

IN THE MATTER OF *THE PSYCHOLOGISTS ACT, 1997* AND BYLAWS AND IN THE
MATTER OF A COMPLAINT AGAINST CHARLES SWIFT, REGISTERED
PSYCHOLOGIST, OF REGINA, SASKATCHEWAN

DECISION

of

Saskatchewan College of Psychologists

DISCIPLINE COMMITTEE

Discipline Committee Members:

Mary Hampton, Registered Doctoral Psychologist, Chair
Gregory Stevens, Registered Doctoral Psychologist
Gordon Glaicar, Public Representative

Karen Prisciak, Q.C., appearing on behalf of the Professional Conduct Committee
Nicholas Cann, appearing on behalf of Charles Swift
Merrilee Rasmussen, Q.C., legal counsel for the Discipline Committee

INTRODUCTION:

[1] The Discipline Committee convened on September 22, 2010 at the offices of the Saskatchewan College of Psychologists (hereinafter referred to as the College) in Regina, Saskatchewan, in accordance with the Notice of Hearing dated August 17, 2010, which was served on the Member as required by *The Psychologists Act, 1997*.¹ The Notice of Hearing alleged that Mr. Swift was guilty of professional misconduct and/or professional incompetence, within the meaning of *The Psychologists Act, 1997*.

[2] At all times material to the complaints against him, Charles Swift was a Member of the Saskatchewan College of Psychologists and licensed to practice in the Province of Saskatchewan. At the outset of the hearing, the Discipline Committee was advised that Mr. Swift had tendered his resignation from the College on September 21, 2010.²

THE FORMAL COMPLAINT

¹Exhibit D to the Affidavit of Karen Messer-Engel, dated September 3, 2010, and filed in evidence in this hearing as Exhibit P-1.

²Exhibit P-3.

[3] The Formal Complaint charges that Charles Swift is guilty of professional misconduct and/or professional incompetence contrary to sections 25 and 26 of *the Psychologists Act, 1997* and/or Regulatory Bylaw #14 in that:

1. From July 2007 to May 2008 he was in a conflict of interest with his client, X, who worked as an employee of the building in which Charles Swift had his business, and was also employed by Charles Swift, contrary to the *Canadian Code of Ethics for Psychologists*, 3rd ed. 2000, Sections III.31 and III.33.
2. On or about mid-April to mid-May 2008, X withdrew from his psychological treatment and he continued to contact *him/her* and provide psychological services, contrary to the Code Sections I.27, I.30, I.7, II.1, II.2, II.3 and II.5.

FACTS:

[4] An “Agreement as to Facts” was submitted to the Discipline Committee by the parties.³ The entire text of the Agreement is as follows:

1. Charles Swift’s practice is located in the [*Workplace Name*] in [*City*], Saskatchewan. He is registered with the College of Psychologists from 2002 until the present day.
2. The Complainant, X, works from [*times deleted*] as a [*employment title*] of the physicians’ office and patient area in the [*Workplace Name*]. *He/She* is a lone parent and the sole support of *his/her* [*age*] year old *son/daughter*.
3. X was involved in a physically abusive relationship with a [*spouse*] who was later the *father/mother* of her *son/daughter*. This [*spouse*] had assaulted *him/her* in [*year*], and was convicted and sentenced to jail for nine months. After *his/her* release, *he/she* lived with X and their newly-born *son/daughter* until *he/she* severely assaulted X again in [*year*]. *He/She* was hospitalized and unable to work for 2 months. *His/Her son/daughter* was placed in care until *he/she* recovered. Ultimately, *his/her* assaulter was convicted and sentenced to jail and declared a dangerous offender.
4. From time to time, X smoked outside the building with Charles Swift during *his/her* work breaks. *He/She* considered Mr. Swift to be someone *he/she* could speak with about *his/her* relationship with *his/her* abusive partner. After the second assault, the other [*employment title*]s of the same building told *him/her* that Mr. Swift offered to speak with *him/her*. X approached Mr. Swift on June 11 and requested his services. Consequently, Mr. Swift counselled X in his office from [*date to date year*]. X was in a

³Exhibit P-2.

state of distress and very scared of *his/her* assaulter. *He/She* experienced panic attacks and physical symptoms of anxiety. Victim Services paid for these sessions.

5. After [*date of year*], the trial of *his/her* assaulter was over and X did not receive any counselling. *He/She* was advised that Victim Services would pay for additional counselling. *He/She* spoke with her physician who supported *his/her* need for counselling. X decided *he/she* was more comfortable being counselled by [*another psychologist*]. Mr. Swift arranged a session for April 21, 2008, and X intended to tell him that *he/she* planned on seeing [*another psychologist*] psychologist.

6. On April 21, 2008, Mr. Swift did not show up for the 4:00 p.m. appointment. At about 5:00 p.m. X found him smoking outside the office and he told *him/her* that he had fallen asleep. During the counselling session in his office, he told X that *his/her* assaulter was being sought by the police for attempted murder and that *he/she* was the fifth or sixth victim. He told *him/her* to consider leaving *his/her son/daughter* in care at the reserve and to consider leaving the province. He said *his/her* assaulter would stop at nothing to find *him/her*. He offered to hide *him/her* as he had hidden another *man/woman* in similar circumstances. X was very scared by this information and advice. Several times during the session, Mr. Swift left X in his office. X told him that *he/she* had arranged for counselling from [*another psychologist*] psychologist.

7. At the conclusion of the April 21 session, Mr. Swift confirmed their next meeting for April 30 at 4:00 p.m. X did not keep this meeting and never met with nor arranged a formal meeting in Mr. Swift's office after that time. X hoped that not showing up would be an indication to Mr. Swift that he was no longer *his/her* counsellor.

8. From April 21 to the end of June 2008, Mr. Swift continued to seek X out while *he/she* was at work [*job description in*] the offices. He followed *him/her* to the door of the bathroom, kitchen and hallway and continued to tell *him/her* that he had police files and knew of murders connected with *his/her* assaulter. He insisted that *he/she* needed to know this and other information for *his/her* own safety. He encouraged *him/her* to speak with him after *his/her* work was completed. These conversations were frightening to X. *He/She* told him that *he/she* did not wish to speak with him and did not want to know anything further nor did *he/she* want his advice as *he/she* was seeing [*another psychologist*].

9. Charles Swift does not agree that X told him that *he/she* did not wish to speak to him and did not want to know anything further nor did *he/she* want his advice.

10. X was scared to go to work for fear that Mr. Swift would continue to find *him/her*. *He/She* experienced panic attacks while walking to work. *He/She* felt pursued by Mr. Swift and felt there was nowhere to hide at work.

11. From April 21 to the end of June 2008, Mr. Swift found X in *his/her* workplace on a number of occasions. He continued to share information and advice, which scared

X. One of the staff members of the [*Workplace*] intervened whenever she saw Mr. Swift approaching X. Ultimately, *he/she* sought the intervention of one of the physicians and Mr. Swift no longer approached *him/her* while *he/she* worked.

12. Prior to April 21, Mr. Swift drove X home after *his/her* work ended. After April 21, Mr. Swift continued to offer to drive X home from work, but *he/she* accepted a ride with a staff member instead.

13. In May of 2008, Mr. Swift hired X to [*job description*] of his office for \$100.00. *He/She* did so as *he/she* was scared to refuse his request. *He/She* completed this task with another [*job description*] when Mr. Swift was away during the weekend.

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 Discipline Committee accepts the acknowledgments provided by Mr. Swift in the Agreed Statement of Facts as pleas of guilty to the described complaints, which constitute failures to comply with the Code of Ethics of the College. In particular, the Discipline Committee finds that Mr. Swift:

- (a) exploited his relationship with X as a psychologist to further his own interests at the expense of X's best interests by taking advantage of *his/her* trust and dependency to frighten *him/her* into receiving his services, contrary to Section III.31 of the Code;
- (b) failed to avoid dual or multiple relationships by employing X to do work for him when *he/she* had been a client of his, contrary to Section III.33 of the Code;
- (c) failed to take reasonable steps to ensure that X was not coerced into consenting to treatment and to respect *his/her* right to discontinue treatment by pursuing *him/her* with disturbing and frightening information about *his/her* assaulter in *his/her* workplace when he knew or ought to have known that *he/she* did not wish to obtain counselling services from him, contrary to Sections I.27 and 1.30 of the Code;
- (d) failed to protect X's welfare and to avoid doing harm to *him/her* by pursuing *him/her* with disturbing and frightening information about *his/her* assaulter in *his/her* workplace, contrary to Sections II.1 and II.2 of the Code;

[9] 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 Charles Swift 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] Counsel for the Professional Conduct Committee submitted that the Discipline Committee order Mr. Swift to do a number of things⁴, which are summarized as follows:

1. Pay the legal fees incurred by the College;
2. Pay a fine in the amount of \$3,000;
3. Attend and complete PSYC 806 Ethics and Standards of Professional Practice, a graduate level ethics course from the University of Regina, or its equivalent;

⁴Exhibit P-4.

4. Obtain further professional development within a mental health setting, where his psychological assessment and therapy skills would be directly supervised by a full practice licenced psychologist in a co-therapist learning environment;
5. Submit a plan for ensuring that the policy and procedures in his private practice are consistent with the codes and ethics and standards of practice for psychology.

[11] Counsel for Mr. Swift submitted that because Mr Swift had tendered his resignation from the College, the Discipline Committee had no jurisdiction to order anything more than payment of legal fees and a fine. All the other matters contained in the Professional Conduct Committee's submissions relate to restrictions on practice and he would not be practising. He argued that Mr. Swift's voluntary resignation was a more severe penalty than that proposed by the Professional Conduct Committee because he was giving up his livelihood. He also argued that Mr. Swift has very limited means and cannot afford to pay legal costs and a fine, but if these are ordered payment in installments should be provided for.

[12] The Discipline Committee's mandate is to serve and protect the public by ensuring to the extent that it is possible to do so that its members meet minimum standards of conduct and competence. Where there is a failure to meet those standards, the Discipline Committee must take what steps are available to it to minimize the risk of any such failure in the future. The Discipline Committee is also mindful of the fact that a person who is registered and licensed in Saskatchewan can move with relative ease to practice in other Canadian jurisdictions. Thus, in spite of the fact that Mr. Swift has submitted his resignation, it is still necessary to ensure that he cannot return to practice in Saskatchewan or in another jurisdiction without addressing the deficiencies that he has demonstrated in his practice to which the charges in this hearing relate. For that reason, the Discipline Committee has no option but to order that Mr. Swift be suspended until he completes a course in ethics, demonstrates his ability to practice ethically by undergoing a period of supervision, and ensures that his policies and procedures in his private practice meet minimum standards and are reviewed regularly. The detailed actions Mr. Swift must take are set out in the Discipline Committee's Order, below.

[13] In addition, the Discipline Committee is of the view that Mr. Swift should pay a fine. In 2009, Mr. Swift was the subject of another discipline hearing that involved ethical issues and the Discipline Committee in that case ordered that he take an ethics examination from the College and practice under supervision, among other things. The Discipline Committee did not levy a fine in that case. Given that this hearing involves a subsequent discipline offence relating to similar issues, the Discipline Committee is of the view that a fine is appropriate. While the Professional Conduct Committee has requested a fine in a higher amount, the Discipline Committee is of the view that a fine of \$2,000 is appropriate, given the maximum amount of a fine that it is authorized to levy and given fines levied in other discipline cases.

[14] 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. 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 legal costs of the Professional Conduct Committee are approximately \$8,000, and it is only the legal costs of the Professional Conduct Committee for which an order for costs is sought. This amount is not unduly harsh or unreasonable, nor is it beyond the means of the average psychologist in Saskatchewan, and the Discipline Committee is of the view that this amount should be ordered to be paid as costs. However, in recognition of the submissions of counsel for the member, it will order costs to be paid over a period of time.

ORDER:

[15] For all of the reasons set out above, the Discipline Committee of the Saskatchewan College of Psychologists therefore finds Charles Swift 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 Charles Swift pay a fine of \$2,000, to be paid in equal monthly instalments over 24 months, beginning on February 1, 2011 and continuing on the first day of each and every month thereafter until paid in full, and, if any such instalment payment is not received by the College, he shall be suspended from the College after the date of the missed payment and until such payment is received in full;
2. That Charles Swift shall pay the sum of \$8,000 in respect of the legal costs of the inquiry and hearing into his conduct incurred by the Professional Conduct Committee, to be paid in equal monthly instalments over 24 months, beginning on February 1, 2011 and continuing on the first day of each and every month thereafter until paid in full, and, if any such instalment payment is not received by the College, he shall be suspended from the College after the date of the missed payment and until such payment is received in full; and

3. That Charles Swift is suspended from the College until he provides to the Registrar:
- (a) confirmation of his satisfactory completion of PSYC 806 Ethics and Standards of Professional Practice, a graduate level ethics course currently offered by the University of Regina, or a course determined by the Registrar to be an equivalent course;
 - (b) a supervision plan acceptable to the Registrar providing for supervision of his psychological assessment and therapy skills by a full practice licensed psychologist in a co-therapist learning environment for a period of one year, for at least four hours per week, at least one hour of which is direct supervision; and
 - (c) a plan acceptable to the Registrar for ensuring that policies and procedures in his practice are consistent with the ethics and standards of the profession in Saskatchewan, including identifiable procedures for ensuring that compliance of the policies and procedures of his practice with those ethics and standards is maintained over time.

Dated at Regina, Saskatchewan this 28th day of December, 2010.

SASKATCHEWAN COLLEGE OF PSYCHOLOGISTS,
DISCIPLINE COMMITTEE

__original signed by_____
Mary Hampton, Registered Doctoral Psychologist
Chairperson