

IN THE MATTER OF *THE PSYCHOLOGISTS ACT, 1997* AND BYLAWS AND IN THE MATTER OF A COMPLAINT AGAINST DANIEL SYDIAHA, REGISTERED DOCTORAL PSYCHOLOGIST (NON-PRACTISING), 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  
Stefania Fortugno, appearing on behalf of Dr. Sydiaha  
Merrilee Rasmussen, Q.C., legal counsel for the Discipline Committee

**INTRODUCTION:**

[1] In its decision dated October 29, 2012, the Discipline Committee found Dr. Sydiaha guilty of professional misconduct as a result of failing to comply with section 11 of the Regulatory Bylaws and 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 formal complaint 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 psychologist registered with the College or held himself out as being entitled to practice as a psychologist registered with the College contrary to the College's Regulatory Bylaw Section 11 and Code violations III.1, III.2, III.36.*

[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 (PCC) submits that the following would constitute an appropriate discipline order in this case:

1. That Dr. Sydiaha participate in a Canadian Psychological Association on-line ethics course within six months of the date of the Decision of the Discipline Committee
2. That Dr. Sydiaha remove all designations as “Psychologist” or “Registered Doctoral Psychologist” or other similar designations from all publications.
3. That Dr. Sydiaha be ordered to pay all investigative and legal costs and disbursements involved in the disciplinary proceedings against him.
4. That if Dr. Sydiaha fails to complete the above three orders, his name will be struck from the Register of the Saskatchewan College of Psychologists with a public notice to that effect being placed in newspapers in Saskatchewan as well as the Saskatchewan College of Psychologists website.

[5] In relation to the matter of costs, counsel for the PCC points out that the total of the legal costs in this case is about \$21,000, and a significant component of those costs was incurred because of the need to respond to the complex *Charter* arguments raised on the member’s behalf, although there was no evidence on which to base them, and the failed attempts to introduce claimed expert evidence.

[6] Counsel for Dr. Sydiaha, Ms Fortugno, points out that he is now 85 years old. He obtained his Ph.D. from McGill University. He began teaching at the University of Saskatchewan in 1958 and became a tenured professor there in 1970. Ms Fortugno read several complimentary letters from former students, which were written in 1998, apparently when Dr. Sydiaha retired from the University.

[7] Ms Fortugno argues that a hearing would not have been necessary if the College had participated in a mediation process. As well, she says that Dr. Sydiaha has modest means and therefore costs should not exceed \$2,000 and he should be provided 12 months to pay. She says there is no point in his completing an ethics course, as it would not make any difference to his understanding or his practice. Finally, it is her submission that the request to remove all improper designations from all publications is unreasonable, is vaguely worded and goes beyond what the charges were in the initial complaint.

## ANALYSIS:

[8] 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.<sup>1</sup>

[9] The purpose of regulating the professional titles that persons can use is to provide protection to the public. The use of a particular regulated title provides an assurance to the public about the qualifications and competence of the individual from whom they are obtaining professional services. While the Discipline Committee understands that Dr. Sydiaha has a fundamental disagreement about the philosophy underpinning the framework for regulation of the psychology profession as contained in *The Psychologists Act, 1997*, he nevertheless chose to continue his non-practising membership

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

each year. Having chosen to be a non-practising member, he is obliged to conduct himself in accordance with the rules established to govern non-practising members and not just with the rules he agrees with. By holding himself out to the public as a “psychologist” he misled the public about his legal status and his relationship with the College of Psychologists. Members of the public are entitled to assume that a person who holds himself out as a psychologist is, in fact, a member of the College and is entitled, in accordance with the standards set by the College, to practice as such.

[10] It is clear that there is no order that the Discipline Committee can make that will change Dr. Sydiaha’s views about the College and the regulatory regime it is responsible for administering. As Ms Fortugno said explicitly, having him take a course in ethics will make no difference to what he thinks or how he practices. It is therefore necessary to make an order that will force Dr. Sydiaha to conduct himself in the manner that the College requires, whether or not he agrees with the College. For this reason, an order requiring him to remove all improper designations from all publications over which he has control and to require him to request that such designations be removed from other publication over which he does not have control is appropriate, because it will secure the desired result of ensuring that the public is not misled. In the same vein, it is reasonable and appropriate to order that if he fails to remove or request the removal of such improper designations from publications that he be expelled from the College and his name be removed from the Register and the fact of its removal be publicized in the manner recommended by the PCC. The Discipline Committee is of the view that orders to this effect will address most of the *Camgoz* factors as listed above and, in particular, will serve to protect the public interest and the confidence of the public in the integrity of the College’s ability to supervise its members and the profession.

[11] 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.

[12] 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 \$21,000. In its three most recent decisions, the Discipline Committee has made awards of costs in the amount of \$8,000, \$11,450 (being all of the legal costs) and \$7,968 (being the total costs). 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. While a member is certainly entitled to defend himself vigorously, in this case the Discipline Committee is of the view that the actions of Dr. Sydiaha in prolonging this hearing, or of his counsel on his behalf, went past the point of vigorous defence.

[13] The Discipline Committee convened initially on June 25, 2012 at Regina Saskatchewan, in accordance with the Notice of Hearing. Only days before the hearing, on June 20, 2012, Ms Fortugno 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.<sup>2</sup> 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 PCC's 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., and it was declined. She then proceeded to endeavour to introduce an expert witness without having given more than a few minutes notice to counsel for the PCC, with the result that the hearing had to be postponed.

[14] On June 25, 2012, Ms Fortugno agreed on behalf of Dr. Sydiaha (who was also personally present, together with his spouse) that he would pay, within 30 days, the costs "thrown away" as a result of the hearing being unable to proceed as scheduled. Counsel for the PCC has advised that the amount of these costs was \$2,742.50, and this amount has not been paid. Counsel for Dr. Sydiaha argues that the Discipline Committee had no jurisdiction to award costs on June 25, 2012, because at that time it had not determined that Dr. Sydiaha was guilty of a discipline offence, as required by subsection 32(1) of *The Psychologists Act, 1997*.

[15] While the Discipline Committee acknowledges that its jurisdiction to award costs is only engaged once a determination of guilt has been made, since it has now determined that Dr. Sydiaha is guilty of professional misconduct, it can assess costs, and it can take into account the fact that as a result of the manner in which Dr. Sydiaha and/or his counsel conducted themselves in the course of this hearing, the College was put to needless expense.

[16] Taking all of these circumstances into account, the Discipline Committee is of the view that an order for costs of \$8,000 is fair and reasonable. Recognizing that Dr. Sydiaha is retired, the Discipline Committee will provide him with 12 months to pay this amount.

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<sup>2</sup>See *Whitcott 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.

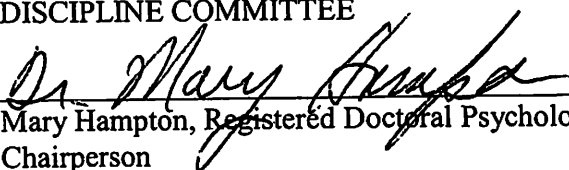
**ORDER:**

[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. Sydiaha is hereby ordered to remove all designations of "Psychologist" or "Registered Doctoral Psychologist" or other similar improper designations from publications under his control, including the yellow pages of any telephone book, so as to indicate that he is a non-practising member of the Saskatchewan College of Psychologists and not entitled to practice;
2. That Dr. Sydiaha is hereby ordered to request those who control any other publications to remove all designations of "Psychologist" or "Registered Doctoral Psychologist" or other similar improper designations, so as to indicate that he is a non-practising member of the Saskatchewan College of Psychologists and not entitled to practice;
3. If Dr. Sydiaha fails to remove or request the removal of improper designations relating to him as required by paragraphs 1 and 2 within 90 days of the date of this decision, that he then be and is hereby expelled from the Saskatchewan College of Psychologists and his name is thereupon removed from the College Register, and a public notice to that effect shall be placed by the College in newspapers in Saskatchewan as well as on the College website;
4. That Dr. Sydiaha pay to the Saskatchewan College of Psychologists the sum of \$8,000 in respect of the costs of the investigation and hearing into his conduct and related costs, to be paid in full on or before the expiration of 12 months from the date of this decision; and
5. If Dr. Sydiaha fails to pay the costs specified in paragraph 4 within the time provided for their payment, that he then be and is hereby suspended from the Saskatchewan College of Psychologists after that time and shall remain suspended until the said costs are paid in full.

Dated at Regina, Saskatchewan this 16<sup>th</sup> day of January 2013.

SASKATCHEWAN COLLEGE OF PSYCHOLOGISTS,  
DISCIPLINE COMMITTEE

  
Mary Hampton, Registered Doctoral Psychologist  
Chairperson