

**IN THE MATTER OF *THE PSYCHOLOGISTS ACT, 1997* AND BYLAWS AND IN THE
MATTER OF A COMPLAINT AGAINST
JOAN HELMSING, A MEMBER OF THE SASKATCHEWAN COLLEGE OF
PSYCHOLOGISTS**

**DECISION
Saskatchewan College of Psychologists
DISCIPLINE COMMITTEE**

Discipline Committee Members:

Tom Robinson, Registered Doctoral Psychologist, Chair
Terry Levitt, Registered Doctoral Psychologist, Member
Christel Gee, Public Representative, Member

Karen Prisciak, Q.C., appearing on behalf of the Professional Conduct Committee
Kelsey O'Brien, appearing on behalf of the member Joan Helmsing
Merrilee Rasmussen, Q.C., legal counsel for the Discipline Committee

INTRODUCTION

[1] The Discipline Committee convened on April 15, 2021, virtually via Zoom, as agreed by the parties, to hear and determine the formal complaint concerning the Member dated April 28, 2020 and amended on March 4, 2021 with the Member's consent, as required by *The Psychologists Act, 1997* ["the Act"].

[2] At all times material to the complaints made against her, Joan Helmsing 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*¹ ("the Code"), and related Saskatchewan College of Psychologists Practice Guidelines ("the Guidelines").

¹ 3rd Ed., 2000 ("the Code").

THE FORMAL COMPLAINT

[3] The Formal Complaint contains the following charges alleging that Joan Helmsing is guilty of professional misconduct and/or professional incompetence contrary to the provisions of sections 25 and 26 of *The Psychologists Act, 1997*, in that she assessed two primary school-aged children and authored three reports wherein she:

Charge #1: Created and utilized a Bipolar Personality Disorder (BPPD) screen for children take from a Time Magazine article published in 2002 contrary to the Professional Practice Guidelines 3.17, 11.4, and 11.13.

Charge #2: Utilized and referenced the BPPD screen in the written reports when the referral questions related to inattention, overactive, and impulsive behaviors (Report 1 and Report 1A) and below grade level functioning, difficulty concentrating, lack of motivation, being sensitive and having difficulties in peer relations (Report 2) contrary to Professional Guideline 11.3.

Charge #3: Failed to identify in the Reports the BPPD screen was not a recognized psychological tool in circumstances in which a reasonable person would accept the BPPD screen was a published and recognized psychological checklist contrary to Professional Practice Guidelines 11.4, 11.8, and 11.13.

Charge #4: Used outdated assessment tools including, inter alia, the Wender Utah Rating Scale - WURS, 1984, the Copeland Symptom Checklist - CSC, 1987, and the Sensory Profile Rating Scale - SPRS, 1990, contrary to Professional Practice Guideline 11.24.

Charge #6: Used the Draw a Person activity without providing a description, rationale, or interpretation of the activity contrary to Professional Guideline 11.21.

FACTS

[4] The parties submitted an Agreed Statement of Facts to the Discipline Committee, the relevant text of which (excluding introductory information and repetition of the charges) is set out below.

C. Ms. Helmsing's Education and Background

4. Ms. Helmsing has been teaching for 50 years and assessing for 40 years. As a learning assistance teacher, she began assessing students for academic learning disabilities in 1978.

5. Ms. Helmsing completed her Bachelor of Education in 1977 and thereafter pursued a Master of Education degree, convocating in 1983.

6. Ms. Helmsing has contributed to her professional community through serving as the national president of the Council for Exceptional Children and as the Saskatchewan Representative on the International Board of Governors. She has supervised five graduate students. Ms. Helmsing has focussed her practice on academic learning disabilities and ADHD and works with both adults and children.

D. Particulars of Complaint:

7. At the material time, Ms. Helmsing was providing psychological assessment and consultation services to elementary school students in Regina, Saskatchewan.

Student A

8. Ms. Helmsing was contacted to provide a behavioral assessment for Student A related to inattention, overactivity, and impulsive behaviors. Student A was approximately 7.5 years old at this time. Ms. Helmsing assessed Student A on March 15, 2019, and again on June 9, 2019.

9. During the March 15, 2019 assessment, Ms. Helmsing used a checklist taken from a Time Magazine article published in 2002 to gather subjective information from Student A's parents. Ms. Helmsing advises that her intention when gathering this information was to determine whether Bi-Polar Personality Disorder might be present in Student A and should be considered by a physician. However, Ms. Helmsing incorrectly described this checklist as a screening instrument for identifying Bi-Polar Personality Disorder in childhood. Ms. Helmsing did not identify the limitations of the checklist and the information gleaned from it. Student A was not referred to Ms. Helmsing for concerns related to possible Bi-Polar Personality Disorder.

10. During the March 15, 2019 assessment, Ms. Helmsing used the following other assessment tools:

- (a) IVA-CPT (14/Braintrain);
- (b) SPCQ (99/Pearson);

- (c) How I Feel;
- (d) Sentence Completion;
- (e) DAP;
- (f) Baron (00/MHS);
- (g) BYI II (01/Pearson);
- (h) WIIP Parent Checklist {OB/Riverside};
- (i) WURS (B4/Wender);
- (j) CSC (B7/Copeland);
- (k) WIIP Reason for Referral & Teacher Checklist (OB/Riverside); and
- (l) SPRS (90/DuPaul).

11. The Wender Utah Rating Scale, Copeland Symptom Checklist, and Sensory Profile Rating Scale, are now outdated.

12. During the March 15, 2019 Assessment, Ms. Helmsing asked Student A to draw a person. In her report, Ms. Helmsing then made comments and observations in relation to the drawing. However, Ms. Helmsing did not provide a description, rationale, or interpretation of the Draw a Person activity.

13. As a result of the March 15, 2019 assessment, Ms. Helmsing authored Report 1. Report 1 notes that ADHD Combined Type may be present. Report 1 does not suggest the presence of Bi-Polar Personality Disorder in Student A.

14. Student A was prescribed Concerta by her physician to alleviate her ADHD symptoms. On June 9, 2019, Ms. Helmsing reassessed Student A to determine if the medication was alleviating those symptoms. Ms. Helmsing conducted the IVA-CPT and concluded in Report 1A that the medication was not alleviating Student A's symptoms of ADHD.

Student B

15. Ms. Helmsing was also asked to assess Student B, who was 7 years old at the time of the assessment on December 7, 2017. Student B was identified as having below grade level functioning, difficulty concentrating, lack of motivation, being sensitive, and having difficulties with peer relations.

16. During her assessment of Student B, Ms. Helmsing again used the checklist referred to above that was taken from a Time Magazine article published in 2002. Ms. Helmsing advises that her intention when using this checklist was to gather subjective information from Student B's parents to determine whether Bi-Polar Personality Disorder might be present in Student B and should be considered by a physician. However, Ms. Helmsing incorrectly described this checklist as a screening instrument for identifying Bi-Polar Personality Disorder in childhood. Ms. Helmsing did not identify the limitations of the

checklist and the information gleaned from it. Student B was not referred to Ms. Helmsing for concerns related to possible Bi-Polar Personality Disorder.

17. During the December 7, 2017 assessment, Ms. Helmsing used the following other assessment tools in relation to Student B:

- (a) IVA-CPT (14/Braintrain);
- (b) How I Feel;
- (c) Sentence Completion;
- (d) OAP;
- (e) Baron (00/MHS);
- (f) BYI II (01/Pearson);
- (g) WIIP Parent Checklist (OS/Riverside);
- (h) WURS (84/Wender);
- (i) CSC (87/Copeland);
- (j) WIIP Reason for Referral & Teacher Checklist (OS/Riverside);
- (k) APRS (90/DuPaul);
- (l) SPCQ (99/Pearson); and
- (m) SPSQ (06/Pearson).

18. The Wender Utah Rating Scale, Copeland Symptom Checklist, and Sensory Profile Rating Scale, are now outdated.

19. During the December 7, 2017 Assessment, Ms. Helmsing asked Student B to draw a person. In her report, Ms. Helmsing then made comments and observations in relation to the drawing. However, Ms. Helmsing did not provide a description, rationale, or interpretation of the Draw a Person activity.

20. As a result of the December 7, 2017 assessment, Ms. Helmsing authored Report 2. Report 2 notes that ADHD Combined Type may be present and also suggests the presence of Bi- Polar Personality Disorder.

E. Conclusion:

21. Ms. Helmsing, through her counsel, pleads guilty to the charges set out in the Formal Complaint outlined above.

LEGISLATION

[5] The Act defines professional misconduct and professional incompetence 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.

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.

[6] Where a member is found to be guilty of professional misconduct or professional incompetence, 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

Finding of Professional Misconduct

[7] The Discipline Committee accepts the guilty plea provided by the Member in the Agreed Statement of Facts in relation to the charges contained in the Formal Complaint. She has acknowledged that she was in contravention of the Practice Guidelines as outlined in the charges contained in the Formal Complaint. The Discipline Committee finds that a failure to comply with the Practice Guidelines is conduct that is harmful to the best interests of the public or the members of the College and tends to harm the standing of the profession, contrary to clauses 25(a) and (b) of the Act, which describe the type of conduct that constitutes professional misconduct. The Member used a magazine article that was almost 20 years old as a screen for a disorder that is not recognized in the DSM-5, as well as other outdated assessment tools and activities that she did not identify as being not recognized by the profession in circumstances in which laypersons would assume that they were. The Discipline Committee therefore finds that the Member is guilty of professional misconduct.

Penalty

[8] The Discipline Committee must therefore determine the appropriate consequence to follow as a result of its findings. Section 32 of the Act 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 and includes the

ordering of counselling or a requirement to take certain courses, among other things. The list is designed to give the Discipline Committee as broad a discretion as possible 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. The list concludes with a broad power to make any order that the Discipline Committee thinks is “just”.

[9] The parties also submitted a Joint Submission as to Penalty to the Discipline Committee, with respect to all aspects of penalty except for costs. The joint submission states as follows:

Joan Helmsing pleads guilty to the charges against her and accepts the following penalty:

1. A reprimand.
2. A fine of \$2,000 payable within one year of the date of the Order. If the fine is not paid within one year, the Member will be removed from the Register of the College. The Member cannot be returned to the Register until payment has been made in full.
4. The Member will use empirically based norm-referenced validated measurement tools designed for the client, their needs and their specific situation, instead of unvalidated, unnormed and outdated measurement tools. She must immediately cease from using her own developed measurement tools. If she fails to do so, the Member will be returned to the Discipline Committee who will address her failure to comply.
5. The Member will arrange for supervision by a Registered Full Practice Psychologist approved by the College, who will review and sign off on the first fifteen (15) child and youth psychological assessment reports the Member completes following the Order of the Discipline Committee. The Member will submit a supervision plan for approval by the Registration Committee.
7. An Order that the Discipline Committee’s decision and penalty shall be published on the website of the College.

[10] In its decision in the case of *Rault v. Law Society of Saskatchewan*,² 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

² 2009 SKCA 81.

unreasonable, or contrary to the public interest, and it should not be departed from unless there are good or cogent reasons for doing so.³ 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.

[11] 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

³ *Ibid*, at paragraph 13.

competence on the part of psychologists who are members of the College. The Discipline Committee finds no good or cogent reason to depart in substance from the sentence agreed to in the joint submissions provided by the parties. The Discipline Committee notes that it is required to ensure that its decision is published on the College's website pursuant to subsection 6(2) of *The Saskatchewan College of Psychologists Regulatory Bylaws, 2016*.

Costs

[12] As quoted above, subsection 32(2) of the Act allows the Discipline Committee to order the payment of the costs of the investigation and hearing into the Member's conduct and to order that the Member be suspended if she fails to pay as required. There is no joint submission in relation to costs in this case.

[13] Counsel for the Professional Conduct Committee submits that the Member should pay the actual costs incurred by the College in relation to the investigation and hearing of this complaint, in the amount of \$12,479. Counsel referred to the December 21, 2020 decision of this Discipline Committee in the case of Tanya Lyons-Belt. In that case, actual costs totaled approximately \$15,000 and the Discipline Committee ordered costs in the amount of \$12,000. In coming to that conclusion, the Discipline Committee took into account the factors outlined by the Saskatchewan Court of Appeal in *Abrametz v. Law Society of Saskatchewan*.⁴

[14] In *Abrametz* the Court of Appeal said that the purpose of costs in the discipline context is not to indemnify the opposing party but for the member whose conduct is the subject of a complaint to bear the costs of the process and not to place that burden on all other members of the profession. The Court identified the following factors to be taken into account in determining an appropriate order in relation to costs in the discipline context:

- the relative degree of success of the parties
- the balance between the effect of the cost award on the member and the need for the profession to effectively administer the disciplinary process

⁴ 2018 SKCA 37.

- the other sanctions imposed and the expenses associated with them
- the member's ability to pay.

[15] In the Lyons-Belt case, the Discipline Committee concluded that the member took responsibility for her conduct early in the process, took steps on her own initiative to improve her practice, cooperated fully with the investigation and agreed to facts that made a protracted hearing unnecessary. While acknowledging the discipline process as a stressful one, the Discipline Committee did not accept that the stress and anxiety caused to the member by the process was a mitigating factor, as it was in effect offset because of the negative impact of the member's actions on her employer and her clients.

[16] Counsel for the Professional Conduct Committee also referred to other recent decisions of this Discipline Committee relating to costs. In the Andrea MacKay decision, also dated December 21, 2020, costs were ordered in the amount of \$16,250. In the Frederick Reekie decision, dated January 29, 2020, costs were ordered at \$8,058. In the Mary Vandergoot decision costs ordered were actual costs, which Counsel advises were approximately \$8,000. In all of these decisions, the costs ordered were based on a joint submission as to penalty in which the amount of the costs was agreed by the parties.

[17] Counsel for the Member in this case submitted that costs awarded should not be the actual costs, based on the following:

- the supervision order that has been agreed to will entail a financial cost to the Member, as will the \$2,000 fine that has been agreed to
- the amount of actual costs, being approximately \$12,500, is a significant financial penalty and is so large as to be punitive, which is not the purpose of a costs award and contrary to the decisions of the courts in this regard
- the cost of discipline is a cost to be borne by the profession as a privilege of self-regulation
- the member cooperated with the investigation and discipline process thus saving the College the cost of a full hearing

- the Professional Conduct Committee did not seek to resolve the complaint by consent, thus increasing the cost to the College, but this is a matter over which the Member had no control and the College should bear the cost of that choice
- new items were raised late in the discussion and this increased the costs

[18] The Discipline Committee finds that the costs as requested by the Professional Conduct Committee are appropriate. While the Member did cooperate with the process, a protracted hearing is costly to all parties, not just the College. The cost of having the investigation and hearing procedures, processes and personnel in place to deal with complaints is the price of self-regulation that all members of the profession bear. The specific cost of a particular complaint is a cost to be borne by the member whose conduct is the subject of the complaint. The actual costs are similar to the costs awarded on consent in other recent decisions by this Discipline Committee, and thus cannot be described as punitive.

ORDER

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

1. Joan Helmsing is hereby reprimanded;
2. Joan Helmsing shall pay a fine of \$2,000 within one year after the date of this Order;
3. Joan Helmsing shall pay costs in the amount of \$12,489 within one year after the date of this Order;
4. If Joan Helmsing fails to pay the fine and costs in accordance with paragraphs 2 and 3 within the time required, her licence shall be thereupon suspended until the fine and costs are paid in full;
5. Joan Helmsing shall cease using her own developed measurement tools and shall use only empirically-based, norm-referenced validated measurement tools designed for the client, their needs and their specific situation;

6. Joan Helmsing shall arrange for supervision by a Registered Full Practice Psychologist approved by the College, who will review and sign off on the first 15 child and youth psychological assessment reports that she completes after the date of this Order, and shall submit a supervision plan for approval by the Registration Committee; and

7. In accordance with subsection 6(2) of *The Saskatchewan College of Psychologists Regulatory Bylaws, 2016*, this decision and reasons shall be posted in the College's website.

Dated at Regina, Saskatchewan this 31st day of May 2021.

SASKATCHEWAN COLLEGE OF PSYCHOLOGISTS,
DISCIPLINE COMMITTEE



Tom Robinson,
Registered Doctoral Psychologist, Chair

On behalf of:
Terry Levitt, Registered Doctoral Psychologist, Member
Christel Gee, Public Representative, Member