

**IN THE MATTER OF *THE PSYCHOLOGISTS ACT, 1997* AND BYLAWS AND IN THE
MATTER OF A COMPLAINT AGAINST DR. DONNA DARBELLAY OF
SASKATOON, SASKATCHEWAN**

**DECISION
Saskatchewan College of Psychologists
DISCIPLINE COMMITTEE**

Discipline Committee Members:

Tom Robinson, Registered Doctoral Psychologist, Chair
Christel Gee, Public Representative
Val Harding, Registered Doctoral Psychologist, Member
Renee Schmidt, Registered Doctoral Psychologist, Member

Karen Prisciak, Q.C., appearing on behalf of the Professional Conduct Committee
Michelle Ouellette, Q.C., and Toni Leedahl, appearing on behalf of the member Dr. Donna
Darbellay
Merrilee Rasmussen, Q.C., legal counsel for the Discipline Committee

INTRODUCTION

[1] The Discipline Committee convened on April 29, 2019, as agreed by the parties, to hear and determine the formal complaint concerning the Member dated January 8, 2018, as required by *The Psychologists Act, 1997* [“the Act”]. The hearing continued to May 1, 2019, during which time the Committee heard testimony from the Complainant, the Complainant’s mother and father, and from Dr. Darbellay. Written submissions were received from the parties on May 21, 2019 and oral submissions were heard on May 29, 2019. The Committee obtained a transcript of the testimony and of the oral submissions of counsel to refer to during its deliberations.

[2] The Committee heard a great deal of detailed evidence about the whole of the Complainant’s relationship with Dr. Darbellay and of her separation from her spouse that really did not assist the Committee in hearing and determining the formal complaint that was made. The Committee appreciates that a certain amount of context is required but felt that much of the information provided through the testimony of witnesses exceeded what was necessary, thus

serving to prolong the hearing unduly and to confuse the issues. Nevertheless, the Committee has carefully reviewed the transcript of all of the evidence provided, as well as the written and oral submissions of the parties to arrive at this decision. This decision avoids a re-telling of the highly personal circumstances of the Complainant surrounding this situation and focuses only on those facts necessary to explain its decision in relation to the formal complaint.

[3] At all times material to the complaint made against her, Dr. Darbellay 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, the *Canadian Code of Ethics for Psychologists* (“the Code”), and related Saskatchewan College of Psychologists Practice Guidelines (“the Guidelines”).

THE FORMAL COMPLAINT

[4] The formal complaint, as amended, alleges that Donna Darbellay is guilty of professional misconduct and/or professional incompetence contrary to the provisions of sections 25 and 26 of *The Psychologists Act, 1997* and Regulatory Bylaw #20 in that she:

Disclosed confidential information about [the Complainant] to [the Complainant]’s parents without her consent and provided a report dated March 25, 2016 to [the Complainant]’s lawyer and the lawyer of the husband of [the Complainant] without her consent in violation and contrary to Professional Practice Guideline 6.2.

[5] There are two specific pieces of information that Dr. Darbellay is alleged to have disclosed to the Complainant’s parents without her consent:¹

1. that the Complainant had not paid Dr. Darbellay’s invoice for her services; and

¹ These were identified in a response to a request for particulars provided by the Professional Conduct Committee and dated February 16, 2018.

2. that the Complainant had been seen by her children at a friend's house party in the absence of her husband (the children's father) apparently under a blanket on a couch with another man – an incident referred to throughout the hearing as the “blanket incident”.

THE EVIDENCE

[6] The Complainant and her husband separated shortly after the blanket incident. Their separation was highly conflictual and eventually led to a court order dated May 1, 2015, which included the following provision:

The parties shall immediately make arrangements to commence therapy through Dr. Donna Darbellay and Dr. Gerald Farthing. They shall ensure that the children participate in any steps recommended by the psychologists and shall sign any documentation required to ensure that there is no delay in therapy commencing or continuing. Both parties shall also participate in the therapy as recommended by the psychologists. The parties shall share the costs equally and shall provide any retainer required by the psychologists without delay. If the parties or the psychologists require any further direction from the court with respect to this provision, they have leave to ask the registrar to arrange for a conference call with Justice Goebel for that purpose.

[7] Dr. Darbellay became involved with the family because of this court order. She met individually with each of the Complainant and her daughters as well as with the Complainant's ex-spouse. She saw her primary role as acting as a bridge² to assist the family in establishing positive relationships that would allow them to interact respectfully, even though the parents were now separated. As the children were living with their father and were apparently on his “side”, achieving this objective required the children to reconcile in some way with their mother and their grandparents. To this end, Dr. Darbellay involved herself in supervising the Complainant's access visits with her daughters. Her involvement continued until February 2016. She prepared a written report, dated March 25, 2016, which she provided to legal counsel for the Complainant and legal counsel for the Complainant's ex-spouse to review in her office. No copies of the report were provided to anyone.

² Transcript, April 30, 2019, p. 197, lines 8 to 22.

[8] The allegations in the formal complaint relate specifically to three events: a phone call between Dr. Darbellay and the Complainant's mother in mid-October 2015, a specific interaction that occurred between Dr. Darbellay and the family on the weekend of November 27/28, 2015, and the report she provided to legal counsel for the Complainant and her ex-spouse.

The Telephone Call

[9] Dr. Darbellay testified that she told the Complainant's mother that she had not been paid by the Complainant in a telephone call in mid-October 2015. She said the Complainant's mother phoned her at home at night and was very frustrated by the lack of progress. At this point in time, Dr. Darbellay had been working with the family for several months and had provided an invoice or invoices for her services. Dr. Darbellay told the Complainant's mother she wasn't even getting paid, but she was "more invested" in the family than in getting paid.³ The Complainant acknowledged that she had not paid Dr. Darbellay.⁴ She also said that she had not told her parents anything about her financial situation or that she had not paid Dr. Darbellay's invoices.⁵

[10] The Complainant's mother did not recall this telephone conversation with Dr. Darbellay⁶ but did recall that Dr. Darbellay had told her that neither the Complainant nor her ex-spouse had paid Dr. Darbellay's bill.⁷

The Weekend at the Condo

[11] There is a lot more confusion about what Dr. Darbellay may or may not have said to the Complainant's parents about the blanket incident.

[12] The Complainant used her parents' condo while they were at their cottage to be with her daughters on her access weekends as her daughters would not go to her own apartment. On November 27, 2015, when the daughters arrived at the condo their grandparents were there. They

³ Transcript, April 30, 2019, p. 156, lines 4 to 14.

⁴ Transcript, April 29, 2019, p. 86, lines 7 to 17.

⁵ Transcript, April 29, 2019, p. 92, lines 3 to 16; p. 93, lines 23 to 25.

⁶ Transcript, April 30, 2019, p. 92, lines 5 to 7.

⁷ Transcript, April 30, 2019, p. 78, lines 4 to 14.

were not expecting this and were upset about it and called Dr. Darbellay. She spoke to them that evening and went to the condo the next day, on November 28.

[13] Dr. Darbellay testified that she asked the Complainant's father to come into the TV room with his two older granddaughters and to listen to them explain why they were upset with the Complainant.⁸ Dr. Darbellay said it was the eldest granddaughter who told him of the blanket incident.⁹

[14] The Complainant was not in the TV room, but she said she heard loud voices. She said her eldest daughter may have been in the TV room for some of the time, although she wasn't sure. She said when her father left the room, he was angry and confronted her about the blanket incident and then left the condo. She said that Dr. Darbellay told her after her father left that Dr. Darbellay had told her father about the blanket incident. The Complainant also explained that after Dr. Darbellay and her daughters left later that day she talked to her parents about the blanket incident and why she didn't understand how her daughters would have thought that what they observed was anything inappropriate.¹⁰

[15] Both Dr. Darbellay¹¹ and the Complainant¹² said that the Complainant's mother was not present in the condo at the time of this incident.

[16] The Complainant's mother testified that she was present in the condo when Dr. Darbellay met with her husband in the TV room. She did not recall the Complainant being present. She said she heard raised voices and then her husband came storming out of the room, mumbled something to her as he passed her, and left the condo. She said that Dr. Darbellay told her about the blanket incident and that it must have been on this occasion because she did not recall meeting with her at

⁸ Transcript, April 30, 2019, pp. 145 to 148.

⁹ Transcript, April 30, 2019, p. 148, lines 11 to 25.

¹⁰ Transcript, April 29, 2019, p. 87, lines 12 to 23; pp. 88 and 89.

¹¹ Transcript, April 30, 2019, p. 145, line 6.

¹² Transcript, April 29, 2019, p. 195, lines 13 to 18.

any other time. She didn't think her granddaughters were around. She could not recall other details of the conversation with Dr. Darbellay in which she heard this information.¹³

[17] The Complainant's father agreed that he and Dr. Darbellay had a discussion in the TV room and that his voice was raised. He did not recall any discussion or confrontation with the Complainant before he left the condo. He wasn't sure whether or not his wife was present and he wasn't sure if his granddaughters were in the TV room when he spoke to Dr. Darbellay. He said somebody told him about the blanket incident, but he wasn't sure who.¹⁴

[18] The Committee accepts the evidence of Dr. Darbellay in this regard. The Committee notes that she was forthright in admitting what she had told the Complainant's mother in relation to the Complainant's financial affairs, even though that admission was not in her favour. Dr. Darbellay said she had encouraged the granddaughters to tell their grandfather about the blanket incident because it was the reason that they were upset with their mother and, by extension, with their grandparents. In these circumstances it is most likely that it was one of the granddaughters who told grandfather about it and not Dr. Darbellay. The Committee accepts that the Complainant and her parents provided their evidence to the best of their recollection, but their memories of the events were not clear, and their testimony was in conflict. For example, the Complainant testified that her mother was not present in the condo when the discussion in the TV room took place. The Complainant's father wasn't sure. The Complainant's mother thought she was present. The Complainant's father couldn't remember who told him about the blanket incident. The situation was one that was clearly highly charged emotionally for all the members of the Complainant's family. Under the circumstances, Dr. Darbellay's recollection of the events of that day is most likely to be accurate.

The Report to the Lawyers

¹³ Transcript, April 30, 2019, pp. 70 to 75.

¹⁴ Transcript, April 30, 2019, pp. 52 to 54.

[19] The Complainant testified that she did request Dr. Darbellay to prepare a report.¹⁵ Dr. Darbellay said that the Complainant made this request on several occasions. She said the Complainant's ex-spouse also requested a report, as did the Complainant's lawyer.¹⁶ Dr. Darbellay testified that she did not want to provide a copy of a report to either the Complainant or her ex because she didn't want to give them ammunition to keep fighting. She decided that she would prepare a report and allow the two lawyers to see it, but not receive copies of it, as long as they did not reveal its contents to their clients, and it would not be provided to the court.¹⁷ The Complainant agreed that Dr. Darbellay advised her that she would provide a report only on this basis.¹⁸ Dr. Darbellay said the two lawyers agreed to these conditions and they both came to her office and reviewed the report.¹⁹

[20] The Complainant testified that Dr. Darbellay told her she would only release her report to her lawyer and her ex-spouse's lawyer on the condition that she would not know what was in the report and, on that basis, she gave her lawyer permission to go to Dr. Darbellay's office and review the report.²⁰

LEGISLATION

[21] The Act defines professional misconduct 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

¹⁵ Transcript, April 29, 2019, p. 180, lines 14-16.

¹⁶ Transcript, April 30, 2019, p. 160.

¹⁷ Transcript, April 30, 2019, p.161, lines 5 to 12

¹⁸ Transcript, April 29, 2019, p. 97, lines 13 to 19.

¹⁹ Transcript, April 30, 2019, p.161, lines 14 to 19.

²⁰ Transcript, April 29, 2019, p.179, lines 13 to 17; p. 182, lines 7 to 13.

(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 [*emphasis added*].

[22] Section 20 of *The Saskatchewan College of Psychologists Regulatory Bylaws, 2016*²¹ requires members to comply with the Code of Ethics of the College:

20 Every member shall comply with the *Canadian Code of Ethics for Psychologists*, Third Edition, as adopted by the Canadian Psychological Association.

[23] The Ethical Standards for Psychologists are set out in the Code and the relevant section of the Code is the following:

I.45 Share confidential information with others only with the informed consent of those involved, or in a manner that the persons involved cannot be identified, except as required or justified by law, or in circumstances of actual or possible serious physical harm or death. (Also see Standards II.39, IV.17, and IV.18.)

[24] Professional Practice Guideline 6.2, which is referred to in the formal complaint, is as follows:

6.2 No disclosure without consent
Except as otherwise permitted in this guidelines document, the Canadian Code of Ethics for Psychologists, and in legislation, a member may only disclose confidential information about a client to a third party if the client has given informed consent, preferably in writing. If verbal consent is obtained a member must document this fact.²²

²¹ Published in *The Saskatchewan Gazette* on June 3, 2016. These bylaws did not therefore formally come into force until their publication date, as provided for in subsection 14(8) of the Act. However, the 2004 Regulatory Bylaws in force immediately prior to June 3, 2016 contain the exact same provision as section 14.

²² *Professional Practice Guidelines*, Saskatchewan College of Psychologists, approved May 15, 2010.

[25] The *Regulatory Bylaws* of the College also contain provisions relating to what constitutes professional misconduct and professional incompetence:

6(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 member:

- (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. [*emphasis added*]

[26] Where a member is found to be guilty of professional misconduct, the Discipline Committee is authorized to make orders directed at improving the conduct or competence. 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

[27] As a result of its review of the evidence as outlined above, the Committee finds that Dr. Darbellay, as she admitted, did disclose the fact that the Complainant had not paid her bill to the Complainant's mother. The Committee finds, based on the testimony it heard, that Dr. Darbellay did not disclose the blanket incident to the Complainant's parents and did not release her report to the legal counsel for the Complainant's ex-spouse without her consent.

[28] Counsel for Dr. Darbellay submits that the disclosure of the fact that the Complainant had not paid her bill was not a disclosure of the Complainant's confidential information but was Dr. Darbellay's own information. She submitted that if Dr. Darbellay were to have started a court action to collect the money owing to her that would not have been a breach of confidentiality. However, legal proceedings are exempted from confidentiality protection in this sense, so this analogy is not pertinent.²³

[29] Counsel argues further that the disclosure that the Complainant had not paid her bill "reveals nothing about the Complainant's financial circumstances" and therefore is not disclosure of confidential information. The Committee disagrees. The issue is not that Dr. Darbellay disclosed whether or not the Complainant had the funds to pay the bill, but that she disclosed the information that the Complainant had not in fact paid it. This information is confidential personal information of the Complainant and ought not to have been disclosed to anyone else. The disclosure is contrary to paragraph I.45 of the Code, which is a breach of the provision of the Regulatory Bylaws that requires all members to comply with the Code and is also contrary to clause 6(2)(f) of the Regulatory Bylaws. A breach of the bylaws is defined by clause 25(c) of the Act as professional misconduct.

[30] The Committee understands that Dr. Darbellay's counsel argues that even if she did disclose confidential information, such disclosure was "inconsequential . . . and does not amount to professional misconduct or incompetence". Counsel cited no authority for this conclusion and the Committee is not aware of any.

²³ The exception contained in the Code, which allows disclosure without consent where "required or justified by law", would apply if a psychologist had to take formal legal action to have a bill paid.

ORDER

[31] For all of the reasons set out above, the Committee concludes that Dr. Darbellay is guilty of professional misconduct in that she disclosed the Complainant's confidential financial information to the Complainant's mother without the Complainant's permission, contrary to the Code and therefore contrary to the Regulatory Bylaws.

[32] A hearing to determine penalty will be convened at a time and place set by the Chair of the Discipline Committee in consultation with legal counsel for the Professional Conduct Committee and Dr. Darbellay.

Dated at Regina, Saskatchewan this 5th day of November 2019.

SASKATCHEWAN COLLEGE OF PSYCHOLOGISTS,
DISCIPLINE COMMITTEE



Tom Robinson,
Registered Doctoral Psychologist, Chair