

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  
Wayne Schlapkohl, Registered Doctoral Psychologist  
Patricia Crassweller, Registered Psychologist  
Gordon Glaicar, Public Representative

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 December 8, 2009 at Saskatoon, Saskatchewan, as agreed by the parties.

[2] Dr. Nanson is a Member of the Saskatchewan College of Psychologists (hereinafter referred to as 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 Notice of Hearing alleged that Dr. Nanson was guilty of professional misconduct and/or professional incompetence, within the meaning of *The Psychologists Act, 1997*.

[3] An interim decision of the Discipline Committee relating to preliminary issues raised by legal counsel for Dr. Nanson and dated September 5, 2008, was quashed by the Court of Queen's Bench in a judgment of Koch, J., dated February 17, 2009. The practical effect of that decision is that the description of the complaints against Dr. Nanson contained in the Report of the Professional Conduct Committee is to be taken as the "formal complaint," as that term is used in *The Psychologists Act, 1997*, before the Discipline Committee in this hearing.

## **FACTS:**

[4] An "Agreement as to Facts" was submitted to the Discipline Committee by the parties. The entire text of the Agreement is as follows:

1. Dr. Jo Nanson is a member of the Saskatchewan College of Psychologists and, at all times material to the complaints against her, was a Psychologist registered and licensed to practice in the Province of Saskatchewan.
2. Pursuant to Section 28(2) of *The Psychologists Act, 1997*, the Professional Conduct Committee prepared three Reports to the Discipline Committee of the Saskatchewan College of Psychologists for the three complaints against Dr. Nanson. The complainants are Mr. X., Ms. Y., and Mr. Z. The Reports were signed by the Professional Conduct Committee members between January 28, 2008 and February 25, 2008.
3. Dr. Nanson received a copy of the Professional Conduct Committee's report to the Discipline Committee. She was subsequently served with a Notice of Hearing by registered mail alleging that she was guilty of professional misconduct and/or professional incompetence within the meaning of *The Psychologists Act, 1997*. The Notice of Hearing attached an expanded version of the complaints referred to in the Reports of the Professional Conduct Committee.
4. The Complaints referred to below are the Complaints identified by the Professional Conduct Committee in their Reports to the Discipline Committee.

### **RE: Mr. Z.'s Complaints**

#### **A. Dr. Nanson was inaccurate in her written communication concerning the treatment of Mr. Z.'s child Child A**

5. The Complaints referred to below are the Complaints identified by the Professional Conduct Committee in their Reports to the Discipline Committee.
6. On June 30, 2006 Dr. Nanson interviewed Child A, an 11 year old child born to Mr. Z. and Ms. A. She provided a letter to the lawyer for the biological mother stating, in part, as follows:

*Child A was referred to me by [Child A's] family physician, Dr. G. for treatment of [Child A's] obsessive compulsive disorder (OCD), which manifests itself in terms of excessive hand washing, depression, sleep problems and anxiety.*

7. This letter is attached as Appendix "A".

8. The note of referral from Dr. G. dated June 29, 2006 indicated that Child A was referred for assessment of possible obsessive compulsive disorder (OCD) and Generalized Anxiety Disorder (GAD) which is attached as Appendix "B".

9. Dr. Nanson acknowledges that she was inaccurate in her communication about the referral from Dr. G. and hereby undertakes to accurately describe the nature of referrals to her for psychological services involving children.

**B. Dr. Nanson violated Mr. Z.'s privacy by relaying information about his interaction with her in the counsel of the child - will not proceed.**

**C. Dr. Nanson demonstrated a lack of objectivity/bias in her written communication and interaction with the child – will not proceed**

**D. Dr. Nanson did not obtain informed consent from Mr. Z. who has a joint custody agreement with the child's mother**

10. In late June of 2006, Dr. J. Nanson provided psychological services to Child A who was 11 years old at the time. At the time, the biological parents were no longer living together and had a joint custody arrangement ratified by court order attached as Appendix "C". The primary residence of the child was with the mother.

11. The mother told Dr. Nanson that she had custody of the child. Dr. Nanson first interviewed the child on June 30, 2006 without the knowledge or consent of the child's father. Dr. Nanson wrote a letter dated June 30, 2006 (Appendix "A") to the lawyer representing the mother which was used by the mother at the pre-trial conference between the parents where custody and access issues were discussed. At no time prior to the pre trial conference did the father know Dr. Nanson was providing psychological services to his child.

12. Dr. Nanson subsequently met with the father and did not secure his written consent to treatment of the child and relied on the consent obtained at the pre-trial conference. Attached as Appendix "D" is the handwritten Minutes of Settlement dated July 4, 2006 following the pre trial conference and attached as Appendix "E" is the subsequent Consent Order issued July 19, 2006.

13. Dr. Nanson agrees not to provide psychological services to children without the written consent of both parents where the parents are estranged.

**RE: Mr. X.'s Complaints**

**E. Dr. Nanson behaved in an unethical and unprofessional manner when she failed to inform the complainant of his rights regarding a custody and access agreement - will not proceed.**

**F. Dr. Nanson was in a position of conflict of interest with respect to her personal relationship with the boyfriend of the complainant's ex-wife. This resulted in inappropriate and biased information being passed to Dr. Nanson which compromised the investigation**

14. Dr. Nanson agreed to conduct a parenting assessment involving two children of Mr. X. and Ms. C. in January 2006. The parents were separated and the custody and access dispute was a matter before the courts.

15. At the time, Ms. C. was dating Mr. B. who was known by name to Dr. Nanson as he was [known to Dr. Nanson's husband and had met at Dr. Nanson's home on a few occasions although Dr. Nanson did not participate in the meetings held at her home].

16. Dr. Nanson advised Mr. X. and Ms. C. of her knowledge of and involvement with Mr. B.. She did so as she was aware that her relationship with Mr. B. may lead to the appearance of bias. Dr. Nanson interviewed Mr. B. as part of her investigation.

17. Dr. Nanson acknowledges that her handling of the situation with the parents did not fully address the conflict of interest contrary to the Code III.33 and III.35. She acknowledges the information she received from Mr. B. had the potential to compromise her investigation of the family.

18. Dr. Nanson undertakes not to provide psychological services to people in circumstances where she, or a member of her family, has a relationship to a third party who may be interviewed as part of an assessment. She undertakes to consult with another psychologist if she is in doubt as to the extent of the conflict.

**G. Psychologist did not maintain confidentiality when she discussed the complainant's information with his ex-wife.**

19. The parenting assessment was completed by Dr. Nanson on April 25, 2006. She advised each parent that the assessment was ready to be picked up at her office rather than providing the assessment to the parties' respective lawyers.

20. Before Mr. X. picked up the parenting assessment, Dr. Nanson sent an e mail to Ms. C. on May 1, 2006 which stated, in part, the following:

*I have used your draft parenting agreement for the basis of what I have recommended, with some modifications; the major one being that I am not recommending any overnight visits for Child B and no time when Child B would be at home without Mr. X. being there. Mr. X. will not like this, so be prepared for an explosion.*

Attached as Appendix "F" is a copy of the e mail.

21. On May 8, 2006 Dr. Nanson communicated with Ms. C. via e mail as follows:

*I am so sorry about Mr. X. He dropped in this morning and demanded to see the consent form that he had signed. I showed it to him and he indicated that he had not given consent for information you gave me to be in the report. I tried to explain informed consent to him and that he cannot "cherrypick" the information in the report. I spoke to him about getting after the kids on the weekend. He agrees he talked to them about their "lies", but does not feel that he did anything wrong. I told him that he needed to spend time with Child B one on one rebuilding their relationship. He feels that I should have repaired it through the assessment and that my report is biased and unfair towards him. He doesn't have time to spend with Child B on [his/her] own and blames [him/her] for all the troubles in his home.*

Attached as Appendix "G" is a copy of the email.

22. After a parenting assessment is completed, Dr. Nanson undertakes not to discuss a parenting assessment without the involvement of both parents. She accepts her conduct was contrary to the Code 1.45, 1.12 and III.11.

### **RE: Ms. Y.'s Complaints**

**H. Dr. Nanson acted unethically when she did not obtain Ms. Y.'s consent to gather information from Ms. Y. regarding her involvement with the children of her common law partner**

23. Dr. Nanson interviewed Ms. Y. in the course of her parenting assessment of Mr. X. and Ms. C.'s children. Dr. Nanson did not obtain Ms. Y.'s written consent to gather information about Ms. Y.'s personal circumstances or about her involvement with Mr. X.'s children.

24. Dr. Nanson undertakes to obtain written consent when obtaining information from third parties.

**I. Dr. Nanson acted in an unprofessional manner by breaching confidentiality when she shared information Ms. Y. had told her with the babysitter of the children of Ms. Y.'s common-law partner**

25. In the course of her parenting assessment, Dr. Nanson spoke with Mr. X.'s babysitter. In their conversation, they discussed the proposition that Ms. Y. did not like Mr. X.'s children. The babysitter said she did not tell Dr. Nanson that Ms. Y. did not like Mr. X.'s children. Attached as Appendix "H" is a note from the babysitter.

26. Dr Nanson accepts that in her manner of communication with the babysitter she may have given the impression that she (Dr. Nanson) had concluded from her own observations of or discussions with Ms. Y. that Ms. Y. did not like Mr. X.'s children.

27. Dr. Nanson agrees she should not have shared any information received by her from Ms. Y. to the babysitter as required by the Code I.45. She undertakes not to share information between individuals interviewed in parenting assessments.

28. Costs

Dr. Nanson agrees to pay \$2,500.00 as costs for the Discipline Hearing.

**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 Agreement as to Facts, referred to and quoted above in its entirety, sets out a description of the complaints made against Dr. Nanson by each of the three complainants and, in the case of each of the complaints that is not withdrawn, states her acknowledgment of her conduct in relation to the complaint and an undertaking related to the substance of the complaint. The following list summarizes the complaints that are not withdrawn, their acknowledgment by Dr. Nanson, and their disposition as proposed by the parties:

#### **Mr. Z.'s Complaints**

A. Dr. Nanson was inaccurate in her written communication concerning the treatment of Mr. Z.'s child Child A:

The member acknowledges that she was inaccurate in her communication about the referral from Dr. G. and undertakes to accurately describe the nature of referrals to her for psychological services involving children.

D. Dr. Nanson did not obtain informed consent from Mr. Z. who has a joint custody agreement with the child's mother:

The member agrees not to provide psychological services to children without the written consent of both parents where the parents are estranged.

#### **Mr. X.'s Complaints**

F. Dr. Nanson was in a position of conflict of interest with respect to her personal relationship with the boyfriend of the complainant's ex-wife. This resulted in inappropriate and biased information being passed to Dr. Nanson which compromised the investigation:

The member acknowledges that her handling of the situation with the parents did not fully address the conflict of interest contrary to the Code III.33 and III.35 and that the information she received from Mr. B. had the potential to compromise her investigation of the family. The member undertakes not to provide psychological services to people in circumstances where she, or a member of her family, has a relationship to a third party who may be interviewed as part of an assessment and to consult with another psychologist if she is in doubt as to the extent of the conflict.

G. Psychologist did not maintain confidentiality when she discussed the complainant's information with his ex-wife:

After a parenting assessment is completed, the member undertakes not to discuss a parenting assessment without the involvement of both parents. She accepts her conduct was contrary to the Code 1.45, 1.12 and III.11

**RE: Ms. Y.'s Complaints**

H. Dr. Nanson acted unethically when she did not obtain Ms. Y.'s consent to gather information from Ms. Y. regarding her involvement with the children of her common law partner:

The member undertakes to obtain written consent when obtaining information from third parties.

I. Dr. Nanson acted in an unprofessional manner by breaching confidentiality when she shared information Ms. Y. had told her with the babysitter of the children of Ms. Y.'s common-law partner:

The member agrees she should not have shared any information received by her from Ms. Y. to the babysitter as required by the Code I.45. She undertakes not to share information between individuals interviewed in parenting assessments

[9] The Discipline Committee accepts the acknowledgments provided by Dr. Nanson as pleas of guilty to the described complaints, which constitute 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. Nanson is guilty of professional misconduct as a result of the acknowledgments contained in the Agreement as to Facts submitted to the Committee. The Discipline Committee must therefore determine the appropriate consequence to follow as a result of that finding.

[10] In its recent decision in the case of *Rault v. Law Society of Saskatchewan*,<sup>1</sup> 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.<sup>2</sup> 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 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

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<sup>1</sup>[2009] S.J. No. 436

<sup>2</sup>*Ibid*, at paragraph 13.

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] In this case, the jointly proposed disposition of the complaints against Dr. Nanson is through a series of “undertakings” to be provided by her. The Discipline Committee notes that this is an unusual means of approaching the matter of attaching consequences to admitted cases of professional misconduct or professional incompetence. 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”. As a result, it is the Discipline Committee’s opinion that it is not able to accept an “undertaking” from a member where it has found that the member is guilty of professional misconduct or professional incompetence; it must make an order.

[13] As well, it is not possible to simply convert the undertakings provided into a form of order. The undertakings are specific examples of the particular ways in which Dr. Nanson failed to comply with the Code of Ethics, which she is obliged to comply with because section 14 of the Regulatory Bylaws requires compliance. That failure, which she has acknowledged, must, however, result in a consequence. If there are no consequences for acknowledged failures to comply with the requirements of the legislation, the public interest is not properly protected. For that reason, the Discipline Committee is of the opinion that a reprimand should be ordered, in addition to an order directed at the manner in which Dr. Nanson shall be required to ensure that she complies with the Code of Ethics.

[14] The Discipline Committee also notes that there are a number of inconsistencies in terms of the precise language of each of the proposed undertakings, and it has revised the language used in the joint submission to provide clarity and consistency in its order.

[15] The joint submission calls for the payment by the member of \$2,500 in the form of costs. The Discipline Committee acknowledges that by pleading guilty and taking responsibility for her actions, Dr. Nanson has significantly reduced the cost of the hearing; however, the Discipline Committee is concerned that the order for costs should be fair in relation to similar orders made in other discipline cases it has decided. For that reason, the Discipline Committee is of the view that costs should be \$3,000 in this case.

**ORDER:**

[16] For all of the reasons set out above, the Discipline Committee of the Saskatchewan College of Psychologists therefore finds Dr. Jo Nanson 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 Dr. Jo Nanson is hereby reprimanded and shall in future conduct herself at all times in accordance with the Code of Ethics of the College and, in particular, to:

(a) accurately describe the nature of referrals to her for psychological services involving children;

(b) not provide psychological services to children without the written, informed consent of both parents;

(c) not provide psychological services to people in circumstances where she, or a member of her family, has a relationship to a third party who may be interviewed as part of an assessment and to consult with another psychologist if she is in doubt as to the existence of a conflict;

(d) not discuss a parenting assessment without the involvement of both parents;

(e) obtain written, informed consent when obtaining information from third parties;

(f) not share information between individuals interviewed in parenting assessments;  
and

2. That Dr. Jo Nanson shall pay the sum of \$3,000 in respect of the costs of the inquiry and hearing into her conduct and related costs, to be paid in full within 30 days from the date of this Order, and, if all or any of that amount remains unpaid after that date, she shall be suspended from the College after that date and until such payment is received in full.

Dated at Regina, Saskatchewan this 20<sup>th</sup> day of April, 2010.

SASKATCHEWAN COLLEGE OF PSYCHOLOGISTS,  
DISCIPLINE COMMITTEE

*(Original signed by)*

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Mary Hampton, Registered Doctoral Psychologist  
Chairperson

## **APPENDICES A – H**

**For the purpose of posting this decision, all Appendices have been removed to protect the privacy of third parties**