

IN THE MATTER OF *THE PARAMEDICS ACT* AND WAYNE NOGIER

DECISION

Council of the Saskatchewan College of Paramedics

Council Members:

Brent Stewart, EMT-P/ACP, Chair

Derek Dagenais, EMT-P/ACP

Karen Bullock, EMT-A/ICP

Lindsay Holm, EMT

Legal Counsel for the Professional Conduct Committee: Roger Lepage

Legal Counsel for Mr. Nogier: Evert Van Olst

INTRODUCTION:

The appeal to the Council of the Saskatchewan College of Paramedics in regards to the decision of the Discipline Committee finding Wayne Nogier guilty of one charge of professional misconduct and sentencing him accordingly was held by agreement on January 26, 2012.

The dates of the decisions of the Discipline Committee were March 1, 2011 for the decision on guilt and August 4, 2011 on the decision as to sentencing.

Mr. Nogier was present with his counsel, Evert Van Olst. Roger LePage, Q.C. was present representing the Professional Conduct Committee (PCC).

EVIDENCE:

A binder of documents agreed upon by counsel for Mr. Nogier and the PCC was received by consent. It contained the following documents:

Tab 1: Notice of Appeal

Tab 2: Notice of Formal Complaint

Tab 3: Transcript of Evidence of Witness 1

Tab 4: Transcript of Evidence of Wayne Nogier

Tab 5: Decision of Discipline Committee of Saskatchewan College of Paramedics dated February 11, 17 and 24, 2011

Tab 6: Sentencing Decision of Discipline Committee of Saskatchewan College of Paramedics dated August 4, 2011

Tab 7: D1 – Health Region Alleged Harassment Report Form

Tab 8: D2 – Memorandum dated May 21, 2009 re: Alleged Harassment Report

Tab 9: D4 – Curriculum Vitae of Wayne Nogier

Tab 10: Letters of Reference for Wayne Nogier

Tab 11: Brief of Law on behalf of Wayne Nogier

Tab 12: Brief of Law on behalf of the Professional Conduct Committee

In addition, counsel for Mr. Nogier introduced a two page document entitled "Specific Transcript References" to assist Council with indentifying testimony that was being reference in the appeal.

SUBMISSIONS OF PARTIES:

Mr. Nogier's counsel submitted that section 36 allows for a very broad appeal power and that Council has the power to look at the results of the Discipline Committee. He emphasized the fact that Council are members of the profession and are in as good of a position as the Discipline Committee to determine what professional misconduct is. He submitted a two step argument. First, he suggested that there were issues in regards to the facts which would suggest that a reasonable person would not have felt bullied or intimidated and as such, the Discipline Committee should not have found that bullying and intimidation occurred. Second, even if Council agrees with the facts found by the Discipline Committee, those facts did not meet the standard of what would be considered professional misconduct.

Counsel for the PCC also proceeded to suggest a two step process. He submitted that there is no difference between a court hearing an appeal and members, as represented by Council, hearing the appeal. The first step is again focused on the findings of fact. However, he argued that it should be asked whether the decision of the Discipline Committee on the facts was in the realm of reasonableness and if the answer is yes, suggested that Council should defer to the Discipline Committee on issues of facts. He indicated that the Discipline Committee had the benefit of seeing the testimony including the demeanor of the witnesses on the stand and is therefore in better position to assess credibility. The second step is whether the facts meet the standard of what would be professional misconduct. He submitted that as professional misconduct is a question of fact, the Discipline Committee again remains in better position to determine whether it was misconduct and deference should be given to them.

DECISION:

The Council first focused on the findings of fact. We reviewed the evidence submitted to us and agree that there was enough evidence in front of us to determine that a reasonable person would have felt bullied and intimidated. Further, we agree that the findings of fact do meet the standard of what would be professional misconduct.

The Council found that evidence was submitted that would have allowed a finding that there were repeated telephone calls initiated by Mr. Nogier and directed at Witness 1. Although there was testimony that suggested that it was not unusual to call an employee at home, there was also evidence that suggested that for the majority of times, it would have been the supervisor that would call in relation to scheduling. As these calls were not done by an immediate supervisor, were not made in relation to a work related manner and were made to the Witness on her day off in order to discuss a personal complaint manner, Council agrees with the Discipline Committee when they determined that these telephone calls breached the privacy of Witness 1. Further, as the evidence demonstrated that Mr. Nogier was the Witness's superior, that there were repeated

phone calls on a non-work matter that breached privacy and that the Witness felt scared of Mr. Nogier, it can be determined that a reasonable person would have felt bullied and intimidated.

Council also agrees with the findings of the Discipline Committee in that this conduct is conduct that is harmful to members and thus constitutes professional misconduct as defined in clause 25(1) of *The Paramedics Act*. Further, we determined that the actions of Mr. Nogier also were in contravention of some of the responsibilities set out in the Responsibilities to the Profession in the Code of Professional Conduct as follows:

- in relation to clause 2, Mr. Nogier did not behave in a way beyond reproach;
- in relation to clause 3, Mr. Nogier failed to present himself in such a manner to encourage and merit the respect of the public for members of the profession;
- in relation to clause 5, self-regulation is a privilege and Mr. Nogier did not live up to his responsibility to merit the retention of that privilege;
- in relation to clause 6, Mr. Nogier neglected to assume responsibility for personal development; and
- in relation to clause 9, it is a requirement to observe the rules of professional conduct set out in the “Code” in the spirit, as well as in the letter. We agree that Mr. Nogier did not follow the code in spirit when he opted to place bullying and intimidating phone calls.

It is professional misconduct to make a phone call, for the purpose of intimidation, to someone who has made a formal complaint to the college against you. It runs the risk of making members and the public hesitant to come forward with valid complaints and is harmful to the best interests of the profession.

The last note on the decision that Council would like to make is in regards to the argument by Mr. Nogier’s counsel that the College is young and is therefore taking an aggressive stance when it comes to misconduct. We think that it is quite clear that the Discipline Committee was very careful in their findings of guilt as evidenced by the fact that they dismissed four out of five claims. The fifth claim is clearly supported by the facts which do not suggest too much aggression on behalf of the College rather; it suggests that both the Discipline Committee and Council took the time to carefully consider the outcome of this decision to ensure that the member was not being treated unfairly. We believe that we have achieved that result.

SENTENCING:

For the reasons noted above and pursuant to section 36 of *The Paramedics Act*, Council hereby orders as follows:

- (a) that Wayne Nogier is formally reprimanded and that the reprimand be noted in the register;
- (b) that Wayne Nogier make a formal written apology to Witness 1 for his bullying behaviour, to be delivered to her within 30 days of the date of this Order;
- (c) that Wayne Nogier pay a fine to the College in the amount of \$750, to be paid within 30 days of the date of this Order;
- (d) that Wayne Nogier pay costs to the College in the amount of \$1,500, to be paid within 6

- months of the date of this Order; and
(e) that the licence of Wayne Nogier be suspended in default of meeting the obligations of clauses (a)-(d) within the time provided.

Council opted to decrease the fine ordered by the Discipline Committee as they had the benefit of reading more recent Discipline Committee decisions and seeing what fines had been ordered. As some of the more recent decisions that have come out from the Discipline Committee ordered lower fines for professional misconduct issues, Council felt that a fine of \$750 was appropriate giving the facts of this case.

8/02/12
Date

08.02.12
Date

Date

Date



Chair, Council



Member, Council

Member, Council

Member, Council

- months of the date of this Order; and
(e) that the licence of Wayne Nogier be suspended in default of meeting the obligations of clauses (a)-(d) within the time provided.

Council opted to decrease the fine ordered by the Discipline Committee as they had the benefit of reading more recent Discipline Committee decisions and seeing what fines had been ordered. As some of the more recent decisions that have come out from the Discipline Committee ordered lower fines for professional misconduct issues, Council felt that a fine of \$750 was appropriate giving the facts of this case.

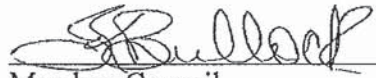
Date

Chair, Council

Date

Member, Council

Feb 6/12
Date



Member, Council

Date

Member, Council

months of the date of this Order, and
(e) that the licence of Wayne Nogier be suspended in default of meeting the obligations of clauses (a)-(d) within the time provided.

Council opted to decrease the fine ordered by the Discipline Committee as they had the benefit of reading more recent Discipline Committee decisions and seeing what fines had been ordered. As some of the more recent decisions that have come out from the Discipline Committee ordered lower fines for professional misconduct issues, Council felt that a fine of \$750 was appropriate giving the facts of this case.

Date

Chair, Council

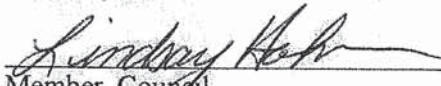
Date

Member, Council

Date

Member, Council

02/06/12
Date



Member, Council