

IN THE MATTER OF *THE PSYCHOLOGISTS ACT, 1997* AND BYLAWS
AND IN THE MATTER OF A FORMAL COMPLAINT DATED SEPTEMBER 24, 2014
AGAINST BRIAN CHARTIER, REGISTERED DOCTORAL PSYCHOLOGIST, OF
SASKATOON, SASKATCHEWAN

DECISION
Saskatchewan College of Psychologists
DISCIPLINE COMMITTEE

Discipline Committee Members:

Tom Robinson, Registered Doctoral Psychologist, Chair
Crystal Gee, Public Representative
Doris Schnell, Registered Psychologist, Member
Kristine Bellows, Registered Psychologist, Member

Karen Prisciak, Q.C., appearing on behalf of the Professional Conduct Committee
Robert Kennedy, Q.C., appearing on behalf of the Member, Brian Chartier
Merrilee Rasmussen, Q.C., legal counsel for the Discipline Committee

INTRODUCTION

[1] The Discipline Committee convened on Thursday, June 14, 2018, at the offices of the Saskatchewan College of Psychologists to hear and determine, in accordance with *The Psychologists Act, 1997* (“the Act”), a formal complaint concerning the Member’s practice, revised June 13, 2018. Counsel for the Professional Conduct Committee as well as the Member and his counsel appeared by teleconference.

[2] As acknowledged in the Agreed Statement of Facts and Admissions filed by legal counsel for the Member and legal counsel for the Professional Conduct Committee, at all times material to the complaints against him, Dr. Chartier was a member of the Saskatchewan College of Psychologists, licensed to practise in the Province of Saskatchewan subject to the Act, the regulatory bylaws of the College, and the *Canadian Code of Ethics for Psychologists* (“the Code”) and related Saskatchewan College of Psychologists Practice Guidelines (“the Guidelines”).

THE FORMAL COMPLAINTS

[3] The Formal Complaint against Dr. Chartier contains two counts as follows:

- a. He conducted psychological assessments in violation of the *Canadian Code of Ethics for Psychologists*, 3rd ed., 2000, (hereinafter referred to as the “Code”) and more specifically Sections I.12, I.3, II.9 and II.30. Further particulars include:
 - i. Administered some psychological tests and inventories to the clients in circumstances that were inappropriate or unnecessary to support the conclusions and recommendations in the parenting capacity assessment report;
 - ii. Administered psychological tests and inventories to the clients without disclosing the rationale for their use in the context of a parenting capacity assessment;
 - iii. Reported psychological tests and inventories without stating an overall conclusion regarding validity;
 - iv. Administered the WRAT-3 when an updated version was available;
 - v. During the course of the psychological assessment of the female client, he diagnosed a Borderline Personality Disorder when he ought to have known the diagnosis could have an excessively negative impact in the future relationship with the Ministry of Social Services;
 - vi. During the course of his assessment of the male client, he diagnosed a Dependent Personality Disorder when he ought to have known the diagnosis could have an excessively negative impact in the future relationship with the Ministry of Social Services; and
- b. He conducted a psychological assessment in violation of the Canadian Code of Ethics for Psychologists, 3rd ed., 2000, (hereinafter referred to as the “Code”) and more specifically Sections I.12, I.3, II.9 and II.30 and contrary to the Saskatchewan College of Psychologists Practice Guidelines, more specifically 3.16, 3.17, 11.2, 3.10, 3.13, 3.16, 11.9, 11.13 and 11.18. Further particulars include:
 - i. Administered some psychological tests and inventories to the client in circumstances that were inappropriate or unnecessary to support the conclusions and recommendations in the parenting capacity assessment report.
 - ii. Reported psychological tests and inventories to the client without disclosing the rationale for their use in the context of a parenting capacity assessment.
 - iii. Administered psychological tests and inventories without stating an overall conclusion regarding validity.
 - iv. Administered the WRAT-3 (1993) when an updated version was available.

- v. Described the interpretive reports of the MCMI-III using language directly generated from the computer profile printout.
- vi. Prepared a report that contained references that should have been properly footnoted.
- vii. During the course of his assessment of the client, he diagnosed a Dependent Personality Disorder when he ought to have known the diagnosis could have an excessively negative impact in the future relationship with the Ministry of Social Services.

FACTS

[4] As noted above, the parties submitted an Agreed Statement of Facts and Admissions to the Discipline Committee, the relevant text of which (excluding headings and repetition of the charges and noting the documents that were attached) is set out below with respect to each of the charges contained in the formal complaints:

Jurisdiction

2. Dr. Chartier is, and has been at all times material to this proceeding, registered with the College, and accordingly, is subject to *The Psychologists Act, 1997*, SS 1997, c. P-36.01, the Regulatory Bylaws the *Canadian Code of Ethics for Psychologists*, 3rd ed., 2000 and the Saskatchewan College of Psychologists Practice Guidelines. Attached at Tab 1 is the Affidavit of the Registrar of the College confirming Dr. Chartier's practicing status and an Affidavit of Service of the Formal Complaint on his legal counsel.

Background of Complaint

3. Dr. Chartier was hired by the Ministry of Social Services to perform a parenting capacity assessment of foster parents. He assessed the parents on November 20 and 24, 2009 and prepared reports dated January 29, 2010 (hereafter Reports A and B). The foster parents complained about his conduct to the College on February 28, 2011.

4. Dr. Chartier was hired by the Ministry of Social Services to perform an assessment of a mother. He assessed the mother on July 7, 2010 and prepared a report dated October 12, 2010 (hereafter Report C). The mother complained about his conduct to the College on April 8, 2011.

Education and Background

5. Dr. Chartier was registered with the College as a full Member since July 4, 1986.

6. Dr. Chartier was a professor of psychology at the University of Saskatchewan until his retirement in 2018. He works in private practice providing psychological services including child, marital, grief individual counselling as well as group therapy.

7. Until 2014, Dr. Chartier was performing Parenting Capacity Assessments and Custody and Access Assessments.

8. In 2011, he was charged with a Formal Complaint which has been replaced with a revised Formal Complaint dated June 13, 2018 regarding Reports A, B and C.

Assessment

Reports A and B

9. Dr. Chartier was hired by the Ministry of Social Services after five biological children and two foster children were apprehended by the Ministry of Social Services and removed from the foster parents' home on September 24, 2009.

10. During the course of assessing the foster parents to prepare Reports A and B, Dr. Chartier conducted numerous psychological tests and interviewed the foster parents and one teenage caregiver on November 20 and 24, 2009.

11. Dr. Chartier administered (or had an assistant administer) some psychological tests and inventories which:

- c. Were inappropriate or unnecessary to support the conclusions and recommendations in the parenting capacity assessment report.
- d. Did not disclose the rationale for their use in the context of a parenting capacity assessment.
- e. Reported psychological tests and inventories without stating an overall conclusion regarding validity.

12. Dr. Chartier administered (or had an assistant administer) the WRAT-3 (1993) to the foster parents when an updated version was available.

13. During the course of his assessment, Dr. Chartier diagnosed the female foster parent with Borderline Personality Disorder when he ought to have known the diagnosis could have an excessively negative impact upon the foster parent's future relationship with the Ministry of Social Services.

14. During the course of his assessment, Dr. Chartier diagnosed the male foster parent with Dependent Personality Disorder (BPD) when he ought to have known the diagnosis could have an excessively negative impact upon the foster parents' future relationship with the Ministry of Social Services.

15. The Ministry of Social Services did not allow the parents to continue as foster parents. The foster parents hired legal counsel at considerable expense to have their biological children returned to their home.

Report C

16. Dr. Chartier was hired by the Ministry of Social Services after four biological children and two stepchildren were apprehended by the Ministry of Social Services and removed from their mother's home.
17. During the course of assessing the mother to prepare Report C, Dr. Chartier conducted numerous psychological tests and interviewed the mother on July 7, 2010.
18. The Report prepared following the psychological assessment contained references that should have been properly footnoted contrary to Saskatchewan College of Psychologists Practice Guidelines 3.16, 3.17 and 11.2.
19. Dr. Chartier administered (or had an assistant administer) the WRAT-3 (1993) when an updated version was available to the mother contrary to Saskatchewan College of Psychologists Practice Guidelines 3.10, 3.13, 3.16, 11.9, 11.13 and 11.18.
20. Other psychological tests administered to the mother did not disclose the rationale for administering the tests in the context of a parenting capacity assessment nor an overall conclusion regarding the validity. Some of the wording in the interpretative reports of the MCMI-III used language directly generated from the computer profile printout contrary to Saskatchewan College of Psychologists Practice Guidelines 3.10, 3.13, 3.16, 11.9, 11.13 and 11.18.
21. During the course of his assessment, Dr. Chartier diagnosed the mother with Dependent Personality Disorder when he ought to have known the diagnosis could have an excessively negative impact upon the mother's future relationship with the Ministry of Social Services.
22. The mother's apprehended children were not returned to her. Once the children became the age of majority, all but one child initiated a relationship with their mother.
23. Dr. Chartier acknowledges he could have taken more care in the preparation of Reports A, B and C and has changed his practice to ensure proper documenting and test reporting.
24. As a result of the complaints and his involvement in the discipline process, the Member has not conducted parenting capacity assessments or custody and/or access assessments since 2014. He has modified his approach to psychological testing and report writing and takes more care and thought when preparing his reports.
25. Regarding all of the above in relation to Reports A, B and C, on a cumulative basis, Dr. Chartier accepts his conduct violated the Canadian Code of Ethics for Psychologists, 3rd ed. 2000, and more specifically, Sections I.12, I.3, II.9 and II.30.
26. Regarding Report C, Dr. Chartier accepts his conduct was contrary to the Saskatchewan College of Psychologists Practice Guidelines 3.10, 3.13, 3.16, 11.9, 11.13 and 11.18.

Conclusion

27. Dr. Chartier pleads guilty to the charges and accepts the Joint Penalty submission.

LEGISLATION

[5] The Act defines both professional misconduct and professional incompetence for the purposes of the discipline process. In this case, it is the definition of professional misconduct that is relevant, and the Act defines it as follows:

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.

[6] Where a member is found to be guilty of professional misconduct, the Discipline Committee is authorized to make orders directed at improving the conduct. Section 32 of the Act provides the Discipline Committee with the following authority:

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 AND DECISION

[7] The Discipline Committee accepts the guilty plea provided by Dr. Chartier in the Agreed Statement of Facts in relation to the charges contained in the Formal Complaint. He has acknowledged that the conduct occurred and that the conduct constitutes professional misconduct in contravention of s. 25 of the Act.

[8] The Discipline Committee must therefore determine the appropriate consequence to follow as a result of its findings. Section 32 of the Act, as quoted above, sets out the powers of the Discipline Committee where it finds a member guilty of professional misconduct. The range of powers available to the Discipline Committee runs from reprimand to expulsion. The list gives the Discipline Committee a broad discretion to tailor its order to the needs of the situation, so as to ensure that the disposition of the complaint will accomplish the goal of protecting the public while respecting the interests of members.

[9] The parties have also presented the Discipline Committee with a joint submission as to penalty, which calls for the following:

- a. a reprimand;
- b. a fine of \$5,000.00 to be paid within one year of the Discipline Committee's decision;
- c. costs of \$15,000.00 to be paid within one year of the Discipline Committee's decision;
- d. an Order that the Member not do or perform any further parental capacity and/or child custody and access assessments. If at any time the Member wishes to return to performing such assessments, he shall take courses in performing parental capacity and/or child custody and access assessments which courses must receive the prior written approval of the Saskatchewan College of Psychologists.

- e. an Order publishing the Discipline Committee's decision and sentence on the website of the College.

[10] In its decision in the case of *Rault v. Law Society of Saskatchewan*¹, the Saskatchewan Court of Appeal made it clear that a discipline committee must give serious consideration to a joint submission on sentencing that has been agreed to unless the sentence is unfit or unreasonable, or contrary to the public interest, and it should not be departed from unless there are good or cogent reasons for doing so.² The Court went on to say, in relation to the discipline process applicable to members of the Law Society of Saskatchewan (which is similar to the process applicable to psychologists):

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.

¹ 2009 SKCA 81.

² *Ibid*, at paragraph 13.

[12] 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 or competence 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. The Discipline Committee found no good or cogent reason to depart in substance from the sentence agreed to in the joint submissions provided by the parties.

ORDER

[23] For all of the reasons set out above, the Discipline Committee of the Saskatchewan College of Psychologists therefore finds Dr. Brian Chartier guilty of professional misconduct and, pursuant to section 32 of *The Psychologists Act, 1997*, orders that:

Dr. Chartier is hereby reprimanded;

1. Dr. Chartier shall:

- a) pay a fine of \$5,000.00 within one year of the date of this Order;
- b) not do or perform any further parental capacity and/or child custody and access assessments without first obtaining the necessary training and be in receipt of written approval of the Saskatchewan College of Psychologists;
- c) pay costs in the amount of \$15,000.00 to be paid within one year of the Discipline Committee's decision;

2. If Dr. Chartier fails to comply with any of the provisions of paragraph 2 his licence to practice shall be suspended until he does so.
3. The Discipline Committee's decision and order shall be published on the website of the College.

Dated at Regina, Saskatchewan this 26th day of July 2018.

SASKATCHEWAN COLLEGE OF PSYCHOLOGISTS,
DISCIPLINE COMMITTEE

ORIGINAL SIGNED BY TOM ROBINSON

Tom Robinson,
Registered Doctoral Psychologist, Chair