility for his actions, thus obviating the need for a lengthy hearing. The Committee is not aware of any generalized concerns relating to the making and communicating of assessments. The Committee has come to its conclusions regarding penalty by balancing these considerations and in particular having regard to the joint submission of counsel. The Committee is particularly concerned to ensure that the penalties it imposes will protect the public and ensure the safe and proper practice of psychology, and maintain public confidence in the profession.

#### DECISION:

[16] Therefore, in light of its analysis and based on the reasons set out above, in accordance with section 32 of *The Psychologists Act, 1997*, the Discipline Committee makes the following orders:

1. That the Authorized Practice Endorsement (APE) of Kenneth Hardy be and is suspended effective from June 4, 2009 until he satisfactorily completes a graduate level course in assessment and related ethics that is approved by the Registration Committee, and provides confirmation to the Registration Committee of having done so;
2. That while his APE is suspended, Kenneth Hardy be and is prohibited from supervising either provisional members or students;
3. That Kenneth Hardy pay to the Saskatchewan College of Psychologists a portion of the costs of the investigation and hearing into his conduct and related costs, in the amount of \$3,000.00, to be paid in full on or before July 30, 2009, and that Kenneth Hardy be and is hereby suspended from the Saskatchewan College of Psychologists after July 30, 2009 if the said costs are not paid on or before that date, and shall remain suspended until the said \$3,000.00 is paid in full; and

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<sup>2</sup> *Camgoz v. College of Physicians and Surgeons of Saskatchewan*, [1993] S.J. No. 557 at paragraph 55

4. That Kenneth Hardy pay to the Saskatchewan College of Psychologists a fine in the amount of \$500.00, to be paid in full on or before July 30, 2009, and that Kenneth Hardy be and is hereby suspended from the Saskatchewan College of Psychologists after July 30, 2009 if the said fine is not paid on or before that date, and shall remain suspended until the said \$500.00 is paid in full.

PUBLICATION:

[17] Section 32 of the Act contains a number of provisions relating to the distribution of the Discipline Committee's orders:

(3) The discipline committee shall send a copy of any order made pursuant to this section to the member whose conduct is the subject of the order and to the person, if any, who made the complaint.

(5) The discipline committee shall submit a written report, signed by the chairperson, of its decision to the council.

(6) The discipline committee may inform a member's employer of the order made against that member where that member has been found guilty of professional misconduct or professional incompetence

[18] In accordance with subsection 32(3) of the Act, a copy of this order is being provided to Mr. Hardy and to the complainant. This decision is also being reported to the Council of the College as required by subsection 32(5). The Discipline Committee recommends to Council that a summary of its decision be placed on the College website as a means by which to educate both members of the College and members of the public about the standards of behaviour and competence expected of members.

Dated at Regina, Saskatchewan this 20th day of May, 2009.

SASKATCHEWAN COLLEGE OF  
PSYCHOLOGISTS, DISCIPLINE COMMITTEE

*Original signed by:* \_\_\_\_\_  
Dr. Mary Hampton, Chairperson