

IN THE MATTER OF *THE PSYCHOLOGISTS ACT, 1997* AND BYLAWS
AND IN THE MATTER OF A COMPLAINT AGAINST CHRISTA MORHART,
REGISTERED PSYCHOLOGIST, OF REGINA, SASKATCHEWAN

DECISION
Saskatchewan College of Psychologists
DISCIPLINE COMMITTEE

Discipline Committee Members:

Mary Hampton, Registered Doctoral Psychologist, Chair
Tom Robinson, Registered Doctoral Psychologist
Daniel Ash, Public Representative

Karen Prisciak, Q.C., appearing on behalf of the Professional Conduct Committee
Nicholas Cann, appearing for Christa Morhart
Merrilee Rasmussen, Q.C., legal counsel for the Discipline Committee

INTRODUCTION

[1] The Discipline Committee convened on June 24, 2015, via conference call, as agreed by the parties. The Member was served with the Notice of Hearing dated March 25, 2015, as required by *The Psychologists Act, 1997* [“the Act”], and with the Formal Complaint concerning her practice.¹ The Notice of Hearing alleged that Ms Morhart was guilty of professional misconduct and/or professional incompetence, within the meaning of the Act.

[2] At all times material to the complaints against her, Ms Morhart was a member of the Saskatchewan College of Psychologists and licensed to practise in the Province of Saskatchewan.

THE FORMAL COMPLAINT

[3] The Formal Complaint charges that by virtue of his contravention Ms Morhart is guilty of professional misconduct and/or professional incompetence as defined in sections 25 and 26 of the Act and/or section 14 of the Regulatory Bylaws in that:

¹ Exhibits B to E to the Affidavit of Karen Messer-Engel, dated May 27, 2015, and filed in evidence in this hearing as a Exhibit P-1.

1. While she was employed as a counsellor at Student Counselling Services at the University of Saskatchewan she kept incomplete notes of at least 180 student client counselling sessions during the course of her clinical care contrary to the *Canadian Code of Ethics for Psychologists*, 3rd ed., 2000 (hereinafter referred to as “the Code”), and more specifically Sections II.19 and Section 7.22, 13.6 and 13.7 of the Saskatchewan College of Psychologists Practice Guidelines (hereinafter referred to as “the Guidelines”),
2. While she was employed as a counsellor at Student Counselling Services at the University of Saskatchewan she attempted to conceal the incomplete status of student client counselling sessions, did not assume responsibility for the status of her student client notes and files and did not acknowledge the negative impact of her behaviour on student clients, colleagues and others contrary to the Code and more specifically Section II.1 and II.3 and Sections 3,2,2, 13,6 and 13.7 of the Guidelines.

FACTS

[4] 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 as follows:

4. Christa Morhart was employed as a student counsellor with the Student Counselling Services (“SCS”) at the University of Saskatchewan from 2010 to June 2013.

...

6. The concerns about the Member’s documentation came to light when Student Counselling Services was moving to a centralized electronic filing system in 2012. The Member informed her manager that she was behind in completing her file notes and therefore could not transfer the files to the new system. It subsequently came to the attention of the Complainant that the Member was not completing clinical notes following her involvement with the student clients.

7. When it was discovered that the Member was behind in her file management she agreed that eight days would be sufficient to get caught up with the clinical notes. Unfortunately, the Member did not acknowledge the extent of file mismanagement and the eight days were insufficient to fully complete her clinical files. As a consequence, a file audit was undertaken by the Manager.

8. The Manager’s audit discovered scratch or handwritten notes from individual sessions with clients that had not been transcribed by the Member nor been placed on the students’ files. The Manager attempted to coordinate the student appointment dates with the Member’s notes and found notes missing and files were incomplete. More specifically, students’ names and dates of session(s) were missing as well as relevant

information on the students' problems and treatment and personal items were mixed in with the files. The audit of 180 files revealed 646 incomplete or missing clinical notes:

2010	229	Incomplete or missing clinical notes
2011	252	Incomplete or missing clinical notes
2012	165	Incomplete or missing clinical notes

9. Students who access *SCS* may access a different counsellor each time they return for counselling services. Therefore it is important that sufficient clinical notes remain on file to allow another clinician to step in if necessary. In addition, it is critical that the clinical notes adequately describe the course of treatment in order to ensure students receive the best clinical care possible as well as continuity of care.

10. There was a September 18, 2012 meeting wherein the status of the Member's outstanding client notes was discussed. From the information discovered after September 18th, the Member did not provide full disclosure about the magnitude of her outstanding file documentation. The Manager and the Member previously agreed that eight days would be sufficient to deal with the backlog of file notes. It clearly was not. The Manager would have been amenable to providing additional time to the Member had the Manager understood the magnitude of the problem.

11. Once the inadequate clinical notes were discovered, the Member was advised of the necessity of updating and organizing her files and ensuring they were transferred to the central electronic filing system. The Member did not transfer her student files in a timely fashion and student files were incomplete as noted in paragraph 8 above.

12. In early November 2012 there was a meeting between the Member, the Manager and other counsellors to discuss the state of the Member's clinical files. During this meeting the Member acknowledged she was behind in her notes but had made an attempt to rectify the client files. She expressed regret for the impact of her errors and apologized for adding pressure to her colleagues' workloads. She contacted clients to reschedule appointments with other *SCS* counsellors, met with counsellors to facilitate the transition of services and updated the files for transfer. She also prioritized completion of inactive files for some clients.

13. The Member acknowledges she should have advised her Manager much sooner of the magnitude of the status of the backlogged files. She did not possess a clear and accurate understanding of the reasons why documentation of student counselling sessions were a fundamental clinical necessity and the potential negative impact on student clients and colleagues of her incomplete clinical notes.

14. Christa Morhart enters a guilty plea to each of the . . . charges.

LEGISLATION

[5] The Act defines professional misconduct and professional incompetence 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.

Professional incompetence

26 Professional incompetence is a question of fact, but the display by a member of a lack of knowledge, skill or judgment, or a disregard for the welfare of a member of the public served by the profession of a nature or to an extent that demonstrates that the member is unfit to:

- (a) continue in the practice of the profession; or
- (b) provide one or more services ordinarily provided as a part of the practice of the profession;

is professional incompetence 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 contain 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 and/or professional incompetence, 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 Ms Morhart in the Agreed Statement of Facts in relation to the charges contained in the Formal Complaint. She 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 of Ethics 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 Ms Morhart 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. 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 – Sentence, which state as follows:

The Professional Conduct Committee and the Member jointly submit the following as discipline for the Member:

1. The Member shall receive a reprimand.
2. The Member shall pay a fine of \$1,000.00 to the Saskatchewan College of Psychologists payable in monthly instalments of \$_____ commencing July 1, 2015.
3. The Member shall attend and complete a graduate level ethics class within 12 months of the date of sentence, such class to be pre-approved by the College of Psychologists.
4. The Member shall provide documentation from a registered practicing psychologist licensed to practice in Saskatchewan with the College of Psychologists, or a psychiatrist licensed to practice in Saskatchewan with the College of Physicians and Surgeons, indicating the Member is fit to practice psychology. Such documentation is to be provided to the College on or before July 25, 2015.
5. The Member shall be under the supervision of a registered practicing psychologist licensed to practice in Saskatchewan with the College of Psychologists with the same declared areas of competence as the Member. The supervising psychologist is to be pre-approved by the College of Psychologists. Such supervision shall be at the rate of 6 hours face-to-face supervision for every 160 work hours commencing July 1, 2015 for a total of 1,500 work hours with an emphasis on documentation in relation to the provisions of the Code and the Practice Guidelines; a component to include review of the Professional Practice

Guidelines, the Act and Bylaws. Reports are to be submitted by the supervisor to the College of Psychologists at 750 and 1,500 work hours.

6. The Member shall pay costs in the amount of \$3,000.00 payable in monthly instalments of \$_____ commencing July 1, 2015.
7. The Member understands that the failure to comply with Paragraphs 2 to 6 above may lead to further disciplinary proceedings against her by the College of Psychologists.

[11] The blanks in the joint submission relate to the matter of the amount to be paid monthly by Ms Morhart with respect to the total of the fine and costs agreed to, which is the one aspect of sentencing that the parties have not agreed to.

[12] In its decision in the case of *Rault v. Law Society of Saskatchewan*², the Saskatchewan Court of Appeal made it clear that a discipline committee must give serious consideration to a joint submission on sentencing agreed upon by counsel 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.³ 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

² 2009 SKCA 81.

³ *Ibid*, at paragraph 13.

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, to the extent that the parties were able to agree.

[13] However, as already mentioned, there is one issue about which the parties did not agree, and that relates to the monthly payment to be required of the Member in payment of the fine and costs agreed to be ordered against her. The parties have agreed that Ms Morhart should pay a fine of \$1,000 and costs of \$3,000. Counsel for Ms Morhart submits that, on the basis of her ability to pay, she should only be required to pay \$100 per month on the total amount of the fine and costs. Ms Morhart provided an affidavit to the Discipline Committee detailing her income and expenses and pointing out that she will incur additional expenses to complete the course she will be required to take in accordance with the joint submission and for obtaining supervision of her practice for a period of one year at an estimated cost of at least \$200 per month. Counsel for the Professional Conduct Committee submits that at \$100 per month, this would impose an

unreasonable administrative burden on the College to monitor payment over a period of almost three and a half years.

[14] The Discipline Committee is sympathetic to Ms Morhart's financial situation, but notes that the expenses of obtaining supervision will cease after one year. It is therefore possible to structure payments over a total of two years, with the payments during the first year being \$100 per month as she has proposed and, during the second year, when she will no longer be required to pay \$200 per month for supervision, her payments can increase to \$250 per month for a further 12 months.

[15] The Discipline Committee acknowledges that the Member has provided documentation from a full practising psychologist or a psychiatrist registered and licensed to practise in Saskatchewan indicating that she is fit to practise psychology, as was contained in the joint submission as paragraph 4, and will therefore make no order in relation to that matter.

ORDER

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

1. the Member is hereby reprimanded;
2. the Member shall attend and complete a graduate level ethics class, as approved by the Saskatchewan College of Psychologists, within 12 months of the date of this Order, or such further time as may be permitted by the Registrar in writing;
3. the Member shall practise under the supervision of a full practising psychologist registered and licensed to practise in Saskatchewan, who is approved by the Saskatchewan College of Psychologists, with the same declared area of competence as the Member, which supervision shall be at the rate of six hours of face-to-face supervision for every 160 work hours, commencing on October 1, 2015 and continuing for a total of 1,500 work hours, which supervision shall include an emphasis on

documentation in relation to the provisions of the Code of Ethics and the Practice Guidelines of the Saskatchewan College of Psychologists and review of *The Psychologists Act, 1997*, the bylaws made under the Act and the Practice Guidelines;

5. the Member shall pay a fine of \$1,000 and costs of \$3,000, the resulting total of \$4,000 to be paid in monthly instalments on the first day of each and every month, as follows:

(a) commencing on October 1, 2015 and continuing to and including September 1, 2016, in the amount of \$100 per month; and

(b) commencing on October 1, 2016 and continuing to and including September 1, 2017, in the amount of \$250 per month;

and, if any such payment is not received by the College on or before the date on which the payment is required to be made, the Member shall be suspended from the College, further to a notice from the Registrar in that regard, until such payment is received in full.

[17] In addition, and at the request of counsel for the Member, the Discipline Committee orders the College to keep the affidavit submitted by the Member in relation to her financial circumstances confidential.

Dated at Regina, Saskatchewan this 11 day of September, 2015.

SASKATCHEWAN COLLEGE OF PSYCHOLOGISTS,
DISCIPLINE COMMITTEE



Mary Hampton,
Registered Doctoral Psychologist, Chair