

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

**DECISION  
Saskatchewan College of Psychologists  
DISCIPLINE COMMITTEE**

Discipline Committee Members:

Renée Schmidt, Registered Doctoral Psychologist, Chair

Christel Gee, Public Representative

Kristin Bellows, Registered Psychologist, Member

Ronni Nordal, Q.C., appearing on behalf of the Professional Conduct Committee

Fernando Larrea appearing on his own behalf

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

**INTRODUCTION**

[1] The Discipline Committee convened virtually on January 20 and 21, 2022, via Zoom, as agreed by the parties, to hear and determine the Formal Complaint concerning the Member dated September 30, 2020, as required by *The Psychologists Act, 1997* [“the Act”].

[2] At all times material to the complaints made against him, Fernando Larrea 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* (“the Code”), and related Saskatchewan College of Psychologists Practice Guidelines (“the Practice Guidelines”).

[3] A pre-hearing conference call was held on January 7, 2022. The participants on that call were the Chair of the Discipline Committee, Renée Schmidt, counsel for the Discipline Committee Merrilee Rasmussen, Q.C., counsel for the Professional Conduct Committee “PCC”) Ronni Nordal, Q.C., and the Member, Fernando Larrea, who was not represented. The purpose

of the meeting was to deal with logistical issues in an effort to help streamline the hearing process. Because the hearing was to be held virtually, the parties were asked to provide the documents they anticipated referring to electronically in advance. Both Ms Nordal for the PCC and Mr. Larrea provided documents in advance as requested, but not all of these were tendered in evidence as exhibits. After the hearing concluded, Mr. Larrea raised concerns that the documents he had provided in advance had not been formally entered as exhibits. In fact, only one of these documents was referred to during the testimony of any of the witnesses, which was an email relating to the “no scent” policy in the penitentiary, which the Complainant, WITNESS1, testified she had not seen until Ms Nordal provided it to her just before the hearing. The Discipline Committee’s decision in this case is not based on the presence or absence of this email as a formal exhibit, nor any of the other documents that Mr. Larrea had forwarded in advance of the hearing, and, although it may have been preferable that they would have been formally received in evidence, their absence does not and would not change this decision.

## **THE FORMAL COMPLAINT**

[4] The Formal Complaint contains the following charges alleging that Fernando Larrea is guilty of professional misconduct and/or professional incompetence contrary to the provisions of Sections 25 and 26 of *The Psychologists Act, 1997*, S.S. 1997, c P-36.01 and/or Regulatory Bylaw #20 in that he:

Charge 1: Failed to complete and maintain adequate records of inmate clients of the Correctional Services of Canada between September 26, 2017 and March 22, 2018 contrary to Section 7.22 of the Professional Practice Guidelines of the Saskatchewan College of Psychologists.

Charge 2: Engaged in misconduct while in an employment relationship with two female colleagues WITNESS1<sup>1</sup> and WITNESS2 contrary to Sections 5.17 and 7.6 of the Professional Practice Guidelines of the Saskatchewan College of Psychologists.

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<sup>1</sup> The Charge was amended by consent to refer to “WITNESS1”.

## EVIDENCE

[5] The parties submitted an Agreed Statement of Facts and Admissions to the Discipline Committee, the relevant text of which (excluding the attached documents referred to) is set out below.

### C. Particulars relating to Charge #1

7. At all times material to the Charge 1, Fernando Larrea was a member of the Saskatchewan College of Psychologists, licensed to practice in the Province of Saskatchewan subject to *The Psychologists Act, 1997*, the regulatory bylaws of the Saskatchewan College of Psychologists, the Canadian Code of Ethics for Psychologists ("the Code"), and the Saskatchewan College of Psychologists Practice Guidelines, which were approved May 15, 2010 ("the Guidelines").

8. At all times material to Charge #1, Fernando Larrea held the position of Chief, Mental Health Services, Saskatchewan Penitentiary, Prince Albert, Saskatchewan. A copy of the job description for the position of Chief, Mental Health Services is attached as Tab "4".

9. The main duties of the Chief, Mental Health Services are the supervision of a multidisciplinary team of clinicians and ensuring compliance to the Institutional Mental Health Guidelines, rather than being directly clinical in nature.

10. Documentation regarding clinical interactions with inmates was to be entered in an electronic medical record system, being the Open Source Clinical Application Resource (OSCAR).

11. The Saskatchewan Penitentiary had a second record keeping system for inmate interactions being the Offender Management System (OMS).

12. On or about May 12, 2017 Fernando Larrea was provided access to the electronic medical record system, OSCAR.

13. Fernando Larrea entered clinical inmate information in the OSCAR system on various occasions between September 26, 2017 and March 22, 2018 with the first entries starting on December 14, 2017.

14. An investigation initiated by Regional Director Health Services, WORKER1, showed that Fernando Larrea had contact that should have been recorded on the electronic medical record, OSCAR with an undetermined number of inmates between September 26, 2017 to March 22, 2018 where no information was recorded on the electronic medical record, OSCAR. Fernando Larrea documented regarding some, or

perhaps all, of these inmates in the Offender Management System (OMS) or by email with other clinicians in the unit.

15. Documentation of all significant clinical contacts in the electronic medical record, OSCAR is required to meet Professional Documentation under 7.22 of the Professional Practice Guidelines

16. Fernando Larrea accepts responsibility regarding Charge # 1 as follows:

*I recognize that as manager of the department I needed to set an example. To set this example, I should have been documenting all significant contacts with offenders within the OSCAR system, as identified by the Mental Health Guidelines. Further, after consideration, I recognize that my documentation on OMS and email was insufficient and created some confusion and inefficiencies within the department.*

D. Conclusion

17. Fernando Larrea pleads guilty to the Charge# 1 set out in the amended Formal Complaint and outlined above.

18. Charge #2 remains set for hearing.

19. The parties request that the issue of penalty be bifurcated and that a penalty hearing proceed after a decision has been rendered by the Discipline Committee in relation to Charge #2.

[6] The hearing proceeded with respect to Charge 2. During the course of the hearing, the Discipline Committee heard evidence from WITNESS1 and WITNESS2, who were called on behalf of the PCC. Mr. Larrea gave evidence on his own behalf and also called WITNESS3, WITNESS4, and WITNESS5 as witnesses. All of the witnesses were individuals with varying professional backgrounds (psychologists, social workers and nurses) who worked in the same area at the Saskatchewan Penitentiary in Prince Albert during the period from August 31, 2017 to March 20, 2018, when the events to which Charge 2 relates occurred. Mr. Larrea held the position of Chief, Mental Health Services, during this time frame. All of the persons who testified were employees who reported to him. During the course of the hearing the following documents were entered as exhibits:

- Exhibit 1: Agreed Statement of Facts and Admissions
- Exhibit 2: Formal Complaint dated September 30, 2020
- Exhibit 3: March 25, 2018 statement prepared by WITNESS 1
- Exhibit 4: undated statement prepared by WITNESS2

Exhibit 5: September 11, 2018 Rebuttal Letter prepared by Fernando Larrea

[7] All of the witnesses described what was referred to during the hearing as the triage process. Inmates are referred to the Mental Health Department, either by themselves or by staff, and when a referral is received the inmate is interviewed in a triage interview by one of the employees in the Mental Health Department who asks a set of specific questions. Depending on the answers to the questions, the inmate is rated as low, moderate or high needs and recommendations for follow-up are made based on those needs. The employee who conducts the triage interview prepares a report and presents it to the entire staff at weekly meetings, called triage meetings, where it is discussed and critically analyzed. Other members of the department make suggestions about how to handle the situation or sometimes the employee will be directed to redo the report. Ultimately, the head of the department, at that time Mr. Larrea, must sign off on the report and recommendations. Policy required that reports be completed within 10 working days of receipt of the referral.

**WITNESS1's Testimony**

[8] WITNESS1 began working in the penitentiary on MM DD, YYYY as a PROFESSION1, reporting to Mr. Larrea. She has a degree in PROFESSION2 as well as a degree in PROFESSION1. She graduated in MM YYYY. After graduation she worked as a PROFESSION3 until she was hired at the penitentiary. During the period from her hiring until March 20, 2018 she was completing triage interviews, but only when either Mr. Larrea or WITNESS4, who was also a PROFESSION1, were available to be present while she interviewed the inmate. She testified that she left the triage meeting on March 20, 2018 in tears because of how Mr. Larrea had treated her and was ready to quit her job. However, she was advised to speak to her union representative who in turn advised her to take some time off, and when she returned in two weeks Mr. Larrea was no longer there.

[9] On March 25, 2018, at the request of her union representative, WITNESS1 prepared a statement relating to her experiences working in the Mental Health Department at the

Saskatchewan Penitentiary.<sup>2</sup> In that statement, and in her testimony, WITNESS1 expressed concerns about several matters.

[10] She said she was not allowed by Mr. Larrea to conduct triage interviews on her own, when others were, and that he was unduly critical of her reports in triage meetings. During a meeting with her in his office after a triage interview with an inmate during which Mr. Larrea was present, Mr. Larrea said that the inmate was looking down her shirt. She reported that he said she was “an attractive girl” and she had to be careful how she dressed because of the nature of the criminal population with which she was dealing. WITNESS1 said she left Mr. Larrea’s office feeling mortified.

[11] In MONTH YYYY WITNESS1 was frustrated by her inability to conduct triage interviews on her own. She said she was in another employee’s office when Mr. Larrea came in and in a raised voice told her she needed to be more productive. WITNESS1 testified that she probably got 5 or 6 referrals in a week but was only able to complete 2 or 3 of them because she was required to have either Mr. Larrea or WITNESS4 present when she conducted the triage interview. She said others would present their reports and Mr. Larrea would tell them that they had done a good job whereas he always criticized her reports.

[12] On another occasion she said Mr. Larrea came “flying” into her office and “yelled” at her for using perfume. She was aware that this was not allowed but she said she overheard Mr. Larrea tell another employee that they “smelled good”. She said she felt singled out, but she was on probation and was afraid to say anything to anyone, including Mr. Larrea.

[13] In MONTH YYYY, WITNESS1 said Mr. Larrea called her into his office and said that he had been nervous about hiring her because she was “an attractive girl” and that having her around the offenders was “like throwing meat to a pack of dogs”.

[14] In MONTH YYYY, after a lunchtime birthday celebration for her, WITNESS1 was

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<sup>2</sup> Exhibit 3.

doing the dishes in the small bathroom attached to the boardroom where the celebration had occurred when Mr. Larrea came in to help and asked her personal questions about her fiancé. On another day during that timeframe, he again told her her shirt was inappropriate.

[15] WITNESS1 said all of these incidents caused her to feel uncomfortable and when he called her into his office she would feel sick to her stomach. Matters came to a head at the March 20, 2018 triage meeting referred to above.

[16] WITNESS1 said at the March 20, 2018 triage meeting Mr. Larrea raised his voice and told her she was not prepared and she needed to redo her report. She left the room at the break in tears but returned with urging from colleagues and finished the meeting. Mr. Larrea asked her to stay back after the meeting ended and he told her that her clothing was inappropriate. She said she was wearing a white t-shirt with a big, baggy cardigan overtop of it. When asked during her testimony if there was a dress code in the institution, she said you were just told it was “business casual”. She said she tended to wear dress pants, t-shirts and cardigans. This was the third time Mr. Larrea had commented on her attire. These earlier incidents occurred in November and December of 2017. It was during the December incident that he told her she was an attractive girl and he had been nervous about hiring her because sending her in to deal with the offenders would be like “throwing a piece of meat to a pack of dogs”.

### **WITNESS2’s Testimony**

[17] WITNESS2 is a PROFESSION4 and had been working at the Penitentiary since MONTH YYYY. She also reported to Mr. Larrea. She described him as “very friendly”, a “people person” and “easy to talk to”. She said that he seemed different during the period from the end of 2017 and the beginning of 2018. He seemed to be easily agitated in particular with WITNESS1. In March 2018 WITNESS2 was interviewed by a union representative in relation to the concerns raised by WITNESS1 who asked WITNESS2 to prepare a statement, which she did.<sup>3</sup> She said she would not have made a complaint on her own, that she prepared the statement

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<sup>3</sup> Exhibit 4.

in support of WITNESS1 and that she felt “probed” by the union representative she spoke to.

[18] In her testimony, WITNESS2 said that she had been present in triage meetings when WITNESS1 made presentations. She said that WITNESS1, as a PROFESSION1, might present a case differently than she would, as a PROFESSION4, or that a PROFESSION2 would, because the training in each discipline is different. She said she didn’t observe anything that caused her concern about the quality of WITNESS1’s presentations, but that is just her opinion. She said she was present when Mr. Larrea criticized WITNESS1 at triage meetings and recalled one in particular when WITNESS1 did not have anything to present and Mr. Larrea responded “very aggressively”.<sup>4</sup>

[19] WITNESS2 said there was a dress code in place and, although she had not seen a written policy, she assumed there was one. Generally, she said you should be covered. She said that WITNESS1 didn’t dress any differently than others. She was not present when Mr. Larrea made comments to WITNESS1 about her clothing but did observe WITNESS1’s response to those comments, as she would be crying and stated to her that that was the reason why. WITNESS2 said Mr. Larrea made complimentary comments to her about her clothing on occasion. When she was going through a divorce, he asked her personal questions. WITNESS2 recalled a conversation in spring or summer 2017 when things in her personal life were causing her some distress and he said, “if it was a problem he would take care of it”. She said in that particular conversation she felt “like he was talking to me as somebody who cared about me, not necessarily as a manager . . . like he was concerned about how I was feeling and didn’t want me to feel that way”. She acknowledged in cross examination that he complimented everybody and was a very friendly, complimentary person. As well, she acknowledged that she did share with him the fact that she was having problems in her personal life because she felt it was “appropriate that [he] knew where I was at”.

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<sup>4</sup> This would not have been the March 20, 2018 meeting that WITNESS1 testified about because on that occasion WITNESS1 did present a report that Mr. Larrea criticized.

[20] For a period of time WITNESS2 was friends with Mr. Larrea on Facebook and she described an exchange of messages in which he commented on them both being online late at night, during which he said, “I think I met my match” or something like that. On another occasion, she made a trip to Mexico and posted a picture and he complimented her on her tan. At some point she “unfriended” him because of the blurriness between work and personal relationships.

[21] WITNESS2 testified that in thinking about these incidents in retrospect she found them to be uncomfortable because Mr. Larrea was her boss.

### **WITNESS3’s Testimony**

[22] WITNESS3 was either a PROFESSION2 or fully licensed PROFESSION2 during the period at issue in this proceeding. She began working in the penitentiary in YYYY or YYYY. She participated in triage meetings as well. She could think of situations in which Mr. Larrea disagreed with her and said that he voiced his disagreement respectfully and professionally, both to her and to others. She was present at triage meetings where WITNESS1 made presentations and described them as “all over the map”. She said she never heard Mr. Larrea raise his voice in a triage meeting or anywhere else. She said WITNESS1 often came to work wearing tights that were sometimes see-through and skin-tight shirts that would show cleavage and often when she bent down her “bottom crack” was showing. She said that Mr. Larrea was very approachable and very personable, with a good sense of humour, and she witnessed him being positive and complimentary to all staff.

### **WITNESS4’s Testimony**

[23] WITNESS4 has a bachelor’s degree in PROFESSION1 and had XX years of frontline work as a PROFESSION1 prior to her retirement in YYYY. She began working as a PROFESSION1 in the penitentiary in June YYYY. She was a senior PROFESSION1 and assisted in mentoring and training new staff. She was assigned to mentor and train WITNESS1. WITNESS4 noted that WITNESS1 did not know about the DSM [the *Diagnostic and Statistical Manual of Mental Disorders* now in its fifth edition] and didn’t know what a personality disorder

was. WITNESS4 asked WITNESS1 about her knowledge in this regard and perceived that WITNESS1 took offence to the questions. WITNESS4's point in asking these questions was to find out what WITNESS1 did and didn't know to be able to focus training and mentorship, since the population they had to deal with had a high incidence of personality disorders.

[24] WITNESS4 testified that WITNESS1 tended to lean towards providing services for those with addiction issues, which was not the mandate of the mental health department. She said the triage meetings weren't always comfortable because everyone provided feedback based on their own clinical experience. She said Mr. Larrea questioned all staff about their presentations at the triage meetings and she didn't always agree with him or them. She said his feedback was clinically sound and appropriate. She said there were times when she could tell that he was frustrated, but she never observed him raise his voice in a triage meeting or belittle a staff member. She was not asked specifically about the triage meeting on March 20, 2018.

[25] WITNESS4 also testified that most of the staff, including Mr. Larrea, helped with cleaning up after social events, including doing dishes in the small bathroom adjacent to the boardroom. She was not asked if she had been present on the occasion when WITNESS1 spoke of Mr. Larrea helping her with the dishes.

[26] WITNESS4 testified that WITNESS1 often wore skin-tight camo jeans and a white t-shirt that was very thin, which she felt was revealing and not appropriate to be wearing in a men's penitentiary. She herself had been cautioned about what to wear and had been told not even to wear short sleeves. WITNESS4 acknowledged that WITNESS1's dress improved over time, but that one t-shirt was particularly problematic.

[27] WITNESS4 also testified to the "no scents" policy in the workplace that was brought to the meetings several times because a staff member had anaphylactic shock. She confirmed that Mr. Larrea had provided direction within the department about the no scents policy. She noted that she reacts to chemicals in certain products, not specifically the smell, but the presence of the chemical. She said WITNESS1 used a hand lotion that caused her to react and that she spoke to

her about it and her response was that it was the soap she used at home. WITNESS4 said this occurred quite frequently.

[28] WITNESS4 also confirmed that Mr. Larrea frequently paid compliments to all staff members.

### **WITNESS5's Testimony**

[29] WITNESS5 was a PROFESSION5 in the penitentiary at the relevant time. She said that WITNESS1 shadowed her and that when WITNESS1 first started she was overwhelmed, but that was not surprising. WITNESS5 also attended triage meetings and said that Mr. Larrea was courteous and respectful of everyone's opinions. He never raised his voice or yelled. She never observed him to be aggressive or to belittle a clinician's opinion. He provided feedback to say that the clinician should obtain more information and re-interview the inmate.

[30] WITNESS5 said WITNESS1 wore leggings or tights and see-through t-shirts and clothes with holes in them. She also testified to the fact there was a no scent policy because "allergies are huge". She said there were instances when WITNESS1 was wearing scent and that Mr. Larrea provided direction both orally and in writing about the policy.

[31] WITNESS5 described Mr. Larrea's management style as open and friendly. His door was always open and he was very supportive. She also observed him doing dishes in helping to clean up after social events.

### **Fernando Larrea's Testimony**

[32] Mr. Larrea testified on his own behalf. He has been a registered psychologist since 2004 with an authorized practice endorsement that allows him to communicate diagnoses. He has been employed at the penitentiary since August 2001. He was chief of the mental health department from 2008 to 2018. During his employment he has had the opportunity to supervise not just provisional psychologists but also students in nursing and social work. While each of these

professions has a differing scope of practice, the expectations of them in the scope of their employment at the penitentiary is the same: all staff are expected to conduct triage interviews and present reports that identify an individual's mental health concerns and recommend appropriate follow-up. As chief of the department, he was also responsible for the conduct of all staff in relation to their behaviour and their attire in the workplace. If an issue arose he was required to draw that issue to the attention of the particular staff member, whether it be in relation to the adequacy of a triage report, manner of dress, or failure to adhere to the no scent policy.

[33] When new staff are hired it is the normal practice to pair them with other clinicians, as was the case with WITNESS1 Mr. Larrea said, as chief, he did provide feedback but always with professionalism and appreciating that junior staff are learning. As one of only two males in the department, and being a physically larger person, he was sensitive to proximity, tone and language. He recognized himself as a role model for others. He joined in the work of cleaning up after social activities to indicate that it was not beneath him even though he was chief. He was generally positive and complimentary to all staff. His management style was informal and friendly. He said he was always open to feedback.

[34] Thus, when WITNESS2 was having personal problems that were obvious because she was crying and not able to engage in her work, he asked her about them and asked her what he could do to support her, pointing out that there was an Employee Assistance Program and various types of leave available if she needed them. He was at one time a Facebook friend with WITNESS2 and he did post the comment "nice tan" because she posted a picture. He acknowledged making the comment about them both being up late at night. He also stated that his comment about "taking care of it" in relation to her relationship with another staff person at the penitentiary was because the persons who worked there as guards could be harassing to female staff and he wanted her to know that he would intervene if necessary.

[35] Mr. Larrea denied making the comment to WITNESS1 that she was "an attractive girl". He said he would never make such a statement because he felt it was "unprofessional". He did

acknowledge that he made the statement about not throwing her out there “like a piece of meat” because offenders objectify women, not because he was objectifying WITNESS1.

[36] Mr. Larrea said he did make comments to WITNESS1 several times about her attire and about the no scent policy because she required them. He said he did not single her out but took the opportunity to send a “gentle reminder” to all staff. In cross examination he said he did not remember saying to another staff that she “smelled good”.

### **Factual Findings of the Discipline Committee**

[37] There is only one fact about which there is any dispute. Mr. Larrea acknowledged that he commented to WITNESS1 about the inappropriateness of her dress and her use of scented products contrary to the no scents policy in the workplace. He criticized her triage reports because that was his job as head of the department. However, he denied that he called her “an attractive girl”.

[38] Mr. Larrea explained that his comments to WITNESS1 concerning her attire were necessary because she was dressing inappropriately given that she was working in a federal penitentiary with male inmates who had committed serious offences, and many of the inmates could be sexually inappropriate. It was his job as head of the department to draw to her attention that she must dress in a conservative manner so as not to trigger inappropriate conduct from the inmates with whom she was interacting, which could put her safety and the safety of others at risk.

[39] The Discipline Committee acknowledges that as the head of the department Mr. Larrea did have the responsibility to draw concerns about the conduct of employees to their attention, and this included providing corrective instruction to WITNESS1.

[40] The Discipline Committee also accepts that all of the witnesses testified to the best of their ability based on their understanding of events that occurred. The Committee notes that no one other than WITNESS1 and Mr. Larrea testified about the “attractive girl” comment. The Committee is of the view that if Mr. Larrea made such a comment it was in the context of

attempting to convey to WITNESS1 the importance of her dressing in a conservative manner in this particular workplace.

## **ISSUE**

[41] The issue in this case is whether any of the incidents to which WITNESS1 and WITNESS2 testified constitute conduct or acts that are “unbecoming, disgraceful, dishonourable or unprofessional” within the meaning of section 7.6 of the College’s Practice Guidelines and thus constitute professional misconduct. Those incidents include the following:

1. chastising WITNESS1 in triage meetings about her triage reports or lack thereof;
2. comments made to WITNESS1 relating to her clothing;
3. personal comments made to WITNESS1 about her attractiveness;
4. personal questions to WITNESS1 about her fiancé when cleaning up the dishes;
5. personal comments made to WITNESS2 on Facebook and general compliments.

## **LEGISLATION**

[42] 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*].

[43] Section 20 of *The Saskatchewan College of Psychologists Regulatory Bylaws, 2016* requires members to comply with the *Canadian Code of Ethics for Psychologists*, as adopted by

the Canadian Psychological Association from time to time. Relevant provisions of the Code include the following:

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

I.4 Abstain from all forms of harassment, including sexual harassment.

[44] Compliance with the College's Practice Guidelines is not specifically required pursuant to the Regulatory Bylaws, but a failure to comply with "established standards of practice" is described in clause 6(1)(l) of the Regulatory Bylaws as falling within the scope of professional misconduct. As well, a failure to comply with the expectations of the profession, as reflected in the Practice Guidelines, may also meet the definition of professional misconduct contained in clause 25(a) or (b) of the Act, as quoted above.

[45] Section 7.6 of the Practice Guidelines, referred to in Charge 2 of the Formal Complaint, provides as follows:

Unprofessional behaviour

While practicing the profession of psychology, a member must not engage in conduct or perform an act that, having regard to all the circumstances, would be regarded by members as unbecoming, disgraceful, dishonourable or unprofessional.

## **ANALYSIS AND DECISION**

### **Charge 1**

[46] The Discipline Committee accepts the guilty plea provided by Mr. Larrea in the Agreed Statement of Facts in relation to Charge 1 in the Formal Complaint. He has acknowledged that he failed to complete and maintain adequate records of inmate clients of the Correctional services of Canada between September 26, 2017 and March 22, 2018 contrary to Section 7.22 of the Professional Practice Guidelines of the Saskatchewan College of Psychologists.

### **Charge 2**

***Position of the Professional Conduct Committee***

[47] Counsel for the PCC drew the Discipline Committee’s attention to the specific wording of Charge 2, which alleges that Mr. Larrea engaged in conduct in relation to WITNESS1 and WITNESS2 contrary to section 7.6 of the Practice Guidelines.<sup>5</sup> She points out that none of Mr. Larrea’s witnesses were asked about the March 20, 2018 triage meeting that WITNESS1 left in tears, there was no clear evidence of a concrete dress policy, and that Mr. Larrea’s intention in making comments about WITNESS1’s attire or asking personal questions was not relevant if the impact of these comments constituted harassment.

[48] Counsel also argued that because section 20 of the Regulatory Bylaws requires all members to comply with the *Code of Ethics*, a breach of the *Code* is a breach of the bylaws, which is defined as “professional misconduct” within the meaning of clause 25(c) of *The Psychologists Act, 1997*. Subsection 6(1) of the Regulatory Bylaws also provides that the Discipline Committee may find a member guilty of professional misconduct where the member fails to comply with the *Code* or fails to comply with established standards of practice. She points to the relevant principles of the *Code* (as set out above) that require a member to strive to use language that respects the dignity of persons and to abstain from all forms of harassment. She submits that comments concerning a person’s appearance can constitute sexual harassment. She argues that a failure to comply with the *Code* or the Practice Guidelines is not only a breach of the bylaws, it also is conduct that falls within the scope of clauses 25(a) and (b) of the Act which defines professional misconduct to include conduct that is harmful to the interests of members or the public or that tends to harm the standing of the profession.

[49] Finally, counsel submitted that Mr. Larrea treated WITNESS1 more harshly than other staff, made inappropriate comments about her appearance and clothing by saying she was “an attractive girl” and saying that having her in a federal penitentiary for men was like “throwing a

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<sup>5</sup> Counsel for the PCC indicated that the reference to a breach of section 5.16 of the Practice Guidelines in the Formal Complaint was not being pursued.

piece of meat to a pack of dogs or wolves”, and asked inappropriate personal questions. He also made inappropriate comments to WITNESS2 about her appearance and clothing and asked inappropriate personal questions. In the PCC’s submission, this conduct constitutes “unbecoming, disgraceful, dishonourable and unprofessional” conduct, contrary to section 7.16 of the Practice Guidelines and therefore is professional misconduct as defined in the Act.

### ***Position of the Member***

[50] Mr. Larrea points out that when these events occurred WITNESS1 had just started working in the federal penitentiary and WITNESS2 was only entering her second year of employment there. A federal prison is an atypical environment where different rules of conduct apply. WITNESS1 lacked experience in that environment and was insecure in the position, which resulted in her misunderstanding the feedback he was providing relating to her behaviour concerning dress and policies in the workplace. She was at no point singled out; she was made aware of the behaviours and breaches of policy she was engaging in. The feedback he provided was done in a respectful, professional and sensitive manner. He both cared for the dignity of his staff and for furthering professional practice by ensuring that sound and competent work was being produced in that environment.

### ***The Code of Ethics***

[51] The PCC has referred to the Code of Ethics in closing submissions, but there is no reference to the *Code of Ethics* in Charge 2 of the Formal Complaint. Mr. Larrea has not been charged with a breach of the *Code*; he has been charged with a breach of section 7.6 of the Practice Guidelines. However, it is the same conduct that is alleged to have been a breach of the *Code* as is alleged to be a breach of the Practice Guidelines.

### ***What conduct is included within the conduct referred to in section 7.6 of the Practice Guidelines?***

[52] The conduct that is prohibited pursuant to section 7.6 of the Practice Guidelines is conduct that can be described as “unbecoming, disgraceful, dishonourable or unprofessional”.

The Discipline Committee accepts that conduct that constitutes “harassment” would fall within the meaning of one or more of those terms.

[53] The Practice Guidelines contain an initial provision that lists definitions of a number of terms used in the document, including the term “sexual harassment”, which it defines as follows:

Sexual harassment - sexual solicitation, physical advances, or verbal or nonverbal conduct that is sexual in nature, that occurs in connection with the member’s activities or roles as a member, and that: (a) is unwelcome, offensive, or creates a hostile workplace environment; or (b) is sufficiently severe or intense to be abusive to a reasonable person in the context. For these purposes, “sexual harassment” may consist of a single intense or severe act or of multiple persistent or pervasive acts.

[54] Section 5.34 of the Practice Guidelines prohibits members from engaging in sexual harassment. Mr. Larrea is not charged with a breach of this provision. Nor is he charged with a breach of section 5.36 of the Practice Guidelines, which prohibits members from engaging in harassment:

Members must not engage in behaviour that is harassing or demeaning to individuals with whom he/she works or has a professional relationship where such behaviour is based on factors such as the age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, language, or socioeconomic status of the individuals.

[55] Nevertheless the PCC appears to argue that the comments made by Mr. Larrea about the way WITNESS1 dressed, the comments he made to WITNESS2 on Facebook, and the personal questions he asked in conversations with WITNESS1 and WITNESS2 are evidence of harassment because WITNESS1 was upset by them and WITNESS2 felt they may have been inappropriate when she reflected back on them. However, this is not what these definitions say. In order to constitute sexual harassment as defined in the Practice Guidelines, comments must be “sexual in nature” as well as unwelcome. Other than the fact that the comments complained of were comments relating to personal appearance, there is nothing in the context in which they were said or in their content that is sexual in nature.

[56] Although the Formal Complaint makes no reference to the *Code of Ethics*, and Mr. Larreas was not charged with a breach of its provisions, the *Code* does prohibit “all forms of harassment, including sexual harassment”. The *Code* does not contain a definition of harassment, but does include the following definition of sexual harassment:

“Sexual harassment” includes either or both of the following: (i) the use of power or authority in an attempt to coerce another individual or group to engage in or tolerate sexual activity (e.g., explicit or implicit threats of reprisal for noncompliance; promises of reward for compliance); (ii) engaging in deliberate and/or repeated unsolicited sexually oriented comments, anecdotes, gestures, or touching, if such behaviours are offensive and unwelcome, create an offensive, hostile, or intimidating working, learning, or service environment, or can be expected to be harmful to the recipient.

[57] The comments complained of in this case do not fall within this definition of sexual harassment either as they were not “sexually oriented” as described.

[58] Although the federal penitentiary, as a federal institution, is subject to the *Canada Labour Code*, not *The Saskatchewan Employment Act*, there was no specific provision relating to workplace harassment federally until October 2018, several months after the events occurred to which the complaint before the Discipline Committee relates. The federal definition now in the *Canada Labour Code* is as follows:

*harassment and violence* means any action, conduct or comment, including of a sexual nature, that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee, including any prescribed action, conduct or comment;

[59] According to this definition, whether or not harassment has occurred is judged by an objective standard. It is not whether the action, conduct or comment in question caused a particular person to be offended, humiliated or otherwise injured; it is whether a reasonable person would expect the action, conduct or comment to have that impact.

[60] *The Saskatchewan Employment Act* contains provisions prohibiting harassment in the workplace and psychologists working in this province outside federal institutions are required to

comply with that legislation. The definition of “harassment” in *The Saskatchewan Employment Act* between August 31, 2017 and March 20, 2018 is the following:

“harassment” means any inappropriate conduct, comment, display, action or gesture by a person towards a worker:

(i) that either:

(A) is based on race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age, nationality, ancestry or place of origin; or

(B) subject to subsections (4) and (5), adversely affects the worker’s psychological or physical well-being and that the person knows or ought reasonably to know would cause the worker to be humiliated or intimidated; and

(ii) that constitutes a threat to the health or safety of the worker;

(4) To constitute harassment for the purposes of subparagraph (1)(1)(i) (A) (II), either of the following must be established:

(a) repeated conduct, comments, displays, actions or gestures;

(b) a single, serious occurrence of conduct, or a single, serious comment, display, action or gesture, that has a lasting, harmful effect on the worker.

(5) For the purposes of subparagraph (1)(1)(i)(A)(II), harassment does not include any reasonable action that is taken by an employer, or a manager or supervisor employed or engaged by an employer, relating to the management and direction of the employer’s workers or the place of employment.

[61] Thus, any “inappropriate conduct”<sup>6</sup> constitutes harassment if the conduct constitutes a threat to the employee’s health or safety and:

1. the conduct is based on any of the grounds listed (basically the prohibited grounds under *The Saskatchewan Human Rights Code*, or on physical size or weight); or

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<sup>6</sup> The use of the word “conduct” here is intended to also include “comment, display, action or gesture” as referred to in the definition of harassment set out above.

2. the conduct is either repeated or a single serious occurrence that adversely affects the employee's psychological or physical well-being and the alleged harasser knew or ought to have known it would cause humiliation or intimidation, unless the conduct is a reasonable action taken by a manager or supervisor relating to the management and direction of an employee.

[62] The Discipline Committee adopts the definition of "harassment" in *The Saskatchewan Employment Act* as a reasonable one to be expected to be adhered to in any workplace and against which to judge whether the actions of a member of the College amount to professional misconduct. This definition is comprehensive in that it includes both harassment on prohibited human rights grounds and also what is sometimes described as "personal harassment" or "bullying" and it also recognizes that workplace criticism can be perceived as unwelcome even when it is appropriate.

[63] Counsel for the PCC argues that Mr. Larrea's comments about WITNESS1's manner of dressing were forms of harassment and could constitute sexual harassment. The Discipline Committee understands the argument to be that comments about dress and appearance are comments based on the prohibited ground of "sex" and therefore they constitute harassment because they caused WITNESS1 some distress. However, this argument does not take into account the fact that Mr. Larrea's role as WITNESS1's supervisor required that he provide her feedback in the form of correction relating to how she dressed because she was not dressing appropriately as a young female in a federal penitentiary whose inmates were males convicted of serious criminal offences, many of these offences being sexual offences. A failure to dress appropriately could put the employee as well as possibly others at risk of harm. Mr. Larrea was required to provide feedback in the form of correction that could be perceived as negative, because that was part of his job as a manager. WITNESS1 may have been distressed by these comments, but they constituted legitimate criticism in this context.

[64] While there was a less than clear dress policy in place in the institution, it was nevertheless understood that there was an expectation that employees would dress conservatively

and, in particular, that female employees would dress in a manner that would ensure they were “covered”. WITNESS1 testified that she understood the policy to require employees to dress in a manner that she described as “business casual”, which is also a less than clear definition, but which would generally require a person to dress professionally although not formally.

[65] WITNESS1 testified that she wore dress pants that may have been too tight so that they looked like leggings, T-shirts, and a cardigan sweater. She said she always made sure her “boobs and butt” were covered. WITNESS2 testified that one should dress so as to be “covered” and not wear open-toed shoes. WITNESS3 testified that WITNESS1 often wore leggings or tights that were sometimes see-through, skin-tight T-shirts that revealed some cleavage, and sometimes when she bent over the top of her “bottom crack” would be visible. WITNESS3 also testified that she herself wore a shirt one time with the shoulders cut out and one of the guards took her aside and told her she probably shouldn’t be wearing that. WITNESS4 testified that she had been cautioned about wearing short sleeves. WITNESS5 testified that WITNESS1 often wore leggings or tights and T-shirts that were see-through or wore clothing with holes.

[66] The Discipline Committee finds that the comments Mr. Larrea made about WITNESS1’s clothing were made in the context of providing necessary direction to her about appropriate dress in a unique workplace, a federal penitentiary for men. These comments did not constitute harassment.

[67] Mr. Larrea was also required to provide correction, including negative feedback or criticism of the work that was done by the employees under his supervision. His criticism of WITNESS1 was directed at her work. WITNESS2 testified that she saw nothing wrong with the quality of WITNESS1’s work, but WITNESS2 was not the person in charge of the Mental Health Department. She was also relatively inexperienced at the time of the events at issue, and she was a PROFESSION4, not a PROFESSION2. It was Mr. Larrea’s job as head of the department to set and enforce standards for the work that was done under his supervision in order to meet the requirements of the institution. It is not “singling out” for a manager to criticize work that didn’t meet the expected standard.

[68] The Discipline Committee heard from many witnesses, including WITNESS2, that Mr. Larrea was a warm friendly person who was always complimentary to everyone, very personable and easy to talk to. WITNESS2 recalled occasions when he would say something like she looked nice in a particular outfit. Of course, context is everything. Those particular words accompanied by certain gestures – such as looking a person up and down in a leering manner – can change their meaning completely. But, as WITNESS2 described them, these were the sorts of comments people make to one another in an effort to be pleasant. She did not take offence about them at the time they were made, and she only thought perhaps they were problematic when she thought about them in retrospect and after WITNESS1 made her complaint to the Union. WITNESS2 said she would not have brought a complaint forward herself.

[69] The personal questions Mr. Larrea asked of WITNESS1 and WITNESS2 fall into a similar category. Engaging in social activities that are not just about work is a means by which colleagues come to see each other as human beings and not just workers. Mr. Larrea testified that he helped to clean up after WITNESS1's birthday celebration in part to show that he was not above doing so even though he was "the boss". In that situation personal conversation is a way of making a connection on a human level. WITNESS2 testified that she herself explained to Mr. Larrea the difficulties she was having in her personal life because those difficulties were affecting her at work. In that context, Mr. Larrea offered her his support.

[70] Facebook and social media generally has introduced a whole different means of interaction between people. However, it would not be unusual for a Facebook "friend" to comment "nice tan" in relation to a picture posted online or to make a comment about being similar types of people when online late at night. The Discipline Committee did not hear how the Facebook friendship was first established but notes that WITNESS2 ultimately decided that she would not continue it. It is questionable that these comments are "inappropriate", but even if they are they do not constitute harassment because they did not constitute a threat to WITNESS2's health or safety and only made her uncomfortable in retrospect.

[71] Mr. Larrea denied that he called WITNESS1 “an attractive girl” but he did acknowledge that he made the comment about having her in the department was like “throwing a piece of meat to a pack of dogs or wolves”. He stated that he regretted the comment and apologized for it.<sup>7</sup> However, while this language is strong it does convey a clear message to a young female employee who had to be told on more than one occasion how to dress appropriately in the institution where she was working. The Committee does not endorse this form of language, but is of the view that it is not disrespectful or demeaning of WITNESS1; Mr. Larrea was trying to make a point through the use of a vivid metaphor about the issues of dress in the workplace she was in.

[72] The Committee is of the view that none of the comments or incidents that form the basis of Charge 2 in the Formal Complaint are unbecoming, disgraceful, dishonourable or unprofessional as those terms are used in section 7.6 of the Practice Guidelines.

[73] The Committee trusts, however, that Mr. Larrea has given a great deal of thought to how he would express the concerns he had about WITNESS1’s clothing if he were to find himself in a similar situation today and that he would take advantage of any learning opportunities, such as courses or continuing professional development, available to him to help him to improve the manner in which he conveys these important messages, particularly to female employees.

### ***Conclusion***

[74] For all of the reasons set out above, the Discipline Committee finds Mr. Larrea guilty of professional misconduct with respect to Charge 1 in the Formal Complaint and not guilty of Charge 2 in the Formal Complaint.

[75] A hearing to consider penalty with respect to Charge 1 will be convened as a time and place set by the Chair of the Discipline Committee in consultation with legal counsel for the Professional Conduct Committee and Mr. Larrea.

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<sup>7</sup> Exhibit 5.

Dated at Regina, Saskatchewan this 6<sup>th</sup> day of April 2022.

SASKATCHEWAN COLLEGE OF PSYCHOLOGISTS,  
DISCIPLINE COMMITTEE

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Renée Schmidt,  
Registered Doctoral Psychologist, Chair

On behalf of:  
Kristen Bellows, Registered Psychologist  
Christel Gee, Public Representative