

IN THE MATTER OF *THE PSYCHOLOGISTS ACT, 1997* AND BYLAWS
AND IN THE MATTER OF A COMPLAINT AGAINST DAVID JACKSON,
REGISTERED DOCTORAL PSYCHOLOGIST, OF NORTH BATTLEFORD,
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
Ian MacAusland-Berg, Registered Psychologist, Member

Dennis Fisher, legal counsel appearing on behalf of the Professional Conduct Committee
Merrilee Rasmussen, Q.C., legal counsel for the Discipline Committee
David Jackson, Registered Doctoral Psychologist, on his own behalf

INTRODUCTION

[1] The Discipline Committee convened on January 8, 2016, via conference call, pursuant to the Notice of Hearing dated October 21, 2015, which was served on the member together with a copy of a formal complaint concerning his practice, as required by *The Psychologists Act, 1997* ["the Act"].¹

[2] As acknowledged in the Agreed Statement of Facts filed by Dr. Jackson and legal counsel for the Professional Conduct Committee,² at all times material to the complaints against him, Dr. Jackson 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* and related Saskatchewan College of Psychologists Practice Guidelines ("the Guidelines").

¹ Affidavit of Karen Messer-Engel, dated November 23, 2015, and filed in evidence in this hearing as Exhibit 1.

² Filed in evidence in this hearing as Exhibit 2.

THE FORMAL COMPLAINT

[3] The Formal Complaint contains the following charges in relation to Dr. Jackson's professional conduct:

That David Jackson of North Battleford, Saskatchewan is guilty of professional misconduct and/or professional incompetence contrary to the provisions of Sections 25 and 26 of The Psychologists Act, 1997 S.S. 1997, c.P-36.01, and/or Regulatory Bylaw #14 in that he:

Having been retained by the Law Society of Saskatchewan on or about June 24, 2013 to perform a psychological assessment on one of its members (hereinafter the "Patient"), and having been provided a referral question by the Law Society of Saskatchewan on that date, and having provided an assessment report to the Law Society of Saskatchewan on or about August 8, 2013 (hereinafter the "Report"):

- (a) Failed to refer to another qualified professional aspects of the assessment that were outside his competence;*
- (b) Failed to state the referral question in the Report;*
- (c) Failed to assess variables and factors relevant to the referral question, or to state such variables or factors in the Report; and*
- (d) Failed to use multi-method, multi-trait procedures in conducting an assessment of the Patient, or to state such procedures, results, inferences or conclusions in the Report.*

contrary to the Saskatchewan College of Psychologists Professional Practice Guidelines, and more specifically Sections 3.31, 11.3 and 11.35."

FACTS

[4] As noted above, the parties submitted an Agreed Statement of Facts to the Discipline Committee, the relevant text of which is set out below.

1. The complainant in this matter, the Law Society of Saskatchewan (hereafter the "Complainant") is a corporation continued by *The Legal Profession Act, 1990* of Saskatchewan and tasked with the responsibility to govern the legal profession in the province of Saskatchewan.

2. The accused member in this matter, Dr. David Jackson (hereafter "Jackson"), is a Registered Doctoral Psychologist currently practicing in North Battleford, SK. Jackson obtained a Ph. D. in Clinical Psychology in 1991 from the University of Manitoba. At all material times, Jackson was a Full Practicing member (in good standing) with the Saskatchewan College of Psychologists. He has held this designation since November 1st, 1991. Attached at **Tab A** is a true copy of the Registration Certificate from the Saskatchewan College of Psychologists.
3. In 2013, the Complainant had serious concerns about the mental health of a practicing lawyer (hereafter the "LAWYER") and his ability to continue to safely practice law as a sole practitioner. A Law Office Management Review had been conducted and in accordance with such Review, the LAWYER was asked to submit to a psychological assessment. The LAWYER suggested Jackson perform the assessment.
4. On June 24th, 2013, the Complainant sent a letter to Jackson outlining its concerns in relation to the LAWYER and summarized what it was seeking in regard to an assessment by Jackson. Attached at **Tab B** is a copy of the (redacted) letter dated June 24th, 2013 with attachment from [REDACTED], Counsel on behalf of the Complainant, to Jackson. A copy of the Law Office Management Review dated April 12th, 2013 (REDACTED) was also provided to Jackson with the letter. Of note in the Review was the LAWYER's assertion that he had been [REDACTED] (REDACTED) by another lawyer. The LAWYER asserted that the other lawyer had [REDACTED]
(REDACTED) The LAWYER had also indicated [REDACTED]
(REDACTED)
5. The June 24th, 2013 letter outlined that the Complainant's motivation to retain Jackson's services was "to ensure that the public and [the LAWYER's] clients are protected". The letter added "To meet that end, we require your psychological assessment regarding [the LAWYER]." After outlining numerous responsibilities the LAWYER would have as a sole practitioner, the letter stated,

"With this in mind, I am writing with [the LAWYER's] consent to obtain your psychological assessment in respect of [the LAWYER]. Following your assessment, we will want to know whether you observed or diagnosed any mental illness or mental health concerns that may impair [the LAWYER'S] ability to continue to practice law? If so, are there any measures or safeguards which you would recommend that may assist [the LAWYER] sufficiently to allow him to safely continue practicing law?"

6. No other communication occurred between Jackson and the Complainant prior to Jackson rendering his written psychological assessment report.
7. Jackson's written two-page report (redacted) dated August 8th, 2013 (hereafter the "Report") is contained at **Tab C**.
8. Upon receipt and review of the Report, the Complainant had concerns about whether it met the required professional standard and qualify as a sufficient report in light of the type of psychological assessment which had been requested. Accordingly, the Complainant sought the professional opinion of another Registered Doctoral Psychologist.
9. As a result of an investigation, charges were laid against Jackson on April 23rd, 2015 as follows:
 10. The following facts support the charges:
 - (a) **Failed to refer to another qualified professional aspects of the assessment that were outside his competence;**
 11. The Professional Practice Guidelines state,

3.31 Issue beyond competence

"If issues arise in a particular assessment ... that are outside the competence of a member, the member must refer that aspect of the assessment ... or the assessment in general to another qualified professional."
12. In his Report, Jackson provides a professional opinion that the LAWYER made ill-advised statements due to [REDACTED] (PHYSICAL CONDITION REDACTED) but that in future situations of [REDACTED] (PHYSICAL CONDITION REDACTED) would be able to refrain from making such statements. There was no objective evidence about whether the LAWYER did, in fact, have [REDACTED] (PHYSICAL CONDITION REDACTED) at any relevant time or what the impact of same may be. Jackson acknowledges that his professional conclusions regarding the LAWYER's [REDACTED] (PHYSICAL CONDITION REDACTED) fall outside of the scope of his competence. He admits that he ought to have made a referral to a professional properly qualified to make such determinations.
 - (b) **Failed to state the referral question in the Report;**
13. The Professional Practice Guidelines state,

13.3 Scope of assessment

“As the scope of an assessment is determined by the nature of the referral question or issue a member must clarify any ambiguity related to the purpose of the assessment and ensure that the purpose of the assessment is specifically stated in the assessment report.”

14. Jackson acknowledges that he failed to identify the referral question and the purpose of the assessment in his Report. He did not contact the Complainant to discuss the assessment referral.

(c) **Failed to assess variables and factors relevant to the referral question, or to state such variables or factors in the Report;**

15. The Professional Practice Guidelines state,

11.35 Assessment methods

“A member must: (a) assess the variables and factors relevant to the referral question or issue;”

16. In his Report, Jackson failed to identify background information and particulars (if any) respecting the methods of assessment used. The Report fails to outline the findings from the interviews conducted by Jackson which ultimately may support the professional conclusions he reached. The Report did not refer to or address the LAWYER’s “belief” which grounded the concerns of the Complainant (as expressed in the Office Review) namely that the LAWYER may have psychological or other mental health issues given his belief [REDACTED]. (REDACTED)

(d) **Failed to use multi-method, multi-trait procedures in conducting an assessment of the patient, or to state such procedures, results, inferences or conclusions in the Report;**

17. The Professional Practice Guidelines state,

11.35 Assessment methods

“A member must: (b) use multi-method, multi-trait procedures when conducting assessments where the outcome may affect the rights of the client.”

18. Jackson acknowledges that his assessment Report had the potential to affect the rights of the LAWYER given that it related to his ability to continue the practice of law as a solo practitioner.

19. Jackson's Report indicates he met with the LAWYER on two occasions and conducted clinical interviews. Very little content from such interviews is documented in the Report. There is no indication that Jackson performed a detailed inquiry. Further, Jackson chose not to administer any psychological tests even though such tests may prove useful in assessing the LAWYER's attitude and compliance with the assessment process, his reliability and consistency of symptom report, to rule out the presence of certain conditions and symptoms, or to direct inquiry to those that could not be ruled out. In addition, had psychological testing been performed, such tests could have demonstrated whether or not the LAWYER was responding in an open, forthright manner, with no evidence of minimizing or hiding any dysfunction.
20. Jackson accepts responsibility for his actions as noted above and pleads guilty to the charges itemized in paragraph 9.

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] 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

[7] The Discipline Committee accepts the guilty pleas provided by Dr. Jackson in the Agreed Statement of Facts in relation to the charges contained in the Formal Complaint. He has acknowledged that the conduct occurred and that the conduct constitutes failures to meet the standards established by virtue of the Practice Guidelines. He has acknowledged that he acted outside the scope of his professional competence and that the report he prepared was deficient in fundamental respects. The report was provided to the client's professional regulatory body, which requested it to determine whether the client was mentally fit to continue to practice in his

own profession. The regulatory body made it very clear that it would be relying on the report Dr. Jackson was asked to prepare to determine whether or not the client was a danger to the public and to his own clients. Dr. Jackson's actions potentially placed the public at risk because the report he provided to the regulator would have allowed the client to continue to practice his profession without limitation. In this manner his actions tend to harm the standing of the profession, contrary to clause 25(b) of the Act, which defines professional misconduct. The Discipline Committee therefore finds that Dr. Jackson is guilty of professional misconduct as a result of the guilty plea contained in the Agreed Statement of Facts.

[8] 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. The range of powers available to the Discipline Committee is designed to give the Discipline Committee broad discretion 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.

[9] The parties have also presented the Discipline Committee with Joint Submissions – Sentence³, which state as follows:

1. The Member shall complete the following online CPA Ethics Course:
 - “Being an Ethical Psychologist”The Member shall successfully complete the said course on or before January 8th, 2017.
2. The Member shall pay costs of \$3,500.00 to the Saskatchewan College of Psychologists on or before January 8th, 2017.
3. The Member understands that the failure to comply with Paragraphs 1 and 2 above may lead to disciplinary proceedings against him by the Saskatchewan College of Psychologists.

³ Filed as Exhibit 3.

[10] In its decision in the case of *Rault v. Law Society of Saskatchewan*⁴, 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.⁵ 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 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.

[11] 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

⁴ 2009 SKCA 81.

⁵ *Ibid*, at paragraph 13.

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.

[12] During the hearing, members of the Discipline Committee raised questions about the possibility of restitution in the form of an order requiring Dr. Jackson to repay the regulatory body any payments that may have been made in relation to his services in preparing the report that he has acknowledged, and the Discipline Committee agrees, was woefully deficient. This issue had not been raised between or discussed by the parties and did not form part of their joint submissions. As a result, and in the absence of any evidence relating to this issue, the Discipline Committee concluded that it would not be appropriate for it to include this in its order.

[13] However, the Discipline Committee is of the view that two minor alterations of the joint submission should be included in its order. The first is a clarification to identify that the obligation is on Dr. Jackson to provide formal confirmation to the Registrar of the College that he has completed the course he is ordered to take. The second, in accordance with clause 32(2)(b) of the Act, is to clarify that where a required payment to the College is not made in the time allowed, a suspension of the member's licence should automatically follow.

ORDER

[14] For all of the reasons set out above, the Discipline Committee of the Saskatchewan College of Psychologists therefore finds David Jackson, Registered Doctoral Psychologist, guilty of professional misconduct and, pursuant to section 32 of *The Psychologists Act, 1997*, orders that:

1. Dr. Jackson shall complete the online CPA Ethics Course titled, "Being an Ethical Psychologist", and shall provide proof of completion of the course to the Registrar of the College on or before January 8, 2017; and

2. Dr. Jackson shall pay costs of the Professional Conduct Committee, legal fees and Discipline Committee expenses in the amount of \$3,500.00 to be paid on or before January 8, 2017, 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 11th day of February 2016.

SASKATCHEWAN COLLEGE OF PSYCHOLOGISTS,
DISCIPLINE COMMITTEE


Tom Robinson,
Registered Doctoral Psychologist, Chair