

IN THE MATTER OF *THE PSYCHOLOGISTS ACT, 1997* AND BYLAWS AND IN THE  
MATTER OF A COMPLAINT AGAINST KRISTINE LARSON OF SASKATOON,  
SASKATCHEWAN

DECISION

of

**Saskatchewan College of Psychologists**

DISCIPLINE COMMITTEE

Discipline Committee Members:

Dr. Mary Hampton, Chair

Dr. Wayne Schlapkohl

Dr. Angeline M. Baydala

Darcia Schirr, Q.C., appearing on behalf of the Professional Conduct Committee

Kristine Larson, appearing on her own behalf

Merrilee Rasmussen, Q.C., legal counsel for the Discipline Committee

INTRODUCTION:

The Discipline Committee convened on April 22, 2005 at Royal Reporting Services, 200 - 2220, 12<sup>th</sup> Avenue, Regina, Saskatchewan, being the location and date set out in the Notice of Hearing served on Henry Kloppenberg, legal counsel for Ms Larson at that time, on February 16, 2005. Ms Larson was in attendance at the hearing.

Kristine Larson is a Member of the Saskatchewan College of Psychologists (hereinafter referred to as the College) and at all times material to the complaints against her was a Psychologist registered and licensed to practice in the Province of Saskatchewan. The Notice of Hearing alleged that Ms Larson was guilty of professional misconduct and/or professional incompetence, within the meaning of *The Psychologists Act, 1997*, based on the following particulars:

1. That she did, on or about March 29, and April 5, 2003, interview the children of Mr. X and Mrs. X apparently at the direction of Mr. X's solicitor and did prepare a report entitled "Children's Voices Report" without obtaining the informed consent of Mrs. X, the custodial parent of the children.
2. In interviewing the children and in preparing the said report, she took no steps or no reasonable steps to determine the nature and extent of any court order respecting a Children's Voices Report.

Ms Larson acknowledged that the allegations of fact were accurate and admitted responsibility for her actions.

FACTS:

An agreed book of documents was filed with the Committee as Exhibit P -1, containing the following:

1. Notice of Hearing addressed to Kristine Larson from Dr. David Randall, Registrar of the College, and dated February 8, 2005.
2. Affidavit of Dr. David Randall, including as exhibits Ms Larson's Application for Initial Registration with the College, dated April 12, 2001 and her resumé, and Register Information dated November 11, 2002
3. Judgment of the Court of Queen's Bench, dated January 27, 1999, with respect to custody and access issues in dispute between Mr. and Mrs. X and granting sole custody to Mrs. X.
4. Order of the Court of Queen's Bench, dated February 26, 2003, ordering the preparation of a Children's Voices Report in respect of the continuing dispute between Mr. and Mrs. X concerning issues of custody and access.
5. Several pieces of correspondence between legal counsel for Mr. and Mrs. X and Family Justice Services relating to the Children's Voices Report.
6. The Children's Voices Report dated April 19, 2003 and prepared by Ms Larson.
7. The fiat of Madam Justice Wilkinson dated July 23, 2003 after the hearing of the dispute between Mr. and Mrs. X.
8. The judgment of Madam Justice Wilkinson based on her fiat, also dated July 23, 2003.
9. The curriculum vitae of Francis Stewart, Registered Psychologist.
10. List of documents referred to by Francis Stewart as part of his review.
11. Form of Informed Consent used by Francis Stewart in his practice.
12. Model Standards of Practice for Child Custody Evaluations, dated October 21, 2002, developed by the Association of Family & Conciliation Courts and applicable to Family Justice Services staff and contractors.

Also filed as Exhibit P-2, was a report by Francis Stewart of the result of his review of the documents described above.

The following facts were submitted on behalf of the Professional Conduct Committee and agreed to by Ms Larson:

1. Ms Larson applied for admission to the College on April 12, 2001, prior to the proclamation of *The Psychologists Act, 1997*, and was thus admitted as a member when the Act was proclaimed in force effective March 1, 2002. (Document 2)
2. On January 27, 1999, a judgment was issued by the Saskatchewan Court of Queen's Bench after a trial between Mr. And Mrs. X relating to custody of and access to their children, which granted sole custody of the children to Mrs. X and access to Mr. X on Saturdays between 10:00 a.m. and 4:00 p.m. (Document 3)
3. On February 26, 2003, after a dispute with respect to possible changes in the access arrangements, an Order was issued by a judge of the Court of Queen's Bench directing that a Children's Voices Report be prepared in respect of a dispute over access between Mr. and Mrs. X. (Document 4) The relevant portion of the Order read as follows:

It is hereby ordered, directed and adjudged as follows ... an expedited Children's Voices Report be held with a request that G.M. be the assessor, if she is available.
4. Some time after February 26, 2003, Mr. X contacted Ms Larson and requested that she prepare the Children's Voices Report that had been ordered by the court. Ms Larson did not request and did not receive a copy of the order, so she was not aware that the judge had requested that a specific individual conduct the assessment and prepare the report.
5. Ms Larson met with and interviewed the children on March 29 and April 5, 2003. Both these days were Saturdays when Mr. X was exercising his right of access pursuant to the 1999 court order then under review. Ms Larson obtained no consent from Mrs. X and only a verbal consent from Mr. X. In the report that she prepared she states that Mrs. X had sole custody of both children, thus indicating that she was aware of the custody and access arrangement. (Document 6)
6. On April 3, 2003, G.M. wrote to Mr. and Mrs. X to advise that she was ready to conduct the assessment ordered by the court and setting appointment times for that purpose. (Document 5)
7. On May 28, 2003 Mr. X's legal counsel filed a Children's Voices Report prepared by Ms Larson with the court and the judge then set a date for a trial of the issues to which the report related for June 24, 2003. (Document 5)

8. On June 2, 2003, legal counsel for Mrs. X learned that the trial date had been set and subsequently discovered that a Children's Voices Report had been filed by legal counsel for Mr. X. She later obtained a copy of this report. (Document 5)
9. The trial judge ultimately issued her order and in her handwritten fiat (reasons) on the court file, commented negatively on the manner in which the issue came before her for hearing, alluding to the report from Ms Larson. (Document 7) Counsel for the Professional Conduct Committee also advised that the custody and access dispute between Mr. and Mrs. X was actually protracted by the production of Ms Larson's report and that it was difficult for the individual referred to in the court Order to finally conduct the assessment because of Ms Larson's introduction into the situation.
10. The Committee also was advised that Francis Stewart, a Registered Psychologist and member of the College with extensive background and experience in the area of child custody and access assessment (Document 9), would have been called as an expert witness to testify as to the relevant standards of practice. His invariable practice is to require both parents to sign a written form of consent that sets out the understandings about what information will be provided to whom. (Document 11)
11. In the opinion of Francis Stewart, the following concerns arise from his review:
  - (a) Ms Larson's claimed competence in the area of child custody assessments is not supported by any training in the area, nor by attendance at any seminars or workshops relating to child custody assessments, and her statement that she was not familiar with court processes indicates little or no actual experience in this area.
  - (b) Section 1.19 of the Code of Ethics is clear in its requirement that a psychologist must obtain informed consent for any psychological services and the standards applicable to staff and contractors with Family Justice Services in the preparation of child custody assessments requires that psychologists adhere to the Code of Ethics of the profession.
  - (c) Reliance on other persons, even though professionals themselves (in this case Mr. X's legal counsel) does not absolve a psychologist of their ethical obligation to obtain consents from both parents to a child custody assessment and to obtain a copy of the Court Order directing the assessment.
  - (d) The Children's Voices Report prepared by Ms Larson did not follow the protocol applicable to such reports applicable to staff and contractors with Family Justice Services in the preparation of child custody assessments in the following ways:
    - (i) it requires careful review of the court file; Ms Larson acknowledges that she did not request a copy of the order nor did she review the file;

- (ii) Ms Larson's report contains no assessment and no recommendations;
- (iii) Ms Larson's report contains no discussion of present functioning at school compared to pre-separation; and
- (iv) Ms Larson's report contains no summary statement of the issues to be addressed or a statement on the perspectives or concerns of the parents.

LEGISLATION:

*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.

The Bylaws of the College also contain provisions relating to what constitutes professional misconduct and professional incompetence:

(2) For the purposes of sections 25 and 26 of the Act, the committee may find a psychologist guilty of professional incompetence and/or professional misconduct where the psychologist:

- (a) abused a client physically, sexually, verbally, or psychologically;
- (b) wilfully endangered the safety of a client;
- (c) influenced a client to change the client's last will and testament;
- (d) wrongfully abandoned a client;
- (e) misappropriated property belonging to a client, employer or fellow employee;
- (f) failed to exercise discretion with respect to the disclosure of confidential information about a client;
- (g) failed to maintain or falsified any client record;
- (h) failed to inform any employer or any client of the psychologist's inability to accept specific responsibility in areas where special training is required or where the psychologist does not feel competent to function without supervision;
- (i) failed to report the incompetence or misconduct of a member or colleague;
- (j) failed to comply with the Code of Ethics of the college or failed to comply with established standards of practice;
- (k) failed without reasonable cause to respond to inquiries from the college regarding alleged professional misconduct or professional incompetence;
- (l) conspired to participate in any act of misconduct or counselled a participant in any act of misconduct;
- (m) obtained registration by misrepresentation or fraud; or
- (n) contravened any provision of the Act or these bylaws.

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:

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

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.

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>

In this case, the agreed standard of professional competence requires that a consent be obtained from both parents in a child custody assessment, that the court file be reviewed carefully prior to conducting a child custody assessment and that a Children's Voices Report follow a typical format and contain an assessment and recommendations, a discussion of present functioning at school compared to pre-separation, and a summary statement of the issues to be addressed or a statement on the perspectives or concerns of the parents. Ms Larson has acknowledged her failure to meet this required standard of professional practice and to that extent is guilty of professional incompetence.

Professional misconduct, as defined in the Act, exists where a member engages in conduct that is harmful to the best interests of the public or the members of the college, or may harm the standing of the profession, or is a breach of the Act or the bylaws. Ms Larson's failure

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<sup>1</sup>(1976), 13 O.R. (2d) 700, at p. 707.

to obtain consents from both parents is a breach of the Code of Ethics, contrary to section 48 of the Bylaws, which states that, “Every member shall comply with the Canadian Code of Ethics for Psychologists, 3rd edition (2000)”. As well, Ms Larson’s conduct in the preparation fo this report without obtaining consent and in failing to adhere to the standards expected of such reports served to undermine regard for members of the profession in the eyes of the Court of Queens’ Bench, which would tend to harm the standing of the profession. For these reasons, the admitted actions of Ms Larson also constitute professional misconduct.

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;
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>

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

In this case, the Discipline Committee has taken into account evidence in relation to these factors. Ms Larson has no prior discipline record and has taken responsibility for her actions without hesitation. She has voluntarily restricted her practice since the events that gave rise to the complaint by not performing any child custody assessments and she advises the Committee that she will never do this work again. She realizes that she acted inappropriately and outside the scope of her competence. The Committee is most concerned about the extent to which these events may have negatively affected two young and already damaged children by providing a means through which the legal proceedings involving them were protracted and influenced. The Committee has come to its conclusions regarding penalty by balancing these considerations and after hearing the submissions of counsel for the Professional Conduct Committee, which were accepted by Ms Larson.

#### DECISION:

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 Kristine Larson be and is hereby reprimanded and that this reprimand be recorded in the register of members kept by the Registrar in accordance with the Act;
2. That Kristine Larson be and is hereby prohibited from conducting child custody assessments;
3. That Kristine Larson pay to the Saskatchewan College of Psychologists the sum of \$2,500.00 in respect of the costs of the investigation and hearing into her conduct and related costs, to be paid in full on or before November 1, 2005, and that Kristine Larson be and is hereby suspended from the Saskatchewan College of Psychologists after November 1, 2005 if the said costs are not paid on that date and shall remain suspended until the said \$2,500.00 is paid in full.

#### PUBLICATION:

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

In accordance with subsection 32(3) of the Act, a copy of this order is being provided to Ms Larson 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. Because the events that led to this complaint arose in a context that is unrelated to Ms Larson's present employment, the Discipline Committee is of the view that no positive purpose is served by informing her present employer of this order.

Dated at Regina, Saskatchewan this 4<sup>th</sup> day of May, 2005.

SASKATCHEWAN COLLEGE OF  
PSYCHOLOGISTS, DISCIPLINE COMMITTEE

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Dr. Mary Hampton, Chairperson