

IN THE MATTER OF *THE PSYCHOLOGISTS ACT, 1997* AND BYLAWS
AND IN THE MATTER OF A FORMAL COMPLAINT DATED NOVEMBER 27, 2017
AGAINST DR. ELIZABETH IVANOCHKO, REGISTERED DOCTORAL PSYCHOLOGIST,
OF REGINA, SASKATCHEWAN

DECISION
Saskatchewan College of Psychologists
DISCIPLINE COMMITTEE

Discipline Committee Members:

Val Harding, Registered Doctoral Psychologist, Chair
Christal Gee, Public Representative
Kristin Bellows, Registered Psychologist, Member

Karen Prisciak, Q.C., appearing on behalf of the Professional Conduct Committee
Michelle Ouellette, Q.C., appearing on behalf of the Member, Dr. Elizabeth Ivanochko
Jaime Carlson, legal counsel for the Discipline Committee

INTRODUCTION

[1] The Discipline Committee convened on Thursday, October 18, 2018, at the offices of the Saskatchewan College of Psychologists to hear and determine, in accordance with *The Psychologists Act, 1997* (“the Act”), a formal complaint concerning the Member’s practice. Counsel for the Professional Conduct Committee as well as the Member and her counsel appeared by teleconference.

[2] As acknowledged in the Agreed Statement of Facts and Admissions filed by legal counsel for the Member and legal counsel for the Professional Conduct Committee, at all times material to the complaints against her, Dr. Ivanochko 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* (“the Code”) and related Saskatchewan College of Psychologists Practice Guidelines (“the Guidelines”).

THE FORMAL COMPLAINT

[3] The Formal Complaint against Dr. Ivanochko contains two charges as follows:

Charge 1: Failed to secure the informed consent of the biological father prior to conducting a psychological assessment of his children in violation of the *Canadian Code of Ethics for Psychologists*, 3rd ed., 2000, and more specifically Sections I.12, I.16 and I.37.

Charge 2: Failed to obtain or seek the involvement of the biological father in conducting the psychological assessments of his children and authoring a psychological report containing material potentially harmful to the biological father in violation of the *Canadian Code of Ethics for Psychologists*, 3rd ed., 2000, and more specifically Sections II.30 and III.11 and contrary to Professional Practice Guideline 11.2 and 11.25.

FACTS

[4] As noted above, the parties submitted an Agreed Statement of Facts and Admissions to the Discipline Committee. The Member acknowledged that she was contacted by a lawyer in January of 2017 who acted for the maternal grandparents of three children, ages 14, 11 and 5 living in their care and custody following the death of the children's mother. The lawyer indicated that the maternal grandparents were "simply seeking an opinion on the children's current psychological state as their mother recently passed away." The lawyer also indicated that they would be seeking "your opinion on who the children should live with."

[5] When the Member met with the grandparents for the first time, she was advised that the children's father was not contesting custody and she was provided a copy of a document purportedly signed by the biological father, dated November 23, 2016 wherein he purported to relinquish all rights and responsibility related to his children in favour of the biological mother, in return for two payments of \$5,000. The Member did not independently investigate the father's involvement with his children and did not speak to him or interview him as a part of the process she used to write psychological reports on all three children.

[6] The Member interviewed the three children, the grandparents and a maternal aunt and prepared psychological reports for each of the three children dated January 24, 2017. The reports focused on the psychological status of the children, and in the case of the two older children, recommended that current plans for custody (as outlined by the grandparents and the children themselves) proceed. Her reports were filed in the Court of Queen's Bench on February

13, 2017, attached to an Affidavit sworn by the Member at the lawyer's request. Although the Member was not aware of it at the time, custody was contested between the maternal grandparents and the biological father.

[7] In her reports, the Member had no firsthand information about the biological father but relayed information given to her by the grandparents, their lawyer, and the two older children. This included that he had been served with a mental health warrant and had been admitted to the Psychiatric Unit at the Regina Hospital; that he had had minimal involvement with the biological mother's family and did not attend family get-togethers; and that his involvement with his older children was minimal and not congenial although he exercised more influence in the youngest child's development. The Member reported that the two older children expressed the desire to continue living with their grandparents and reported their views of their father.

[8] The Member accepted the charges and pleaded guilty to them. She has retired and become a non-practicing member of the College after December 31, 2017.

LEGISLATION

[5] The Act defines both professional misconduct and professional incompetence for the purposes of the discipline process. In this case, it is the definition of professional misconduct that is relevant, and the Act defines it 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 6 of *The Saskatchewan College of Psychologists Regulatory Bylaws, 2004* requires members to comply with the Code of Ethics of the College among other provisions relating to what constitutes professional misconduct and professional incompetence:

6(1) For the purposes of sections 25 and 26 of the Act, the Discipline Committee may find a member 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 any client record;
- (h) falsified any client record;
- (i) 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;
- (j) failed to report the incompetence or misconduct of a member or colleague;
- (k) failed to comply with the Code of Ethics of the college;
- (l) failed to comply with established standards of practice;
- (m) failed without reasonable cause to respond to inquiries from the college regarding alleged professional misconduct or professional incompetence;
- (n) conspired to participate in any act of misconduct or counselled a participant in any act of misconduct; or
- (o) obtained registration by misrepresentation or fraud.

The *Canadian Code of Ethics for Psychologists*, 3rd ed., 2000 is the Code of Ethics of the College.

[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. 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 plea provided by Dr. Ivanochko in the Agreed Statement of Facts and Admissions in relation to the charges contained in the Formal Complaint. She has acknowledged that the conduct occurred and that the conduct constitutes professional misconduct in contravention of s. 25 of the Act, because proceeding with a psychological assessment of children without the permission of the children's parents is not a best practice and is conduct that is harmful to the best interests of the public or the members of the college and tends to harm the standing of the profession. This is especially so when the assessment is done during and for a custody dispute. The Discipline Committee finds that Dr. Ivanochko was guilty of professional misconduct in proceeding with the psychological

assessments of the children, even though she appears to have been misled by the maternal grandparents and their lawyer.

[9] The parties also substantially agreed on the penalty that would be appropriate in this matter, agreeing to the following:

- a. A reprimand.
- b. Should the Member return to Full Practise, the Member will abstain from child custody assessment unless she is supervised under a Full Practise Member who is competent in the area of child custody assessment and who is approved by the Registration Committee. All costs incurred for supervision will be the responsibility of the Member.
- c. A fine of \$2,000.00 payable within one year from the date of the Order; if not paid within the one year, the Member will be removed from the Registrar of the College and will be sent back to Discipline for failing to comply. The Member cannot be returned to the Register until the Discipline Committee has addressed the failure to comply.
- d. The Discipline Order will be posted on the Saskatchewan College of Psychologists' website.

[10] The only matter that the parties could not reach an agreement on in relation to penalty was the issue of costs.

[11] In its decision in the case of *Rault v. Law Society of Saskatchewan*¹, 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.² The Discipline Committee finds no good or cogent reason to depart in substance from the aspects of penalty agreed to by the parties.

¹ 2009 SKCA 81.

² *Ibid*, at paragraph 13.

[12] Regarding the remaining issue of costs, counsel for the Professional Conduct Committee submitted that the Member should be responsible for the full recovery of all costs of the Professional Conduct Committee and the Discipline Committee, estimated to be \$6,617.37 at the time of the hearing. It was noted by counsel for the Professional Conduct Committee that the costs estimates provided at the time of the hearing are nearly always less than the actual amount of costs that the College bears.

[13] Counsel for the Member submitted that this case involved several mitigating factors that should be considered, reasoning that these mitigating factors should be considered in relation to the costs awarded by the Discipline Committee. The mitigating factors submitted by counsel for the Member include the following factors:

- the background in which these charges arose including the fact that the Member was allegedly misled by a lawyer and the maternal grandparents of the children who were subject of the psychological assessments about the status and participation of the children's father and that at the time the Member had no reason to doubt or question the information provided;
- that the Member has no prior discipline record in her lengthy career;
- that the Member has provided service to the College, acting as the registrar and on Committees of the College at different points;
- that the Member has accepted responsibility for the charges;
- that the Member's primary area of practice was not custody and access assessments; and
- that the Member did not understand the assessment she was doing to be for the primary purpose of assisting with a determination of custody.

Considering the mitigating factors, counsel for the Member submitted that an order for costs in the amount of \$5000.00 would be fair.

[14] The Discipline Committee recognizes and acknowledges that there are mitigating factors present in the facts of this case, especially the long previously unblemished record of the Member.

[15] However, the Discipline Committee also agreed that the Member was guilty of professional misconduct and under subclause 32(2)(a)(ii) of *The Psychologists Act, 1997*, the Discipline Committee can order the Member to pay 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. The costs of an individual discipline hearing is substantial, and, where the member is guilty of the discipline charges, it is the member who should bear that cost and not the other members of the College who do meet the standards of conduct and competence expected of them by their profession.

[16] Furthermore deterrence, including general deterrence, is a factor that sentencing bodies can fairly consider when determining the appropriate penalty to result from a finding of professional misconduct or professional incompetence.³ This case may be a caution to other members of the College to ensure that when undertaking work that involves assessing children it is crucial to seek the informed consent and participation of any living parent.

[17] After considering the mitigating factors as well as the considerations for determining a fair and just penalty, the Discipline Committee determined that the costs order requested by counsel for the Professional Conduct Committee was not unreasonably high or punitive in nature and was fair for the member to bear in this case and therefore order that the member pay the costs of \$6,617.00

³*Camgoz v College of Physicians and Surgeons (Sask)*, 1993 CanLII 8952 (SK QB) at para 49, 114 Sask R 161.

ORDER

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

1. Dr. Elizabeth Ivanochko is hereby reprimanded.
2. Dr. Elizabeth Ivanochko shall pay:
 - a) A fine of \$2,000.00 to be paid within one year of the date of this Order; and
 - b) Costs in the amount of \$6,617.00, to be paid within one year of the date this decision.

Should Dr. Elizabeth Ivanochko fail to pay either the fine or costs order within one year, she will be removed from the Register of the College, and she cannot be returned to the Register until the Discipline Committee has addressed the failure to comply.

3. Should Dr. Elizabeth Ivanochko return to Full Practise, she will abstain from child custody assessment unless she is supervised under a Full Practise Member who is competent in the area of child custody assessment and who is approved by the Registration Committee. All costs for supervision will be the responsibility of Dr. Ivanochko.
4. The Discipline Committee's decision and Order shall be published on the website of the College.

Dated at Regina, Saskatchewan this 31 day of October 2018.

SASKATCHEWAN COLLEGE OF PSYCHOLOGISTS,
DISCIPLINE COMMITTEE

Val N. Harding
Val Harding,
Registered Doctoral Psychologist, Chair