

**IN THE MATTER OF *THE PSYCHOLOGISTS ACT, 1997* AND BYLAWS AND IN THE  
MATTER OF A COMPLAINT AGAINST ANDREA MacKAY, A FORMER MEMBER OF  
THE SASKATCHEWAN COLLEGE OF PSYCHOLOGISTS**

**DECISION**

**Saskatchewan College of Psychologists**

**DISCIPLINE COMMITTEE**

Discipline Committee Members:

Tom Robinson, Registered Doctoral Psychologist, Chair  
Marc Sheckter, Registered Doctoral Psychologist, Member  
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, Andrea MacKay  
Merrilee Rasmussen, Q.C., legal counsel for the Discipline Committee

**INTRODUCTION**

[1] The Discipline Committee convened on December 16, 2020, via conference call, as agreed by the parties, to hear and determine the formal complaint concerning the Member dated April 7, 2020, as required by *The Psychologists Act, 1997* ("the Act").

[2] At all times material to the complaints made against her, Andrea MacKay 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").

**THE FORMAL COMPLAINT**

[3] The Formal Complaint contains the following charges alleging that Andrea MacKay is guilty of professional misconduct contrary to section 25 of *The Psychologists Act, 1997*, S.S. 1997, c P-36.01 and/or Regulatory Bylaw #20 in that she:

Charge 1: Entered into a personal relationship with a client (DH) during or immediately following a professional relationship with the same client from November 2017 to June 2018 which conduct, *inter alia*, was unbecoming to the profession contrary to Principle 111.31, 111.3 3, 111.36 of the Canadian Code of Ethics for Psychologists, 3rd ed., 2000 and Sections 5.16 and 5.17 of the Professional Practice Guidelines of the Saskatchewan College of Psychologists.

Charge 2: Sought and received financial assistance for personal expenses from a client (DH) during or immediately following a professional relationship with the same client from November 2017 to June 2018 contrary to Principle 111.3 1, 111.3 3, 111.36 of the Canadian Code of Ethics for Psychologists, 3rd ed., 2000 and Section 5.17 of the Professional Practice Guidelines of the Saskatchewan College of Psychologists.

## FACTS

[4] The parties submitted an Agreed Statement of Facts the relevant text of which (excluding headings and repetition of the charges) is set out below.

### B. Jurisdiction

2. Ms. Mackay was at all material times registered with the College of Psychologists in Saskatchewan and accordingly was subject to The Psychologists Act, 1997, S.S. 1997, c. P-36.01 and the *Canadian Code of Ethics for Psychologists* 3<sup>rd</sup> ed., 2000 (the "Code").

3. Ms. Mackay is currently the subject of a formal complaint dated April 7, 2020, comprised of the allegations noted above.

4. On April 9, 2020 Ms. Mackay was served with the Formal Complaint and Notice of Disciplinary Hearing by registered mail (Tab A).

### C. Particulars of Complaint

5. At the material time, Ms. Mackay was a provisional licensee working under the supervision of fully licensed psychologists.

6. DH was involved in a legal dispute relating to custody and access of his child from a previous relationship.

7. From about November of 2017 to June of 2018, DH saw Ms. Mackay for psychological services to assist with the legal conflict in which he was involved related to his ongoing custody litigation.

8. On April 27, 2018 the Complainant, Mackay, and Fred Curtis (mediator) met socially. The Complainant stayed overnight at Mackay's house.

9. During the April 27, 2018 meeting Ms. Mackay said she explained to Fred Curtis "about dual relationships and that I didn't want or couldn't be involved in this case anymore".

10. The Complainant brought and left items of his personal property at Mackay's residence. In May 2018 he left three duffle bags at her residence.

11. Ms. Mackay and the Complainant communicated via text after their professional relationship ended. Attached are copies of the texts dated May 26 and June 22, 2018 (Tab B).

12. Ms. Mackay entered into a personal relationship with DH which failed to maintain appropriate boundaries and was inappropriate given their professional relationship.

13. During the personal relationship, Ms. Mackay entered into a personal relationship with DH described in the preceding paragraph. Ms. Mackay accepted money from DH and later returned the money. This financial exchange was inappropriate given their previous professional relationship. Attached are the text messages of June 25, 2018 and the deposit statements of June 20 and June 28 wherein Ms. Mackay deposited \$1,600.00 to DH's account (Tab C).

#### D. CONCLUSION

14. Ms. Mackay, through her counsel, pleads guilty to the charges set out in the Formal Complaint.

## 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 (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 Andrea MacKay in the Agreed Statement of Facts in relation to the charge contained in the Formal Complaint. She has acknowledged that she was in breach of the Code and the Guidelines by entering into a personal relationship with a client and accepting financial assistance from him. The Guidelines establish generally acceptable practices within the profession and a failure to comply with the Guidelines is harmful to the best interests of the public and tends to harm the standing of the profession, contrary to clauses 25(a) and (b) of the Act. As well, she was in breach of the Code, compliance with which is required by section 20 of the College's Regulatory Bylaws, and thus a breach of the bylaws contrary to clause 25(c) of the Act. The Discipline Committee therefore finds that Andrea MacKay 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.

[9] The parties have also submitted an Agreement as to Penalty, as follows:

Andrea McKay 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 charged with failing to comply with an Order of the Discipline Committee. The Member cannot be returned to the Register until the Discipline Committee has addressed her failure to comply.
3. Full cost recovery of all investigation expenses, Professional Conduct Committee expenses and legal fees, and Discipline Committee expenses and legal fees in the sum of \$16,250.00, payable within one year from the date of the Order. If the costs are not paid within one year, the Member will be charged with failing to comply with an Order of the Discipline Committee. The Member cannot be returned to the Register until the Discipline Committee has addressed her failure to comply.
4. The Member must successfully complete an updated University graduate-level ethics course from an accredited Canadian University (approved by the College) or an approved ethics course (approved by the College) within one year of returning to the Registrar. Evidence of completion of the course must be sent directly to the College by the institution.
5. 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*<sup>1</sup>, 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<sup>2</sup>. 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

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<sup>1</sup> 2009 SKCA 81.

<sup>2</sup> *Ibid*, at paragraph 13.

members and the Law Society have a vested interest in ensuring that matters proceed expeditiously. If the member cooperates 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 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, although is of the view that the order should be worded slightly differently than has been proposed.

## **ORDER**

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

1. Andrea MacKay is hereby reprimanded;
2. Andrea MacKay shall pay a fine of \$2,000 to the College within one year of the date of this Order;
3. Andrea MacKay shall pay to the College the full cost of all investigation expenses, Professional Conduct Committee expenses and legal fees, and Discipline Committee expenses and legal fees incurred by the College in the investigation and prosecution of the formal complaints against her in the sum of \$16,250.00, within one year from the date of this Order;
4. If the fine and costs ordered to be paid pursuant to paragraphs 2 and 3 are not paid within the time required, the matter will be referred to the

Professional Conduct Committee for investigation as a new complaint of failing to comply with an order of the Discipline Committee contrary to clause 25(d) of *The Psychologists Act, 1997* and while that investigation is outstanding Andrea MacKay will not be eligible to regain membership or licensure with the College or, if she has been reinstated, her licence shall be suspended;

4. If Andrea MacKay chooses to apply for reinstatement with the College, she shall successfully complete a University graduate-level ethics course or other ethics course approved by the College within one year of her reinstatement and shall arrange for confirmation of her successful completion of the course to be sent directly to the College by the institution.

5. This decision and order shall be posted on the website of the Saskatchewan College of Psychologists.

Dated at Regina, Saskatchewan this \_\_21st\_\_\_\_ day of December 2020.

SASKATCHEWAN COLLEGE OF PSYCHOLOGISTS, DISCIPLINE  
COMMITTEE



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Tom Robinson,  
Registered Doctoral Psychologist, Chair

On behalf of:

Marc Sheckter, Registered Doctoral Psychologist, Member  
Terry Levitt, Registered Doctoral Psychologist, Member  
Christel Gee, Public Representative, Member