

**Professional Conduct Committee
Saskatchewan Association of Social Workers
and
Ms. Penelope (Penny) F. G. Kelly (SASW Reg. #2479)**

DECISION
of the
Discipline Committee
Saskatchewan Association of Social Workers

Appearing for the Professional Conduct Committee:

Darcia Schirr, Q.C.

Appearing for Penelope (Penny) F. G. Kelly:

None

Members of the Discipline Committee:

Harriet Greenhow, BSW, RSW (SK) - chairperson

Katherine Potts, BSW, RSW (SK)

Karen Wasylenka, MSW, RSW (SK)

Victoria Walton, MSW, RSW (SK)

Doug Stewart, public representative

Counsel for the Discipline Committee:

Dirk Silversides

Date of the Hearing: December 17, 2010 - 10:00 a.m.

Date of the Decision: January 10, 2011

Introduction

A hearing of the Disciplinary Committee of the Saskatchewan Association of Social Workers ("SASW") pursuant to Section 28 of the Social Workers Act ("the Act") was conducted in Regina, Saskatchewan on December 17, 2010 with respect to a complaint against Penny Kelly. Ms. Penny Kelly did not appear before the Disciplinary Committee, nor was she represented by counsel.

No issues or objections to the composition or jurisdiction of the Discipline Committee were raised.

Background

The Professional Conduct Committee, in its Investigation Report dated October 26, 2010, stated that a written complaint from Bill Tingley, Registrar of the SASW, had been received on December 9, 2009, concerning Penny Kelly. The letter of complaint indicated that Ms. Penny Kelly provided false information on her application for SASW registration dated November 23, 2009, and had misrepresented herself by claiming registered social work status in Saskatchewan prior to her approval of registration on November 25, 2009.

The Professional Conduct Committee reviewed the complaint and proceeded with the formal investigation pursuant to Section 26(1) of the Act.

Having considered all matters disclosed during the investigation of the complaint, the Professional Conduct Committee recommended the matter be referred to the Discipline Committee to hear and determine the complaint.

Charges Against the Member

The particulars of the alleged professional misconduct are set out in Appendix A to the Notice of Discipline Hearing, a copy of which is attached to this decision.

Preliminary Matters

At the commencement of the hearing, a preliminary ruling was requested of the Discipline Committee by counsel for the Professional Conduct Committee with respect to whether there had been proper service of the Notice of Discipline Hearing and the formal complaint upon Ms. Kelly.

Counsel for the Professional Conduct Committee provided evidence that a registered letter containing the Complaint and the Notice of Discipline Hearing was sent out to the address of Penny Kelly (as contained in the records of the SASW) on November 17, 2010, as required pursuant to Section 28(1) of the Act. The registered letter was returned unclaimed.

Sections 50(1)(b) and (2) of the *Act* provide as follows:

“50(1) Any notice or other document that is required to be served pursuant to this *Act* may, unless otherwise provided for in this *Act*, be served by:

...

(b) registered mail addressed to the last business or residential address of the person to be served known to the registrar.

(2) A notice or document sent by registered mail is deemed to have been served on the seventh day following the date of its mailing unless the person to whom it was mailed establishes that, through no fault of that person, the notice or document was not received or was received at a later date.”

The Discipline Committee provided its ruling that there had been proper service upon Ms. Penny Kelly given that the Complaint and Notice of Hearing had been sent by registered mail pursuant to s. 28(1) of the *Act* and given the provisions of s. 50 of the *Act* which deemed service by registered mail to have been made on the seventh day following the date of its mailing.

Although not determinative in the Discipline Committee’s decision in this regard, it did take note of the following in satisfying itself that every possible attempt had been made to notify Penny Kelly of this hearing:

- Counsel for the Professional Conduct Committee advised that she was unable to effect personal service upon Ms. Kelly as she lived in an apartment building with a security system, thus making it difficult for a process server to gain admittance to her residence for the purpose of serving the documents.
- Ms. Debb Fisher, the Office Administrator of the SASW, swore an Affidavit stating that she left a telephone message on Ms. Kelly’s answering machine on November 24, 2010, identifying herself and advising that the Hearing was set for December 17, 2010, at the West Harvest Inn at 10:00 a.m. and that the Association had a letter for her at Canada Post related to the Notice of Hearing which Ms. Kelly should pick up.

Accordingly, the Discipline Committee also exercised its discretion pursuant to s. 28(9) of the *Act* to proceed with the hearing in the absence of Penny Kelly.

Summary of Evidence

The evidence presented to the Disciplinary Committee was in two forms, documentary and the testimony of three witnesses. A chronology of the evidence from these two sources is as follows:

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An anonymous letter dated November 9, 2009 from a concerned family member of a resident of Wascana Rehabilitation Centre was received at the SASW office stating the concern that Ms. Penny Kelly's name was not on the list of Registered Social Workers on the SASW website. A business card with Penny Kelly's name was enclosed with the letter and it indicates that she was using the designations of RSW (Sask) and Medical Social Worker on the card.

Bill Tingley, Registrar for SASW, testified that when he became aware Ms. Penny Kelly was using the title of Registered Social Worker and was in fact not registered as a member of SASW, he wrote to her in regard to this matter (and to the Regina Qu'Appelle Health Region ("RQHR") which requires all Social Workers in its employ to be registered with SASW.

Mr. Tingley further testified that in a telephone conversation with Ms. Kelly at that time, she appeared shocked that she was not a member stating she had downloaded a registration application from the SASW website, completed it and mailed it from the Pasqua Hospital. Mr. Tingley testified he searched the SASW office for the application but could find no evidence the registration application had been received.

Ms. Penny Kelly was given a deadline of November 27, 2009 by the Registrar to have her completed registration form submitted to the SASW office.

Testimony provided by Debb Fisher, Office Administrator for SASW, stated that Ms. Penny Kelly attended at the SASW office on November 23, 2009 with her registration form. The following questions, which appeared under the heading "Registration in Another Jurisdiction" in the application form were not completed:

- a) Have you ever been registered in another jurisdiction?
- b) Have you ever been suspended, disqualified, censured or had disciplinary action instituted against you as a member of any profession in any jurisdiction in Canada?
- c) Are you currently the subject of a complaint, an investigation or practice restrictions instituted against you as a member of any profession in any jurisdiction in Canada?

Ms. Fisher circled the questions and asked Ms. Kelly to go to the boardroom to complete the form. Ms. Kelly returned the form to Ms. Fisher with the three questions answered in the negative.

Penny Kelly's registration was approved November 25, 2009.

Debra Wiszniak, RSW, and a Client Representative for the RQHR, testified she received a telephone call on December 4, 2009 from a Social Worker at the Wascana Rehabilitation Centre in Regina with concerns regarding Ms. Kelly's social work practice, and suggested Ms. Wiszniak "Google" Ms. Kelly's name. Ms. Wiszniak proceeded with the internet search and discovered that an individual named Penny Kelly had been the subject of a discipline hearing in the state of Nevada on March 3, 2006 and had been found guilty of 10 counts of misconduct, her registration had been revoked and she had been fined a penalty of \$5,000. Ms. Wiszniak sent an e-mail to Mr. Tingley on December 4, 2009 regarding this concern and received a reply from

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him dated December 5, 2009 that steps would be taken to confirm whether the Penny Kelly disciplined by the state of Nevada had in fact registered with SASW.

A letter dated December 9, 2009 to Ms. Penny Kelly from Mr. Tingley advised her that he was referring a complaint to the Professional Conduct Committee regarding (1) the falsely answered question (a) in her application under the heading Registration in Another Jurisdiction, and (2) the false representation of herself as a Registered Social Worker in Saskatchewan prior to November 25, 2009.

On December 9, 2009 Mr. Tingley referred the matter to the SASW Professional Conduct committee for investigation.

A letter dated December 22, 2009 to Ms. Kelly from the Registrar informed her that due to the disciplinary action taken against her in the state of Nevada, and her neglect to inform the SASW about the action, her application for renewal of registration with SASW for 2010 was denied.

Ms. Kelly wrote to SASW President Jim Walls on December 28, 2009 to appeal the decision of the Registrar.

An appeal was heard on April 12, 2010 and the decision of the Registrar was upheld by the Council of the SASW.

Decision of the Discipline Committee

The Disciplinary Committee accepts the evidence presented through the testimony of the three witnesses and the documentation submitted by counsel for the Professional Conduct Committee and concludes that:

1. Penny Kelly, from approximately August 2009 until November 2009 represented herself as a registered social worker and engaged in the practice of social work when in fact she was not a member of the Association and a license to practice as a social worker had not been issued to her.
2. Ms. Kelly in her Application for Registration form signed on November 23, 2009 provided an inaccurate response to the question of registration in another jurisdiction. Ms. Kelly was previously registered as a social worker in Nevada and subsequently obtained registration as a member of SASW and received an annual license for the balance of 2009 as a result of false, inaccurate or misleading information provided to the Registrar.

As a result, the Discipline Committee has determined Ms. Kelly's actions constitute a breach of Value 4 of the Canadian Association of Social Workers Code of Ethics 2005, a breach of Sections 24 and 49 of the *Act* and therefore amount to professional misconduct within the meaning of Section 30(1) of the *Act*.

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Orders

The Discipline Committee hereby orders:

1. Pursuant to Section 29(2)(a)(i) of the *Act*, Penny Kelly shall pay the SASW a fine of \$3,000 by May 1, 2011.
2. Pursuant to Section 29(2)(a)(ii) of the *Act*, Penny Kelly shall pay the SASW costs related to the hearing in the amount of \$2,000 by May 1, 2011.
3. Pursuant to Section 29(1)(f) of the *Act*, the Executive Director of SASW, on behalf of the Discipline Committee, will prepare a synopsis of this decision and publish the synopsis in the SASW newsletter, and on the SASW Website. The synopsis will identify Ms. Kelly.
4. Pursuant to Section 29(1)(f) of the *Act*, the Executive Director of SASW will arrange for notification of this decision to be sent to the Public Protection Data Base, the Registrars of Social Work Associations in Canada, England, Scotland and Ireland and any other registrars that are deemed appropriate by the Executive Director.
5. Pursuant to Section 29(1)(f) of the *Act*, the Executive Director of SASW will notify all organizations that he deems appropriate who employ Social Workers in Saskatchewan of the decision of the Discipline Committee.
6. Pursuant to Section 29(1)(f) of the *Act*, the Executive Director of SASW will attempt to notify Penny Kelly of the decision of the Discipline Committee by all possible means, including but not limited to regular mail, registered mail, courier, and the e-mail address listed on her registration form. If the Executive Director of SASW is not satisfied that she has received the notification within 12 weeks from the date of this decision, the Executive Director will place a notice regarding the decision in the Regina Leader Post.
7. Pursuant to Section 29(1)(f) of the *Act*, Ms. Kelly shall not be entitled to apply for re-registration with SASW until:
 - a) she has paid the fine and costs in full;
 - b) she has successfully completed the SASW Seminar "Promoting a Culture of Ethical Excellence", or if this seminar is no longer offered, an equivalent course as determined by the Executive Director.



Harriet Greenhow, BSW, RSW (SK)
Chairperson - Discipline Committee

Decision Date: January 10, 2011

For the Discipline Committee:

Katherine Potts, BSW, RSW (SK)
Victoria Walton, MSW, RSW (SK)

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