

IN THE MATTER OF *THE PARAMEDICS ACT* AND BYLAWS AND IN THE MATTER OF
A COMPLAINT AGAINST WAYNE NOGIER

SENTENCING DECISION

Discipline Committee of the Saskatchewan College of Paramedics

Discipline Committee Members:

Don Brickner, EMT-Paramedic, Chair
Danae Ackles, EMT-Paramedic, Member
Jamie Struthers, Q.C., Public Representative, Member

Legal Counsel for the Discipline Committee: Merrilee Rasmussen Q.C.
Legal Counsel for the Professional Conduct Committee: Roger Lepage
Legal Counsel for Mr. Nogier: Evert Van Olst

INTRODUCTION:

[1] By its decision of February 2011, the Discipline Committee of the Saskatchewan College of Paramedics (the “College”) found Wayne Nogier, a member of the College, to be guilty of one of five charges made against him as a result of a complaint received by the College from another member. The charge as contained in the formal complaint was as follows:

Charge Number 5

You, Wayne Nogier, are alleged to be guilty of professional misconduct contrary to subsections 25(a), (b) and (c) of *The Paramedics Act* in that you:

on or about May 2009, after becoming aware of the anonymous complaint regarding your conduct on March 28 and 29, 2009, you repeatedly telephoned [REDACTED] asking her to confirm she had done it. You advised that the person who did it would be in serious trouble. She refused to discuss it further with you. You telephoned back, saying that you had a witness on the line with you. You were intimidating and threatening in your language and approach. You tried to bully her into going to the workplace. She hung up and was fearful you would come to her residence. This conduct constitutes bullying and intimidation, and is contrary to the Regulatory bylaw and the Code of professional Conduct (Honour the profession), Responsibilities to the Profession (items 2, 3, 4, 5, 6 and 9).

[2] The Committee found that Mr. Nogier’s conduct in this regard was bullying and intimidating. Mr. Nogier was [REDACTED] superior and he had power over her in relation to her job. He called her at home, thus invading her privacy outside the workplace, and he called on more than one occasion. He attempted to bully her into attending at the workplace to discuss the complaint and threatened “whoever was responsible” for the complaint to the College with “serious consequences”. The Committee was not convinced that these actions contravened the

principles set out in the Code of Ethics, but did agree that this conduct is conduct that is harmful to members and thus constitutes professional misconduct as defined in clause 25(1) of the Act.

[3] Once the Committee has determined that a member is guilty of professional misconduct, section 31 of the Act authorizes the Committee to make an order relating to sentence that addresses the unacceptable behaviour that led to the complaint. Section 31 provides as follows:

31(1) Where the discipline committee finds a member guilty of professional misconduct or professional incompetence, it may make one or more of the following orders:

(a) an order that the member be expelled from the college and that member's name be struck from the register;

(b) an order that the member's licence be suspended for a specified period;

(c) an order that the member's licence be suspended pending the satisfaction and completion of any conditions specified in the order;

(d) an order that the member may continue to practise, but 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 medical or other treatment or counselling or both;

(e) an order reprimanding the member;

(f) any other order that the discipline committee considers 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 exceeding \$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 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's licence be suspended.

[4] The Act also requires the Committee to exercise its powers to make orders in a manner that will achieve its objects and carry out its duties as set out in section 4:

4(1) It is the duty of the college at all times:

(a) to serve and protect the public; and

(b) to exercise its powers and discharge its responsibilities in the public interest and not in the interests of the members.

(2) The objects of the college are:

(a) to regulate the practice of the profession and to govern the members in accordance with this Act and the bylaws; and

(b) to assure the public of the knowledge, skill, proficiency and competency of members in the practice of emergency medical services.

POSITIONS OF THE PARTIES:

[5] Counsel for the Professional Conduct Committee submits that Mr. Nogier's conduct for which was directly aimed at interfering with the complaint process under *The Paramedics Act* and constituted harassment under *The Occupational Health and Safety Act*. For this reason, he argued that the conduct in question was very serious and recommended that the Discipline Committee order the following:

1. A suspension of 21 days;
2. A written apology to [REDACTED];
3. Completion of a course with a counsellor/psychologist regarding bullying and intimidation in the workplace;
4. Pay the costs of the course; and
5. Pay costs of \$12,000, based on the finding of guilty on one of five charges and the total estimated costs of the investigation and hearing process.

[6] Counsel for Mr. Nogier argues that given the context and all relevant mitigating factors the appropriate order is a formal reprimand. He also argues that the costs incurred in the process of investigation and discipline are excessive.

ANALYSIS:

[7] The charge of which Mr. Nogier was found guilty was bullying and intimidation. He was not charged with, nor was he found guilty of, interfering with the complaint process under *The Paramedics Act*, nor was he charged with or found guilty of a breach of *The Occupational Health and Safety Act*. Any order of the Discipline Committee in sentencing must be directed only to the charges of which Mr. Nogier was found guilty.

[8] Both counsel have referred the Discipline Committee to the factors outlined by James T. Casey in *The Regulation of Professions in Canada*¹ to be taken into account in sentencing. Generally, the Discipline Committee must consider the element of specific deterrence in relation to the member himself, as well as general deterrence of all members, rehabilitation, isolation and, most importantly, the need to demonstrate to the public that the profession is able to supervise and regulate the conduct of its members in the public interest. In addition, of course, the penalty imposed should not be substantially different from punishments meted out in other similar cases.²

[9] The Discipline Committee must also consider mitigating factors. These include the nature and gravity of the offence, attitude, age and inexperience, discipline record, co-operation, whether restitution has been made, good character, unblemished record of professional service, other negative impacts on the member, and the impact on the victim of the offending behaviour.³

[10] In this case, the Discipline Committee considers the offence of bullying and intimidation to be a serious offence. However, the Committee notes that Mr. Nogier did offer a verbal apology to the complainant reasonably soon after the events occurred. He has a long and unblemished record of service to his profession and no previous discipline record. He is highly regarded by many of his peers in the profession and by others in related professions. While the Committee acknowledges the negative impact the offending behaviour has had on the complainant, the Committee notes that Mr. Nogier is no longer in the workplace and, although it was his decision to leave his position, he made that decision at least in part as a result of the events that led to this discipline proceeding which made continuing in the position difficult if not untenable.

[11] There are no cases under *The Paramedics Act* that are similar to this one. Counsel for the Professional Conduct Committee has referred the Discipline Committee to a decision of an arbitration board in a case of a grievance of a dismissal of a registered nurse for harassment that was upheld by the Court on judicial review.⁴ In that case, the arbitration board found that the

¹Carswell, Looseleaf Edition, at Chapter 14.

²*Ibid*, at p. 14-5.

³*Ibid*, at pp. 14-6 to 14-9.

⁴*Saskatchewan Union of Nurses v. Stevenson et al.*, 2008 SKQB 281.

nurse was unjustly dismissed, but determined that she was guilty of harassment as defined in *The Occupational Health and Safety Act* and she was therefore suspended for three months. The Discipline Committee is of the view that the case of the nurse is substantially different from the case before it. First of all it is a decision of a labour arbitration board, not a professional discipline committee. In addition, the nurse had been engaged in a dispute with another nurse that she harassed for a period of nine years and there had been many incidents of harassment. As well, the harassing behaviour was determined to be in contravention of provincial legislation directed to ensuring safe workplaces. In this case, however, the conduct complained of arose out of a single event and it was not determined to be in breach of provincial harassment legislation.

[12] The Discipline Committee has also reviewed summaries of reported discipline decisions as described in Casey, and could find no cases involving bullying and only one case involving harassment, *Assn. of Professional Engineers of Ontario v. Karmash*.⁵ The decision of the court on appeal in this case reduced the suspension ordered by the discipline committee to four months. While the appeal decision does not fully outline the facts of the case, it appears to have involved the verbal abuse of a female employee by the member on more than one occasion publicly and in a work-related environment. The discipline committee found that the member took advantage of his professional position personally to denigrate the female employee on the basis of gender and in front of several other employees. His behaviour is described in the decision as “strange and offensive” as well as “bizarre”.⁶ As well, the Discipline Committee did not believe the evidence provided to it in the hearing by the member. These circumstances appear to be quite different from and much more serious than the circumstances of this case, and the penalty imposed in it is therefore not applicable.

[13] After taking into account all of the relevant factors applicable to sentencing in a case of professional discipline, and in particular the nature and circumstances of the particular offence of which Mr. Nogier has been found guilty, the Discipline Committee has concluded that it is appropriate that Mr. Nogier be formally reprimanded, pay a fine and provide a written apology to the complainant, in accordance with the Committee’s order as set out below. As success in the matter is divided, there will be no order as to costs.

ORDER:

[14] For all the above reasons, pursuant to section 31 of *The Paramedics Act*, the Discipline Committee hereby orders as follows:

- (a) that Wayne Nogier is formally reprimanded and that the reprimand be noted in the register;
- (b) that Wayne Nogier pay a fine to the College in the amount of \$1,500, to be paid within 30 days of the date of this Order; and

⁵[1998] O.J. No. 2161.

⁶*Ibid*, at para. 9.

(c) that Wayne Nogier make a formal written apology to [REDACTED] for his bullying behaviour, to be delivered to her within 30 days of the date of this Order.

DATED at Regina, Saskatchewan:

August 4/2011
Date



Don Brickner, Chair Discipline Committee
Saskatchewan College of Paramedics
