

IN THE MATTER OF *THE PSYCHOLOGISTS ACT, 1997* AND BYLAWS
AND IN THE MATTER OF A COMPLAINT AGAINST H. NORMAN GRAYSTON,
REGISTERED PSYCHOLOGIST (Provisional), OF YORKTON, SASKATCHEWAN

DECISION
Saskatchewan College of Psychologists
DISCIPLINE COMMITTEE

Discipline Committee Members:

Tom Robinson, Registered Doctoral Psychologist, Chair
Daniel Ash, Public Representative
Tanya Lyons-Belt, Registered Psychologist, Member
Kendra Nesbitt, Registered Psychologist, Member

Karen Prisciak, Q.C., appearing on behalf of the Professional Conduct Committee
Merrilee Rasmussen, Q.C., legal counsel for the Discipline Committee
H. Norman Grayston, Registered Psychologist (Provisional), on his own behalf

INTRODUCTION

[1] The Discipline Committee convened on December 11, 2015, via conference call, as agreed by the parties. The Member was served with a copy of a formal complaint concerning his practice on May 28, 2015 and with the Notice of Hearing on December 7, 2015, as required by *The Psychologists Act, 1997* ["the Act"].¹

[2] As acknowledged in the Agreed Statement of Facts and Admissions filed by Mr. Grayston and legal counsel for the Professional Conduct Committee,² at all times material to the complaints against him, Mr. Grayston was a member of the Saskatchewan College of Psychologists, licensed to practise in the Province of Saskatchewan subject to the Act, the regulatory bylaws of the College, and the *Canadian Code of Ethics for Psychologists*³ ("the

¹ Affidavit of Karen Messer-Engel, dated December 9, 2015, and filed in evidence in this hearing as Exhibit A.

² Filed in evidence in this hearing as Exhibit B.

³ 3rd Ed., 2000 ("the Code").

Code”) and related Saskatchewan College of Psychologists Practice Guidelines (“the Guidelines”).

THE FORMAL COMPLAINT

[3] The Formal Complaint contains the following charges in relation to Mr. Grayston’s professional conduct:

“(a) In his counselling relationship that commenced with CLIENT A and CLIENT B on or about September 2013 in correspondence dated December 9, 2013, he offered an opinion regarding child custody and access to the child of CLIENT A and CLIENT B:

- i. Without collecting sufficient information to support the opinion.
- ii. Without the qualifications to render the opinion.
- iii. Without documenting the limits of the opinion.
- iv. By using words that did not convey his intention,

contrary to the Canadian Code of Ethics for Psychologists, 3rd ed., 2000, (hereinafter referred to as “the Code”) and more specifically Section II.30 and Saskatchewan Practice Guidelines 3.8, 3.19 and 11.31.

“(b) He breached CLIENT A’s confidentiality by sending his opinion on custody and access to CLIENT B’s lawyer in correspondence dated December 9, 2013 without CLIENT A’s consent and contrary to the Code and more specifically Section I.45 and Saskatchewan Practice Guidelines 6.2 and 6.16.

“(c) In correspondence dated December 9, 2013 he portrayed CLIENT A in negative terms and more specifically he attributed CLIENT B’s difficulties solely to CLIENT A’s behavior contrary to the Code and more specifically Sections II.1, II.2, II.30 and Saskatchewan Practice Guideline 11.30.

“(d) He failed to complete the clinical notes and failed to obtain his supervisor’s signature on the December 9, 2013 correspondence, the session notes and in documents forwarded to third parties contrary to the Saskatchewan Practice Guidelines 3.5.1, 13.6 and Saskatchewan College of Psychologists Membership Advisory “Responsibilities of the Supervisor”, point 7.”

FACTS

[4] As noted above, the parties submitted an Agreed Statement of Facts and Admissions to the Discipline Committee, the relevant text of which (excluding headings and repetition of the charges) is set out below with respect to each of the charges contained in the formal complaint.

Agreed Facts relating to Charge (a) in the Formal Complaint:

4. Mr. Grayston was contacted by CLIENT A through his Employee Assistance Program with the objective to improve communications between CLIENT A and CLIENT B, mother of CLIENT A's infant child. Two counselling sessions were arranged on September 5 and September 26, 2013.

5. Subsequent to these joint sessions, Mr. Grayston continued to have subsequent counselling sessions with CLIENT B without CLIENT A

6. On December 9, 2013 Mr. Grayston offered a recommendation to CLIENT B's lawyer regarding child access/custody.

7. Mr. Grayston sent the November 9, 2013 correspondence without conducting a child access/custody assessment and without indicating his qualifications or any limitations in making such a recommendation. His opinion was "I would strongly recommend that their CHILD Y remain in --- (REDACTED) mother's full custody, and that she may alter the visitation schedule at her discretion. I would also recommend a custody assessment be conducted. I would suggest that such an assessment include his parent's home because he relies upon his mother to provide child care while he is at the ---"(REDACTED).

8. Mr. Grayston accepts that custody assessments are not an area of competence in his practice.

Agreed Facts relating to Charge (b) in the Formal Complaint:

9. The statement of understanding signed between CLIENT A and CLIENT B prior to counselling indicated that no information would be released to anyone outside the EA program except if there was consent in writing which was not provided by CLIENT A. The clinical assessment form indicated that the presenting problem was for CLIENT B and CLIENT A to "learn to work together" with the target problem to "reduce conflict and improve communication".

10. At the time of the counselling sessions, CLIENT A and CLIENT B were involved in litigation over child access and custody. During the two sessions with CLIENT B and CLIENT A, Mr. Grayston's purpose of counselling was not to collect information regarding custody and access.

11. The December 9, 2013 correspondence was not provided to CLIENT A or CLIENT A's lawyer.

12. CLIENT A did not consent to Mr. Grayston's December 9, 2013 correspondence to CLIENT B's lawyer and did not agree with its contents. Mr. Grayston released confidential information about CLIENT A to CLIENT B's lawyer without the consent of CLIENT A

Agreed Facts relating to Charge (c) in the Formal Complaint:

13. Mr. Grayston's December 9, 2013 correspondence contained comments arising from the Member's individual sessions with CLIENT B. Mr. Grayston noted the following comments about CLIENT B:

- REDACTED

14. The above comments were offered in referring to CLIENT A as REDACTED. It was also stated that the behaviors experienced with CLIENT A were "consistent with ..." (REDACTED).

15. Mr. Grayston further stated that "each of these points consistently illustrate ---" (REDACTED).

16. The comments in the December 9, 2013 correspondence were one-sided, inaccurate and unrelated to the reason for the counselling sessions. At no time was CLIENT A advised that his conduct during the sessions would be the subject of a child custody/access opinion.

Agreed Facts relating to Charge (d) in the Formal Complaint:

17. Mr. Grayston note of the joint sessions in September 2013 were incomplete as follows:

- They did not reflect the full names of the clients in the session.

- The notes did not indicate relevant information on the interventions offered.
- There was no indication as to how the therapeutic relationship ended with CLIENT A

18. Mr. Grayston initially sent the December 9, 2013 correspondence without his supervisor's signature. On December 9, 2013 Mr. Grayston received the supervisor's signature and forwarded the signature page to CLIENT B's counsel. The session notes and the documents forwarded to the third party Employee Assistance Program did not have the supervisor's signature.

19. Contrary to the supervision requirements, Mr. Grayston did not ensure that a supervisor signed off on the December 9, 2013 correspondence before he initially sent it to CLIENT B's counsel. The session notes and the documents forwarded to the third party Employee Assistance Program did not have the supervisor's signature.

Agreed Facts relating to Plea to all Charges in the Formal Complaint:

20. Mr. Grayston pleads guilty to all charges set out in the formal complaint.

LEGISLATION

[5] The Act defines professional misconduct as follows:

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.

[6] Section 14 of *The Saskatchewan College of Psychologists Regulatory Bylaws, 2004* requires members to comply with the Code of Ethics of the College and also contains 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. [*emphasis added*]

[7] Where a member is found to be guilty of professional misconduct, the Discipline Committee is authorized to make orders directed at improving the conduct or competence. Section 32 of the Act 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 guilty pleas provided by Mr. Grayston in the Agreed Statement of Facts and Admissions in relation to the charges contained in the Formal Complaint. He has acknowledged that the conduct occurred and that the conduct constitutes failures to comply with the Code of Ethics of the College. A failure to comply with the Code is a

breach of section 14 of the Regulatory Bylaws, which requires all members to comply with the Code. A breach of a bylaw is professional misconduct, as set out in clause 25(c) of the Act. The Discipline Committee therefore finds that Mr. Grayston is guilty of professional misconduct as a result of the guilty plea contained in the Agreed Statement of Facts and Admissions.

[9] The Discipline Committee must therefore determine the appropriate consequence to follow as a result of its findings. Section 32 of the Act sets out the powers of the Discipline Committee where it finds a member guilty of professional incompetence or professional misconduct. This provision establishes, first, that the Discipline Committee has no power to do anything unless there is a finding of guilt and, second, 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 reprimand to expulsion, 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”.

[10] The parties have also presented the Discipline Committee with Joint Submissions – Sentence⁴, which state as follows:

1. The Member shall receive a reprimand.
2. The Member is prohibited from making any custody, access, guardianship or visitation recommendations in family matters until such time as competence is demonstrated to the satisfaction of the Saskatchewan College of Psychologists.
3. The Member will schedule a consultation with a manager of the Child Protection Division of the Ministry of Social Services to determine when, how and to whom to report a case of suspected child abuse and/or neglect. Within two weeks of the consultation, the Member will send a letter to the Registrar of the Saskatchewan College of Psychologists confirming the attendance of such meeting and an

⁴ Filed as Exhibit C.

indication that the Member understood the procedures to be followed in cases of child abuse and/or neglect.

4. The Member shall pay costs of the Professional Conduct Committee, legal fees and Discipline Committee expenses in the amount of \$7,885.00 to be paid within one year of the date of these submissions.

[11] In its decision in the case of *Rault v. Law Society of Saskatchewan*⁵, the Saskatchewan Court of Appeal made it clear that a discipline committee must give serious consideration to a joint submission on sentencing that has been agreed to 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.⁶ 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

⁵ 2009 SKCA 81.

⁶ *Ibid*, at paragraph 13.

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.

[12] 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 or competence to ensure, to the extent that it is reasonably 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. The Discipline Committee found no good or cogent reason to depart in substance from the sentence agreed to in the joint submissions provided by the parties, with one minor exception. The Discipline Committee is of the view that there should be a time specified within which Mr. Grayston must contact the Ministry of Social Services in order to ensure that this contact occurs within a reasonable time. Legal counsel for the Discipline Committee therefore canvassed the views of Mr. Grayston and legal counsel for the Professional Conduct Committee, and it was agreed that the consultation should occur on or before March 31, 2016, or such longer time as the Registrar of the College, in her discretion, may permit.

ORDER

[13] For all of the reasons set out above, the Discipline Committee of the Saskatchewan College of Psychologists therefore finds H. Norman Grayston guilty of professional misconduct and, pursuant to section 32 of *The Psychologists Act, 1997*, orders that:

1. Mr. Grayston is hereby reprimanded;
2. Mr. Grayston is prohibited from making any custody, access, guardianship or visitation recommendations in family matters until such time as competence is demonstrated to the satisfaction of the Saskatchewan College of Psychologists;

3. Mr. Grayston shall schedule a consultation with a manager of the Child Protection Division of the Ministry of Social Services, on or before March 31, 2016 or such further time that the Registrar of the Saskatchewan College of Psychologists, in her discretion, may permit, to determine when, how and to whom to report a case of suspected child abuse and/or neglect. Within two weeks of the consultation, Mr. Grayston shall send a letter to the Registrar confirming the attendance of such meeting and an indication that he understood the procedures to be followed in cases of child abuse and/or neglect; and

4. Mr. Grayston shall pay costs of the Professional Conduct Committee, legal fees and Discipline Committee expenses in the amount of \$7,885.00 to be paid on or before December 11, 2016, and, if payment is not received by the College on or before that date, the Member shall be suspended from the College, further to a notice from the Registrar in that regard, until payment is received in full.

Dated at Regina, Saskatchewan this 23rd day of December, 2015.

SASKATCHEWAN COLLEGE OF PSYCHOLOGISTS,
DISCIPLINE COMMITTEE



Tom Robinson,
Registered Doctoral Psychologist, Chair