

IN THE MATTER OF *THE PARAMEDICS ACT* AND BYLAWS AND IN THE MATTER OF  
A COMPLAINT AGAINST MARK OLLINGER

DECISION

**Discipline Committee of the Saskatchewan College of Paramedics**

Discipline Committee Members:

Don Brickner, EMT-Paramedic, Chair  
Robert Ferland, 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 Q.C.  
Legal Counsel for the Member: Evert Van Olst

**INTRODUCTION:**

[1] The hearing by the Discipline Committee of the Saskatchewan College of Paramedics (the "College") into the complaints against Mark Ollinger, a Member of the College, was convened in the Solarium Room at the West Harvest Inn, Regina, Saskatchewan, at 10:00 a.m. on September 19, 2011, being the location, time and date specified in the Notice of Hearing served on Mr. Ollinger.

[2] Mr. Ollinger was present at the hearing, along with his legal counsel Evert Van Olst. Roger Lepage Q.C. was present representing the College's Professional Conduct Committee (the "PCC").

[3] Lily Stonehouse was called as a witness by the PCC. Mr. Ollinger testified on his own behalf and Wayne Nogier also testified for him. A binder of documents prepared by counsel for the PCC was received in evidence by consent. It contained the following documents:

- Exhibit C-1: Notice of Formal Complaint and notice of hearing dated June 24, 2011;
- Exhibit C-2: Excerpt from the College Register re Mark Ollinger
- Exhibit C-3: Written complaint to the College from Lily Stonehouse dated October 19, 2010;
- Exhibit C-4: Extract from transcript of Wayne Nogier hearing dated September 30, 2010;
- Exhibit C-5: Oath of Office and Confidentiality Agreement signed by Mark Ollinger dated October 19, 2008;

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- Exhibit C-6: April 30, 2009 email from Lily Stonehouse to PCC members, with attachments consisting of complaint re Wayne Nogier and April 27, 2009 letter to [REDACTED] at ITLS Saskatchewan;
- Exhibit C-7: Excerpt from Minutes of May 6, 2009 meeting of PCC;
- Exhibit C-8: Email resignation by Mark Ollinger from PCC dated September 9, 2009;
- Exhibit C-9: November 19, 2010 letter from the College to Mark Ollinger advising of receipt of complaint;
- Exhibit C-10: March 1, 2011 from PCC to Mark Ollinger advising that the complaint will be referred for a hearing;
- Exhibit C-11: Policy statements of College re Complaint/Investigation Process, Confidentiality of Investigation Records, Consensual Complaint Resolution;
- Exhibit C-12: Policy documents of College re Confidentiality, Conflict of Interest;
- Exhibit C-13: Policy documents of College re Complaint Process, Investigation Process, Confidentiality of Investigation Reports, Consensual Complaint Resolution.

[4] In the course of the hearing, the following additional exhibits were received on behalf of the Member:

- Exhibit D-1: May 19, 2009 letter from the College to Wayne Nogier advising him of a complaint made against him;
- Exhibit D-2: May 19, 2009 response of Wayne Nogier to the College concerning the complaint against him;
- Exhibit D-3: Mark Ollinger resumé
- Exhibit D-4: December 17, 2010 email response of Mark Ollinger to complaint made against him.

#### **THE FORMAL COMPLAINT:**

[5] The notice served on Mr. Ollinger contained the following charge:

##### **Charge Number 1**

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

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*while a member of the Professional Conduct Committee, you did divulge to a member who was the subject of a complaint that a complaint against him had been received and you divulged the substance of the complaint, contrary to your obligation to keep confidential matters being dealt with by the Professional Conduct Committee.*

[6] Particulars of the charge were also provided in the notice, indicating that the charge related to a conversation between Mr. Ollinger and Wayne Nogier, another member of the College, relating to the existence of a complaint made against Mr. Nogier, which conversation Mr. Nogier testified, in his discipline hearing, took place prior to his receiving notice from the College that the complaint had been made.

**THE LEGISLATION:**

[7] Section 25 of *The Paramedics Act* defines "professional misconduct" as follows:

25 Professional misconduct is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonourable, is professional misconduct within the meaning of this Act if:

- (a) it is harmful to the best interests of the public or the members;
- (b) it tends to harm the standing of the profession;
- (c) it is a breach of this Act or the bylaws; or
- (d) it is a failure to comply with an order of the professional conduct committee, the discipline committee or the council.

[8] Section 10 of the Regulatory Bylaws of the College requires that each member comply with the Code of Professional Conduct, which is attached to those Bylaws as Appendix A. The Code sets out principles of ethical behaviour and responsibilities to the profession, the pertinent ones of which are as follows:

**Principles of Ethical Behavior for All Members**

- 1. . . .
- 2. Honour the profession.
- 3. . . .
- 4. . . .
- 5. Remember that integrity and professional ability should be the member's best advertisement.
- 6. Disclose any conflict of interest whether that is personal or financial.
- 7. Respect the confidentiality of issues.

**Responsibilities to the Profession**

All members must:

- 1. . . .

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2. behave in a way beyond reproach and report any incompetent, illegal or unethical conduct by colleagues or other health care personnel to the appropriate authorities;
3. conduct and present oneself in such a manner so as to encourage and merit the respect of the public for members of the profession;
4. avoid impugning the reputation of any colleague;
5. recognize that self-regulation of the profession is a privilege and that each practitioner has a continuing responsibility to merit the retention of this privilege;
6. assume responsibility for personal and professional development;
7. never use the member's profession, knowledge or skills for unethical gain;
8. . . .
9. observe the rules of professional conduct set out in the Code in the spirit, as well as in the letter;
10. . . .

[9] In addition, clause 8(1)(g)(v) of the College's Regulatory Bylaws provides as follows:

8(1)(g)The professional conduct committee shall take appropriate action, including:

(v) holding in confidence all documentation and information received.

[10] A breach of the Code is therefore a breach of the Regulatory Bylaws and thus constitutes professional misconduct as defined in the Act. In addition, any conduct that can be objectively described as being harmful to the best interests of the public or the members or that brings the standing of the profession into disrepute is also professional misconduct as defined.

#### **FACTS:**

[11] The pertinent facts are not in dispute. Mr. Ollinger was a member of the PCC from October 2008 until September 9, 2010, when he resigned. In March 2009 a written complaint was received by the College relating to the conduct of Wayne Nogier. A copy of the written complaint was forwarded to members of the PCC by the College on April 30, 2009 in advance of the PCC conference call meeting scheduled for May 6, 2009. Mr. Ollinger received this information as a member of the PCC. At the May 6, 2009 PCC meeting, Mr. Ollinger appropriately declared his conflict in dealing with the Nogier matter, as Mr. Nogier was a friend and colleague, and immediately left the meeting. Subsequently, Mr. Ollinger asked Mr. Nogier in a telephone call what was happening with the complaint against him. Mr. Nogier was unaware at that time that there was a complaint. Mr. Ollinger provided him with information about the general nature of the complaint and that it related to an ITLS course Mr. Nogier had conducted. Mr. Ollinger acknowledged providing this information to Mr. Nogier.

#### **POSITIONS OF THE PARTIES:**

[12] Counsel for the PCC acknowledged that the PCC bears the onus of proof on a balance of probabilities that the facts if proven constitute professional misconduct. He argued that confidentiality is a cornerstone of the discipline process and fundamental to the public trust in

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the College. He pointed to the provisions of the Code of Ethics and the requirement for confidentiality contained in the Regulatory Bylaws relating to the PCC, as cited above. Since the definition of "professional misconduct" contained in the Act states that a breach of the bylaws is professional misconduct, the fact that Mr. Ollinger has breached the Code of Ethics and subclause 8(1)(g)(v) of the Regulatory Bylaws is sufficient to establish professional misconduct, regardless of whether or not Mr. Nogier had been notified by the College of the complaint against him.

[13] Counsel for Mr. Ollinger argued that not all breaches of confidentiality are automatically a breach of the Regulatory Bylaws and, because Mr. Nogier should have been informed of the complaint against him in a more timely manner, it was reasonable for Mr. Ollinger to assume that Mr. Nogier already knew about the complaint. Counsel also submitted that Mr. Ollinger should have been offered an opportunity to resolve the complaint by consent as provided for under subclause 27(2)(b)(i) of the Act.

#### **ANALYSIS AND DECISION:**

[14] The powers of the Discipline Committee can only be exercised where it makes a finding that a member is guilty of professional misconduct or professional incompetence.<sup>1</sup> The Discipline Committee has concluded that Mr. Ollinger is guilty of the charge made against him in the formal complaint on the basis of the reasoning that follows.

[15] Mr. Ollinger is alleged to be guilty of professional misconduct contrary to subsections 25(a), (b) and (c) of *The Paramedics Act* in that, while he was a member of the Professional Conduct Committee, he divulged to a member who was the subject of a complaint that a complaint against him had been received and divulged the substance of the complaint, contrary to his obligation to keep confidential matters being dealt with by the Professional Conduct Committee. Mr. Ollinger acknowledges that he did divulge the information as alleged, but that he assumed that Mr. Nogier already had the information, since he was entitled to it and some time had passed since the complaint had been received by the College.

[16] The Discipline Committee notes that there was some difference in the evidence of Mr. Ollinger and that of Mr. Nogier concerning the timing of their conversation. In Mr. Nogier's discipline hearing, he said that it occurred on the day before he called the individual who had complained about him. In that hearing, the date was established by the Discipline Committee as being May 12, 2009, which would mean that Mr. Ollinger spoke to Mr. Nogier about the complaint on May 11, 2009. Mr. Ollinger felt that the conversation occurred the day before Mr. Nogier received the formal letter of notification from the College of the complaint against him on May 19, 2009, which would mean the telephone conversation took place on May 18, 2009.

[17] The Discipline Committee has concluded that the date of the conversation is not relevant to the question of whether or not Mr. Ollinger divulged information to Mr. Nogier that Mr. Ollinger acquired in the course of his duties as a member of the PCC. In addition, once it

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<sup>1</sup>Subsection 31(1) of *The Paramedics Act*.

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became clear that Mr. Nogier did not know about the complaint, Mr. Ollinger appears to have continued to provide him with details about the general nature of the complaint. In other words, Mr. Ollinger continued to disclose confidential information to Mr. Nogier even after he should have been aware that Mr. Nogier had no knowledge of it, and thus Mr. Ollinger's justification for his disclosure – that he assumed Mr. Nogier already knew – cannot be supported by the facts.

[18] Counsel for Mr. Ollinger has submitted to the Discipline Committee a decision of the Manitoba Court of Appeal relating to a similar situation in the case of *Manitoba Chiropractors Assn. v. Alevizos*.<sup>2</sup> In that case, the member had responded to a question about the process involving another member by that other member's wife who was also a lawyer. The Manitoba legislation "deemed" professional misconduct to include a breach of the Act or regulations (equivalent to bylaws in Saskatchewan). The Act prohibited "knowingly" communicating confidential information. The discipline committee concluded that a communication had occurred but felt that, in all of the circumstances, what happened displayed a lack of judgment on the part of the member that did not amount to "professional misconduct". This decision was upheld by the Court of Appeal on the basis that "deemed" should be interpreted as meaning, "deemed until the contrary is proven" and therefore not every technical breach of the Act or regulations was professional misconduct. Counsel for Mr. Ollinger has invited this Discipline Committee to take the same approach.

[19] It is the Discipline Committee's conclusion that, based on the facts of this case, the conduct of Mr. Ollinger in communicating confidential information that he acquired while a member of the PCC to Mr. Nogier, whether or not Mr. Nogier knew of the information from other sources, is professional misconduct. Mr. Ollinger raised the topic of the complaint in the telephone conversation he had with Mr. Nogier; Mr. Nogier did not question him. Even after he should have realized that Mr. Nogier did not have the information, he proceeded to disclose more details of the complaint. This was not an accidental or inadvertent act, but a deliberate one. Even if the Regulatory Bylaws contained no provisions relating to confidentiality, the Discipline Committee is of the view that the disclosure of this confidential information in the circumstances of this case would constitute professional misconduct pursuant to clauses 25(a) and (b) of the Act on the basis that it is harmful to the best interests of the public, and thus tends to harm the standing of the profession, because it has the potential to jeopardize the investigation and discipline process if individuals take it upon themselves to act independently of the process established.

**ORDER:**

[20] Having found Mark Ollinger to be guilty of professional misconduct in relation to Charge Number 1, as outlined in the notice of hearing and set out above, the Discipline Committee of the Saskatchewan College of Paramedics hereby orders that the hearing of the matter be reconvened on a date and at a time and place to be determined by the Chair of the Committee, after consultation with the parties, for the purpose of hearing evidence, if any, and

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<sup>2</sup>2003 MBCA 80.

submissions in relation to the issue of what order or orders should be made by the Committee pursuant to section 31 of *The Paramedics Act*.

DATED at Regina, Saskatchewan this 28<sup>th</sup> day of September, 2011.



Don Brickner  
Chair, Discipline Committee  
Saskatchewan College of Paramedics  
On behalf of the Discipline Committee