

**IN THE MATTER OF *THE PSYCHOLOGISTS ACT, 1997* AND BYLAWS AND IN THE
MATTER OF A COMPLAINT AGAINST TANYA LYONS-BELT, A MEMBER OF THE
SASKATCHEWAN COLLEGE OF PSYCHOLOGISTS**

DECISION

Saskatchewan College of Psychologists

DISCIPLINE COMMITTEE

Discipline Committee Members:

Tom Robinson, Registered Doctoral Psychologist, Chair
Val Harding, Registered Doctoral Psychologist, Member
Terry Levitt, Registered Doctoral Psychologist, Member
Kristina McAvoy, Registered Psychologist, Member
Christel Gee, Public Representative, Member

Karen Prisciak, Q.C., appearing on behalf of the Professional Conduct Committee
Christine Hansen-Chad, appearing on behalf of the Member, Tanya Lyons-Belt
Merrilee Rasmussen, Q.C., legal counsel for the Discipline Committee

INTRODUCTION

[1] The Discipline Committee convened on October 2, 2020, via conference call, as agreed by the parties, to hear and determine the formal complaint concerning the Member dated September 12, 2017, as required by *The Psychologists Act, 1997* ["the Act"].

[2] At all times material to the complaints made against her, Tanya Lyons-Belt 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, 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, as amended by agreement of the parties, contains the following charges alleging that Tanya Lyons-Belt is guilty of professional misconduct 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 #20 in that she:

Charge 1(a): while practicing as a registered psychologist at Saskatchewan Polytechnic, conveyed a diagnosis of attention deficit/hyperactivity disorder (A-D/HD), combined presentation, and major depressive episode of a Saskatchewan Polytechnic student, in the absence of a

detailed written summary of corroborating information contrary to Sections 11.6 and 11.9 of the Guidelines.

Charge 1(b): substituted a core subtest with a supplemental subtest when assessing a student's cognitive ability without thoroughly substantiating the reason for this substitution in the psycho-educational report contrary to Sections 11.6 and 11.9 of the Guidelines.

Charge 1(c): did not make test protocols, raw and standard scores, confidence intervals and other relevant data from the standardized testing completed during the student's assessment readily available/accessible to allow for the continuation of care by another Psychologist or to back up the transferred data from available computer scored printout that indicated an error contrary to Sections 11.6 and 11.9 of the of the Guidelines.

Charge 2(a): when sharing diagnostic information by letter, did not clearly state the sources of information used to form her opinion contrary to Section 14.6 of the Guidelines.

Charge 2(b): diagnosed a student with a specific learning disorder in math without an adequately detailed written summary or supporting documentation readily accessible on file to substantiate diagnosis contrary to Sections 3.10 and 3.16 of the Guidelines.

Charge 3: failed to maintain all information in respect of students on student files and shredded protocols and other relevant documentation on files contrary to Section 13.1 and 14.11 of the Guidelines.

Charge 4: failed to consult with colleagues prior to shredding relevant information on student files contrary to Principle IV.18 of the Code.

FACTS

[4] The parties submitted an Agreed Statement of Facts, the relevant text of which (excluding repetition of the charges) is set out below.

B. Jurisdiction

2. Ms. Lyons-Belt has been at all times material to this proceeding registered with the College of Psychologists in Saskatchewan (hereinafter referred to as the "College"), and accordingly, is subject to *The Psychologists Act, 1997*, SS 1997, c. P-36.01, the Canadian Code of Ethics for Psychologists, 3rd ed., 2000 (hereinafter referred to as the "Code") and the Professional Practice Guidelines of the Saskatchewan College of Psychologists (hereinafter referred to as the "Guidelines"). Attached at Tab A is a copy of the Certificate of the Registrar of the College confirming Ms. Lyons-Belt's practicing status.

3. Ms. Lyons-Belt is the subject of a formal complaint which is comprised of the charges, as amended and noted above. The Complaint was served on Ms. Lyons-Belt on September 14, 2017. Attached at Tab B is a copy of the Affidavit of Karen Messer-Engel sworn January 25, 2018 attesting those facts.

4. Ms. Lyons-Belt is a Registered Psychologist who has been a Full Practicing Member in good standing with the Saskatchewan College of Psychologists since November 19, 2008 and remains so to the present date.

C. Background

5. From January 2012 to October 2016 Ms. Lyons-Belt was employed as a psychologist with Saskatchewan Polytechnic, formerly known as SIAST (hereinafter "SaskPolytechnic"), at its Regina Campus in the division of Student Services. Her duties included performing psychoeducational assessments, diagnosing and recommending accommodations and providing support to students living with disabilities.

6. In 2014 and 2015 Ms. Lyons-Belt experienced a [REDACTED] and beginning April and May of 2015 began working reduced work hours as recommended by her family physician. As Ms. Lyons-Belt began to prepare for her parental leave her caseload remained consistently high. Steps were taken by Ms. Lyons-Belt to try to appropriately transition her student files for the period of her parental leave, however at that time no other registered psychologists were employed in her department at Saskatchewan Polytechnic who were able to assume her student caseload.

7. Following an audit of Ms. Lyons-Belt's files by her employer while she was on her parental leave in June 5, 2015 to June of 2016, the employer determined there was information about some of her students that was not located in the students' paper files. Ms. Lyons-Belt had retained the students' information electronically. She also retained paper copies of test protocols, data software printouts, questionnaires, the informed consent for services and the background history of her students. Further information, such as student emails and personal notes relating to her assessments were stored on her work computer in a file under the student's name. Ms. Lyons-Belt admits she did shred paper copies of some assessment results and other file documentation and did not consult with her employer prior to doing so.

D. Particulars of Conduct

Charges 1(a) and 2(a):

8. With respect to Charge 1(a), a student self-referred to Ms. Lyons-Belt with reported test anxiety. During a meeting the student provided a detailed history regarding her family relationships and dynamics and the student's medical history including her past injuries, current illnesses and symptoms and medical diagnoses, all of which were considered by Ms. Lyons-Belt in her assessment. Ms. Lyons-Belt prepared a report wherein she indicated based on one session and the student's scores on four standardized self report questionnaires and one computer-based questionnaire, these results suggested the student was struggling with Attention Deficit/Hyperactivity Disorder as well as Major Depressive Episode. The report did not contain any observations or clinical impressions made by Ms. Lyons-Belt. There were no detailed clinical notes in the student's paper file. Ms. Lyons-Belt concluded interim accommodations ought to be put in place for the student's upcoming exams, counselling was recommended and the student was encouraged to follow up with her doctor. Ms. Lyons-Belt acknowledges her obligations and responsibilities to ensure readers of her reports contain sufficient supporting information to enable recipients of those reports understand her conclusions and recommendations and the basis on which they have been made which she failed to do with this student.

9. With respect to charge 2(a), Ms. Lyons-Belt provided an assessment stating a student was within the borderline criteria for an intellectual disability and was therefore eligible to receive certain accommodations as per SaskPolytechnic's policies and guidelines. The student file did not contain an assessment report nor were the test protocols summarized. Ms. Lyons-Belt has acknowledged that the wording of the letter confirming her assessment could have been stated

more clearly and needed to identify the source of information for her diagnosis to avoid any possible confusion over her final assessment.

10. Ms. Lyons-Belt has demonstrated a willingness to strengthen her skills in terms of drafting and documenting reports and assessments. She has independently sought mentorship and resources to support her continued practice.

Charges 1(b), 1(c) and 2(b):

11. With respect to charges 1(b), 1(c) and 2(b) Ms. Lyons-Belt admits that at the time she was working with SaskPolytechnic and these students she utilized some of tests and testing protocol that were new and not well-established, namely XBA analysis, and that she was in the process of becoming more skilled and efficient in use and reporting of cross battery testing and assessment analysis. Ms. Lyons-Belt has continued to utilize and receive training in relation to scoring software to become better skilled at explaining the use of the tests she utilizes in communicating test results in her reports. Further, Ms. Lyons-Belt acknowledges she now has a greater understanding of better practices relating to the retention of handwritten notes and hard copies of protocols on student files rather than relying primarily on electronic files.

12. In assessing a student who self-referred due to struggles with reading, memory and completing exams, Ms. Lyons-Belt administered supplemental subtests to assess the student's cognitive ability without identifying a rationale for doing so. Her report did not synthesize her clinical impressions and test scores.

13. Ms. Lyons-Belt diagnosed a student with a specific learning disorder in mathematics and prepared a report that did not provide a detailed written summary or supporting documentation necessary to substantiate the diagnosis.

14. During her employment with SaskPolytechnic, Ms. Lyons-Belt assessed students and administered test protocols. In preparing five reports she did not provide the raw data or confidence intervals but rather summarized the results.

15. Ms. Lyons-Belt has at all times been open and honest with the College about her processes and the steps taken to assist her students, the rationale for her use of tests and the adjustments necessary when interpreting scores. Ms. Lyons-Belt has confirmed to the College that going forward she will take appropriate steps to maintain all documentation associated with her testing, including her scores and analysis of these scores, to be able to confirm the analysis. Further, she acknowledges her commitment to consult with the College if she has any questions with the management of her files.

Charges 3 and 4:

16. With respect to Charges 3 and 4, Ms. Lyons-Belt was in the process of preparing for her parental leave and was aware of her obligation to secure her student files and not to leave students' raw scores accessible to others, except where they could be properly maintained in the possession and control of a registered psychologist. As there was no registered psychologist in her department at SaskPolytechnic to which her files could be transferred while she was on parental leave, Ms. Lyons-Belt admits she shredded file copies of some protocols and raw scores, but maintained her electronic copies and the hard copy of her reports. After shredding the file copies, Ms. Lyons-Belt subsequently contacted Karen Messer Engel of the College to obtain

some direction, but acknowledges she ought to have consulted the College prior to shredding the documents when she was uncertain about the appropriate course of conduct.

17. Throughout the investigation and in the time leading up to the resolution of this formal complaint, Ms. Lyons-Belt co-operated with investigators and actively took steps to educate herself on best file management practices and sought out additional mentorship and training.

E. Prior History

18. Ms. Lyons-Belt has no prior professional discipline history from the College. She has not been the subject of any further complaints by the College with respect to her practice since the incidents resulting in the Charges occurred or in the three years since the subject Complaint was made.

F. Conclusion

19. The College and Member have come to an agreement in relation to the charges and will present a joint submission on penalty. Ms. Lyons-Belt admits and pleads guilty to the allegations in the amended charges as set out herein.

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 plea provided by Tanya Lyons-Belt in the Agreed Statement of Facts in relation to the charges contained in the Formal Complaint. She has acknowledged that she failed to comply with a number of provisions of the Guidelines in several situations. The Guidelines establish generally acceptable practices within the profession and a failure to comply with the Guidelines is harmful to the best interests of the public and tends to harm the standing of the profession, contrary to clauses 25(a) and (b) of the Act. As well, she failed to consult with colleagues prior to shredding documents contrary to the Code, compliance with which is required by section 20 of the College's regulatory bylaws, and thus a breach of the bylaws contrary to clause 25(c) of the Act. The Discipline Committee therefore finds that Tanya Lyons-Belt is guilty of professional misconduct.

[8] The Discipline Committee must therefore determine the appropriate consequences 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 misconduct. The parties have also submitted a Joint Submission with respect to some aspects of penalty. They agree that Tanya Lyons-Belt be reprimanded and that the Discipline Committee's order be posted on the College's website but do not agree as to the amount of costs that the Member should be ordered to pay.

[9] Counsel for the Professional Conduct Committee submits that costs should be ordered in the amount of \$15,000, which represents the costs incurred by the College in relation to the investigation and prosecution of the charges against the Member, and that the costs be paid within one year of the date of the Discipline Committee's order.

[10] Counsel for the Member submits that costs should be in the range of \$7,500 to \$10,000. She points out that the Member acknowledged her responsibility for her errors early on in the process and that she has been honest, forthright and cooperative. As well, the charges as initially laid were significantly amended. In particular, she referred to the factors to be taken into account in determining costs in a professional discipline case as set out in the decision of the Saskatchewan Court of Appeal in *Abrametz v Law Society of Saskatchewan*.¹

[11] *Abrametz* points out that costs are in the discretion of the Discipline Committee but that this discretion must be exercised judicially. The purpose of costs in the professional discipline setting is different from the approach taken in the courts. The objective is not to indemnify the opposing party, but for the member of the profession who is the subject of the formal complaint to bear the costs of the proceeding as an aspect of the burden of being a member and not to burden all other members of the profession with those costs. However, that does not necessarily lead to the conclusion that costs should equal a full indemnification. Costs should not be so high as to prevent members from defending their right to practice or so prohibitive that they become punitive.² That said, courts have identified several factors to be taken into account in determining a costs award, in addition to the caution that costs not be punitive. These can be summarized as follows:

- the relative degrees of success of the parties
- the balance between the effect of the cost award on the member and the need for the profession to effectively administer the disciplinary process
- the other sanctions imposed, and the expenses associated with them
- the member's ability to pay

[12] The Discipline Committee is of the view that this list of factors is not a closed list and that other factors may also be taken into account. In particular, the conduct of the parties can have a significant impact on the costs that will be incurred in a discipline proceeding. The Professional Conduct Committee may choose to proceed in a manner

¹ 2018 SKCA 37.

² *Ibid*, at para. 45.

that is more likely to increase the costs by, for example, proceeding to lay a formal complaint without attempting to resolve the matter by consent as is permitted by subclause 28(2)(b)(i) of the Act. This is not to suggest that the Professional Conduct Committee cannot make a decision of this kind, only that if it does the increased costs may be costs that the College must bear and not the member who is the subject of the complaint. On the other hand, for example, a member can be unreasonably adversarial requiring all facts to be tendered to the Discipline Committee in a formal hearing through the testimony of witnesses.

[13] In this case, the Member took responsibility for her conduct early in the process, took steps on her own initiative to improve her practice, cooperated fully with the investigation, and agreed to facts that made a protracted hearing unnecessary. These steps do have the result of significantly decreasing the cost to the College and should be recognized.

[14] However, the impact of the investigation and discipline process on the Member's personal circumstances is not a factor that relates to an appropriate assessment of costs to be ordered. The Discipline Committee understands that the process is a difficult one and that it has caused stress and anxiety to the Member and had an impact on her career that may have carried with it financial consequences, but the Member's actions that led to the formal complaint had an impact also on her employer and her clients.

[15] Assessing the situation comprehensively, the Discipline Committee is of the opinion that costs should be something less than total costs, and therefore concludes that costs in the amount of \$12,000 is appropriate, taking all of the relevant factors into account.

ORDER

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

1. Tanya Lyons-Belt is hereby reprimanded;
2. Tanya Lyons-Belt shall pay costs in the total amount of \$12,000, payable within one year of the date of this order;
3. If Tanya Lyons-Belt fails to pay the costs in accordance with paragraph 2 within the time required, her licence shall be thereupon suspended until the costs are paid in full; and
4. This decision and order shall be posted to the website of the Saskatchewan College of Psychologists.

Dated at Regina, Saskatchewan this ____21st____ day of December 2020.

SASKATCHEWAN COLLEGE OF PSYCHOLOGISTS, DISCIPLINE
COMMITTEE



Tom Robinson,
Registered Doctoral Psychologist, Chair

On behalf of:

Val Harding, Registered Doctoral Psychologist, Member
Terry Levitt, Registered Doctoral Psychologist, Member
Kristina McAvoy, Registered Psychologist, Member
Christel Gee, Public Representative, Member