

**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, K.C., appearing on behalf of the Professional Conduct Committee
Fernando Larrea appearing on his own behalf
Merrilee Rasmussen, K.C., legal counsel for the Discipline Committee

INTRODUCTION

[1] A discipline hearing was held on January 20 and 21, 2022, to hear and determine the formal complaint concerning the Member, dated September 30, 2020. The formal complaint consisted of two charges. The Member pled guilty to the first charge and not guilty to the second charge. On April 6, 2022, the Discipline Committee released its decision in relation to the second charge in the formal complaint, finding the Member not guilty.

[2] A penalty hearing was convened virtually on June 28, 2022 via Zoom. The Discipline Committee received evidence related to penalty as well as written and oral submissions from legal counsel for the Professional Conduct Committee (PCC) and from the Member.

THE FORMAL COMPLAINT

[3] The charge contained in the Formal Complaint to which Mr. Larrea pled guilty alleged that he was 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.

EVIDENCE

[4] The Professional Conduct Committee (PCC) entered the following documents in evidence with the consent of the Member:

P-1 Affidavit of Wendy Petrisor, Deputy Registrar, containing a spreadsheet detailing the costs incurred by the College, as revised by legal counsel for the PCC

P-2 Evidence of Karen Prisciak, former legal counsel for the College, submitted by agreement

P-3 Motion by Council of the College with respect to costs of discipline proceedings

P-4 October 28, 2020 letter from Karen Prisciak to the Member

P-5 April 22, 2021 letter from Karen Prisciak to the Member

P-6 April 27, 2021 letter from Karen Prisciak to the Member

P-7 May 12, 2021 email from Member to Karen Prisciak accepting responsibility re Charge 1

LEGISLATION

[5] Where a member is found to be guilty of professional misconduct, the Discipline Committee is authorized to make orders directed at the conduct underlying the complaint that

gave rise to the finding. 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

[6] The Discipline Committee accepted the guilty plea provided by Mr. Larrea in the Agreed Statement of Facts in relation to Charge 1 in the Formal Complaint. He 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.

[7] The Discipline Committee must therefore determine the appropriate consequence to follow as a result. Section 32 of the Act sets out the powers of the Discipline Committee where it finds a member guilty of professional misconduct. The range of powers available to the Discipline Committee runs from reprimand to expulsion and includes the ordering of counselling or a requirement to take certain courses, among other things. The list is designed to give the Discipline Committee as broad a discretion as possible to tailor its order to the needs of the situation, so as to ensure that the disposition of the complaint will accomplish the goal of protecting the public while respecting the interests of members. The list concludes with a broad power to make any order that the Discipline Committee thinks is “just”.

[8] The PCC submits that the Discipline Committee should make an order including the following:

- (a) a reprimand;
- (b) completion of the CPA online course, “Being an Ethical Psychologist”, by Carole Sinclair;
- (c) a fine of \$2,000 payable within one year; and
- (d) costs of \$22,479 payable within one year.

[9] Mr. Larrea did not comment with respect to the reprimand and course, and the Discipline Committee understands that he is in agreement with those aspects of the penalty proposed by the PCC. However, he submits that the total of the fine and costs sought by the PCC would pose a financial burden for him, as it represents about 1/3 of his take-home salary for a year. He says the maximum amount he could pay in a year is \$10,000.

[10] The Discipline Committee is of the view that a fine is not warranted in this case as it is a first discipline offence for Mr. Larrea and he did ultimately take responsibility for it.

[11] The Saskatchewan Court of Appeal addressed the issue of costs in the professional discipline context in its decision in 2018 in *Abrametz v. The Law Society of Saskatchewan*¹ which it endorsed in 2022 in its decision in *MacKay v. The Law Society of Saskatchewan*, where the Court said:

[110] The purpose of a costs award in a disciplinary proceeding is “not to indemnify the opposing party but for the sanctioned member to bear the costs of disciplinary proceedings as an aspect of the burden of being a member ... and not to visit those expenses on the collective membership ...” (*Abrametz* 2018 at para 44, citing Robert A. Centa and Denise Cooney, “Trends in Costs Awards before Administrative Tribunals” (2014) 27 Can J Admin L & Prac 259). Professional disciplinary bodies must, however, maintain a balance and ensure that “[c]osts should not be so prohibitive as to prevent a member from defending his or her right to practice in the chosen profession, or from being able to dispute misconduct charges” (*Abrametz* 2018 at para 45).

[111] Referring to *Hills v Nova Scotia (Provincial Dental Board)*, [2009 NSCA 13](#), 307 DLR (4th) 341 [*Hills*], this Court in *Abrametz 2018* endorsed the following approach in relation to costs:

[46] Apart from these broad principles, courts have taken a variety of factors into account in undertaking a reasonableness review of a costs award. The factors that emerge from case authority, as identified by Bryan Salte in *The Law of Professional Regulation*, (Markham: LexisNexis, 2015) at 262 [*Professional Regulation*], are the following:

1. Whether the costs are so large that the costs are punitive;
2. Whether the costs are so large that they are likely to deter a member from raising a legitimate defence;
3. The member’s financial status;
4. A member has an obligation to provide financial information to support a contention that a cost award will impose an undue hardship;
5. The regulatory body should provide full supporting material for the amount of costs claimed;
6. The regulatory body should provide the individual with an opportunity to respond to the information and respond to the total quantum of costs which may be ordered before costs are imposed;
7. The regulatory body should provide reasons for reaching the decision that it made;

¹ 2018 SKCA 37.

8. If the decision is made in British Columbia, it appears that the cost award will have to be based upon the tariff of costs that is awarded in court actions.

[47] A more concise statement of factors can be found in the Nova Scotia Court of Appeal decision of *Hills v Nova Scotia (Provincial Dental Board)*, [2009 NSCA 13](#), 307 DLR (4th) 341 [*Hills*]. There, the Court reduced the salient considerations to the following:

[61] ... the Committee referred to the *Regulation* prescribing the sanctions which it could impose, summarized the expenses ... and identified and addressed the following factors:

- a. The balance between the effect of a cost award on the Appellant and the need for the Provincial Dental Board to be able to effectively administer the disciplinary process;
- b. The respective degrees of success of the parties;
- c. Costs awards ought not to be punitive;
- d. The other sanctions imposed and the expenses associated therewith;
- e. The relative time and expense of the investigation and hearing associated with each of the charges and in particular those on which guilt were entered and those where the Appellant was found not guilty.²

[12] In this case, the costs requested by the PCC do not represent the total costs incurred by the College. The actual total exceeds \$50,000. The PCC has reduced the amount requested to be ordered based on the fact that Mr. Larrea eventually acknowledged that he accepted responsibility for Charge 1 as alleged. However, he did not clearly communicate that acceptance until May 12, 2021³, in response to a letter from legal counsel for the PCC⁴, and as a result of which the hearing that was scheduled to commence on May 3, 2021 was adjourned at his request. Legal counsel for the PCC was thus required to prepare for that hearing on the basis that both charges were in dispute. The PCC has requested that one-third of the costs incurred up until that date be paid by Mr. Larrea, recognizing that, although there were only two charges, the second

² 2021 SKCA 99.

³ Exhibit P-7.

⁴ Exhibit P-6.

charge was more complex and would have required more time to prepare for. This amount is \$12,842.45. The PCC has also requested that 10% of the costs incurred after May 12, 2022, or \$3,073.83, be attributed to Charge 1. Finally, the PCC requests that the total estimated costs of the penalty hearing, or \$6,563.50, be paid by Mr. Larrea.

[13] Mr. Larrea submits that he never denied the facts that underpin Charge 1 and didn't realize that the two charges could in effect proceed separately until he received the letter from the PCC's legal counsel of April 27, 2022 and had a subsequent telephone conversation with her on April 29, 2022. He noted that costs are not intended to be punitive and that he has suffered significant penalties from his employer in the form of workplace discipline and a demotion. He notes also that his wife was killed in a motor vehicle accident in November 2021 and, although they were separated at the time, he is now a single parent for three children.

[14] The Discipline Committee accepts the submissions of the PCC with respect to the costs incurred up until May 12, 2021. Counsel could not assume that Charge 1 would not be disputed, and it was necessary to prepare for that charge as part of the hearing that was originally scheduled to proceed on May 3, 2021. The Discipline Committee also accepts that attributing one-third of the total costs actually incurred to that point in time is a fair and reasonable apportionment of costs given the nature of the two charges. As well, the Discipline Committee accepts that the cost of the hearing with respect to penalty relates entirely to Charge 1. However, the Discipline Committee does not agree that the costs after May 12, 2021 and prior to the penalty hearing should be attributed to Charge 1 at all as the time required to address this matter before the Discipline Committee was negligible. In conclusion, then, the total of the costs that Mr. Larrea should be ordered to pay is \$19,405.95. However, in recognition of Mr. Larrea's submissions with respect to the hardship this would create if he had to pay it all within one year, the Discipline Committee will order that the total of the costs to be ordered may be paid over two years rather than just one.

[15] The Discipline Committee notes that it is required to ensure that its decision is published on the College's website pursuant to subsection 6(2) of *The Saskatchewan College of Psychologists Regulatory Bylaws, 2016* and will do so in compliance with the Bylaws.

ORDER

[16] For all of the reasons set out above, the Discipline Committee of the Saskatchewan College of Psychologists therefore, pursuant to section 32 of *The Psychologists Act, 1997*, orders that:

1. Fernando Larrea is hereby reprimanded;
2. Fernando Larrea shall provide the Registrar with proof of completion of the CPA online course, "Being an Ethical Psychologist", by Carole Sinclair, within 120 days of the date of this Order, and if he fails to do so his licence shall be thereupon suspended until he does;
3. Fernando Larrea shall pay costs in the amount of \$19,405.95, within two years after the date of this Order and if he fails to do so his licence shall be thereupon suspended until the costs are paid in full; and
4. In accordance with subsection 6(2) of *The Saskatchewan College of Psychologists Regulatory Bylaws, 2016*, this decision and reasons shall be posted on the College's website.

Dated at Regina, Saskatchewan this ___ 22nd ___ day of September 2022.

SASKATCHEWAN COLLEGE OF PSYCHOLOGISTS,
DISCIPLINE COMMITTEE



Renée Schmidt,
Registered Doctoral Psychologist, Chair

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