

IN THE MATTER OF *THE PSYCHOLOGISTS ACT, 1997* AND BYLAWS
AND IN THE MATTER OF A COMPLAINT AGAINST KIM MCKAY-MCNABB,
FORMERLY A PROVISIONAL PSYCHOLOGIST, OF REGINA, SASKATCHEWAN

DECISION
Saskatchewan College of Psychologists
DISCIPLINE COMMITTEE

Discipline Committee Members:

Tom Robinson, Registered Doctoral Psychologist, Chair
Daniel Ash, Public Representative
Val Harding, Registered Doctoral Psychologist, Member

Karen Prisciak, Q.C., appearing on behalf of the Professional Conduct Committee
Michelle Oulette, Q.C., appearing on behalf of the Member, Kim McKay-McNabb
Jaime Carlson, legal counsel for the Discipline Committee

INTRODUCTION

[1] The Discipline Committee convened on Thursday, March 1, 2018, via conference call, as agreed by the parties, to hear and determine the formal complaint against the former Provisional Member dated September 5, 2017, in accordance with *The Psychologists Act, 1997* [“the Act”].

[2] As acknowledged in the Agreed Statement of Facts filed by legal counsel for Dr. McKay-McNabb and legal counsel for the Professional Conduct Committee, at all times material to the complaints against her, Dr. McKay-McNabb was a provisional 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 contains the following charge alleging that Dr. Kim McKay-McNabb is guilty of professional misconduct or professional incompetence, in that she:

“At a powwow on the [REDACTED] First Nation on August 20, 2016, raised her voice and called [REDACTED], who was attending the powwow, a “slut” in the presence of members of the public contrary to the *Canadian Code of Ethics for Psychologists*, 3rd ed. 2000, and more specifically Section I.2, I.3 and I.46.”

FACTS

[4] As noted above, the parties submitted an Agreed Statement of Facts 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.

4. [REDACTED], a member of the public (hereinafter “the Complainant”), complained to the Saskatchewan College of Psychologists and Dr. McKay-McNabb was investigated by the Professional Conduct Committee of the College.

5. Dr. McKay-McNabb was registered with the College as a Provisional Member from January 3, 2014 to January 3, 2017.

6. Dr. McKay-McNabb worked in private practice with a special interest in, and focus on, culturally responsive therapies; her practice included child, marital, individual and group therapy, and reunification therapy, as well as conducting parenting capacity and assessments with families.

7. Dr. McKay-McNabb has not previously had a complaint against her.

8. At a powwow on the [REDACTED] First Nation on August 20, 2016, raised her voice and called [REDACTED], who was attending the powwow, a “slut” in the presence of members of the public.

9. Dr. McKay-McNabb pleads guilty to Charges 1 and acknowledges she did not fully comply with Section I.2, I.3 and I.46 of the Code.

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] The Ethical Standards for Psychologists are set out in the *Canadian Code of Ethics for Psychologists*. The relevant sections of the Code are:

I.2 Not engage publicly (e.g., in public statements, presentations, research reports, with primary clients or other contacts) in degrading comments about others, including demeaning jokes based on such characteristics as culture, nationality, ethnicity, colour, race, religion, sex, gender, or sexual orientation.

I.3 Strive to use language that conveys respect for the dignity of persons and peoples as much as possible in all spoken, written, electronic, or printed communication.

I.46 Encourage others, in a manner consistent with this *Code*, to respect the dignity of persons and peoples, and to expect respect for their own dignity.

[8] 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

[9] The Discipline Committee accepts the guilty plea provided by Dr. McKay-McNabb in the Agreed Statement of Facts in relation to the charge contained in the Formal Complaint. She has acknowledged that the conduct occurred and that the conduct constitutes failures to comply with the Code. 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 Dr. McKay-McNabb is guilty of professional misconduct as a result of the guilty plea contained in the Agreed Statement of Facts.

[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. The range of powers available to the Discipline Committee runs from reprimand to expulsion. 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 a joint Proposed Penalty, which states as follows:

Dr. McKay-McNabb pleads guilty to the charges against her and accepts the following sentence:

1. A reprimand.
2. Costs payable to the College in the amount of \$6,500.00. Such costs to be paid within one year from the date of the Order, failing which she shall be removed from the College of Psychologists' register.
3. An Order precluding the Member from making application for registration with the College until the above condition has been fully satisfied.
4. An Order publishing the Discipline Committee's report and sentence on the website of the College.

[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 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.

¹ 2009 SKCA 81.

² *Ibid*, at paragraph 13.

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.

[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.

ORDER

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

1. Dr. McKay-McNabb is hereby reprimanded;
2. Dr. McKay-McNabb shall pay costs to the College in the amount of \$6,500.00 within one year of the date of this Order and, if payment is not received by the College on or

before that date, the Member shall be removed from the register of the College of Psychologists until payment is received in full;

3. Dr. McKay-McNabb is precluded from making application for registration with the College until the condition set out in paragraph 2 has been fully satisfied; and

4. The Discipline Committee's report and sentence shall be published on the website of the College.

Dated at Regina, Saskatchewan this 30th day of April 2018.

SASKATCHEWAN COLLEGE OF PSYCHOLOGISTS,
DISCIPLINE COMMITTEE

A handwritten signature in dark ink, appearing to read 'Tom Robinson', is written over a horizontal line.

Tom Robinson,
Registered Doctoral Psychologist, Chair