

IN THE MATTER OF THE PSYCHOLOGISTS ACT, 1997 AND BYLAWS AND IN THE
MATTER OF A COMPLAINT AGAINST GINA KEMPTON-DOANE, REGISTERED
PSYCHOLOGIST, OF GRENFELL, SASKATCHEWAN

DECISION

of

Saskatchewan College of Psychologists

DISCIPLINE COMMITTEE

Discipline Committee Members:

Mary Hampton, Registered Doctoral Psychologist, Chair
Tom Robinson, Registered Doctoral Psychologist
Nikki Gerrard, Registered Doctoral Psychologist
Daniel Ash, M.D., Public Representative

Karen Prisciak, Q.C., appearing on behalf of the Professional Conduct Committee
Nicholas Cann, appearing on behalf of Ms Kempton-Doane
Merrilee Rasmussen, Q.C., legal counsel for the Discipline Committee

INTRODUCTION:

[1] This hearing was originally scheduled to be held on November 20, 2013 but was adjourned by consent to a date, time and place to be determined by the Chair of the Discipline Committee. The hearing thus commenced on April 21, 2014 at 10:00 am by teleconference.

[2] Ms Kempton-Doane is a Member of the College and was so registered at all times material to the complaints against her. The Formal Complaint alleged that she was guilty of professional misconduct and/or professional incompetence, contrary to the provisions of sections 25 and 26 of *The Psychologists Act, 1997*. The particular charges made against her were that she:

1. Violated Section 7.22 and 11.5 of the Saskatchewan College of Psychologists Practice Guidelines in that she:

(a) failed to ensure proper documentation on client files;

(b) destroyed client records;

(c) failed to consult the Saskatchewan College of Psychologists when she was unable to consult with her supervisor; and

(d) failed to ensure effective communication of test results of clients to various stakeholders in various assessments

2. Violated the Canadian Code of Ethics for Psychologists, 3rd ed., 2000 and more specifically Sections II.8, II.11 and II.12 in that she:

(a) failed to take immediate steps to obtain consultation or refer the client when it became apparent that the client's problems were beyond her competence;

(b) failed to seek appropriate help when she had a reduced ability to benefit others; and

(c) failed to engage in self-care activities in a timely manner and therefore could not avoid conditions that impaired her judgment.

FACTS:

[3] The parties submitted an Agreed Statement of Facts, dated April 11, 2014, which is attached as Schedule A to these reasons, pursuant to which Ms Kempton-Doane has accepted responsibility for her actions as described in them and pleads guilty to the charges included in the formal complaint, as set out in paragraph 2.

LEGISLATION:

[4] *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.

[5] Compliance by members of the College with the Canadian Code of Ethics for Psychologists, 3rd edition (2000) (the “Code of Ethics” or “Code”) is required by section 14 of the College’s regulatory bylaws. Consequently, a failure to comply with the Code of Ethics would be a breach of the bylaws and would fall within the definition of “professional misconduct” as set out in the Act. The College also publishes Practice Guidelines. While compliance with the Practice Guidelines is not specifically required by the College’s regulatory bylaws, the Guidelines shed light on what the profession considers to be acceptable steps to be taken by members in order to comply with the requirements of the Code, compliance with which is required.

ANALYSIS and DECISION:

[6] The Discipline Committee accepts the pleas of guilty to the formal complaint by Ms Kempton-Doane, as set out in paragraph 20 of the Agreed Statement of Facts. The conduct that is the substance of the formal complaint constitutes failure to comply with the Code of Ethics of the College, contrary to section 14 of the College’s Regulatory Bylaws, which requires all members so to comply, and is described in clause 25(c) of *The Psychologists Act, 1997* as professional misconduct. The Discipline Committee therefore finds that Ms Kempton-Doane is guilty of professional misconduct. Once a finding of guilt is made, the Discipline Committee must then determine the appropriate consequence to follow as a result.

[7] The parties also made a Joint Submission as to Sentence, also dated April 11, 2014, which is attached as Schedule B to these reasons.

[8] In its decision in the case of *Rault v. Law Society of Saskatchewan*, the Saskatchewan Court of Appeal held that a discipline committee must give serious consideration to a joint submission on sentencing agreed upon by counsel and it should not be departed from unless there are good or cogent reasons for doing so. The Court explained the importance of encouraging resolution through negotiation by providing deference to the compromises reached by agreement and contained in joint submissions:

The discipline process in the Act has many similarities to the criminal process and as such the bargaining process is undermined if a joint submission, the product of compromise, is readily rejected by the Discipline Committee. There is a formal process for the handling of complaints, including the appointment of an Investigation Committee, which may set out a Formal Complaint outlining the allegations which may constitute a finding of guilt as to conduct unbecoming a lawyer. This can lead to the appointment of a Hearing Committee which determines if the allegations in the Formal Complaint are well-founded and, if so, the matter is referred to the Discipline Committee for sentencing on the charges.

This process can be time-consuming for Benchers involved in the various stages leading to the final penalty imposed by the Discipline Committee and can involve significant costs for both the member and the Law Society. Therefore, all members and the Law Society have a vested interest in ensuring that matters proceed expeditiously. If the member co-operates with the investigation and hearing process and, as happened in the instant case, pleads guilty, and puts an Agreed Statement of Facts before the Hearing Committee, the Law Society is relieved of the burden of proving the allegations in what could, in some instances, be a complicated and protracted hearing with the usual risks and vagaries that may occur in the course of such hearings. If the parties negotiating compromise agreements cannot expect their efforts will be respected, there is little incentive to attempt to negotiate a resolution. For this reason, joint submissions on sentence should be considered by the Discipline Committee in a principled way similar to the jurisprudence in criminal matters and as applied by discipline committees in the provinces noted above.

[9] As a result, it is only in a situation where the Discipline Committee is persuaded that the sentence agreed to in a joint submission is unfit or unreasonable or contrary to the public interest that the Discipline Committee would not accept the joint submission. The Discipline Committee is also mindful of the fact that the objective of professional discipline proceedings is not punishment, but correction or improvement of conduct to ensure, to the extent that it is reasonably practicable to do so, that the public is protected from substandard conduct or competence on the part of psychologists who are members of the College.

[10] The Discipline Committee is in agreement with the Joint Submission as presented in this case, and therefore makes the Order set out below.

ORDER:

[11] For all of the reasons set out above, the Discipline Committee of the Saskatchewan College of Psychologists therefore finds Gina Kempton-Doane guilty of professional misconduct for failure to comply with the Code of Ethics of the College, contrary to section 14 of the College's Regulatory Bylaws, and, pursuant to section 32 of *The Psychologists Act, 1997*, Orders as follows:

1. That Gina Kempton-Doane is hereby reprimanded;

2. That Gina Kempton-Doane shall not engage in standardized psychological assessments of any condition similar to Fetal Alcohol Spectrum Disorders (FASD) and Autism Spectrum Disorders (ASD) without seeking further training and/or supervision;

3. That, within 12 months of the date on which she returns to practice as a psychologist, Gina Kempton-Doane shall enroll in the following on-line graduate level courses from Athabasca University:

(a) Graduate Counselling and Applied Psychology - GCAP 634 Assessment Processes; and

(b) Graduate Counselling and Applied Psychology - GCAP 632 Professional Ethics;

and shall successfully complete those courses within two years of the date on which she returns to practice as a psychologist;

4. That, during the 12 months immediately following the date on which she returns to practice as a psychologist, Gina Kempton-Doane shall be supervised once every two weeks for two hours by a supervisor who is a psychologist approved by the Registrar of the Saskatchewan College of Psychologists and shall provide to the Registrar a signed contract between herself and the supervisor, which contract acknowledges the overall goal of direct supervision and observation of her practice and contains further particulars regarding the supervision and consultation in relation to:

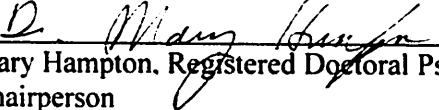
- (a) record keeping;
- (b) communication of findings to clients and others;
- (c) competency in assessments;
- (d) competency in psychotherapy;
- (e) psychometric assessments and evaluations;
- (f) report writing; and
- (g) self-care;

5. That Gina Kempton-Doane shall ensure that her supervising psychologist submits a supervisory report to the Registrar on each of the first day of the fifth month, the first day of the ninth month, and the first day of the thirteenth month after the date on which she returns to practice as a psychologist; and

6. That Gina Kempton-Doane shall pay costs of \$1,500.00 to the Saskatchewan College of Psychologists on or before April 1, 2015, failing which her licence shall be suspended until such costs are paid in full.

Dated at Regina, Saskatchewan this 2 day of July, 2014.

SASKATCHEWAN COLLEGE OF PSYCHOLOGISTS,
DISCIPLINE COMMITTEE



Mary Hampton, Registered Doctoral Psychologist
Chairperson