

Professional Conduct Committee
Saskatchewan Association of Social Workers
And
Ms. Jessica Pegg (SASW Reg. # 2228)

Decision

Of the
Discipline Committee
Saskatchewan Association of Social Workers

Appearing for the Professional Conduct Committee: Connor Clyde

Appearing for Jessica Pegg: Steve Seiferling

Members of the Discipline Committee:

David Rivers, MSW, RSW (SK) – Chairperson

Katherine Potts, HBSW, RSW (SK)

Charlene Cameron, BSW, MA, RSW (SK)

Della Yaroshko, BSW, RSW (SK)

Lynda Kushnir-Pekrul, RN, BScN, MScAdmin (Public Representative)

Counsel for the Discipline Committee: Alma Wiebe, Q.C.

Date(s) of the Hearing: August 15 and October 30, 2018

Introduction

A hearing of the Discipline Committee of the Saskatchewan Association of Social Workers ("SASW") pursuant to Section 28 of the *Social Workers Act* was conducted by video conference set up in Saskatoon and Regina Saskatchewan on October 30, 2018 with respect to a complaint against Ms. Jessica Pegg. The hearing began on August 15, 2018, and was adjourned to October 30, 2018.

Background

On October 27, 2017, the SASW received a letter of complaint from a director of a human service agency, alleging that Ms. Pegg may be guilty of professional misconduct. The complaint referred to the termination with cause of Ms. Pegg's employment and her admission to the theft of gift cards intended for the use of service recipients of the agency with a value of at least \$1500.

After reviewing the complaint, Jim Walls, the Chair of the Professional Conduct Committee proceeded with a formal investigation pursuant to Section 26(1) of the *Social Workers Act*.

After consideration of 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 following charges as set out in Appendix A to the Notice of Discipline Hearing dated July 26, 2018:

1. While you were employed at the Human Service Agency and through the period from May 2017 to October 2017, you stole gift cards with a total value of over \$1500.00 from the agency intended for service recipients experiencing financial difficulties.
2. When questioned by your employer about the use of the gift cards taken from the agency and asked to provide the required documents regarding the issuing of gift cards, you initially indicated the documents had been provided to an administrative assistant in the department. This was false. When confronted later about the issue, you advised that you had mailed the gift cards to a service recipient; however, you only provided a portion of the gift cards to that service recipient.
3. For the 2017 year, you failed to renew your license to practise by December 31, 2016. Throughout 2017 until your termination from the agency on or about October 12, 2017, you were employed as, practising as, and calling yourself a Clinical Oncology Social Worker, despite not being a practising member.

Preliminary Matters

At the commencement of the hearing on August 15, 2018, Counsel for the Professional Conduct Committee filed proof of service of the Notice of Discipline Hearing on Ms. Pegg pursuant to Section 28(1) of *The Social Workers Act*.

No issues or objections to the composition of the Discipline Committee or its jurisdiction to hear and decide this matter were raised.

Solicitors for the SASW Professional Conduct Committee informed the Discipline Committee the first communication they had with Ms. Pegg was 15 minutes before the hearing and there was indication of agreement by Ms Pegg as to charges and facts, but insufficient time to address penalties. Ms Pegg stated she was prepared to plead guilty, but expressed uncertainty about her ability to proceed and readiness to speak to all matters. For this reason, the Discipline Committee decided to adjourn the hearing and encouraged Ms Pegg to seek counsel which she did.

A phone conference with the involved solicitors and parties was scheduled for September 4, 2018 at which time the parties advised they would be developing an Agreed Statement of Facts and a Joint Submission as to Penalty. The hearing resumed on October 30, 2018 and the Agreed Statement of Facts and Joint Submission as to Penalty were presented to the Discipline Committee.

Agreed statement of facts

Solicitors for the SASW Professional Conduct Committee and for Ms. Pegg submitted an Agreed Statement of Facts. It is provided here with certain personal details minimized or removed:

1. Jessica Pegg of the City of Saskatoon, in the Province of Saskatchewan, was a registered social worker and a member of the Saskatchewan Association of Social Workers (the "SASW") in good standing until January 1, 2017, when she did not renew her license. She has not renewed her license since that date.
2. Ms. Pegg was first registered with the SASW on March 20, 2008. Her license status since that point is as follows:

Time Period	Registration Type
2009 Renewal	Full Time
2010 Renewal	Full Time
2011 Renewal	Part Time

2012 Renewal	Full Time
2013 Renewal	Licensed-Non-Practicing Status
2014 Renewal	Full Time
2015 Renewal	Full Time
2016 Renewal	Licensed-Non-Practicing Status
2017 Renewal	Did not renew by December 31, 2016

3. On January 5, 2017, Fay Schuster, Registrar of the SASW, sent a letter to Ms. Pegg at the address she has provided for the SASW as her mailing address. This letter advised that her renewal for 2017 had not been received or processed and advised that without renewing her license that she was not entitled to engage the practice of social work by using the title Social Worker. (A copy of the letter was submitted as evidence.)
4. On October 27, 2017, the SASW received a complaint letter from a director of a Human Services Agency (the "HSA"). (A copy of the letter was submitted as evidence.)
5. The complaint letter was forwarded to the Professional Conduct Committee as evidence and investigation. The investigation by the Professional Conduct Committee has resulted in the charges set out in Appendix A to a Notice of Discipline Hearing dated July 26, 2018. Documents were gathered and both Ms. Pegg and the complainant were interviewed.

Practising Without a License

6. Ms. Pegg began her employment with the HSA in September 2011 as a Clinical Social Worker. During her employment with the HSA she has been on parental leave on three occasions. Her most recent parental leave commenced in 2016 with her returning to work as a Clinical Social Worker in May 2017.
7. An Application for Employment for the same position Ms. Pegg held while employed with the HSA was submitted as evidence.
8. When Ms. Pegg returned to work in May 2017, she acknowledges and admits that she was not licensed with the SASW. Ms. Pegg worked as, engaged in the practice of, and used the title of "Social Worker" while employed with HSA from

May 2017 until her departure on October 12, 2017, without being licensed. Ms. Pegg admits and acknowledges that she was practicing without proper registration.

9. An Electronic Signature Ms. Pegg used in 2017 while employed by the HSA was provided as evidence.
10. In late 2016, Ms. Pegg was on maternity and parental leave when the renewal of her registration came up, as well as when the letter was sent by Ms. Schuster to Ms. Pegg's home address.
11. If Ms. Pegg were to testify, she would state:
 - (a) that she forgot to renew her license because the license renewal usually occurs in December of each year, when she [REDACTED] (personal reasons).
 - (b) that she was advised to remain on maternity and parental leave for a full year, however, she returned to work in May 2017, for [REDACTED] (personal reasons). At the time, she [REDACTED] [REDACTED] (personal issues).

Misrepresentation and Misappropriation of Gift Cards

12. The HSA has a client gift card program wherein clients and their families can be provided gift cards by social workers such as Ms. Pegg. The gift cards are property of HSA to be used for the benefit of individuals in need of financial assistance during times of need. The Program is an honor and trust-based system, relying on social workers to properly record when gift cards are taken and to provide gift cards appropriately (the "Program").
13. When a gift card is taken by a social worker to be provided to a client or their family, the social worker is required to complete an entry on a list maintained by the HSA. Copies of the list maintained by the HSA between April 7, 2017 and December 13, 2017 were provided as evidence. The signatures which are visible within the "Signature of Social Worker" column are Ms. Pegg's.
14. Social workers are also required to complete a form entitled "Gift Cards Assigned to Clients" when providing a gift card for the Program and have the client initial the document if possible. Copies of these documents which Ms. Pegg has signed were provided as evidence. Ms. Pegg kept an unknown number of these gift cards for herself rather than provide them to clients.
15. In September 2017, the HSA noticed an issue of misappropriation of gift card funds. A document prepared by the Manager of Social Workers employed by the

HSA, which outlines the HSA's investigation into the misappropriation was provided as evidence.

16. Ms. Pegg admits that she is the employee referred to in the document submitted as evidence and that she committed all acts referenced within it. Ms. Pegg initially denied that she had taken any gift cards for personal use to the Manager of Social Workers, providing other explanations for gift cards being missing, before eventually admitting her misconduct to the HSA on December 12, 2017.

17. Ms. Pegg acknowledges and admits she misappropriated gift cards from the HSA in the total amount of approximately \$1,500 for her own personal use.

18. Ms. Pegg's employment with the HSA ended on Oct 12, 2017.

19. Within the last few months, Ms. Pegg has begun making payment to the HSA to account for the funds she misappropriated.

20. If Ms. Pegg were to testify, she would state:

(a) that her [REDACTED] [REDACTED] (personal issues) when she misappropriated the gift cards. She returned to work early from a maternity and parental leave, [REDACTED]. [REDACTED] [REDACTED] (related personal reasons). (A copy of the letter was provided as evidence).

(b) That she acknowledges her wrong doing, and apologizes to the HSA and to the others who were affected.

21. On July 27, 2018 Ms. Pegg was served with the Notice of Discipline Hearing. Ms. Pegg acknowledges and admits to the charges identified in the Notice of Discipline and admits that her actions amount to a prohibited practice, in breach of section 24 of *The Social Workers Act*, SS 1993, c S-52.1 (the "Act"), as professional misconduct as that term is defined in section 30 of the Act, and amount to a breach of the SASW General Bylaws, Canadian Association of Social Workers Code of Ethics 2005, and Canadian Association of Social Workers Guidelines for Ethical Practice 2005 provision particularized in Appendix A.

Penalty

In light of the Agreed Statement of Facts and Ms. Pegg's admission of guilt, argument on behalf of both parties moved to the issue of penalty. In that regard, the parties filed a joint submission as to penalty. Upon careful review of the joint submission and upon hearing from counsel for both parties, the committee made the following order.

1. Pursuant to s.29(1)(f) of *The Social Workers Act* (the "Act"), Jessica Pegg shall not be entitled to reapply for admission with the Saskatchewan Association of Social Workers (the "SASW") for a period of six months and until such time as the following condition is met:
 - (a) Within one month of her intended return to practice, Jessica Pegg shall prepare and provide the Registrar with a written self-reflective essay referencing the relevant provisions of the Canadian Association of Social Workers Code of Ethics and Canadian Association of Social Workers Guidelines for Ethical Practice identified in this case and how they will guide her future practice.
 - (b) Within one week of her intended return to practice, Jessica Pegg shall provide the Registrar with a letter from a physician which indicates she is medically cleared to practice as a social worker.
2. Upon the expiry of the six months and fulfilment of conditions specified in paragraph 1 and pursuant to section 29(1)(f) of the Act, Jessica Pegg's license shall be subject to the following conditions:
 - (a) For a period of 6 months, Jessica Pegg shall not work in any capacity where she has any direct control and/or responsibility over the finances and/or financial affairs of her employer or her clients.
 - (b) For a period of 12 months and within 14 days of commencing or resuming employment in any social worker position, Jessica Pegg shall notify the Registrar of the name, address, and telephone number of her social worker employer.
 - (c) For a period of 12 months, Jessica Pegg shall provide her social worker employer(s) with a copy of the Discipline Committee's decision and order and provide verification to the Registrar that this has been done. This condition applies to any jurisdiction where employment is obtained.
3. Pursuant to section 29(2)(i) of the Act, Jessica Pegg shall pay a fine of \$1,000. Such fine shall be paid on or before December 31, 2021. If Jessica Pegg fails to

make payment of the fine as ordered, her license shall be immediately suspended pursuant to section 27(2)(b) of the Act, until such payment is made.

4. Pursuant to section 29(2)(ii) of the Act, Jessica Pegg shall pay costs of the investigation and hearing in the total amount of \$4,000. Such costs shall be paid as follows
 - (a) On or before January 31, 2019, the sum of \$400.
 - (b) On or before April 30, 2019, the sum of \$400.
 - (c) On or before July 31, 2019, the sum of \$400.
 - (d) On or before October 31, 2019, the sum of 400.
 - (e) On or before January 31, 2020, the sum of \$400.
 - (f) On or before April 31, 2020, the sum of \$400.
 - (g) On or before July 31, 2020, the sum of \$400.
 - (h) On or before October 31, 2020, the sum of \$400.
 - (i) On or before January 31, 2021, the sum of \$400.
 - (j) On or before April 30, 2021, the sum of \$400.

Jessica Pegg shall be permitted to make additional payments or larger payments at her discretion. If Jessica Pegg fails to make any payment of the costs as ordered on the due date or within 5 days of the due date, her license shall be immediately suspended pursuant to section 27(2)(b) of the Act, until such payment is made.

Although not included in the written joint submission, the issue of anonymization of the decision was raised by counsel for the Member at the hearing and the SASW counsel concurred with the Member's position. Discipline committee members requested written reasons supporting the application for anonymization and received submissions on October 30, 2018 and November 19, 2018. After reviewing the submissions by the solicitors, as well as literature related to the publication of disciplinary hearings and the use of pseudonyms, the Discipline committee members notified the solicitors of the reasons why they were not inclined to support the anonymizing of the decision. Solicitors were provided a further opportunity to review and respond to the committee. A further submission was provided on December 5, 2018.

Committee Members carefully reviewed these submissions, case law regarding publication of disciplinary hearings and the use of pseudonyms, SASW Council decisions and bylaws and past practices of the SASW Discipline Committee. The Committee concluded that it did not support anonymizing this decision to protect the Member's name from disclosure. The Committee did not find the circumstances in this case so exceptional as to justify a departure from the open court principle. That said the Committee agreed to write the decision in a manner that ensured references to Ms. Pegg's personal information were minimized or removed.

The Social Workers Act and General Bylaws concerning publication of Discipline

Committee decisions provide as follows:

General Bylaws, Section 17(5) states:

Discipline hearings shall be open to the public.

Section 17(10) states:

(10) The association shall, at the request of the discipline committee, publish the findings of a hearing in the association's newsletter and on the association's website as a means of educating the association's membership.

Section 17(11) states:

(11) Notwithstanding subsection (10), where the discipline committee determines the need to protect the identity of the parties to a hearing, the findings of a hearing may be published without identifying information.

The Social Workers Act, SS 1993, c S-52.1, Section 29(3) provides:

29(3) The discipline committee shall send a copy of an order made pursuant to subsection (1) or (2) to the member whose conduct is the subject of the order and to the person, if any, who made the complaint.

(4) The discipline committee shall inform a member's employer of the order made against that member where that member has been found guilty of professional misconduct or professional incompetence.

As is apparent from the SASW's website, since 2009 all Discipline Decisions have been published on the website along with a brief notification placed in the SASW newsletter. These Decisions include the name of the Member involved.

The Committee considered the law related to the open court principle and the test articulated by the Supreme Court of Canada in two decisions [*Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 SCR 835, 1994 CanLII 39 (SCC); *R. v. Mentuck*, [2001] 3 SCR 442, 2001 SCC 76 (CanLII)]: the party opposing the principle must demonstrate that non-publication is necessary to prevent a serious risk to the proper administration of justice and that the salutary effects of the order sought outweigh the deleterious effects on the rights and interests of the parties and the public.

In *Law Society of Upper Canada v. Xynnis*, [2014] L.S.D.D. No. 38, the LSUC appeal panel overturned a hearing panel decision to prohibit publication of medical information of the member. The appeal tribunal suggested a number of considerations in addressing privacy issues:

- 1) It is essential to consider privacy issues, particularly those respecting third parties, when drafting all reasons and orders. If personal information is not germane to the reasoning or the result, it may be unnecessary to include it and
- 2) Prior to considering publication bans or closed hearings, adjudicators and parties should always consider whether privacy interests can be addressed through careful drafting.

The appeal tribunal also commented on the process to balance openness and other values: In considering whether an order for a closed hearing or a publication ban is necessary, the risk must be to the administration of justice, and must go beyond the desire to avoid publicity or the normal stresses of disclosure of personal matters in litigation. The personal concerns of a litigant, including concerns about the very real emotional distress and embarrassment that can be occasioned to litigants when justice is done in public will not, standing alone, satisfy the necessary branch of the test. The desire to avoid publicity, effect on one's career, or embarrassment of having justice done in public when one is a party to litigation is not sufficient to meet the first branch of the test.

In light of the Discipline Committee's decision to adhere to the open court principle, committee members do not support the anonymization of this decision and therefore order:

5. A copy of the Discipline committee decision shall use the member's name and this order is to be distributed to the registrars of all social work regulatory bodies in Canada, posted on the SASW website, and a digest of the decision shall be published in the SASW newsletter.

Members of the Discipline committee express their appreciation to Counsel and to Ms Pegg for their cooperation in supporting and developing an Agreed Statement of Facts and Joint Submission as to Penalty which helped expedite the discipline hearing and penalty decision process.



David Rivers, MSW, RSW (SK)
Chairperson – Discipline Committee

Date: January 28, 2019

For the Discipline Committee:
Katherine Potts, HBSW, RSW (SK)
Charlene Cameron, BSW, MA, RSW (SK)
Della Yarashko, BSW, RSW (SK)
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