

**IN THE MATTER OF *THE OPTICIANS ACT, 2010***  
**AND IN THE MATTER OF A COMPLAINT AGAINST CHRISTINE JOHNSON**

Counsel for Professional Conduct Committee: Ian D. McKay, Q.C.  
Counsel for Ms. Johnson: Kenneth M. Cornea

**DECISION OF THE DISCIPLINE COMMITTEE AS TO PENALTY**

By written decision dated September 5, 2019, this Committee found that Ms. Johnson was guilty of professional misconduct pursuant to section 27(c) of *The Opticians Act*, by reason of having violated section 22(3)(e) of *The Opticians Regulatory Bylaws*. Section 22(3)(e) of *The Opticians Regulatory Bylaws* prohibits opticians from writing prescriptions for eye glasses, although its reach goes beyond that.

The principles which have guided the Committee in determining an appropriate penalty include protection of the public, specific and general deterrence, maintenance of public confidence in the profession and its ability to regulate itself and rehabilitation of the member.

On the subject of costs which may be awarded as part of a penalty order, the Committee has been guided by the following statement of the Saskatchewan Court of Appeal, in *Kapoor v The Law Society of Saskatchewan*, 2019 SKCA 85:

59 The purpose of costs in a professional discipline context is "not to indemnify the opposing party but for the sanctioned member to bear the costs of disciplinary proceedings as an aspect of the burden of being a member... and not to visit those expenses on the collective membership" (*Abrametz v. The Law Society of Saskatchewan*, 2018 SKCA 37 (Sask. C.A.) at para 44).

The discretionary powers of the Committee to make a penalty are spelled out in section 33 of *The Optician's Act*. The discretionary powers include a power to impose a fine not exceeding \$5,000 and to order payment of 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.

The Committee has carefully considered the written submissions of Messrs. McKay, Q.C. and Cornea, as well as the oral submissions which they made at the oral hearing, conducted by telephone conference, on October 4, 2019. The Committee has also considered the statements made by Ms. Johnson during that telephone conference.

The Committee hereby orders:

1. That Ms. Johnson pay a fine in the amount of \$2,000.00;
2. That Ms. Johnson pay costs in the amount of \$10,000.00;

3. That the aggregate of the foregoing, namely \$12,000.00, be paid by Ms. Johnson to the College in 36 monthly installments, commencing November 1, 2019 with each installment payment, except the last one, being in the amount of \$333.00, and the 36<sup>th</sup> installment being in the amount of \$345.00; and
4. Should Ms. Johnson fail to make any of the installment payments by the due date, her license to practice shall stand automatically suspended as of that due date and shall remain suspended unless and until she makes such payment or payments as are required to be in compliance with this order.

A brief summary of the Committee's reasons follows.

Prescribing lenses is the exclusive province of optometrists and ophthalmologists. Opticians are forbidden from doing so. The reason behind this is public safety. Opticians do not have the requisite training to prescribe lenses. There is a risk of considerable harm to the public that could arise from prescription of lenses by an individual, such as an optician, not qualified or legally authorized to do so. These include, by way of example only, blurred vision, eye strain and pain, and dizziness. Accordingly, the Committee does not accept that the violation which occurred in this case was merely technical.

The Committee acknowledges the testimony of Ms. Johnson that she intended to ensure that glasses based on the prescription she wrote were not dispensed and the fact that on the evidence, no glasses based on the offending prescription were dispensed. Nevertheless, Ms. Johnson created the possibility of a sequence of events in which a patient could have received glasses with lenses not lawfully prescribed. Protection of the public, general deterrence and public confidence in the profession and its ability to regulate itself call for more than a reprimand, but rather a significant fine.

The total of the costs incurred by the Conduct Committee and the Discipline Committee, to September 16, 2019, is \$19,713.90. A breakdown of these costs was provided to counsel in advance of the discipline hearing held October 3, 2019. No exception was taken by Ms. Johnson to the list of expenses, except for one preliminary hearing said to have been unnecessary.

The foregoing total of \$19,713.90 does not include costs incurred subsequent to September 16, 2019. Such costs would include the cost of the legal services of Mr. McKay, Q.C. for the Conduct Committee, the costs of the members of the Discipline Committee and the cost to the Discipline Committee of its independent counsel. The Committee estimates that these additional costs would bring the total to date to a figure in the order of \$24,000.00. It is acknowledged that particulars of the post-September 16, 2019 costs have not been provided to Ms. Johnson or her counsel.

The Committee takes the decision of the Court of Appeal in *Kapoor*, to mean that it should strike a balance between the competing principles that an award of costs should not

necessarily be a full indemnity and that the membership as a whole should not be burdened by the costs resulting from the misconduct of a particular member.

[REDACTED]

Taking all of the foregoing into account, the Committee has determined that an award of costs in the amount of \$10,000 is appropriate in the circumstances.

The order for monthly installments over 36 months means that Ms. Johnson is being ordered to pay \$333.00 per month for 35 months, and \$345.00 in the 36th month. [REDACTED]

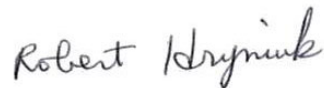
[REDACTED]

The Committee believes that the monetary obligations which it is imposing, and the time it is affording for satisfaction thereof, strike an appropriate balance of the *Kapoor* principles.

Dated this \_\_\_11th\_\_\_ day of October 2019.



Name: Al Brooks, Chair



Name: Robert Hryniuk



Name: Letitia Lam



Name: Arlene Miller