

IN THE MATTER OF *THE PSYCHOLOGISTS ACT, 1997* AND BYLAWS AND IN THE
MATTER OF A COMPLAINT AGAINST DANIEL SYDIAH, REGISTERED DOCTORAL
PSYCHOLOGIST (NON-PRACTISING), OF SASKATOON, SASKATCHEWAN

DECISION

of

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

Stefania Fortugno, appearing on behalf of Dr. Sydiaha

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

INTRODUCTION:

[1] The Discipline Committee convened initially on June 25, 2012 at Regina Saskatchewan, in accordance with the Notice of Hearing. Prior to the hearing, on June 20, 2012, Ms Fortugno, counsel for Dr. Sydiaha, had requested an adjournment to pursue Charter remedies in the Courts. The Discipline Committee declined this request, based on a number of decisions of the Saskatchewan Court of Queen's Bench.¹ On June 22, 2012 (the Friday before the hearing was to commence on Monday), Ms Fortugno made a second request for an adjournment based on her submission that there was a reasonable apprehension of bias because the Professional Conduct Committee's (PCC) primary witness was the Registrar of the College and that the complaint itself was initiated by the College. Ms Fortugno was advised by counsel for the Discipline Committee that it was not possible to convene the Committee to address her request prior to the time at which it was scheduled to meet. Ms Fortugno presented her request to the Committee when it convened at the scheduled time on June 25, 2012.

¹See *Whatcott v. Sask. Assoc. of Licensed Practical Nurses*, 2003 SKQB 3; *Sander v. Certified General Accountants Assn.*, 2007 SKQB 413; *Kawula v. Institute of Chartered Accountants of Saskatchewan*, 2010 SKQB 11.

[2] The Committee denied Ms Fortugno's request for an adjournment based on bias. The investigation and discipline process set out in *The Psychologists Act, 1997* functions independently of the Registrar of the College and of the Council. The purpose of the College is to provide public protection, and there is nothing in the Act to suggest that the Registrar cannot initiate a complaint. To the contrary, in fact the Act requires the PCC to initiate an investigation where an issue is referred to it by the Council.² In many cases, the Registrar is in the best position to be aware of behaviour that has the potential to compromise public safety. The independent investigation and discipline process provides the checks and balances necessary to ensure that the interests of members are properly respected. Moreover, the evidence of the Registrar related to matters generally of a non-controversial nature, including the fact of Dr. Sydiaha's non-practising status and various listings related to him in print publications and on the internet. In all of these circumstances, there was no reasonable apprehension of bias.

[3] The morning of the hearing, Ms Fortugno indicated that she wished to call Dr. Lorne Elkin as an expert witness, but she had provided no notice to counsel for the PCC, Ms Prisciak, that she intended to do so. As a result, the hearing was adjourned to July 27, 2012, and Ms Prisciak requested that the Discipline Committee order costs against Dr. Sydiaha with respect to the costs "thrown away" in relation to the day of hearing that could not proceed on June 25. Ms Fortugno agreed to the payment of costs on June 25, including that payment would be made within 30 days. However, when the Discipline Committee reconvened on July 27, she made a submission to the effect that the Discipline Committee had no jurisdiction under *The Psychologists Act, 1997* unless and until it found Dr. Sydiaha guilty of a discipline offence. The Discipline Committee reserved its decision in this regard and the hearing proceeded.³

[4] Dr. Sydiaha is a Member of the Saskatchewan College of Psychologists (the "College") and at all times material to the complaints against him he was registered as Non-Practising. The Formal Complaint attached to the Notice of Hearing alleged that Dr. Sydiaha was guilty of professional misconduct and/or professional incompetence, contrary to the provisions of sections 25 and 26 of *The Psychologists Act, 1997*. The particular charges made against him were that he:

1. Registered as a non-practising member with the College and failed to use the designation "non-practising" in advertising, correspondence and communication, in violation of the College's Regulatory Bylaw Section 11 and contrary to the Canadian Code of Ethics for Psychologists (Third Edition 2000) Sections III.1, III.2 and III.36;
2. Practiced and continues to practice as a psychologists registered with the College or held himself out as being entitled to practice as a psychologist

²See *The Psychologists Act, 1997*, ss. 28(1).

³Since the Committee's decision is that Dr. Sydiaha is guilty of a discipline offence, the matter of costs will be addressed in the continued hearing in relation to consequences.

registered with the College contrary to the College's Regulatory Bylaw Section 11 and Code violations III.1, III.2, III.36.

FACTS:

[5] The Discipline Committee heard the testimony of Karen Messer-Engel, M.A., R. Psych, who is Registrar of the College. Ms Fortugno tendered Lorne Elkin and Dennis Arbuthnott as expert witnesses on behalf of Dr. Sydiaha in relation to the area of registration and licensure, but the Discipline Committee did not qualify either of them as experts in relation to the area of expertise claimed for them by counsel. While both of them had experience with the SPA and in the legislative process leading up to the enactment of the new Act in 1997, this did not qualify them as experts in the area of registration and licensure. In addition, the issues about which it was proposed that they were to testify were the very issues that the Discipline Committee is granted jurisdiction under the legislation to decide. There were no other witnesses called on behalf of Dr. Sydiaha and he did not testify himself, although he was present throughout the hearing.

[6] In the course of the hearing the Discipline Committee received the following documents in evidence:

- | | |
|-------------------|---|
| Exhibit P-1 | Affidavit of Karen Messer-Engel, M.A., R. Psych., attached to which are Dr. Sydiaha's certificate of registration with the College, the Formal Complaint and cover letter dated January 16, 2012, with proof of service, and the original Notice of Hearing dated January 31, 2012, with proof of service |
| Exhibit P-2 Tab 1 | Extract from 2009-10 SaskTel Phone book for Saskatoon showing the listing "Sydiaha Dan Dr. Psychologist" in the white pages and a similar listing in the yellow pages under the heading "Psychologists" |
| Exhibit P-2 Tab 2 | Extract from 2010-11 SaskTel Phone book for Saskatoon showing the listing "Sydiaha Dan Dr. Psychologist" in the white pages and a similar listing in the yellow pages under the heading "Psychologists" |
| Exhibit P-2 Tab 3 | Extract from 2011-12 SaskTel Phone book for Saskatoon showing the listing "Sydiaha Dan Dr. Psychologist" in the white pages and a similar listing in the yellow pages under the heading "Psychologists" |
| Exhibit P-2 Tab 4 | A printout of web information re "Sydiaha Dan Dr Psychologist" downloaded on April 29, 2010 |

- Exhibit P-2 Tab 5 An advertisement in the *Saskatchewan Psychologist* Fall 2010 showing Dan Sydiaha Ph.D. as the presenter and organizer of “Three Experimental Weekend Workshops” on “Helping Skills”, “Assertiveness Training” and “Sharing of Professional Skills”
- Exhibit P-2 Tab 6 Fall 2010 *Leisure Guide* showing a listing for “Dan Sydiaha, Ph.D., Psychologist” and including advertisements for the workshops referred to in Exhibit P-2 Tab 5
- Exhibit P-2 Tab 7 2003 College Register Information form completed by Dan Sydiaha
- Exhibit P-2 Tab 8 December 10, 2003 letter to Dan Sydiaha from College indicating that he is registered as non-practising and not entitled to practice
- Exhibit P-2 Tab 9 May 28, 2009 letter to Dan Sydiaha from College indicating that he has held a non-practising membership since March 1, 2002 and cannot return to active practice unless under supervision
- Exhibit P-2 Tab 10 May 5, 2010 letter to Dan Sydiaha from College explaining the College’s concerns with his advertising on various websites as a “psychologist” with no indication of his non-practising status
- Exhibit D-1 (ID) February 21, 2003 letter from Dan Sydiaha to College raising a number of concerns with the College’s requirements for membership
- Exhibit D-2 (ID) November 30, 2003 letter from Dan Sydiaha to College explaining why he did not respond to several questions on the College’s register Information form
- Exhibit D-3 November 30, 2012 email from College Registrar to Dan Sydiaha explaining the exemption contained in ss. 24(3) of the Act
- Exhibit D-4 (ID) Unidentified extract re “Couple Communication in Various Languages and Countries”
- Exhibit D-5 Curriculum Vitae for Lorne Elkin
- Exhibit D-6 Curriculum Vitae for Dennis Arbuthnott

[7] The facts in this case are relatively straight-forward and uncontradicted. Dr. Sydiaha was a member of the Saskatchewan Psychological Association (SPA), the forerunner to the College. In 1997, *The Registered Psychologists Act* was revised to allow for registration of persons as psychologists who had masters level university education. The legislation had previously only

permitted those with doctoral degrees to so register. A Transitional Council was created under the legislation with the authority to promulgate new bylaws to provide the necessary details to allow the Act to be proclaimed in force, which occurred effective March 1, 2002. The new legislation “continued” persons who had been members of the SPA as members of the new College. Because Dr. Sydiaha was registered as a “retired” member of the former SPA, he was continued as a “non-practising” member of the new College. Each year since 2002, Dr. Sydiaha has applied for and been licensed as a non-practising member.

[8] It appears that Dr. Sydiaha disagrees with decisions made by the Council of the College in relation to matters concerning registration and licensure, but the precise nature of that disagreement is unclear since he did not testify. In spite of being registered as a non-practising member, Dr. Sydiaha has listed himself in both the white pages and yellow pages of the Saskatoon phone book since 2009 as a “psychologist” with no indication of his non-practising status. His name similarly appears on a number of website listings, although there was no evidence that Dr. Sydiaha himself placed those listings. It would appear, however, that they are derived from the listings he did place in the Saskatoon phone book.

LEGISLATION:

[9] *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.

[10] *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.

[11] Section 24 of the Act provides protection for the title “psychologist” and similar terms by generally prohibiting non-members from using them:

24(1) Subject to subsection (3), no person other than a member shall use the title “psychologist” or any word, title or designation, abbreviated or otherwise, to imply that the person is a member. . . .

(3) A person who is not a member and who is employed as a psychologist at The University of Regina, the University of Saskatchewan, Saskatchewan Indian Federated College or the Saskatchewan Institute of Applied Science and Technology may use the title “psychologist” provided that that person is not providing or directing the provision of counselling, clinical psychology or psychological assessment.

[12] Section 11 of the College’s Regulatory Bylaws provides for non-practising membership: It allows members to call themselves “Psychologist (non-practising)” or “Doctoral Psychologist (non-practising)” and prohibits them from practising or holding themselves out as entitled to practice:

Non-practising membership

11(1) Non-practising membership in the college is available to an applicant who:

(a) is eligible for registration as a practising member in accordance with the Act and the bylaws;

(b) was in good standing when last registered with the college (if applicable);

(c) is not currently practising as a psychologist in Saskatchewan.

(2) Non-practising membership entitles a person to the following privileges:

(a) to use the title "Psychologist (non-practising)" or "Doctoral Psychologist (non-practising)";

(b) to have a voice, but no vote at annual and special meetings of the college;

(c) to be appointed to committees of the college;

(d) to receive a copy of college documents appropriate for distribution; and

(e) to receive the publications of the college.

(3) Persons who are registered as non-practising members may not practise as psychologists or hold themselves out as being entitled to practise as psychologists.

[13] The College's Code of Ethics provides as follows:

III.1 Not knowingly participate in, condone, or be associated with dishonesty, fraud, or misrepresentation.

III.2 Accurately represent their own and their colleagues' credentials, qualifications, education, experience, competence, and affiliations, in all spoken, written, or printed communications, being careful not to use descriptions or information that could be misinterpreted (e.g., citing membership in a voluntary association of psychologists as a testament of competence).

III.36 Familiarize themselves with their discipline's rules and regulations, and abide by them, unless abiding by them would be seriously detrimental to the rights or welfare of others as demonstrated in the Principles of Respect for the Dignity of Persons or Responsible Caring.

ANALYSIS:

[14] Ms Fortugno made a lengthy submission and filed a written brief on Charter grounds. She argued that Dr. Sydiaha conscientiously objected to registering as a practising member of the College on the basis that the licensing requirements were not supported by the psychology literature, the model of self-regulation adopted by the College was adversarial rather than collaborative, and the processes for investigation and discipline contained in the legislation were inherently biased in favour of the College. This conscientious belief, she said, requires him to conduct himself in a particular manner that includes refusing to participate in activities contrary to the ethics, research and academic literature of the profession of psychology. In particular, she argues that requiring him to register as a practising psychologist in order to advertise as a psychologist and requiring him to use the designation "non-practising" coerces him into acting contrary to his conscientiously held beliefs and is therefore contrary to his freedom of conscience under s. 2(a) of the Charter. As well, she submits, these requirements restrict his freedom of expression and are contrary to s. 2(b) of the Charter. She also argues that Dr. Sydiaha is being charged with an offence for failing to use the

“non-practising” designation when that is not a requirement under the College’s governing act or regulatory bylaws, which she says is contrary to sections 7 and 11 of the Charter. Finally, she says that the restriction on Dr. Sydiaha from using the title “psychologist” is contrary to the truth because he is trained as a psychologist and this is an unreasonable restriction of his freedom of expression under s. 2(b) of the Charter.

[15] The fundamental difficulty with Ms Fortugno’s Charter arguments is that there is absolutely no evidence to support them. Dr. Sydiaha did not give evidence, although he was present throughout the hearing. The burden of proof is on Dr. Sydiaha to show, on a balance of probabilities, that his freedom of conscience and expression have been denied. Because it has no evidence on the point, the Committee is not able to conclude that Dr. Sydiaha held a conscientious belief that would meet the test laid out by the Supreme Court of Canada in *R. v. Morgentaler*⁴ to which Ms Fortugno referred. Since no Charter right has been established to have been infringed, the issue of justification under s. 1 of the Charter does not arise.

[16] The allegations against Dr. Sydiaha contained in the formal complaint are broken down into two separate bases or charges on which it is claimed that he is guilty of either professional misconduct or professional incompetence, or both, as those terms are defined in *The Psychologists Act, 1997*.

[17] The first charge is that he was registered as a non-practising member and failed to use the designation “psychologist (non-practising)” as is required by section 11 of the College’s Regulatory Bylaws. The second charge alleges that he either practised or held himself out as entitled to practice by virtue of omitting to use the term “non-practising”.

[18] Ms Fortugno in her submissions, both oral and written, acknowledged that Dr. Sydiaha is registered as a non-practising member of the College and advertised himself in the Saskatoon yellow pages as a “psychologist” with no reference to his non-practising status.⁵ She argues that he is entitled to call himself a psychologist because he is a member, and subsection 24(1) of the Act permits members to use this title. She does not refer to s. 11 of the Regulatory Bylaws in relation to this aspect of her argument. Section 11 prohibits a non-practising member from practising or holding themselves out as entitled to practice.

[19] In this regard, she has referred the Discipline Committee to the decision of the Alberta Court of Queen’s Bench in *R. v. Saxton*⁶, a case that involved a lawyer who was suspended. In that case, the court held that the lawyer could refer to himself as a “barrister and solicitor”, because he was

⁴[1988] 1 S.C.R. 30.

⁵See paragraphs 2 and 3 of Written Submissions on Behalf of Dr. Sydiaha Re: Constitutional Questions.

⁶[1986] 4 W.W.R. 19.

one, in a situation where he threatened to commence a lawsuit on his own behalf. However, it also held but he could not use the title when he was acting on behalf a corporation, which was a separate legal entity. The relevant legislation prohibited a suspended member from holding himself out as or representing himself to be “a member in good standing or a member not under suspension”. The court stated that when he ceased to act for himself and represented the corporation he was holding himself out as entitled to practice.

[20] The Discipline Committee concludes that the circumstances in the situation involving Dr. Sydiaha are similar to the circumstances of the lawyer who represents someone other than himself. By listing his name in the yellow pages under the heading “Psychologists” there is no other reasonable conclusion to be drawn than that he is holding himself out as entitled to provide professional services as a psychologist, which as a non-practising member he is prohibited from doing. He has therefor breached this provision of the Regulatory Bylaws.

[21] Ms Fortugno argues that because the Act permits persons who are employed by the Universities to call themselves “psychologist” even though they are not members, it can be concluded that there is no harm to the profession or to the public created by the simple use of the title “psychologist”. However, the Discipline Committee notes that this exception applies only to persons who are not members and who are employed by one of the Universities in the province. Dr. Sydiaha is a member and he is no longer employed by a University. As a member, Dr. Sydiaha is subject to the bylaws of the College. The bylaws require him to use the designation “non-practising” to indicate that the College does not consider him entitled to practice. To hold himself out in the yellow pages of the Saskatoon phone book as a “psychologist” is to imply to the public that he is available to them to provide services as a “psychologist” when in fact he is not.

[22] The act of listing himself in the Saskatoon yellow pages as a “psychologist” without also referring to his non-practising status is a contravention of section 11 of the Regulatory Bylaws. It is also a contravention of Sections III.1, III.2 and III.36 of the Code of Ethics (referred to above at paragraph 13) and, since compliance with the Code of Ethics is also required by the Regulatory Bylaws, a breach of the Code is also a breach of the bylaws.. Clause 25(c) of the Act defines a breach of the bylaws as professional misconduct.

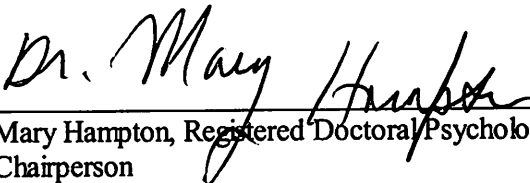
[23] The Discipline Committee emphasizes that the purpose of *The Psychologists Act, 1997* is to protect the public. The categories of membership are established in the interests of public protection and when Dr. Sydiaha chose to register for many years as a non-practising member, he chose to maintain his non-practising status within the confines of the membership framework established by the College. To register himself as non-practising and hold himself out as practising is simply improper.

ORDER:

[24] For all the reasons set out above, the Discipline Committee therefore finds that Dr. Sydiaha is guilty of professional misconduct. The Discipline Committee must therefore determine the appropriate consequence to follow as a result of that finding and for that purpose the Committee Orders that the hearing in this matter be reconvened at a time and place to be determined by the Chair of the Committee in consultation with counsel for the parties.

Dated at Regina, Saskatchewan this 29th day of October, 2012.

SASKATCHEWAN COLLEGE OF PSYCHOLOGISTS,
DISCIPLINE COMMITTEE



Mary Hampton, Registered Doctoral Psychologist
Chairperson