

**IN THE MATTER OF *THE PSYCHOLOGISTS ACT, 1997, AMENDED 2004*, AND
BYLAWS AND IN THE MATTER OF A COMPLAINT AGAINST
GINA KEMPTON-DOANE**

**DECISION
Saskatchewan College of Psychologists
DISCIPLINE COMMITTEE**

Discipline Committee Members:

Tom Robinson, Registered Doctoral Psychologist, Chair

Daniel Ash, Public Representative

Val Harding, Registered Doctoral Psychologist, Member

Karen Prisciak, Q.C., appearing on behalf of the Professional Conduct Committee

Bart Soroka, Student-at-law, appearing on behalf of the member Gina Kempton-Doane

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

INTRODUCTION

[1] The Discipline Committee convened on Friday, October 13, 2017, via conference call, as agreed by the parties, to hear and determine the formal complaint concerning the Member dated December 27, 2016, as required by *The Psychologists Act, 1997* ["the Act"].

[2] According to Ms. Kempton-Doane, she returned to practice as a psychologist on September 1, 2015. At all times material to the complaints made against her, Ms. Kempton-Doane 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"), related Saskatchewan College of Psychologists Practice Guidelines ("the Guidelines") and the Order of the Discipline Committee against her that will be referred to below.

3rd Ed., 2000 ("the Code").

THE FORMAL COMPLAINT

[3] The Formal Complaint contains the following charges alleging that Ms. Kempton-Doane is guilty of professional misconduct contrary to the provision of Sections 25 of *The Psychologists Act, 1997*, S.S. 1997, c P-36.01 in that:

"Contrary to Section 25(d) of *The Psychologists Act, supra*, she failed to comply with an Order of the Discipline Counsel [*sic*] dated July 3, 2014 which states as follows:

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."

FACTS

[4] As noted above, the parties submitted an Agreed Statement of Facts and Joint Submissions as to Penalty to the Discipline Committee, the relevant text of which (excluding headings and repetition of the charges) is set out below.

1. On July 3, 2014 the Discipline Committee of the Saskatchewan College of Psychologists accepted the Member's guilty plea to charges of professional misconduct. A joint submission as to sentence was presented and supported by the Discipline Committee. It ordered:

[11] For all 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 (FASO) 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:

Graduate Counselling and Applied Psychology - GCAP 634 Assessment Processes; and

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.

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 license shall be suspended until such costs are paid in full.

2. The Member failed to comply with the terms of the Order of the Discipline Committee in that she did not fulfil Item #3.

3. On August 30, 2016, the Member wrote to the College acknowledging that she would not be in compliance with the Order:

From: Gina Kempton-Doane [\[mailto: \(email redacted\)\]](mailto:(email redacted))
Sent: Tuesday, August 30, 2016 10:35 AM

To: Saskatchewan College of Psychologists <skcp@sasktel.net>

Subject: enrolling in graduate courses to meet requirements of my discipline order

Hi Karen.

I'm getting in touch with you to discuss a concern I have. As part of my discipline order. I am required to complete 2 classes from Athabasca University. I had planned to complete these classes as part of the post masters certificate specialization program. I felt that this would give me the chance to further my professional development in the area of counselling upon completing my courses. Both classes are offered in the winter session (Jan 2017). This is an ideal time to complete these, as I reduced my work load and arranged for extra support with family responsibilities. The requirements of the discipline order state that I am required to be registered in these courses one year after my return to practice and have them completed 2 years after my return to practice.

My concern is that due to the University calendar I cannot register in them until my final documents are reviewed and I am accepted into the program. According to the academic advisor, this should take place by October or November of 2016.

I am confident that both classes will be completed in advance of the two year deadline. However, I am concerned that I will not be able to provide proof of registration prior to the one year deadline of my return to practice. Am I able to request an extension of the registration date? My supervision hours are continuing and will be complete as of Sept 1. However, I have arranged with my supervisor to continue being under her supervision until I receive confirmation that my hours have been approved by the college. I will be submitting my final supervision report on Sept. 1.

Thank you in advance for your help. I look forward to hearing from you.

Gina Kempton-Doane, R. Psychi.

4. The Member did not seek a variation of the Order of the Discipline Committee nor further communicate with the College regarding her noncompliance with Item #3.
5. Accordingly, the Member was charged with the Formal Complaint now before the Discipline Committee.
6. The member acknowledged she requested and received an adjournment of this Hearing previously scheduled for May 26, 2017.
7. The member acknowledges she received letters from the counsel for the College of Psychologists on March 8, April 20, May 25 and October 3, 2017 and provided no reply.
8. The Member acknowledges she sought legal assistance on October 11, 2017 which was two (2) days before the Hearing of this complaint.

9. The Member acknowledges that this document and the Decision of the Discipline Committee shall be published on the website of the College of Psychologists.

LEGISLATION

- [5] 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
- (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*].

- [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 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 (I), 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 Ms. Kempton-Doane in the Agreed Statement of Facts in relation to the charge contained in the Formal Complaint. She has acknowledged that she failed to meet the requirements outlined in part 3 of the Order of the Discipline Committee. Ms. Kempton-Doane also provided an explanation to the Discipline Committee about her failure to meet the order, which the Committee accepts. Nevertheless, a failure to comply with an order of the Discipline Committee is professional misconduct, as set out in clause 25(d) of the Act. The Discipline Committee therefore finds that Ms. Kempton-Doane is guilty of professional misconduct.

[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. This provision establishes, first, that the Discipline Committee has no power to do anything unless there is a finding of guilt and, second, that the powers it does have are those enumerated in the list contained in the provision. 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 apparently 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] As noted above, the parties submitted an Agreed Statement of Facts and Joint Submissions as to Penalty to the Discipline Committee, which states as follows:

10. The Member and Counsel for the Professional Conduct Committee jointly submit the following penalty:
 - a. The Member's name shall be struck from the Registry of the College of Psychologists.
 - b. The Member shall pay costs of \$6,000.00 on or before May 31, 2018.
 - c. The Member may apply to restore her name to the Registry of the College of Psychologists upon proof that she has completed Item #3 as ordered by the Discipline Committee on July 3, 2014 and has paid the costs as referred to above.

[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 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):

² 2009 SKCA 81.

³ *Ibid*, at paragraph 13.

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.

[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

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

1. Ms. Kempton-Doane's name shall be struck from the Registry of the College of Psychologists;
2. Ms. Kempton-Doane shall pay costs of \$6,000.00 on or before May 31, 2018; and
3. Ms. Kempton-Doane may apply to restore her name on the Registry of the College of Psychologists upon proof that she has completed Item #3 as ordered by the Discipline Committee on July 3, 2014 and has paid the costs as referred to above.

Dated at Regina, Saskatchewan this 24th day of October 2017.

SASKATCHEWAN COLLEGE OF PSYCHOLOGISTS,
DISCIPLINE COMMITTEE



Tom Robinson
Registered Doctoral Psychologist, Chair