

IN THE MATTER OF: *The Psychologists Registration Act, C.C.S.M., c. P190*

AND IN THE MATTER OF: Dr. Cynthia Jordan, C. Psych.

AND IN THE MATTER OF: a hearing of allegations of professional misconduct before the Inquiry Committee of the Psychological Association of Manitoba held on December 12 - 16, 2011 and December 19, 2011

Reasons for Decision

Review of the Charge

On January 19, 2010, The Complaints Committee of the Psychological Association of Manitoba (the "Association") pursuant to *The Psychologists Registration Act* of Manitoba, and the By-laws of the Association, issued a charge of professional misconduct against Dr. Cynthia Jordan. The particulars of the charge against Dr. Jordan are as follows:

1. In September, 2008, after becoming aware of a complaint of professional misconduct against her, consisting of a letter dated July 17, 2008 from The Complainant to the Association, and other material sent by the complainant and received by the Association on September 4, 2008 (collectively referred to as the "Complaint"), Dr. Jordan telephoned The Complainant and stated to him that:

- (i) If he continued with the Complaint, she would be required to disclose certain of The Complainant's personal information which he would not want to be disclosed;
- (ii) The complaint process would be lengthy and protracted and could last for up to 8 years;
- (iii) She had already reviewed aspects of his complaint with an "ethics group," suggesting that his Complaint had already been determined by this group to be without merit.

Dr. Jordan thereby attempted to interfere with the right of the complainant to pursue his Complaint with the Association.

As a result of Dr. Jordan's statements to The Complainant, he withdrew his Complaint by letter to the Association dated October 16, 2008 in which he stated: "Please be advised that I have been blackmailed into a decision to not pursue any action at this time."

Facts not in dispute

There were a number of points of evidence regarding the course of events that occurred in this matter that were not disputed by the member or the prosecution that are relevant for this decision and include:

1. That Dr. Jordan, upon being made aware of the Complaint filed against her by The Complainant, contacted The Complainant by telephone. During that telephone conversation, Dr. Jordan discussed with The Complainant the complaint that he filed against her, specifically:
 - a. That the complaints process is likely to be protracted
 - b. That, if the Complaint proceeded, she (Dr. Jordan) would have to disclose confidential and potentially damaging information about The Complainant. In this discussion, The Complainant contemplated whether he "had anything to hide" to which Dr. Jordan responded "oh yes, you do."
 - c. That she (Dr. Jordan) had consulted a third party to discuss the ethics related to the subject of The Complainant's Complaint and that she had no concerns about her actions in that matter. (The Complainant testified that Dr. Jordan stated she had spoken to an "ethics committee").
2. That Dr. Jordan suggested that she and The Complainant meet to review Dr. Jordan's documentation, that The Complainant failed to attend the scheduled meeting, and that Dr. Jordan telephoned The Complainant again (on September 26, 2008) after he failed to attend the scheduled meeting at which time The Complainant indicated that he was not going to pursue the Complaint.
3. That, following the telephone call of September 26, 2008, Dr. Jordan contacted the Association by letter on September 29, 2008 to indicate that The Complainant was withdrawing his Complaint.

The Evidence

Mr. The Complainant

The Complainant testified that he, along with his then wife were clients of Dr. Jordan's for couples counselling during 2 periods, specifically June 1998 to November 1999 and February 2003 to summer 2003. Towards the end of the second period, Dr. Jordan recommended that The Complainant seek individual counselling with another psychologist (Dr. Lilian Esses) while Dr. Jordan continued with individual counselling with his wife. The Complainant indicated that he filed a Complaint with the Association against Dr. Jordan on July 17, 2008 upon learning that she had provided an affidavit in support of his wife to be submitted as evidence in the divorce proceedings between The Complainant and his wife, which he believed was a conflict of interest.

The Complainant testified that Dr. Jordan contacted him by telephone on the 23rd or 24th of September, 2008 at which time Dr. Jordan requested that she and The Complainant meet at her office on September 26, 2008 to discuss his Complaint. The Complainant agreed to meet. The Complainant subsequently decided to not go to the scheduled meeting, and after not showing up, received a few telephone messages from Dr. Jordan inquiring about his absence from their meeting. On the afternoon of September 26, 2008, The Complainant received a telephone call from Dr. Jordan and during that conversation, Dr. Jordan indicated that she had been through the complaint process before and that it took eight years to resolve and indicated that the time frame to resolve his Complaint could take this long. The Complainant further testified that Dr. Jordan indicated that he would be losing his confidentiality and that when he said he didn't think he had anything to hide, Dr. Jordan responded with "Oh yes, you do" which he interpreted as threatening. He further testified that Dr. Jordan indicated that she had talked to an ethics committee, which he, The Complainant, assumed was the Association, and that Dr. Jordan had received prior authorization to provide the affidavit, and there was no basis for his Complaint.

The Complainant indicated that upon receiving this information from Dr. Jordan, he believed that pursuing the Complaint would be a waste of time, that he would end up disclosing a lot of personal information, and that he would lose because he did not have a valid argument. The Complainant further testified that he was under the impression that Dr. Jordan was acting on behalf of the Association, and consequently decided that, in view of this, he would withdraw his

Complaint. The Complainant testified that at no time during any phone conversations did Dr. Jordan mention that she was in a conflict of interest by contacting him about the Complaint.

Upon cross examination, The Complainant indicated that he was involved in court proceedings initiated by his wife and children, the subject of which included divorce from his wife and financial matters related to his wife and his children. The Complainant further acknowledged that it was Dr. Jordan's preparation of an affidavit to be used in these proceedings that initiated his Complaint against her.

Dr. Jaye Miles

Dr. Miles was not called as an expert witness. She testified as to the complaints process followed by the Association and outlined the typical response of the Complaints Committee. She stated that there is no anticipation or expectation that a member would contact a complainant to discuss the Complaint.

Further, Dr. Miles stated that in her experience of processing between 200 and 300 complaints she had never known of an occasion wherein a member contacted a complainant directly. Dr. Miles also testified the typical timeframe taken by the Complaints Committee is purposefully lengthy to allow the member time to prepare a response. Further testimony on her part spoke specifically to the Complaints Committee's response to both The Complainant and Dr. Jordan being timed to allow Dr. Jordan to prepare her response. That specific response, in keeping with the standard practice of the committee, does not support the need for an immediate response to The Complainant as evidenced by Dr. Jordan's call to him the same day she received notice of the Complaint.

Dr. Cynthia Jordan

Dr. Cynthia Jordan is and has been a registered psychologist in Manitoba for over 30 years, currently working in private practice, recipient of past awards and a past member of the executive council and Complaints Committee of the Association.

With respect to the charge against her, Dr. Jordan testified that:

- She did not call The Complainant to discuss his Complaint with the intent or motive to interfere with the complaints process, although she acknowledged in cross examination that her actions could look this way to others. She testified that she did not believe The Complainant felt threatened by the content of the phone call, and indicated that it would be unreasonable for him to feel threatened by her.
- Her actions in contacting The Complainant upon learning of the Complaint were in the service of protecting his best interest. She testified that because of his multiple psychological problems, he was unaware and could not fully appreciate the implication of his filing the Complaint and making confidential and potentially damaging information publicly available. She further testified that because of The Complainant's multiple psychological problems, it was not possible to provide this information to him in any way other than a face-to-face meeting.
- She believed that under *The Personal Health Information Act*, ("PHIA") she would be obligated to provide the Complainant's wife access to the couples file if she made the file available to the Complaints Committee of the Association as part of their investigation of The Complainant's Complaint. It was because of this obligation to disclose file content to his wife (and presumably her lawyers) that Dr. Jordan wanted The Complainant to be aware of the file content, suspecting that there was content in the file that The Complainant would not want his wife (and her lawyers) to see. However, upon cross-examination, Dr. Jordan was unable to identify any specific provision within PHIA that explicitly mandated her to disclose information to the Complainant's wife under these circumstances. She

further acknowledged that section 23 (3) of PHIA, which states that "a trustee shall not disclose personal health information if the trustee has reason to believe that the disclosure might lead to harm to the individual the information is about", may have been applicable in this situation.

- In consideration of the Canadian Code of Ethics for Psychologists (the "Code"), Dr. Jordan testified that she felt obligated to The Complainant to uphold Principles I (respect for the dignity of persons) and II (responsible caring) in the Code. Specifically, she called The Complainant to ensure that he was making the decision to pursue the Complaint with full informed consent and to ensure that she was promoting his welfare. She testified that in resolving this situation, she relied on her own personal conscience. She also testified that Principle III (integrity in relationships) never occurred to her as she did not see herself in a conflict of interest in contacting The Complainant about his Complaint against her.

On cross examination, Dr. Jordan stated that:

- She made the first phone call to The Complainant within a few hours of receiving the letter from the Association of his Complaint against her.
- She did not contact the Association to express her concerns regarding the potential damage her disclosure of personal information may have, nor did she consult with anyone in the Association about the advisability of calling The Complainant.
- She was aware of the timeframe outlined in the literature and website of the Association. As well she acknowledged previous experience with the complaints process, as a member of the Association's governing body and through her own experience as the subject of previous complaints.

Expert Witness Testimony

Evidence was heard from Dr. Don Stewart, called by the prosecution, and Dr. Valerie Holms, called by the defence. Both Dr. Stewart and Dr. Holms were accepted as experts, and are both members in good standing with the Association.

Both experts commented on Dr. Jordan's conduct in contacting The Complainant after receiving notification of his formal Complaint against her. A summary of the convergent points of testimony include:

- While there is no explicit prohibition in the Code indicating that a psychologist should not contact a client who has filed a complaint against the psychologist, both experts indicated that, as a general rule, such contact ought to be avoided.
- Both experts indicated that a psychologist contacting a client who has filed a complaint against the psychologist might be viewed by others, including the complainant, as an attempt to interfere with the complaints process.
- The experts both indicated that a potential conflict of interest may be created when a psychologist contacts a client who has filed a complaint against the psychologist and, in this situation, the psychologist has a responsibility to declare the potential conflict of interest and to ensure that the client's best interests are safeguarded.
- Both experts agreed that in situations where ethical principles are in conflict, generally principles I and II are given higher weighting than principle III after carefully weighing all three principles.
- Dr. Stewart testified, however, that in such situations a psychologist would be expected to consult with a colleague or colleagues to find a resolution to such conflicts.

Dr. Stewart testified that psychologists should recognize that there is an inherent power imbalance within the therapeutic relationship, which endures even after the termination of the therapeutic relationship, and, by virtue of this, former clients are vulnerable to having that relationship exploited if the psychologist is entering into a conflict of interest relationship with that person. Dr. Stewart further testified that a practicing psychologist should be aware that once a formal complaint has been made, any contact with a complainant about the complaint is inappropriate due to the potential conflict of interest it creates, along with the potential interference such contact might have on the rights of the client to pursue the complaint.

Dr. Stewart also testified that in a situation such as the one Dr. Jordan was in, a reasonable solution might have been for the psychologist to communicate her concerns about the impact of

disclosure of information in her file to the complainant through some indirect method, for example in writing or through a third party such as the Complaints Committee.

Dr. Holms testified that Dr. Jordan's contacting The Complainant after learning that he filed a complaint against him may not have been unethical if she was attempting to provide information. However, under cross examination, she did agree that if that information had the potential effect of intimidating or threatening a complainant in some way, such conduct would be unethical.

Professional Misconduct

Counsel for the Association and counsel for Dr. Jordan referred to the case of *Law Society of Manitoba v. Savino* [1983] M.J. No. 206 (CA) at paragraph 17, as authority for the following definition of professional misconduct:

"Professional Misconduct is a wide and general term. It is conduct which would be reasonably regarded as disgraceful, dishonourable, or unbecoming of a member of the profession by his well respected brethren in the group - persons of integrity and good reputation amongst the membership."

Counsel for Dr. Jordan also referred to the following case law:

1. *Sonntag v. Sonntag* (1979) CarswellOnt 418 (Ont S.C.), at paragraph 16:
"Professional misconduct for which a solicitor may be held personally responsible in costs to an opposite party need not be criminal and need not involve dishonesty. A mere mistake or error of judgment is not generally sufficient."
2. *Fan v. Law Society (British Columbia)* 1977 CarswellBC 127 (BCCA) as authority for the proposition that you must look to the Code as a guideline;
3. *Sussman v. College of Psychologists (Alberta)* 2010 CarswellAlta 2013 (ABCA) specifically paragraph 54 thereof which states:

"We are unable to accept that all departures from the script of rules developed by the Appeal Panel out of language of the standards should automatically be called unprofessional conduct. The conduct may be unintentional, non-negligent and harmless. Or, the departure might otherwise be justified by policies consistent with those underlying the Code, the standards or the objectives of the College and Council, or by the therapeutic aims of the profession itself. An automatic finding of unprofessional conduct would not be consistent with the reasonable interpretation of the guideline on which the Appeal Panel relied." Counsel for the Association referred to paragraph 53 for the statement that "Psychologists cannot avoid the effect of reasonable and foreseeable extensions or elaborations by not informing themselves or by treating them as irrelevant merely because they are not written into the Standards expressly. Nonetheless, it is also reasonable to

assume that, by not inserting such language directly into the Standards, the authors of the Standards contemplated that (a) the degree of departure and (b) whether that degree of departure was enough to constitute unprofessional conduct would be factual and policy questions for specific Hearing Tribunals and Appeal Panels to consider in a given case."

Findings of the Panel

Upon review of the evidence, the case law, and consideration of the arguments presented, the Inquiry Committee concluded that Dr. Jordan is guilty of professional misconduct in her actions in response to being made aware of the Complaint filed against her by The Complainant. This finding is based on the following:

1. Dr. Jordan's actions in response to learning of The Complainant's Complaint were intentional and directed at compelling The Complainant to withdraw his complaint. Dr. Jordan's actions in (a) telling The Complainant "Oh yes, you do" when he speculated about whether he had anything to hide, (b) warning The Complainant that the complaints process would be protracted, and (c) informing The Complainant that she had consulted about the ethics of her providing an affidavit on behalf of his wife and had no concerns about her actions, all suggest that she was attempting to dissuade The Complainant from pursuing his Complaint against her. Indeed, Dr. Jordan acknowledged in her testimony upon cross-examination that ultimately her purpose in calling The Complainant was for him to withdraw the Complaint.

2. Dr. Jordan's knowledge of the time frames associated with the complaints process, as informed by her past experience with complaints against her and as a past member of Council for the Association, does not support her very quick reaction to receipt of the notice of Complaint, nor does it support her equally prompt notice to the Complaints Committee that The Complainant had withdrawn his Complaint. The promptness of these actions suggests that Dr. Jordan felt a sense of urgency to quash the Complaint against her.

3. The Complainant's decision to withdraw his Complaint against Dr. Jordan was a direct result of the telephone conversation that Dr. Jordan initiated. The Complainant testified that during the conversation he felt threatened by Dr. Jordan's comments and that there was little point in pursuing the complaint given the information provided to him by Dr. Jordan. While The Complainant and Dr. Jordan's evidence respecting the dates and timing of the conversations are

not congruent, there is no dispute that the telephone conversations took place. While evidence was presented which reflected upon The Complainant's credibility in his divorce proceedings, no compelling evidence was given to challenge his credibility in the matter at hand, i.e., that he believed Dr Jordan wanted him to abandon the Complaint. Beyond this, the Inquiry Committee believe that, under these circumstances (i.e., contact from a previous therapist warning of potential dangers of pursuing a complaint) a reasonable person would have felt intimidated. Dr. Stewart, the expert witness, spoke to this point in his testimony by stating "a client might very well perceive contact by their former therapist to be intimidating, to be putting some sort of pressure on them, or to otherwise be interfering with their right to pursue a complaint."

4. The defence's argument that The Complainant wrote the "blackmail" letter in an attempt to exact revenge on Dr. Jordan for her affidavit and testimony in the divorce proceeding is not believable. By his testimony on cross examination, The Complainant indicated that he wrote the letter to express his frustration with his perceived lack of support from the Association for his Complaint (arising from his interpretation that Dr. Jordan was speaking on behalf of the Association during their telephone conversation). The Inquiry Committee found this testimony from The Complainant to be believable.

5. Dr. Jordan's testimony was that she called The Complainant to provide information about the complaints process so that he could make the decision to pursue the Complaint with informed consent. Specifically, Dr. Jordan testified that she wanted to make The Complainant aware that if he were to pursue the Complaint, then confidential information about him would be available to others and that this may be harmful to his interests. Dr. Jordan claims her actions were to protect the interests of The Complainant. However:

- a. No compelling evidence was presented to show that there was harmful information that would have not have been otherwise available to the Complainant's wife's lawyer and the court;
- b. No compelling evidence was presented to show that the private correspondence sent from The Complainant to Dr. Jordan in 1999 could not be kept confidential if the Complaint against Dr. Jordan proceeded. Under cross examination Dr. Jordan acknowledged she could have asked that part of the hearing to be heard in private to protect The Complainant's confidentiality;

- c. Due to her past involvement in complaints, both as a past member of the Association Council, and as a member against whom a complaint had been made, Dr. Jordan would have been aware at the time of her phone call that The Complainant had waived confidentiality by virtue of the fact he had made a complaint to the Association.

6. Dr. Jordan testified that she was the only person who could have shared sensitive information with The Complainant so that he would have complete informed consent in pursuing his Complaint, and therefore, she was compelled to meet with him and review the file. She further stated that she knew The Complainant well, and knew that he would not be able to act in his own best interest without her involvement. This was not accepted by the Panel because:

- a. By Dr. Jordan's evidence, The Complainant was no longer her client and had not been so for several years. By her testimony, Dr. Jordan had no clinical interaction with him in that time. It is reasonable to conclude she would not have up-to-date information about his mental state and hence his ability to deal with potentially harmful information;
- b. However, for several years, The Complainant had been in therapy with Dr. Esses, a clinician recommended and referred by Dr. Jordan. Dr. Jordan could have consulted with Dr. Esses regarding The Complainant's ability to deal with troubling information before calling The Complainant herself;
- c. Further, because of the professional relationship between Dr. Jordan and Dr. Esses, it is reasonable to assume Dr. Jordan could have consulted with Dr. Esses around the issue in question, or; could have asked her to participate in a meeting with The Complainant as a support or advocate.
- d. In cross examination Dr. Jordan acknowledged that she could have invited another person to attend the September 26, 2008 meeting with The Complainant.

7. Dr. Jordan testified she was following PHIA by not separating information in her files relating to The Complainant from that of his wife. Further, she testified that if she disclosed any information to the Complaints Committee, she was compelled under PHIA to inform his wife and disclose her entire file contents to her. On cross examination she was unable to find that

stipulation or provision in the PHIA. She also acknowledged that section 23 (3) of the PHIA, which prevents disclosure of harmful personal health information, may have been applicable in this particular situation.

8. Dr. Jordan testified that she was acting in accordance with the Code specifically, Principles I and II. However, upon review of the evidence, the Inquiry Committee concluded that Dr. Jordan failed to follow the prescribed process for dealing with ethically complex situations as per the Code, specifically:

- a. Dr. Jordan did not seek consultation with colleagues around the most ethical course of action before acting;
- b. Dr. Jordan did not follow the steps outlined in the Code for resolving difficult or complex issues;
- c. Dr. Jordan did not disclose to The Complainant that she was in a conflict of interest in contacting him about the Complaint;
- d. Dr. Jordan did not establish safeguards to protect The Complainant's interests in a conflict of interest situation;
- e. Dr. Jordan was not sensitive to the power differential existent in their relationship.

9. Dr. Jordan claims that she made every reasonable effort to resolve the conflict in ethical principles without success, and thus, had to depend on her own personal conscience. The Code is explicit in the expectations it holds for psychologists when needing to rely on personal conscience to resolve ethical dilemmas:

“In some cases, resolution [of an ethical dilemma] might be a matter of personal conscience. However, decisions of personal conscience are also expected to be the result of a decision-making process that is based on a reasonably coherent set of ethical principles and that can bear public scrutiny.” (Code, pg. 2)

The Code further instructs psychologists involved in an ethical decision making process, thusly:

“Psychologists engaged in time-consuming deliberation are encouraged and expected to consult with parties affected by the ethical problem, when

appropriate, and with colleagues and/or advisory bodies when such persons can add knowledge or objectivity to the decision-making process.” (Code, pg. 3)

The Panel does not accept that Dr. Jordan made every reasonable effort to resolve this conflict. Specifically:

- a. There was no compelling evidence that Dr. Jordan followed the prescribed set of basic steps specified in the Code as typify the ethical decision making process as outlined on page 3 of the Code. By her evidence, Dr. Jordan testified that she responded within a matter of hours by phoning The Complainant following notification of the Complaint that he filed against her. In view of this, it is not credible that Dr. Jordan took the necessary time to fully and carefully consider (a) the ethically relevant issues and practices, including the interests, rights, and any relevant characteristics of the individuals and groups involved and of the system or circumstances in which the ethical problem arose, (b) how her personal biases, stresses, or self-interest might influence the development of or choices between courses of action, (c) alternative courses of action, or (d) the likely short-term, on-going, and long-term risks and benefits of each course of action on the individuals/groups involved or likely to be affected, as specified by the Code.
- b. By her testimony, Dr. Jordan acknowledged that she did not consult with any colleagues or advisory bodies in her ethical decision making process. Dr. Jordan testified that she did not consult with others because doing so would violate The Complainant’s confidentiality. The Inquiry Committee does not find this explanation credible and instead believe that Dr. Jordan could have, and should have, consulted with other psychologists in her attempts to resolve this complex situation. The Inquiry Committee believe that methods of accessing consultation while maintaining confidentiality are an integral part of psychological training and practice, and that a reasonable person would expect an established and experienced psychologist to be aware of alternatives to breaking confidentiality when consulting colleagues.

Given that Dr. Jordan did not appear to have followed the prescribed ethical decision making process outlined in the Code or to have consulted with others to assist her in evaluating the

appropriateness of her chosen course of action, the Inquiry Committee does not accept that the decision making process engaged in by Dr. Jordan was either based on a reasonably coherent set of principles or was explicit enough to bear public scrutiny.

10. The Inquiry Committee concluded that Dr. Jordan's actions in contacting The Complainant reflects conduct that falls well short of what would be expected of a professional psychologist, particularly one with Dr. Jordan's years of experience and knowledge of the Code. In his report, Dr. Stewart wrote:

“In a situation where a former client has made a complaint against a psychologist, there is an inherent conflict between the best interests of the parties to the complaint.” Because of this ‘inherent conflict’ it “would be seen as inconsistent with the Code, and therefore not appropriate, for a practicing psychologist to contact or meet with a former patient who has a complaint against the psychologist”

When asked about the conflict of interest, Dr. Jordan said that she “never thought about it.” Oblivious of the conflict of interest, Dr. Jordan felt no obligation to alert The Complainant to the issue nor did she consider following the procedures prescribed by the Code for dealing with unusual and complex situations. Dr. Jordan's failure to recognize the conflict of interest inherent in her contacting The Complainant about his complaint indicates in the opinion of the Panel, a serious lack of judgment incongruent with what would be expected of a registered psychologist who has practiced for many years, supervised psychologists-in-training, and sat as a member of the Association Council.

11. Dr. Jordan's responses during cross-examination suggest that she did not feel constrained by the Code. When asked about her thoughts about the withdrawal of Complaint against her, she replied that she had no opinion. The prosecutor followed with “You had no opinion? This was a Complaint of misconduct to your Association against you and you are asking the Panel to accept your evidence that you had no opinion on the outcome of the Complaint?” Dr. Jordan responded that she had been in practice for many years and “so I would get a reprimand? So bloody what? I didn't think about the Complaint one way or another. And I had to do what was right for my own conscience about him. Now, if they believe me, fine. If they didn't, fine. It doesn't matter. I'm well past impression management. What other people think is something way, way down the list of values for me. I'm 65 years old, it doesn't matter.” The Inquiry

Committee believe that this attitude towards the Code is cavalier and could represent a potential risk to members of the public.

12. The Inquiry Committee believe that, Dr. Jordan, through her actions in this situation, has jeopardized the public's faith in psychologists and in the due process for pursuing complaints against psychologists. The Complainant testified that this was indeed the case for him. Dr. Stewart highlighted the importance of a psychologist's concern with how the profession is viewed by society in his testimony when he stated, "Psychology is a self-regulating profession and as such it has a social contract to ensure that its members act in the best interests of members of society, both individually and collectively." Later, Dr. Stewart noted that the Code "talks about the obligations of psychologists to be mindful of the social contract and to not do anything that would disadvantage the discipline as a whole."

13. In the circumstances, Dr. Jordan's conduct was disgraceful, and unbecoming of a member of the Association.

Decision

The Inquiry Committee has determined that Dr. Cynthia Jordan is guilty of professional misconduct in accordance with the charge, and pursuant to Section 40 of By-law No. 1 of the Association. By agreement between counsel for the Association and counsel for Dr. Cynthia Jordan, the hearing was bifurcated to first determine whether Dr. Jordan was guilty of professional misconduct in accordance with the charge. Therefore, disposition was not spoken to or addressed. In light of the Inquiry Committee's decision, the hearing will be reconvened to hear submissions on the issue of disposition.

Dr. Jordan and her Counsel have filed an Appeal of these Reasons for Decision.

IN THE MATTER OF: *The Psychologists Registration Act, C.C.S.M., c. P190*

AND IN THE MATTER OF: Dr. Cynthia Jordan, C. Psych.

AND IN THE MATTER OF: An order and reasons for decision relating to disposition, following the continuation of the hearing held on May 28, 2012 before the panel of the Inquiry Committee of the Psychological Association of Manitoba consisting of Dr. R. Martin, Dr. J. Ediger and Mr. I. Hughes.

Order and Reasons for Decision - Disposition

Review

A hearing of allegations of professional misconduct was held before a panel of the Inquiry Committee ("the Inquiry Committee") of the Psychological Association of Manitoba on December 12 - 16, 2011 and December 19, 2011. By agreement between counsel for the Association and counsel for Dr. Cynthia Jordan, the hearing was bifurcated to first determine whether Dr. Jordan was guilty of professional misconduct in accordance with the Charge. Reasons for decision respecting the Charge were delivered on March 15, 2012. The Inquiry Committee determined that Dr. Cynthia Jordan was guilty of professional misconduct in accordance with the Charge, and pursuant to Section 40 of By-law No. 1 of the Association.

Having found Dr. Cynthia Jordan guilty of professional misconduct, the hearing was continued on May 28, 2012 to address the appropriate order pursuant to By-law No. 1 of the Association. Following are the Inquiry Committee's order and its reasons for decision respecting disposition.

Order

The Inquiry Committee orders that, pursuant to Sections 41(1), 42 and 44 of By-law No. 1 of the Association:

1. Dr. Cynthia Jordan shall be issued a reprimand.

2. The circumstances relevant to the findings and the order of the Inquiry Committee, including Dr. Cynthia Jordan's name, shall be published by the Psychological Association of Manitoba.

3. Dr. Cynthia Jordan shall pay a fine in the amount of \$2,000.00, payable within 30 days of the date of this order.

4. Dr. Cynthia Jordan shall pay costs to the Psychological Association of Manitoba in the amount of \$20,000.00, as a contribution towards the costs associated with the investigation, prosecution and hearing of this matter, said costs to be payable within 90 days of the date of this order.

In addition, the Inquiry Committee recommends that Dr. Cynthia Jordan make a formal apology to the Complainant.

Reasons

The Inquiry Committee is mindful that the one of fundamental purposes of the Association is to ensure that the public is protected from acts of professional misconduct. The Inquiry Committee considered the protection of the public and many other factors in determining the appropriate penalty, including specific deterrence for Dr. Cynthia Jordan, general deterrence to other members of the profession, rehabilitation, punishment and denunciation of Dr. Cynthia Jordan's conduct, the public confidence in the integrity of the profession, and consistency between penalties imposed in other cases.

The Inquiry Committee determined that Dr. Cynthia Jordan's actions constituted conduct that falls well short of what would be expected of a professional psychologist, particularly one with Dr. Cynthia Jordan's years of experience and knowledge of the Code. Dr. Cynthia Jordan's failure to identify the inherent conflict of interest, her serious lack of judgment, her disregard for the complaints process, her cavalier attitude toward the Code, and her lack of insight into the power imbalance with the Complainant, are all factors that contribute to the gravity of the professional misconduct.

Dr. Cynthia Jordan had one previous charge of professional misconduct dated June 29, 2001, for which she received a reprimand. The previous charge related to an issue of conflict of interest.

The Inquiry Committee considered that Dr. Cynthia Jordan did not admit guilt and accept responsibility for her actions. However, Dr. Cynthia Jordan is entitled to have the case against her proven and to make full answer in defence without fear of the threat of an increased penalty.

The Inquiry Committee considered the case law presented by the Association and counsel for Dr. Cynthia Jordan, but did not find any of the case law to be directly on point. The Inquiry Committee also considered Dr. Cynthia Jordan's over 30 years' experience as a psychologist, her valuable contributions to the psychological community, and the numerous reference letters filed in her support, speaking of her good character.

The Inquiry Committee has determined that a reprimand, and the publication of Dr. Cynthia Jordan's name to the profession and the public will serve as a specific deterrent to Dr. Cynthia Jordan, and as a general deterrent to other members of the profession that conduct such as Dr. Jordan's in this case will not be condoned.

The Inquiry Committee also took into account that the maximum fine under Section 42(1) of the By-law No. 1 of the Association is \$10,000.00. A fine of \$2,000.00 is appropriate, based on the severity of the professional misconduct, and based on penalties imposed in other cases.

With respect to the issue of costs, counsel for the Association argued that the hearing could have been shortened by an agreed statement of facts, or by not calling the Complainant to testify. Counsel for Dr. Cynthia Jordan argued the Association's case could have been shortened by not calling Dr. Miles to testify. The Inquiry Committee considered those arguments, but found on balance that the conduct of the hearing by both counsel for the Association and counsel for Dr. Cynthia Jordan was reasonable in the circumstances. However, as the Inquiry Committee found this to be professional misconduct, the Inquiry Committee believes it is appropriate that Dr. Cynthia Jordan contribute to the costs of the prosecution, investigation, and hearing of this matter. The sum of \$20,000.00 is a substantial contribution to the costs, and will have a financial impact on Dr. Cynthia Jordan, while at the same time compensating the Association for a portion of its costs.

While the finding of professional misconduct against Dr. Cynthia Jordan is a serious one, taking into account the vulnerability of the Complainant and Dr. Jordan's disregard for the complaints process of the Psychological Association of Manitoba, the cases provided by counsel for the Association to support a penalty of an interim suspension dealt with conduct more severe in

nature. The Inquiry Committee does not believe, based on Dr. Cynthia Jordan's complaints history and her long years of service to the profession and the community, that an interim suspension is warranted to denounce her conduct or to protect the public.

The imposition of a reprimand, publication of Dr. Cynthia Jordan's identity, a fine, and a substantial contribution to costs maintains the public's confidence in the integrity of the profession, and properly takes into account all relevant factors in considering the appropriate penalty.

Dated this 2nd day of August, 2012

Dr. Jordan and her Counsel have filed an appeal of this Order and reasons for Decision.