

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

SENTENCING DECISION

**Saskatchewan College of Psychologists
DISCIPLINE COMMITTEE**

Discipline Committee Members:

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

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

INTRODUCTION:

[1] In its decision dated October 11, 2012, the Discipline Committee found Dr. Jo Nanson guilty of professional misconduct as a result of failing to comply with several provisions of the Code of Ethics. A failure to comply with the Code is a contravention of section 14 of the College's Regulatory Bylaws, which require such compliance.

[2] The particulars of the charges of which Dr. Nanson was found guilty were set out in the formal complaint against her as follows:

2. She made recommendations regarding custody and access in a report dated August 29, 2007, in favour of the child's father and to the detriment of Ms X, without speaking or meeting with Ms X, her parents or anyone knowing Ms X, in contravention of sections II.1, II.21 and II.38 of the Code.

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

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

[3] As a result of its finding, the Discipline Committee ordered that a sentencing hearing be convened at a time and place to be determined by the Chair of the Committee in consultation with counsel for the parties. The sentencing hearing was held via conference call on January 3, 2013.

POSITIONS OF THE PARTIES:

[4] Based on the premise that the purpose of sentencing in relation to a professional discipline offence is primarily to protect the public, including educating the member and others concerning the acceptable standards of conduct and competence for members of the profession, counsel for the Professional Conduct Committee submits that the following would constitute an appropriate discipline order in this case:

1. Dr. Nanson shall take a graduate level class in ethics acceptable to the College of Psychologists, which class shall be completed within 24 months of the date of the discipline decision.
2. Dr. Nanson shall take a graduate level class in assessment and report writing acceptable to the College of Psychologists, which class shall be completed within 24 months of the date of the discipline decision.
3. Dr. Nanson shall be prohibited from supervising provisional members, colleagues and students in their clinical practice until all conditions of the above discipline has been met.
4. Dr. Nanson shall pay a fine of \$3,000.00.
5. Dr. Nanson shall pay all costs of the investigation into these charges by the College of Psychologists and all hearing charges including all legal costs, committee costs, legal disbursements, costs of subpoenaing witnesses and conduct money and any other costs incidental thereto, which cost, while not detailed in counsel's submissions, is in excess of \$22,000.

[5] Counsel for Dr. Nanson argues that, in respect of charge 2, Dr. Nanson made every possible effort to have the mother participate in the child custody and access assessment and the Code of Ethics only requires that members "strive to produce the best possible outcome". He acknowledged that she should have expressed in her report the limitations resulting from the mother's non-participation in the assessment process, which she failed to do, but that the mother's non-participation had no impact on the recommendations she ultimately made. And, while she did not consult with other possible witnesses, she saw no need to because it would not have had an impact on her recommendations and she thought it unlikely that the mother would consent.

[6] In respect of charge 4, counsel argues that because the assessment that Dr. Nanson was asked to do was in the context of a legal proceeding and she was aware of the effort being made by the

father's lawyer to obtain consent, and because she honestly believed she had implied consent in the circumstances, it was not that she intentionally did not obtain consent or ignored the lack of consent, and that this should weigh in her favour in assessing consequences.

[7] In respect of charge 5, counsel argues that despite the number and frequency of the errors in her report, they are of little importance in relation to the content of the recommendations; they are trivial and not worthy of any attention whatsoever in terms of sanction.

[8] For all of these reasons, counsel for Dr. Nanson submits that a \$3,000 fine (when the maximum allowable is \$5,000) is significantly out of line. He also argues that any order as to costs should take into account that significant effort was expended in relation to issues that were ultimately abandoned by the PCC, or that were found in Dr. Nanson's favour by the Discipline Committee. For example, the original charge 3 was withdrawn and Dr. Nanson was acquitted of charge 1. He also points out that as of January 1, 2013, Dr. Nanson is a non-practising member of the College.

ANALYSIS:

[9] The courts have laid out a list of factors to which regard should be had in coming to a conclusion about the appropriate consequences resulting from a finding of professional incompetence or professional misconduct, which includes the following:

1. The nature and gravity of the proven allegations;
2. The age of the offending member;
3. The age of the offended client or patient;
4. Evidence of the frequency of the commission of the particular acts of misconduct;
5. The presence or absence of mitigating circumstances, if any.
6. Specific deterrence;
7. General deterrence;
8. Previous record, if any, for the same, or similar, misconduct; the length of time that has elapsed between the date of any previous misconduct and conviction thereon; and, the member's (properly considered) conduct since that time;
9. Ensuring that the penalty imposed will, as mandated by the Act, protect the public and ensure the safe and proper practice of psychology;

10. The need to maintain the public's confidence in the integrity of the College's ability to properly supervise the professional conduct of its members;

11. Ensuring that the penalty imposed is not disparate with penalties previously imposed in this jurisdiction, particularly, and in other jurisdictions in general, for the same, or similar acts of misconduct.¹

[10] The Discipline Committee would like to state, firstly, that the fact that Dr. Nanson has chosen to take out a non-practising membership in Saskatchewan is not a factor to be taken into account in determining discipline consequences, just as a member cannot escape discipline by resigning.² A return to active practice is always possible, and a member may move to another jurisdiction. It is important, therefore, that the Discipline Committee fashion an order that will address the conduct that gave rise to the complaints irrespective of the member's current licensing status.

[11] Counsel for Dr. Nanson has argued that the breaches of the Code for which she has been found guilty are minor or trivial. While the Discipline Committee acknowledges that what occurred was not the most serious of possible breaches, it was nevertheless more than trivial. Dr. Nanson failed to take all reasonable care in preparing a report that she knew was likely to be used in a formal legal proceeding where the subject matter of the report she made was the primary issue in contention in a case involving a decision about custody of and access to a child. It is not relevant that she would have come to the same recommendations whether or not she had talked to the mother or other witnesses. The professional standards require that she make every effort to do so. More importantly, a reader of the report would not be aware that the non-participation of the mother or other witnesses would have had no effect on the recommendations made. The long list of errors in preparing the report, although each of them was relatively minor, together speaks to a general carelessness in completing it, even though it was a report for use in a legal proceeding. Such carelessness in the preparation of a professional report is unacceptable. These comments relate primarily to the first and fifth of the *Camgoz* factors.

[12] The sixth and seventh *Camgoz* factors relate to deterrence. Penalties are imposed not just to deter the person being disciplined in the present case, but also to serve as a general deterrent to others. The Discipline Committee is of the view that an order prohibiting Dr. Nanson from conducting custody and access assessments unless under supervision would be appropriate, both as a specific and as a general deterrent. Dr. Nanson obtained her M.A. in psychology in 1970 and her Ph.D. in clinical psychology in 1988. It is not reasonable at this stage of her career to require her to complete graduate level courses in ethics and assessment and report writing. Indeed, the Discipline Committee is not confident that it is possible for her to take such courses at a university if she is not

¹*Camgoz v. College of Physicians and Surgeons of Saskatchewan*, [1993] S.J. No. 557 at paragraph 55

²*Abdouabdallah v. College of Dental Surgeons of Saskatchewan*, 2011 SKCA 99; leave to appeal to the Supreme Court of Canada refused, [2011] S.C.C.A. No. 474.

a graduate student. However, the Discipline Committee is of the view that the objective sought to be achieved by taking such courses is also achieved by prohibiting Dr. Nanson from conducting custody and access assessments unless under supervision.

[13] A prohibiting order also responds to the eighth *Camgoz* factor, which takes into account previous record. In a discipline proceeding relating to complaints arising from events that occurred in June and July of 2006, Dr. Nanson undertook not to provide psychological services to children without the written consent of both parents where the parents are estranged. While the Discipline Committee understands that this undertaking was not provided to the Discipline Committee until April 2010, the fact remains that in the space of about one year, Dr. Nanson's involvement with children of parents who were separated led to formal complaints and protracted hearings.³ This prohibition also responds to the ninth *Camgoz* factor which calls for a penalty that will ensure public protection and the safe and proper practice of psychology.

[14] The Discipline Committee is of the view that a fine of \$3,000 is appropriate. The conduct complained of was not trivial and this is the second incident of similar circumstances leading to a formal complaint. It is important that the public's confidence in the integrity of the profession be maintained and that other members also appreciate that issues of client consent and preparation of accurate and complete reports, particularly in situations involving legal proceedings and children, are important matters and not trivial.

[15] Finally, there is the matter of costs. Subclause 32(2)(a)(ii) of *The Psychologists Act, 1997* allows the Discipline Committee to order the payment of the costs of the investigation and hearing into the member's conduct and related costs, which explicitly includes the expenses of both the professional conduct committee and the discipline committee, as well as the costs of legal services. The Discipline Committee acknowledges that a core aspect of the College's mandate is the discipline process and that the system necessary to establish and enforce standards of competence and conduct is in that sense the price of self-regulation. Individual members who face discipline should not be required to pay those systemic costs. However, the cost of an individual discipline hearing is substantial, and, where the member is found guilty of the discipline charges made, it is the member who should bear that cost, and not all the other members of the College who do meet the standards of conduct and competence expected of them by their profession.

[16] On the other hand, the Discipline Committee is mindful of the fact that if costs are unreasonably high they can become punitive and can effectively deny a member a fair opportunity to dispute allegations of professional incompetence or professional misconduct. In the absence of any specific evidence of ability to pay, an order for costs must be reasonable in relation to the average financial means of a member of the profession. The information provided to the Discipline Committee through counsel's submissions is that the total legal costs are about \$22,000. In its three

³The Discipline Committee is also aware that its decision of April 20, 2010 has been appealed by Dr. Nanson, but, unless and until its decision is reversed by a Court or stayed pending appeal, the decision stands as provided for by section 38 of *The Psychologists Act, 1998*.

most recent decisions, the Discipline Committee has made awards of costs in the amount of \$8,000, \$11,450 and \$7,968. All of these cases proceeded on the basis of agreed facts, thus minimizing the legal costs. In this case, there were no agreed facts and a number of issues were hotly contested. However, Dr. Nanson was acquitted of one of five charges and one other charge was withdrawn. Taking all of these circumstances into account, the Discipline Committee is of the view that an order for costs of \$11,000 is fair and reasonable.


ORDER:

[17] Therefore, in light of its analysis and based on the reasons set out above, in accordance with section 32 of *The Psychologists Act, 1997*, the Discipline Committee makes the following orders:

1. That Dr. Nanson be and is hereby prohibited from conducting child custody assessments, unless she obtains supervision from a member of the College approved by the Registration Committee, which approval is obtained prior to commencing the assessment;
2. That Dr. Nanson pay to the Saskatchewan College of Psychologists a fine in the amount of \$3,000 within 30 days of the date of this decision;
3. That Dr. Nanson pay to the Saskatchewan College of Psychologists the sum of \$11,000 in respect of the costs of the investigation and hearing into her conduct and related costs, to be paid in full on or before the expiration of six months from the date of this decision; and
4. If Dr. Nanson fails to pay the fine and/or costs specified in paragraphs 2 and 3 within the time provided for their payment, that she then be and is hereby suspended from the Saskatchewan College of Psychologists after that time and shall remain suspended until the said fine and costs are paid in full.

Dated at Regina, Saskatchewan this 9th day of January 2013.

SASKATCHEWAN COLLEGE OF PSYCHOLOGISTS,
DISCIPLINE COMMITTEE


Mary Hampton, Registered Doctoral Psychologist
Chairperson