

IN THE MATTER OF *THE PSYCHOLOGISTS ACT, 1997* AND BYLAWS AND IN THE MATTER OF A COMPLAINT AGAINST TIMOTHY LANDRY, REGISTERED PSYCHOLOGIST, OF REGINA, SASKATCHEWAN

DECISION

of

Saskatchewan College of Psychologists

DISCIPLINE COMMITTEE

Discipline Committee Members:

Mary Hampton, Registered Doctoral Psychologist, Chair
Carl von Baeyer, Registered Doctoral Psychologist
Gordon Glaicar, Public Representative

Karen Prisciak, Q.C., appearing on behalf of the Professional Conduct Committee
Nicholas Cann, appearing on behalf of Timothy Landry
Merrilee Rasmussen, Q.C., legal counsel for the Discipline Committee

INTRODUCTION:

[1] The Discipline Committee convened on October 27, 2010, via conference call, as agreed by the parties. The Member was served with the Notice of Hearing dated September 2, 2010, which was served on the Member as required by *The Psychologists Act, 1997*.¹ The Notice of Hearing alleged that Dr. Landry was guilty of professional misconduct and/or professional incompetence, within the meaning of *The Psychologists Act, 1997*.

[2] At all times material to the complaints against him, Timothy Landry was a Member of the Saskatchewan College of Psychologists and licensed to practice in the Province of Saskatchewan.

THE FORMAL COMPLAINT

[3] The Formal Complaint charges that Dr. Landry is guilty of professional misconduct and/or professional incompetence contrary to sections 25 and 26 of *The Psychologists Act, 1997* and/or Regulatory Bylaw #14 in that:

1. He was involved in a personal relationship with X while *he/she* was a practicum student and an employee from [*dates deleted*] which personal relationship included

¹Exhibit D to the Affidavit of Karen Messer-Engel, dated October 25, 2010, and filed in evidence in this hearing as Exhibit P-1.

kissing, embracing, sexual touching, backrubs and other similar conduct, including personal advances contrary to the *Canadian Code of Ethics for Psychologists*, 3rd ed. 2000 (hereinafter referred to as the *Code*) Sections II.1, II.2, II.28 and III.31.

2. From [dates deleted], during the time of X's employment as his [employment title], he directed *him/her* to photocopy test protocols used in clinical assessments, including the Beck Depression and Anxiety Inventories and the WAISs, contrary to testing protocols and contrary to Section III.1 of the *Code*.

3. From [dates deleted], during the time of X's employment as his [employment title], he did not acknowledge *his/her* involvement as a [employment title] and did not recognize *his/her* contribution to the assessments contrary to Section III.5 and III.7 of the *Code*.

FACTS:

[4] An "Agreement as to Facts" was submitted to the Discipline Committee by the parties.² The entire text (with the exception of the amendment of #15) of the Agreement is as follows:

1. Timothy Landry is a psychologist who was registered with the College of Psychologists in Saskatchewan until the date of his letter of resignation, January 30, 2010.

2. On May 5, 2010, Dr. Landry was served with a Formal Complaint dated May 3, 2010. On September 7, 2010, Dr. Landry was served with a Notice of Hearing dated September 2, 2010.

3. Dr. Landry accepts the Discipline Committee is properly constituted and has no preliminary objections to the jurisdiction of the Discipline Committee.

4. From [dates deleted], X was a practicum student under the supervision of Dr. Landry in the [Department Area] Program at the [Employment Name] in [City Name],

5. During X's four month practicum, Dr. Landry initiated conversations of an increasingly personal nature. Both Dr. Landry and X flirted back and forth and Dr. Landry complimented X on *his/her* attractiveness and intelligence.

6. In [date deleted], Dr. Landry hired X as his [employment title] to conduct psychological testing of his private practice patients. X conducted various neuropsychological testing of adult patients at [Employment Name] until *he/she* left Dr. Landry's employment in [date deleted].

²Exhibit P-2.

7. X worked 20 to 30 hours per week with Dr. Landry. X was at the [*Employment Name*] every Friday morning and sporadically during the week.
8. Dr. Landry instructed X to photocopy neuropsychological testing materials used in clinical assessments contrary to psychological testing protocols.
9. Dr. Landry did not acknowledge X's involvement in his assessment of private practice patients in the assessment reports.
10. Once X became an employee of Dr. Landry, a consensual physical relationship started in his private office. The physical contact initially started with back rubs and progressed over time to kissing, embracing and some sexual touching. Dr. Landry disagrees there was sexual touching.
11. X felt vulnerable to Dr. Landry as he was *his/her* supervisor and *he/she* was in financial need as a student. *He/She* required Dr. Landry's reference to continue in *his/her* Ph.D. program in psychology and to ensure *his/her* one year internship in psychology.
12. From time to time, Dr. Landry and X met with each other over lunches, coffee and once for drinks. These arrangements were made by telephone, email or in person.
13. When X indicated to Dr. Landry that *he/she* would be unable to work the hours he required as the work was interfering with other responsibilities, Dr. Landry expressed dissatisfaction in not seeing *him/her* and was disappointed *he/she* could not increase the number of hours *he/she* worked for him.
14. Ultimately, the intimate relationship ended when X embarked on *his/her* professional internship outside [*City Name*], [*Province Name*]. However, X again agreed to work as a [*employment title*] for Dr. Landry from [*date deleted*]. Although Dr. Landry did not initiate physical intimacy during this time, he told X that he valued *him/her* and their friendship. X resigned from his employment in [*date deleted*].
15. [*Statement regarding impact has been removed due to privacy issues, and at the request of the complainant*].
16. Dr. Landry accepts full responsibility for his conduct and accepts:

He was involved in a personal relationship with X while *he/she* was a practicum student and an employee from [*dates deleted*] which personal relationship included kissing, embracing, sexual touching, backrubs and other similar conduct, including personal advances contrary to the *Canadian Code of Ethics for Psychologists*, 3rd ed. 2000 (hereafter referred to as the *Code*) Sections II.1, II.2, II.28 and III.31.

From [dates deleted], during the time of X's employment as his [employment title], he directed *him/her* to photocopy test protocols used in clinical assessments, including the Beck Depression and Anxiety Inventories and the WAIS, contrary to testing protocols and contrary to Section III.1 of the *Code*.

From [dates deleted], during the time of X's employment as his [employment title], he did not acknowledge *his/her* involvement as a [employment title] and did not recognize *his/her* contribution to the assessments contrary to Section III.5 and III.7 of the *Code*.

LEGISLATION:

[5] *The Psychologists Act, 1997* defines professional misconduct and professional incompetence in the following manner:

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] *The College of Psychology Regulatory Bylaws, 2004* 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.

[7] Where a member is found to be guilty of professional misconduct and/or professional incompetence, the Discipline Committee is authorized to make orders directed at improving the conduct or competence. Section 32 of *The Psychologists Act, 1997* 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:

[8] The Discipline Committee accepts the acknowledgments provided by Dr. Landry in the Agreed Statement of Facts as pleas of guilty to the described complaints, because his acknowledgments repeat, word for word, the content of the formal complaint even though paragraph 10 of the Agreed Statement of Facts states that he does not agree that there was sexual touching. The conduct that he acknowledges occurred constitutes failures to comply with the Code of Ethics of the College. A failure to comply with the Code of Ethics is a breach of section 14 of the College's Regulatory Bylaws, which requires all members so to comply. A breach of a bylaw is, as described in clause 25(c) of *The Psychologists Act, 1997*, professional misconduct. The Discipline Committee therefore finds that Dr. Landry is guilty of professional misconduct as a result of the acknowledgments contained in the Agreed Statement of Facts submitted to the Committee. The Discipline Committee must therefore determine the appropriate consequence to follow as a result of that finding.

[9] Section 32 of *The Psychologists Act, 1997* sets out the powers of the Discipline Committee where it finds a member guilty of professional incompetence or professional misconduct. This provision establishes, firstly, that the Discipline Committee has no power to do anything unless there is a finding of guilt and, secondly, 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 expulsion to reprimand, 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". However, in all cases the Discipline Committee must make an "order". In that regard, the parties have also presented the Discipline Committee with Joint Submissions as to Sentencing.³ In summary form, the joint submission requests the Committee to order the following:

1. That the Member be reprimanded;
2. That the Member pay a fine of \$1,500;
3. That the Member be prohibited from supervising [*deleted to protect identity*] students for one year and until completing the requirements of points 4 to 7 below;
4. That the Member complete a graduate level course in Ethics of Psychology approved by the College, which is not an online course;

³Exhibit P-3.

5. That the Member attend six individualized counselling sessions with a psychologist having expertise in appropriate professional boundaries who is approved by the College, follow the treatment plan proposed by the psychologist, and provide a copy of the plan to the College;
6. That, as an alternative to 5, the Member enroll in a course on appropriate boundaries for psychologists, which is not an online course;
7. That the Member not copy test protocols and abide by all psychological testing protocols;
8. That the Member acknowledge the involvement of [*employment title*] in his psychological assessment reports; and
9. That the Member pay all the legal costs of the investigation and hearing of the complaints against him.

[10] In its decision in the case of *Rault v. Law Society of Saskatchewan*,⁴ the Saskatchewan Court of Appeal made it clear that a discipline committee must give serious consideration to a joint submission on sentencing agreed upon by counsel 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.⁵ 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

⁴[2009] S.J. No. 436

⁵*Ibid*, at paragraph 13.

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 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.

[12] While the Discipline Committee is generally in agreement with the Joint Submission as presented, there are some alterations in details that the Committee believes are necessary to provide clarity and certainty to the order it must make. There are several references in points 3 to 6, inclusive, to the “satisfaction” or “approval” of the College, and the Committee is of the opinion that this would be more precise if the satisfaction or approval is required of the Registrar of the College. The Committee is also of the view that Dr. Landry should notify the test companies of his misuse of their test protocols and should provide confirmation to the registrar that he has done so. An order of this nature is in keeping with both the Code of Ethics and a previous Order of the Discipline Committee in a similar case.⁶ Finally, the Discipline Committee notes that the Agreed Statement of Facts says that Dr. Landry submitted his resignation to the College in January 2010, and several of the points in the Joint Submission pertain to Dr. Landry’s conduct in the future as a practising psychologist. The Discipline Committee agrees with the inclusion of these aspects of the sentencing proposal as jointly submitted, but they must be addressed in a different manner in order to be effective and to ensure, to the extent that is practicable to do so, that the Discipline Committee meets its mandate to serve and protect the public by ensuring to the extent that it can that its members meet minimum standards of conduct and competence. The Discipline Committee is also mindful of the fact that a person who is registered and licensed in Saskatchewan can move with relative ease to practice in other Canadian jurisdictions. Thus, in spite of the fact that Dr. Landry has apparently submitted his resignation, it is still necessary to ensure that he cannot return to practice in Saskatchewan or in another jurisdiction without addressing the deficiencies that he has demonstrated in his practice to which the charges in this hearing relate. For that reason, the Discipline Committee has no option but to order that if Dr. Landry wishes to return to practice in

⁶*In re the Saskatchewan College of Psychologists and Charles Swift*, decision of the Discipline Committee dated May 20, 2009, at paragraph 31.

Saskatchewan that he be suspended until he can demonstrate that he has complied with all aspects of the Discipline Committee's Order, which is set out below.

ORDER:

[13] For all of the reasons set out above, the Discipline Committee of the Saskatchewan College of Psychologists therefore finds Dr. Timothy Landry 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 Timothy Landry is hereby reprimanded and shall in future conduct himself at all times in accordance with the Code of Ethics of the College and, in particular, shall:
 - (a) not photocopy test protocols and abide by all psychological testing protocols; and
 - (b) acknowledge the involvement of [*employment title*] in his psychological assessment reports;
2. That Timothy Landry is prohibited from supervising [*deleted to protect identity*] students until December 31, 2011 and until he has complied with paragraph 5 of this Order;
3. That Timothy Landry shall pay a fine of \$1,500, to be paid on or before January 31, 2011, and, if such payment is not received by the College on or before that date, he shall be suspended from the College until such payment is received in full;
4. That Timothy Landry shall pay costs in an amount equal to the total of the legal fees incurred by the Professional Conduct Committee and the Discipline Committee, as certified by the Registrar, within 30 days of the date of such certification and, if such payment is not received by the College on or before that date, he shall be suspended from the College until such payment is received in full;
5. That Timothy Landry is suspended from the College until he provides to the Registrar:
 - (a) confirmation of his satisfactory completion of a graduate level ethics course approved by the Registrar;
 - (b) confirmation of attendance or completion of:

(i) six individualized counselling sessions with a psychologist having expertise in appropriate professional boundaries who is approved by the Registrar; or

(ii) a course in appropriate boundaries for psychologists approved by the Registrar; and

(c) a copy of the treatment plan proposed by the psychologist described in clause (b)(i) of this Order, if he has chosen to attend counselling sessions, and confirmation that he has followed it.

Dated at Regina, Saskatchewan this 28th day of December, 2010.

SASKATCHEWAN COLLEGE OF PSYCHOLOGISTS,
DISCIPLINE COMMITTEE

_original signed by_____

Mary Hampton, Registered Doctoral Psychologist
Chairperson