

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

**DECISION
Saskatchewan College of Psychologists
DISCIPLINE COMMITTEE**

Discipline Committee Members:

Tom Robinson, Registered Doctoral Psychologist, Chair
Val Harding, Registered Doctoral Psychologist, Member
Renee Schmidt, 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 Laura Vilness
Merrilee Rasmussen, Q.C., legal counsel for the Discipline Committee

INTRODUCTION

[1] The Discipline Committee convened on April 14, 2021, virtually via Zoom, as agreed by the parties, to hear and determine the formal complaint concerning the Member dated March 10, 2020 and amended by consent, as required by *The Psychologists Act, 1997* (“the Act”).

[2] At all times material to the complaints made against her, Laura Vilness 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”).

THE FORMAL COMPLAINT

¹ 3rd Ed., 2000.

[3] The Formal Complaint contains the following charges alleging that Laura Vilness 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 during the period from August 2017 to June 2018 she provided psychological services to school age children and that she:

Charge #1: Failed to maintain adequate records, including test protocols, contrary to Sections 13.1, 13.3, 13.6, and 13.7 of the Professional Practice Guidelines of the Saskatchewan College of Psychologists.

Charge #2: Provided and communicated a diagnosis of intellectual disability and learning disability of three students based on insufficient assessment or failed to make a complete assessment and failed to communicate the reason for the diagnosis, contrary to Sections 3.8 and 3.21 of the Professional Practice Guidelines of the Saskatchewan College of Psychologists.

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. Vilness's Education and Background

4. Ms. Vilness is a retired educator who worked as a classroom and special education teacher, educational psychologist, and administrator for approximately 37 years in Saskatchewan.

5. Ms. Vilness has a Master of Education degree in Educational Psychology (University of Regina, 1993), as well as a B.A., B.Ed., and Ed.D. Ms. Vilness has served on the SCP Executive Council and Professional Conduct Committee and on three oral exam panels.

6. Ms. Vilness is no longer registered as a psychologist in either British Columbia or Saskatchewan.

D. Particulars of Complaint:

7. Ms. Vilness began working with the XXXX XXXX XXXX in August of 2017 on a temporary contract during the complainant's XXXX XXXX. In the spring of 2018, Ms. Vilness's files were transferred back to the complainant.

Charge 1

8. When Ms. Vilness organized the 29 files for transfer back to the complainant she shredded parts of the ABAS-3 protocols that included parent responses, which contained subtest item responses, out of a concern about who would have access to this sensitive information once it was transferred to central filing.

Charge 2

9. Ms. Vilness authored a psychological evaluation for a 7-year-old student dated February 19, 2018, that communicated a diagnosis of mild intellectual disability. Ms. Vilness did not conduct sufficient assessment to substantiate that diagnosis. In particular, Ms. Vilness conducted an abbreviated WISC-V that was not appropriate in these circumstances.

10. Ms. Vilness authored a psychological evaluation for a 17-year-old student dated December 21, 2017. That psychological evaluation communicated a moderate specific learning disorder in the areas of reading, written expression, and mathematics. This student was on track to graduate high school, despite his difficulties with learning. Ms. Vilness did not conduct further assessment into the possibility of this student having an intellectual disability. This was an insufficient assessment.

11. Ms. Vilness authored a psychological evaluation for an 8-year-old student dated November 17, 2017 that communicated a specific learning disorder in reading and written expression. This diagnosis was based on insufficient assessment and the reasons for the learning disorder in written expression diagnosis were not clearly articulated in the report.

E. Conclusion:

12. Ms. Vilness, 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, 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 charge 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 shredded documents from a patient file that should not have been destroyed. She communicated diagnoses in respect of three different students, based on insufficient assessments. The Discipline Committee therefore finds that the Member is guilty of professional misconduct.

Penalty

Introduction

[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”.

Positions of the Parties

[9] The parties agreed with respect to the imposition of a reprimand and to provisions relating to the possibility that the Member might choose to return to practice but did not agree with respect to the issues of fine and costs.

[10] Counsel for the Professional Conduct Committee submitted that a fine of \$2,000 be imposed and the full costs of the College in relation to the investigation and hearing of the complaint against the Member, to be paid within one year of the date of the Discipline Committee's Order.

[11] Counsel for the Member pointed out that the Member is now fully retired and won't practice again. In these circumstances, counsel submitted that the total of the fine and costs proposed, being \$14,100, is punitive, especially considering the nature of the conduct that is the subject of the Formal Complaint. A member should not be forced by the spectre of high costs into accepting any and every proposal made by the Professional Conduct Committee nor should a member be required to pay for the costs of negotiating a resolution. In this case, the Formal Complaint was amended, and other charges originally contained in the Formal Complaint were not pursued. The Professional Conduct Committee made no effort to resolve the complaint by consent and, while that choice is the Committee's to make, it necessarily increases the costs incurred by the College and the Member should not have to bear the cost of that choice. A fine of \$2,000 is disproportionate, since the maximum fine under the Act is \$5,000. Counsel for the Member submitted that no fine should be imposed in this case as the charges are relatively minor, the Member has no discipline history, the Member cooperated with the process, and she had a long and exemplary career as a psychologist.

Factors to Consider in Assessing Penalty

[12] Discipline committees of the College of Psychologists have usually referred to the factors set out in *Camgoz v College of Physicians and Surgeons*² when there has not been agreement

² 1993 CanLII 8952 (SK QB). The *Camgoz* factors were referred to by the Saskatchewan Court of Appeal in *Peet v Law Society of Saskatchewan*, 2019 SKCA 49. The Court of Appeal's approval of the non-exhaustive list of factors to be considered in sentencing in a professional discipline context is implicit.

between the parties with respect to penalty. The *Camgoz* factors include the following³:

1. The nature and gravity of the proven allegations;
2. The age of the offending member of the profession;
3. The age of the offended patient;
4. Evidence of the frequency of the commission of the particular acts of misconduct within particularly, and without generally, the Province;
5. The presence or absence of mitigating circumstances, if any.
6. Specific deterrence;
7. General deterrence;
8. Previous record, if any, for the same, or similar, misconduct; the length of time that has elapsed between the date of any previous misconduct and conviction thereon; and, the member's (properly considered) conduct since that time;
9. Ensuring that the penalty imposed will protect the public and ensure the safe and proper practice by members of the profession;
10. The need to maintain the public's confidence in the integrity of the profession's ability to properly supervise the professional conduct of its members;
11. Ensuring that the penalty imposed is not disparate with penalties previously imposed in this jurisdiction, particularly, and in other jurisdictions in general, for the same, or similar acts of misconduct.

Reprimand and Conditions

[13] In this case, as noted, the parties have agreed that a reprimand and conditions on return to practice if the Member chooses to do so are appropriate. The Discipline Committee agrees. A reprimand is the least of penalties that can be imposed, amounting to a formal acknowledgement that the Member is guilty of professional misconduct whose negative impact is felt only in respect of professional reputation. Since the Member is now fully retired this will not negatively affect her in a practical sense but serves to articulate the boundary between acceptable and unacceptable conduct for those members of the profession who are still engaged in practice and for members of the public who can be confident that the profession is regulating its members in

³ *Ibid*, at para. 49.

the interests of public protection. Recognizing that there is a possibility that the Member could decide to return to practice, the limitations on such a return are also designed to achieve the objective of public protection.

Fine

[14] The Discipline Committee is of the view that a fine is also appropriate in this case. A fine demonstrates to members and the public that discipline offences are taken seriously.

[15] Fines have been imposed in SCP discipline cases a dozen times in the 28 discipline cases that have been heard and determined since the College was established in 2002. In all but two of those cases, the fine was agreed to by the Member and contained in a joint submission as to penalty provided to the Discipline Committee. In the first of the two cases where the fine was not agreed to, the member chose not to participate at all. The fine imposed in that case was \$3,000.⁴ Taking inflation into account since that decision was decided, the equivalent amount today would be almost \$3,900.⁵ In the second such case, counsel for the member argued that no fine should be imposed as the member had ceased to practise, but the Discipline Committee imposed a fine of \$2,000 (approximately \$2,500 in current dollars) based on that member's discipline case the previous year involving similar issues.⁶

[16] In the other 10 cases where the fine was agreed to by the member, the amounts ranged from \$1,000 to \$5,000, with the average fine being \$2,550 and the mean \$2,000. This represents the considered opinion of 10 different members and their legal counsel about the appropriateness of the imposition of a fine and the amount.

⁴ Vesper Adams Penalty Decision dated September 3, 2006.

⁵ See <https://www.bankofcanada.ca/rates/related/inflation-calculator/>

⁶ Charles Swift Decision dated December 2010.

[16] In the present case, the Professional Conduct Committee proposes a fine of \$2,000. Taking into account the amounts of fines that have been imposed in the other cases before it, the Discipline Committee is of the view that a fine in this amount is reasonable.

Costs

[17] The total costs incurred by the College in this case are estimated to be approximately \$12,100. In *Abrametz v. Law Society of Saskatchewan*⁷, the Saskatchewan 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. Counsel referred to the factors outlined by the Court of Appeal to be taken into account when determining costs which the Court identified as follows:

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

[18] Counsel for the Professional Conduct Committee referred to other recent decisions of this Discipline Committee relating to costs. In the Frederick Reekie decision, dated January 29, 2020, costs were ordered at \$8,058. In the Mary Vandergoot decision dated August 21, 2020, costs ordered were actual costs, which Counsel advises were approximately \$8,000. In the Andrea MacKay decision, dated December 21, 2020, costs were ordered in the amount of \$16,250. 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. Counsel also 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 on the basis that the member took responsibility for her conduct early

⁷ 2018 SKCA 37.

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.

[19] Two of the members of the Discipline Committee who heard this case also heard the case of Joan Helmsing, where the issue of costs was also in dispute. As outlined in that decision, while the Member in this case, as in Helmsing, 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 Laura Vilness guilty of professional misconduct and, pursuant to section 32 of *The Psychologists Act, 1997*, orders that:

1. Laura Vilness is hereby reprimanded;
2. Laura Vilness shall pay a fine of \$2,000 within one year after the date of this Order;
3. Laura Vilness shall pay costs in the amount of \$12,100 within one year after the date of this Order;
4. If Laura Vilness fails to pay the fine and costs in accordance with paragraphs 2 and 3 within the time required, her licence, if she holds one at that time, shall be thereupon suspended until the fine and costs are paid in full and she will be charged with professional misconduct for failing to comply with an Order of the Discipline Committee;
5. If Laura Vilness wishes to resume practice in Saskatchewan in a manner that involves her conducting psychological assessments, she shall arrange to be supervised by a member of the College who holds a full practising licence who is approved by the College and who would review and sign off on the first 10 assessment reports she completes after resuming that practice, in accordance with a supervision plan approved by the Registration Committee.

6. 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:

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