

IN THE MATTER OF *THE PSYCHOLOGISTS ACT, 1997* AND BYLAWS AND IN THE MATTER OF A COMPLAINT AGAINST JO NANSON, REGISTERED DOCTORAL PSYCHOLOGIST, OF SASKATOON, SASKATCHEWAN

DECISION

of

**Saskatchewan College of Psychologists**

DISCIPLINE COMMITTEE

Discipline Committee Members:

Mary Hampton, Registered Doctoral Psychologist, Chair  
Tom Robinson, Registered Doctoral Psychologist  
Regan Hart-Mitchell, Registered Doctoral Psychologist

Karen Prisciak, Q.C., appearing on behalf of the Professional Conduct Committee  
James H. Gillis, appearing on behalf of Dr. Nanson  
Merrilee Rasmussen, Q.C., legal counsel for the Discipline Committee

**INTRODUCTION:**

[1] The Discipline Committee convened on August 23 and 24, 2012 at Saskatoon, Saskatchewan, as agreed by the parties.

[2] Dr. Nanson is a Member of the Saskatchewan College of Psychologists (the “College”) and at all times material to the complaints against her was a Psychologist registered and licensed to practice in the Province of Saskatchewan. The Formal Complaint attached to the Notice of Hearing alleged that Dr. Nanson was guilty of professional misconduct and/or professional incompetence, contrary to the provisions of sections 25 and 26 of *The Psychologists Act, 1997*. The particular charges made against her were that:

1. She misrepresented that Mr. Harvey Walker, as legal counsel for Ms X, stated Ms X was fully mobile during a conference call held on July 7, 2007, and in a custody and access report dated August 29, 2007, contrary to the provisions of the *Canadian Code of Ethics for Psychologists*, 3<sup>rd</sup> Ed. 2000, section II.19.

2. She made recommendations regarding custody and access in a report dated August 29, 2007, in favour of the child’s father and to the detriment of Ms X, without

speaking or meeting with Ms X, her parents or anyone knowing Ms X, in contravention of sections II.1, II.21 and II.38 of the Code.

3. She did not declare custody and access assessment as an area of competence with the Saskatchewan College of Psychologists contrary to sections II.6 and II.9 of the Code.

4. She failed to secure the informed consent of Ms X to a custody and access assessment involving Ms X's child, when Ms X had joint custody of her child pursuant to a court order and she did not inform all participants about the limits of confidentiality contrary to sections I.16, I.24 and III.14 of the Code.

5. She made uncomplimentary and inaccurate statements about Ms X in a custody and access report dated August 29, 2007, contrary to sections I.3, III.11 and IV.26 of the Code.

#### **FACTS:**

[3] The Discipline committee heard the testimony of Harvey Walker Q.C., who was counsel for Ms X during her custody and access dispute with her ex-husband, as well as Ms X. In addition, the Committee heard the testimony of Lori Gollan, who was counsel for Ms X's ex-husband, and from the member, Dr. Nanson. During the course of the hearing the following documents were received in evidence:

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| Exhibit A | Affidavit of Karen Messer-Engel, M.A., R. Psych., attached to which are Dr. Nanson's certificate of registration with the College, the Formal Complaint and cover letter dated September 20, 2010, with proof of service, and the original Notice of Hearing dated June 14, 2011, with proof of service |
| Exhibit B | Queen's Bench Fiat dated December 1, 2005 indicating that Ms X had joint custody of her son   |
| Exhibit C | Queen's Bench Order dated April 9, 2007 varying the 2005 Order to increase access in favour of Ms X   |
| Exhibit D | Report of Dr. Nanson titled "Neuropsychological Consultation report" re Ms X's son dated August 29, 2007  |
| Exhibit E | Complaint from Harvey Walker Q.C. dated November 13, 2008   |
| Exhibit F | Letter from Lori Gollan to Harvey Walker dated May 30, 2007   |

- Exhibit G Letter from Harvey Walker to Lori Gollan dated June 11, 2007
- Exhibit H Letter from Lori Gollan to Harvey Walker dated July 11, 2007
- Exhibit I Queen's Bench decision dated July 31, 2008
- Exhibit J Notice by Lori Gollan of intent to submit Exhibit D at the custody/access trial re Ms X's son
- Exhibit K Dr. Nanson's curriculum vitae
- Exhibit L Description of custody and access assessments from Saskatchewan Justice website dated August 20, 2012
- Exhibit M Letter from Lori Gollan to Harvey Walker dated April 9, 2007
- Exhibit N Letter from Lori Gollan to Harvey Walker dated July 5, 2007
- Exhibit O Letter from Lori Gollan to Harvey Walker dated July 16, 2007
- Exhibit P Extract from British Columbia Code of Conduct dated January 1, 2009 re Assessment Procedures
- Exhibit Q Extract from *Child Custody Assessments, A Resource Guide for Legal and Mental Health Professionals*, Rachel Birnbaum et al., Carswell 2008
- Exhibit R Extract from British Columbia Code of Conduct dated January 1, 2009 re Informed Consent

[4] Ms X gave birth to her son on May 24, 2005. Unfortunately, she suffered a series of debilitating strokes that left her hospitalized for many months after his birth. During that time, her (now) ex-husband had de facto custody of their son. Ultimately, their dispute about custody and access led them to initiate formal legal proceedings. An interim court order in December 2005 provided for joint custody with primary residence in the home of the child's father, as Ms X was still hospitalized at that time. Ultimately the matter went to trial. Prior to the trial, as is required by The Rules of Court, Ms Gollan, who was acting as legal counsel for the father, provided a notice that she intended to use the report prepared by Dr. Nanson on August 29, 2007 as evidence in the trial.

[5] When Mr. Walker received the report as Ms X's counsel he reviewed it and found that it contained the following sentence:

Although Mr. Walker told me that Ms X was fully mobile, Dr. Levitt notes that she ambulated using a walker.<sup>1</sup>

[6] And later in the report, there appears the following additional sentence:

I am confused by the information supplied by Mr. Walker as he told me during a telephone conference call, that [the child's] mother was fully mobile, yet in Dr. Levitt's notes, she ambulates with a walker.<sup>2</sup>

[7] When he saw this information in Dr. Nanson's report Mr. Walker saw himself as a potential witness in a custody/access dispute that had become quite bitter. Because a lawyer cannot be both counsel and witness, he felt he had to withdraw as Ms X's legal counsel, and, as a result she had to obtain a different lawyer to represent her on the eve of the trial. Mr. Walker subsequently submitted a complaint to the College.

[8] Mr. Walker states in his letter of complaint<sup>3</sup> that he did not represent that Ms X was fully mobile in the April 9, 2007 conference call. However, he not only objected to the reference to this information that he said was inaccurate but also to Dr. Nanson's using information in her report that was gleaned from a conference call that was held for the purpose of determining whether or not Ms X would participate in Dr. Nanson's assessment. He felt that Dr. Nanson should have known that including statements ascribed to him in her report would lead to his having to withdraw as Ms X's lawyer because he would then be a potential witness. Dr. Nanson said that she didn't think that this would be the result of her having included this information in her report. Mr. Walker also complained that Dr. Nanson made assessments about Ms X's ability to care for her son without ever having met Ms X.

[9] Ms X also signed Mr. Walker's letter of complaint to indicate her support for the concerns he expressed.

[10] Dr. Nanson and her legal counsel, Lori Gollan, who both participated in the July 7, 2007 conference call, both testified that Mr. Walker said Ms X was "fully mobile". Dr. Nanson said the issue arose during the course of the conversation because she offered to come to Ms X's home to interview her, rather than having her travel in to Saskatoon to Dr. Nanson's office. In this context, she said Mr. Walker commented, "That's not a problem, she's fully mobile". Lori Gollan brought with her the notes she had made at the time of the call. The notes indicate that Mr. Walker used the phrase "fully mobile". Ms Gollan also confirmed that the comment was made in relation to the issue of whether or not Ms X could attend at Dr. Nanson's office.

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<sup>1</sup>Exhibit D, at p. 4.

<sup>2</sup>*Ibid*, at p. 8.

<sup>3</sup>Exhibit E.

[11] The Discipline Committee has concluded that Mr. Walker did use the phrase “fully mobile” in the course of the July 7, 2007 conference call, although it seems clear that he intended it to be understood in a different manner from how it was taken by Dr. Nanson and Ms Gollan.

[12] The report itself was prepared by Dr. Nanson without having interviewed Ms X or anyone she knew, other than her ex-husband with whom she was in a bitter legal dispute. The report was received in evidence at the trial and the trial judge noted in his decision that Dr. Nanson had not talked to Ms X and that she had to rely on the reports of others to form an opinion in relation to Ms X. Ultimately, the judge confirmed the joint custody arrangement with primary residence in the home of the father and increased Ms X’s access to her son to include two days a week of overnight access and during holidays.

[13] Lori Gollan provided Dr. Nanson with a number of medical reports in relation to Ms X as well as an affidavit sworn by Ms X in the course of the litigation. Ms X did not consent to the use of her personal medical information or her affidavit in this way. While Ms X declined to make herself available to be interviewed by Dr. Nanson for the purpose of preparing this report, her legal counsel advised Ms Gollan that:

If Mr. Y proposes to follow through with an assessment by Dr. Nanson and [the son] is to be presented to Dr. Nanson for her observations, Mr. Y will have to arrange for interviews at times other than when [the son] and Ms X are exercising access to each other.<sup>4</sup>

[14] Ms X testified that she couldn’t control what her son’s father did when he had their son in his custody and that this statement simply acknowledged that fact. Mr. Walker also held this view of the meaning of this sentence. Ms Gollan, however, interpreted it as providing implicit consent to the interview of the son by Dr. Nanson, as, apparently, did Dr. Nanson.

[15] Dr. Nanson did interview the son at his father’s home. She also interviewed the father and the paternal grandmother. She reviewed a variety of medical reports relating to Ms X as well as an affidavit that Ms X prepared and filed for use in her legal action. These documents were all provided to Dr. Nanson by Ms Gollan, and Dr. Nanson did not obtain any specific consent from Ms X to the use of her private information nor to interviewing her son, of whom she had joint custody.

[16] Dr. Nanson’s report made a number of negative assessments in regard to Ms X, all of which were based entirely on a review of the documents she had received from Ms Gollan.

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<sup>4</sup>Exhibit H, p. 1.

## **LEGISLATION:**

[17] *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.

[18] *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.

**ANALYSIS:**

[19] The allegations against Dr. Nanson contained in the formal complaint are broken down into five separate bases or charges on which it is claimed that she is guilty of either professional misconduct or professional incompetence, or both, as those terms are defined in *The Psychologists Act, 1997*.

[20] The first charge alleges that Dr. Nanson misrepresented the statements made by Harvey Walker as legal counsel for Ms X in a conference call held on July 7, 2007 and in the report she prepared for the purpose of the trial that was ultimately held in relation to custody and access

concerning Ms X's son. The Discipline Committee has concluded, on the basis of the evidence it heard, that Mr. Walker did in fact use the phrase "fully mobile" in the July 7, 2007 conference call, even though he may have intended a different meaning from what was understood. The Committee therefore dismisses the first charge.

[21] The second charge is that Dr. Nanson made recommendations regarding custody and access in her August 29, 2007 report that were to the detriment of Ms X without speaking or meeting with Ms X, her parents, or anyone knowing her. There is no doubt on the evidence that Dr. Nanson made the report she made, that it contained recommendations relating to custody and access, and that she did not speak to Ms X, her parents or anyone else who knew her. The issue is whether or not these facts lead to a conclusion that a discipline offence occurred.

[22] It is alleged that these facts constitute a breach of sections II.1, II.21 and II.38 of the *Canadian Code of Ethics for Psychologists* (the "Code"), compliance with which is required by section 14 of the College's Regulatory Bylaws. Those sections provide as follows:

In adhering to the Principle of Responsible Caring, psychologists would:

II.1 Protect and promote the welfare of clients, research participants, employees, supervisees, students, trainees, colleagues, and others.

II.21 Strive to provide and/or obtain the best possible service for those needing and seeking psychological service. This may include, but is not limited to: selecting interventions that are relevant to the needs and characteristics of the client and that have reasonable theoretical or empirically-supported efficacy in light of those needs and characteristics; consulting with, or including in service delivery, persons relevant to the culture or belief systems of those served; advocating on behalf of the client; and, recommending professionals other than psychologists when appropriate.

II.38 Refuse to help individuals, families, groups, or communities to carry out or submit to activities that, according to current knowledge, or legal or professional guidelines, would cause serious physical or psychological harm to themselves or others.

[23] In the view of the Discipline Committee, Dr. Nanson did not offer the best possible service, contrary to section II.21 of the Code, when she proceeded to conduct a custody and access assessment without the participation of Ms X. Dr. Nanson, who is also a member of the British Columbia College of Psychologists, argued that she complied with the similar provisions in the B.C. Code, which states that a psychologist may give recommendations when it is not feasible to examine the individual if the resulting limitations are clearly set out in the report. While it is clear from her report that Dr. Nanson did not examine Ms X, she does not explicitly set out the limitations of that

failure, nor did she make any effort to interview anyone else when it was apparent that Ms X would not participate. The Committee notes that Dr. Nanson could have written her report without any reference at all to Ms X. The references contained in the report were improper for a variety of reasons, including the fact that she was in breach of section II.21 of the Code.

[24] Charge #3 was withdrawn.

[25] Charge #4 alleges that Dr. Nanson failed to secure the consent of Ms X to a custody and access assessment involving her child when Ms X had joint custody pursuant to a court order and she did not inform all participants about the limits of confidentiality contrary to sections I.16, I.24 and III.14 of the Code. Those sections of the Code provide that the psychologist should:

I.16 Seek as full and active participation as possible from others in decisions that affect them, respecting and integrating as much as possible their opinions and wishes.

I.24 Ensure, in the process of obtaining informed consent, that at least the following points are understood: purpose and nature of the activity; mutual responsibilities; confidentiality protections and limitations; likely benefits and risks; alternatives; the likely consequences of non-action; the option to refuse or withdraw at any time, without prejudice; over what period of time the consent applies; and, how to rescind consent if desired.

III.14 Be clear and straightforward about all information needed to establish informed consent or any other valid written or unwritten agreement (for example: fees, including any limitations imposed by third-party payers; relevant business policies and practices; mutual concerns; mutual responsibilities; ethical responsibilities of psychologists; purpose and nature of the relationship, including research participation; alternatives; likely experiences; possible conflicts; possible outcomes; and, expectations for processing, using, and sharing any information generated).

[26] Ms X in fact had joint custody of her son pursuant to a court order.<sup>5</sup> Dr. Nanson made no effort to obtain informed consent from Ms X to the assessment of her son, but relied on an ambiguous sentence in a letter sent by Ms X's lawyer to the lawyer for the child's father. It is the responsibility of a psychologist to ensure that consent is clear and informed. Dr. Nanson didn't describe for Ms X what she was going to be doing, and that is also part of informed consent. She obtained no consent to use Ms X's medical information and an affidavit sworn by Ms X in relation to the litigation. The Committee has therefore concluded that Dr. Nanson breached sections I.16, I.24 and III.14 of the Code.

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<sup>5</sup>Exhibit B.

[27] Charge #5 alleges that Dr. Nanson made uncomplimentary and inaccurate statements about Ms X in her report contrary to sections I.3, III.11 and IV.26. Those sections of the Code require a psychologist to:

I.3 Strive to use language that conveys respect for the dignity of persons as much as possible in all written or oral communication.

III.11 Take care to communicate as completely and objectively as possible, and to clearly differentiate facts, opinions, theories, hypotheses, and ideas, when communicating knowledge, findings, and views.

IV.26 Exercise particular care when reporting the results of any work regarding vulnerable groups, ensuring that results are not likely to be misinterpreted or misused in the development of social policy, attitudes, and practices (e.g., encouraging manipulation of vulnerable persons or reinforcing discrimination against any specific population).

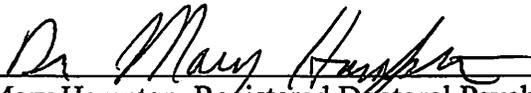
[28] Dr. Nanson's report was inaccurate in several respects: the title of the report was wrong, several dates were wrong, the child's father did not have "primary custody" and the parties were not both seeking sole custody. She referred to comments made by the child as if they were accurate, when clearly they were not. Her report was also lacking in objectivity: she referred critically to comments made by Harvey Walker but not to any comments of Lori Gollan. In all of these circumstances, the Committee concludes that Dr. Nanson was careless in the preparation of her report and failed to demonstrate proper respect for the child who was the subject of her report and whose life would potentially be directly affected by the recommendations she made. These failures constitute breaches of the above mentioned sections of the Code.

**ORDER:**

[29] 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. Nanson is guilty of professional misconduct for the reasons stated above. The Discipline Committee must therefore determine the appropriate consequence to follow as a result of that finding and for that purpose the Committee Orders that the hearing in this matter be reconvened at a time and place to be determined by the Chair of the Committee in consultation with counsel for the parties.

Dated at Regina, Saskatchewan this 11<sup>th</sup> day of October, 2012.

SASKATCHEWAN COLLEGE OF PSYCHOLOGISTS,  
DISCIPLINE COMMITTEE

  
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Mary Hampton, Registered Doctoral Psychologist  
Chairperson