

*Saskatchewan Registered Nurses Association
Carolyn M. Strom, RN # 0037024*

INVESTIGATION COMMITTEE
of the
SASKATCHEWAN REGISTERED NURSES' ASSOCIATION

- and -

Carolyn M. Strom
Saskatchewan RN # 0037024

DECISION
of the
DISCIPLINE COMMITTEE
of the
SASKATCHEWAN REGISTERED NURSES' ASSOCIATION

Legal Counsel for the Investigation Committee:	Roger Lepage
Legal Counsel for Carolyn M. Strom:	Marcus Davies
Legal Counsel for the Discipline Committee:	Darcia Schirr, Q.C.
Chairperson for the Discipline Committee:	Christopher Etcheverry, R.N.

Date of Hearing: February 10, 11, 2016 and March 3, 2016

Hearing Location:	Ramada Plaza Regina 1818 Victoria Avenue Regina, Saskatchewan	The Offices of McKercher LLP Regina & Saskatoon, Saskatchewan
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Date of Decision: October 18, 2016

INTRODUCTION

1. On February 10, February 11 and March 3, 2016 the Discipline Committee of the Saskatchewan Registered Nurses' Association ("SRNA") convened to hear and determine a complaint of professional misconduct against Carolyn Strom, registered nurse # 0037024. The Discipline Committee is established under section 30 of *The Registered Nurses Act, 1988* (the "Act").
2. By a Notice of Hearing dated December 9, 2015, Ms. Strom has been charged with professional misconduct contrary to section 26(1) and (2) of the *Act*. The charge is as follows:

You, CAROLYN M. STROM, are alleged to be guilty of professional misconduct that occurred between the dates of February 25, 2015 to the present, when you posted on your personal Facebook page the following information:

"██████████ spent a week in "██████████" before he died and after hearing about his and my family's experience there ██████████ ██████████ ██████████) it is evident that Not Everyone is "up to speed" on how to approach end of life care . . . Or how to help maintain an Ageing Senior's Dignity (among other things!) So . . . I challenge the people involved in decision making with that facility, to please get All Your Staff a refresher on this topic AND More. . . . to those who made ██████████ last years less than desirable, Please Do Better Next Time!. . . And a caution to anyone that has loved ones at the facility mentioned above: keep an eye on things and report anything you Do Not Like! That's the only way to get some things to change. The fact that I have to ask people, who work in health care, to take a step back and be more compassionate, saddens me more than you know!"

In response to participants on your Facebook page you continued and said the following:

". . . And this has been an ongoing struggle with the often subpar care given to ██████████ X ██████████ (especially ██████████) for many years now . . . Hence my effort to bring more public attention to it (As not much else seems to be working).

As an RN and avid health care advocate myself, I just HAVE to speak up! Whatever reasons/excuses people give for not giving quality care, I Do Not Care. It. Just. Needs. To. Be. Fixed. And NOW!"

You continue on your Facebook page as follows:

“. . . “Why do you do your job?” “Do you actually care about the people you WORK FOR/Care For?” “Or is it JUST A JOB, WITH A PAYCHEQUE?” . . . If so, maybe it’s time to take a step back.

Either way I just want [REDACTED] (and everyone else in that facility) to be treated well, ALWAYS!"

3. The Notice of Hearing set out five particulars. The first particular was entitled “Violation of Confidentiality”. In the course of the hearing, this was withdrawn. The remaining particulars are as follows:

Failure to follow proper channels

2. You publicly posted on Facebook information about the healthcare provided to [REDACTED] in order to criticize the health care given to them at a specific named healthcare facility. You publicly criticized the care provided by the staff. This violates your obligation as a professional to take concerns you may have to the appropriate channels starting with the individual care providers and if matters cannot be resolved at that level then to report it to their manager. If that does not result in a positive change, raise it with the director of the facility and ultimately the health board of the facility and the health region and the minister. It is only if all of those efforts have not led to a positive change would you be able, with the consent of [REDACTED] or [REDACTED] to take the matter to the public. You have failed to take your concerns to the appropriate people using the appropriate channels.

Impact on reputation of facility and staff

3. By communicating your concerns to the general public rather than to the appropriate people using the appropriate channels you have publicly called into question the capacity of that health facility and its employees and directors to deliver appropriate healthcare. This has an impact on the reputation of the facility and its employees and directors. You have alleged that the facility and its employees are not "up to speed" on how to approach end of life care or how to

maintain a senior's dignity. You have alleged that they lack compassion and that [REDACTED] were not treated well or fairly. You have stated that "this has been an ongoing struggle with the often subpar care given to [REDACTED]X [REDACTED] (especially [REDACTED]) for many years now ..." You have charged that some employees are not giving quality care and implied that they are simply there for the paycheck. All of these are serious allegations that tarnish reputations.

Failure to first obtain all the facts

4. As a registered nurse you made accusations in a public forum by publishing them on your personal Facebook without having first having obtained all of the facts directly from the facility and the care providers. You have made public your conclusions without first having obtained all of the relevant facts.

Using status of registered nurse for personal purposes

5. The publication in your personal Facebook on February 25, 2015 discloses that you are a registered nurse. By so doing you engage the professional image of registered nurses in general as well as your personal professional obligations. A registered nurse is required to conduct herself in a professional manner towards not only patients but also colleagues. You made negative comments about other registered nurses and other healthcare providers and management. By identifying yourself as a registered nurse you have engaged your obligation to abide by the standards and code of ethics of your profession. You have failed to protect your integrity and your profession's integrity when you used inappropriate communication channels to discuss, report and resolve workplace issues. Your conduct has fallen below the standards established by the SRNA.

4. The Notice of Hearing also references an offer of a Consensual Resolution Agreement. In the course of the hearing, this too was withdrawn with the Investigation Committee agreeing that that reference would be removed completely from the Notice of Hearing that had been published on the Saskatchewan Registered Nurses' Association website.
5. The Notice alleges that Ms. Strom is guilty of professional misconduct contrary to these provisions of section 26 of the *Act*:

26(1) For the purpose of this Act, professional misconduct is a question of fact but any matter, conduct or thing, whether or not disgraceful or dishonourable, that is contrary to the best interests of the public or nurses or tends to harm the standing of the profession of nursing is professional misconduct within the meaning of this Act.

(2) Without restricting the generality of subsection (1), the discipline committee may find a nurse guilty of professional misconduct if the nurse has:

(c) inappropriately used the nurse's professional status for personal gain;

(h) failed to exercise discretion with respect to the disclosure of confidential information about a client;

(l) failed to comply with the code of ethics of the association;

6. The Notice also alleges that Ms. Strom's conduct is contrary to numerous provisions of the *Code of Ethics for Registered Nurses, 2008*, and in particular, provisions A.1, A.3, B.3, D.1, D.10, E.1, E.3, E.4, E.5, E.7, F.2 and G.1 Those provisions are set out in Appendix A to this document.

7. Further, it is alleged that Ms. Strom's conduct breached these provisions of the *Standards & Foundation Competencies for the Practice of Registered Nurses, 2013*:

STANDARD 1 – PROFESSIONAL RESPONSIBILITY AND ACCOUNTABILITY

The registered nurse:

1. Is accountable and accepts responsibility for own actions and decisions.

5. Consistently identifies self by first and last name and professional designation to clients and co-workers.

8. Demonstrates effective collaborative problem solving strategies, including conflict resolution.

15. Reports unsafe practice or professional misconduct of a health care worker to appropriate authorities.

STANDARD III – ETHICAL PRACTICE

The registered nurse:

62. Practices in accordance with the current CNA *Code of Ethics for Registered Nurses* and the accompanying responsibility statements.

71. Demonstrates ethical and legal responsibilities related to maintaining client privacy and confidentiality in all forms of communication.

STANDARD IV – SERVICE TO THE PUBLIC

76. Participates and contributes to registered nursing and health care team development by:

a. promoting interprofessional collaboration through application of principles of decision-making, problem solving and conflict resolution;

f. using appropriate channels of communication;

78. Uses established communication policies and protocols within and across health care agencies, and with other service sectors.

THE HEARING

8. Ms. Strom disputed the allegations and a contested hearing was held. The Investigation Committee called six witnesses and in addition, filed an Exhibit Book (P-1). The witnesses were the [REDACTED] [REDACTED] of that facility, one of which is currently a former employee. Ms. Strom testified on her own behalf and called no other witnesses. The evidence of witnesses concluded on February 11, 2016. On March 3, 2016 counsel for the Investigation Committee and Ms. Strom made submissions to supplement the Briefs both counsel filed.
9. Exhibit P-1, tab 2 contains Ms. Strom's registration status and other details. Ms. Strom completed her nursing program at the University of Saskatchewan [REDACTED] and she first registered with the SRNA on February 18, 2004. She has been a practising registered nurse on a continuous basis since February 18, 2004.

10. The facts in this case are not particularly complicated.
11. Ms. Strom lives and practices nursing in Prince Albert. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
12. [REDACTED] is a registered nurse at [REDACTED]. She was professionally familiar with Ms. Strom's [REDACTED] and she provided nursing care to [REDACTED]. One day in late February or early March 2015, [REDACTED] saw a document at the nurses' desk which upset her. The document was a print out of a Facebook posting Ms. Strom had made about [REDACTED] care at [REDACTED] (Exhibit P-1, tab 3, pages 1 through 4 inclusive). The Facebook page was copied and circulated among the professional staff at the facility.
13. The posting came to the attention of [REDACTED] who was the interim executive director at [REDACTED] at the time. [REDACTED] testified that the Facebook post had caused "quite a disruption in the facility" as many staff were upset about its contents, including [REDACTED]. [REDACTED] brought the Facebook post to the attention of the Board Chair and it was discussed at a Board meeting. In addition to bringing the Facebook post to the attention of the Board, [REDACTED] provided a copy to the Vice-President of Human Resources for the health region. Health region staff attended at the facility and met with the nursing staff, reminding them about the ethical considerations of social media posting and also to address the emotions of the staff generated by the Facebook post. [REDACTED] testified that the staff felt demoralized about the Facebook post and they were also angry about it as they saw its contents as one sided and an unfair attack.
14. [REDACTED] suggested to [REDACTED] that she may wish to report the matter to the SRNA. [REDACTED] did that and it is that complaint that led to these discipline

proceedings. The essence of [REDACTED] complaint to the SRNA is set out in her letter dated March 27, 2015 (Exhibit P-1, tab 4).

I am writing on behalf of my RN colleagues and myself at [REDACTED]. This concerns the enclosed facebook posting on February 25, 2015 of Carolyn Brost Strom RN of Prince Albert, SK.

Despite her concerns regard (sic) [REDACTED], we find it unprofessional in that it specifically names our facility and location on page one then she identifies herself as a RN on page three. With previous SRNA instructions and caution warnings to all members about appropriate use of social media, we find her posting inappropriate. Our staff are very upset about the public posting as there were many factors involved in caring for [REDACTED], especially [REDACTED], of which Mrs. Strom is unaware. Regardless of this fact there are proper channels to air grievances and concerns which do NOT include facebook. Even nursing registration exam questions address use of social media by registered nurses. To us, a letter from her to our facility staff would have been a professional avenue to follow not facebook.

15. [REDACTED] letter suggested that the SRNA may wish to interview other [REDACTED] staff, identifying [REDACTED]. All of those individuals testified at the discipline hearing.
16. The evidence of [REDACTED] was similar. All testified that they were upset about the Facebook post using words such as “humiliating”, “embarrassing” and “angry”. [REDACTED] testified that community members approached her, asking about the Facebook posting and asking what was going on at [REDACTED]. None of these witnesses had ever met Ms. Strom nor did they recall seeing her at [REDACTED]. The witnesses took offence to a number of comments in the Facebook posting including the statement that Ms. Strom made that [REDACTED] had received “often subpar care”. The witnesses were also upset by the statements made in online conversations as they interpreted Ms. Strom to suggest that many staff there were only interested in a pay cheque.
17. [REDACTED] testified that she never received a formal complaint from Carolyn Strom or any member of her extended family regarding the care of [REDACTED]. The only complaint or criticism from Ms. Strom that the witnesses could recall was her

concern about an expired liquid hand sanitizer that was in the recreation room. Ms. Strom admitted that was the only complaint she made to staff about [REDACTED] care or the facility.

18. Ms. Strom testified that she visited [REDACTED] at [REDACTED] when she could. She lives three and one-half hours away [REDACTED] and she was also busy with her full time job and her family. Based on her visits at the facility and discussions with her family, she observed aspects of [REDACTED] care that she questioned and gave her concern. Ms. Strom admitted she did not bring those concerns to the attention of the Executive Director or any other staff at [REDACTED]. In cross-examination, she also admitted that she had no particular expertise in palliative care or end of life care.
19. Based on her testimony in both direct and in cross-examination, it was clear that Ms. Strom is a frequent and sophisticated user of social media. She enjoys sharing articles, making comments and inviting discussion, frequently about health care issues.
20. When asked if she considered herself a “spokesperson”, Ms. Strom responded that she believed it was important that people are aware of health care issues and are discussing them. She saw her Facebook posting and the discussion that resulted online as reflecting that. What led to the Facebook posting was a newspaper article Ms. Strom had read online. The article was entitled “Guest Column: We have right to die but not to quality palliative care” written by Dr. Harvey Chochinov, a psychiatry professor at the University of Manitoba. The article was tendered by Ms. Strom [REDACTED]. Her Facebook posting included a link to this newspaper article. Ms. Strom testified that the article struck a chord with her as it reminded her of [REDACTED] and [REDACTED] [REDACTED] at [REDACTED]. The newspaper article shaped her Facebook post and the subsequent discussion she engaged in online.
21. Ms. Strom “tweeted”, via Twitter, her Facebook posting to Dustin Duncan, the Minister of Health at the time, and to Trent Wotherspoon, the Leader of the Opposition. She stated that she wanted them to know about her concerns and that in her view, people are often afraid to speak out about their experiences. Once she “tweeted” her Facebook posting, the Facebook posting became fully public.

22. In her direct evidence, Ms. Strom was asked to explain many aspects of the posting either on a line by line or passage by passage basis. She pointed out that some of her comments were expressing gratitude (“Don’t get me wrong, “some” people have provided excellent care so I thank you so very much for YOUR (sic) efforts. . .”). The purpose of her comment “Please Do Better Next Time” was based on the fact [REDACTED] was still at the facility. Regarding her statements which were framed as a caution or warning (“And a caution to anyone that has loved ones at the facility mentioned above: keep an eye on things and report anything you Do Not Like! (sic) That’s the only way to get some things to change”), she testified this was her way of telling people they need to speak up if there is a concern. She saw this as part of her role as an advocate nurse.
23. In cross-examination, Ms. Strom was asked what she has learned because of the complaint to the SRNA and everything that followed. Ms. Strom had many responses:
- (a) People interpret things you say their own way.
 - (b) I have hurt people’s feelings.
 - (c) I have learned how this process operates.
 - (d) How to cope. For me, it is a really stressful process.
 - (e) It is easy to be misunderstood.
 - (f) Common knowledge in her workplace.
 - (g) Consider myself to be a good nurse.
 - (h) Not a rule breaker.

ISSUES AND ANALYSIS

24. While the facts are straightforward, the case and the circumstances raise a number of legal issues.

Application of the Code and Standards:

25. Ms. Strom argues that the various provisions of the Canadian Nurses Association *Code of Ethics for Registered Nurses (2008)* (“Code”) (“Code of Ethics”) and *Standards and Foundation Competencies for the Practice of Registered Nurses (2013)* (“Standards”), do not apply to her and these circumstances. Ms. Strom rightly points out that she did not provide nursing care to [REDACTED] nor was she part of the health care team. Further, Ms. Strom argues that she wrote the Facebook posting and distributed it by Twitter as [REDACTED] – not a registered nurse. Ms. Strom invites the Discipline Committee to take a narrow interpretation of the *Code* and the *Standards*.
26. The starting point regarding the application of the *Code* and *Standards* is the Act:
- 2(l) ‘practising member’ means a registered nurse who qualifies as a practising member in accordance with the bylaws;**
27. From the SRNA Bylaws, these provisions are relevant:

BYLAW IV - MEMBERSHIP

SECTION 2. PRACTICING MEMBERSHIP.

- (3) Practicing membership carries obligations including but not limited to the following:**
- (a) to adhere to the Canadian Nurses Association *Code of Ethics for Registered Nurses* contained in bylaw XIV; and**
- (b) to adhere to the nursing standards and competencies for the practice of registered nursing contained in bylaw XV.**

BYLAW XIV - CODE OF ETHICS OF THE ASSOCIATION

SECTION 1. CODE OF ETHICS OF THE ASSOCIATION

- (1) The association adopts the June 2008 Canadian Nurses Association *Code of Ethics for Registered Nurses*.**

BYLAW XV- STANDARDS, COMPETENCIES AND NURSING EDUCATION PROGRAM APPROVAL

SECTION 1. STANDARDS, COMPETENCIES AND NURSING EDUCATION PROGRAM APPROVAL

(1) Effective December 1, 2013, the association adopts the standards and competencies contained in its May 1, 2013 publication entitled *Standards and Foundation Competencies for the Practice of Registered Nurses* as the standards and competencies required by and for registered nurses pursuant to the relevant Bylaws.

The Discipline Committee does not accept that argument. As a practising member, Ms. Strom is obligated to comply with the *Code* and *Standards*. The Discipline Committee agrees with these statements of the Investigation Committee from its Brief dated February 22, 2015 (sic):

28. As a practising member, Ms. Strom is obligated to comply with the *Code* and *Standards*. Does that obligation end off hours or outside of a nursing practice environment?
29. Many provisions of the *Code of Ethics* and *Foundations and Standards* refer to “nursing practice” or “nursing care” but many provisions do not. The *Code of Ethics* should be interpreted broadly in order to meet the intent of the *Act* and the purpose of the SRNA, which is to protect the public and promote the public standing of the profession of registered nursing.
30. This leads to a discussion about the principles of responsibility for off duty conduct and the application of those principles to this case.

Off Duty Conduct:

31. There is no doubt that Ms. Strom was not a member of [REDACTED] health care team. She is and was employed in [REDACTED] with a completely different health region. As a matter of fact, she was on [REDACTED] in February, 2015 when she made the Facebook post.

32. Regulated professionals are investigated and depending on the facts of the case, disciplined for off duty conduct. The Discipline Committee was provided with a number of court decisions across Canada where regulated professionals had been found guilty of professional misconduct or conduct unbecoming because of actions or behaviours taken in their private lives. The rationale is expressed in a British Columbia decision called *Ratsoy v Architectural Institute of British Columbia*, 1980 CanLII 662. In that case, the architect had been found guilty of unprofessional conduct regarding the demolition and reconstruction of his own building project without the appropriate permits and contrary to city Bylaws. The court stated:

[10] . . . It is well settled, I think, that a professional man may expose himself to disciplinary proceedings for conduct entirely outside the actual practice of his profession, if the conduct reflects on him in a professional way.

33. A more recent case from Alberta is to the same effect. In *Erdmann v Complaints Inquiry Committee*, 2013 ABCA 147 (leave to appeal refused 2013 SCC No. 230), an accountant had been found guilty of unprofessional conduct arising out of certain emails she sent in a dispute she was having with the builder of her residential condominium. In the emails, she identified herself as a chartered accountant. One of her grounds of appeal to the court was that the discipline tribunal did not have jurisdiction over her because she sent the emails as a private citizen and not in her capacity as a chartered accountant. This argument was rejected by the Alberta Court of Appeal. On the issue of private conduct, the court stated:

[20] Professionals in every walk of life have private lives and should enjoy, as much as possible, the rights and freedoms of citizens generally. A chartered accountant's status in the community at large means that his/her conduct will from time to time be the subject of scrutiny and comment. While acknowledging the legitimate demands of one's personal life, and the rights and privileges that we all enjoy, private behaviour that derogates from the high standards of conduct essential to the reputation of one's profession cannot be condoned. It follows that a chartered accountant must ensure that her conduct is above reproach in the view of reasonable, fair-minded and informed persons.

34. The Discipline Committee agrees with that rationale as it applies to registered nurses in Saskatchewan.
35. The Investigation Committee referred to a case called *Fountain v British Columbia College of Teachers*, 2013 BCSC 773. In that case, Fountain was found guilty of conduct unbecoming a teacher. During a dispute with his sons, he fired a gun above their heads. He was charged and convicted of certain firearms offences under the *Criminal Code*. The British Columbia Supreme Court referred to a Supreme Court of Canada decision for the principles to analyze off duty conduct. The case is *Trinity Western University v British Columbia College of Teachers*, [2001] 1 SCR 772. In that case the Supreme Court stated:

[65] In summary, the framework for the analysis of off-duty conduct that arises from the case law is:

(a) some, but not all, off-duty conduct can give rise to discipline for professional misconduct or conduct unbecoming;

(b) in considering whether the particular conduct at issue is such as to give rise to discipline, the Panel should consider whether the conduct evidences direct impairment of the ability to function in the professional capacity or impairment in the wider sense as described in the case law; and

(c) direct evidence of impairment is not always required. In an appropriate case, impairment can be inferred. In the absence of direct and evidence of impairment, the panel will need to consider whether it is appropriate to draw on inference of impairment in the circumstances.

36. In the *Fountain* case, the court set out factors to consider as to whether the off duty conduct shows impairment. At paragraph 20 of the *Fountain* decision:

[59] In summary, the case law establishes that in appropriate circumstances it is permissible to draw an inference of direct impairment or of impairment in the wider sense in the absence of direct evidence. Relevant factors to be considered include:

(a) the nature of the conduct at issue; [derived from *Attis v. New Brunswick District Board of Education No. 15*, [1996] 1 S.C.R. 825 [Ross], *Fraser v. Public Service Staff Relations Board*, [1985] 2 S.C.R. 455 [Fraser]];

- (b) the nature of the position; [*Ross and Fraser*]
- (c) whether there is evidence of a pattern of conduct; [*Kempling v. British Columbia College of Teachers*, [2004] B.C.J. No. 173, 2004 BCSC 133[*Kempling 1*] and [*Kempling 2*]
- (d) evidence of controversy surrounding the conduct; [*Ross and Kempling 1*]
- (e) evidence that the private conduct has been made public; [*Ross and Kempling 1*] and
- (f) evidence that the private conduct has been linked by the member to the professional status of the member. [*Kempling 1 and 2*]

37. In the online conversation Ms. Strom initiated, she very clearly identified herself as a registered nurse (Exhibit P-1, tab 3, p. 3):

It is VERY UNFORTUNATE Alex. And this has been an ongoing struggle with the often subpar care given to [REDACTED] X [REDACTED] (especially [REDACTED]) for many years now... Hence my effort to bring more public attention to it (As not much else seems to be working).

As an RN and avid health care advocate myself, I just HAVE to speak up! Whatever reasons/excuses people give for not giving quality care, I Do Not Care. It. Just. Needs. To. Be. Fixed. And NOW!

38. The Discipline Committee finds that Ms. Strom's purpose in identifying herself as a registered nurse was to give credibility and legitimacy to her comments. Did Ms. Strom's Facebook posting and her Twitter comments have a connection to her position as a registered nurse? The Discipline Committee concludes that the answer to that question is yes. It is Ms. Strom who made that link between her views of the care provided to [REDACTED] and her position as a registered nurse.

39. Once she tweeted her Facebook post to the political officials, the twitter feed and her Facebook post became public. As a sophisticated user of Facebook and Twitter social media platforms, Ms. Strom knew that her comments would become public and widely viewed. The Discipline Committee does not accept any suggestion that Ms. Strom did

not realize that entering into a Twitter debate would make her Facebook posting fully public.

40. Ms. Strom may consider herself a “whistle blower”. The *Code of Ethics* contains a description of “whistle blowing”:

WHISTLE-BLOWING: speaking out about unsafe or questionable practices affecting people receiving care or working conditions. This should be resorted to only after a person has unsuccessfully used all appropriate organizational channels to right a wrong and has a sound moral justification for taking this action (Burkhardt & Nathaniel, 2002).

41. Ms. Strom did not use any “appropriate organizational channels”. When asked about that, Ms. Strom testified she did not know who to report to. As a registered nurse, Ms. Strom would know better than anyone about the lines of authority in a health care facility.

42. In her online Twitter conversation, she calls herself an “avid health care advocate”. Nurses should advocate for “the provision of safe, compassionate, competent and ethical care” (see page 5 of the *Code of Ethics*). However and rather than raising concerns or complaints about [REDACTED] care to the health care team, Ms. Strom engaged in a generalized public venting about the facility and its staff and went straight to social media to do that.

Charter of Rights and Freedoms

43. Ms. Strom argues that her right to freedom of expression under the *Charter of Rights and Freedoms* would be violated if she was found guilty of professional misconduct and sanctioned.

44. Section 2(b) of the *Charter of Rights and Freedoms* (“*Charter*”) is as follows:

2. Everyone has the following fundamental freedoms:

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

45. The Investigation Committee acknowledges that Ms. Strom's Facebook post and the subsequent online discussion would be protected by this provision of the *Charter*. However, the Investigation Committee also points out section 1 of the *Charter*, which shows that rights guaranteed by the *Charter* are not absolute. Section 1 of the *Charter* states:

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

46. Both Ms. Strom and the Investigation Committee referred to the case of *Whatcott v Association of Licensed Practical Nurses (Saskatchewan)*, 2008 SKCA 6. Mr. Whatcott was a licensed practical nurse with strong opinions about abortion. He picketed in front of a Planned Parenthood office with signs stating, "Planned Parenthood aborts babies". While picketing, he shouted out phrases to the effect that Planned Parenthood murdered babies and corrupted young women. Mr. Whatcott was charged with two counts of professional misconduct. The Discipline Committee of the Saskatchewan Association of Licensed Practical Nurses ("SALPN") found him guilty of professional conduct and suspended his license for a total of 45 days and ordered that he pay costs in the amount of \$15,000.00.

47. The case made its way to the Saskatchewan Court of Appeal. The Discipline Committee of SALPN did not address the *Charter* issue in its decision but the Court of Appeal did. The Court of Appeal set aside the finding of professional misconduct. It concluded that disciplining Whatcott was a violation of his section 2(b) *Charter* rights that could not be justified under section 1 of the *Charter*.

48. The Court concluded that there was no rational connection on the facts of the case between the objective of maintaining the standing of the nursing profession and protecting the public and the decision to discipline Whatcott. At paragraph 66:

[66] Is there a rational connection between the objective and the decision? Will the public have greater respect for licensed practical nurses because Mr. Whatcott can no longer work as a practical nurse? There is no evidence of this. There is no suggestion that Mr. Whatcott held himself out as a licensed

practical nurse while picketing. Few persons would have known that he held a licence as a practical nurse. It was only after PPR filed a complaint with the SALPN that Mr. Whatcott issued a press release that referred to him as a licensed practical nurse. (emphasis ours)

49. In this case and unlike *Whatcott*, Carolyn Strom identified herself as a registered nurse.
50. The purpose and objective of the SRNA is to protect the public by investigating complaints of professional misconduct and professional incompetence. Section 26(1) of the *Act* contains a broad definition of professional misconduct as being conduct that is contrary to the best interests of the public or nurses or tends to harm the standing of the nursing profession. The Discipline Committee finds that Ms. Strom's comments harmed the reputation of the nursing staff at [REDACTED] and undermined the public confidence in the staff at that facility. Ms. Strom argues that nowhere in her post does she refer to nursing staff directly. While strictly speaking that may be true, the Discipline Committee finds that her intentions were to direct criticisms at those providing direct care to [REDACTED] meaning the nursing staff.
51. The Discipline Committee finds that the infringement of Ms. Strom's right to free expression under section 2(b) of the *Charter* by finding her guilty of professional misconduct is justified under section 1 of the *Charter*.

CONCLUSION

52. For the reasons set out in this decision, the Discipline Committee finds Ms. Strom guilty of professional misconduct contrary to section 26(1) of the *Act*. As to section 26(2) and given the withdrawal of the alleged violation of confidentiality, there is no basis to conclude that section 26(2)(h) has been breached.
53. The Discipline Committee also finds there is no evidence to sustain the allegation that Ms. Strom "inappropriately used the nurses professional status for personal gain" as set out in section 26(2)(c) of the *Act*. The fact that Ms. Strom identified herself as a registered nurse in her online discussion is certainly key to this decision for other

reasons but there is no evidence of any “personal gain” for Ms. Strom because of her conduct.

54. As to section 26(2)(1) of the *Act* and the failure to comply with the *Code of Ethics*, the Discipline Committee finds that the following provisions of the *Code* have been breached:

A.1 Nurses have a responsibility to conduct themselves according to the ethical responsibilities outlined in this document and in practice standards in what they do and how they interact with persons receiving care as well as with families, communities, groups, populations and other members of the health-care team.

A.3 Nurses build trustworthy relationships as the foundation of meaningful communication, recognizing that building these relationships involves a conscious effort. Such relationships are critical to understanding people’s needs and concerns.

B.3 Nurses collaborate with other health-care providers and other interested parties to maximize health benefits to persons receiving care and those with health-care needs, recognizing and respecting the knowledge, skills and perspectives of all.

D.1 Nurses, in their professional capacity, relate to all persons with respect.

D.10 Nurses treat each other, colleagues, students and other health-care workers in a respectful manner, recognizing the power differentials among those in formal leadership positions, staff and students. They work with others to resolve differences in a constructive way.

F2. Nurses refrain from judging, labelling, demeaning, stigmatizing and humiliating behaviours toward persons receiving care, other health-care professionals and each other.

G1. Nurses, as members of a self-regulating profession, practise according to the values and responsibilities in the *Code of Ethics for Registered Nurses* and in keeping with the professional standards, laws and regulations supporting ethical practice.

55. As to the *Standards & Foundation Competencies for the Practice of Registered Nurses (2013)*, the Discipline Committee finds that these are the key provisions that apply to Ms. Strom and this case:

STANDARD 1 – PROFESSIONAL RESPONSIBILITY AND ACCOUNTABILITY

The registered nurse:

- 1. Is accountable and accepts responsibility for own actions and decisions.**
- 5. Consistently identifies self by first and last name and professional designation to clients and co-workers.**
- 8. Demonstrates effective collaborative problem solving strategies, including conflict resolution.**

STANDARD III – ETHICAL PRACTICE

The registered nurse:

- 62. Practices in accordance with the current CNA *Code of Ethics for Registered Nurses* and the accompanying responsibility statements.**

STANDARD IV – SERVICE TO THE PUBLIC

- 76. Participates and contributes to registered nursing and health care team development by:**

- a. promoting interprofessional collaboration through application of principles of decision-making, problem solving and conflict resolution;**
- f. using appropriate channels of communication;**

- 78. Uses established communication policies and protocols within and across health care agencies, and with other service sectors.**

56. The Exhibit Book contained a number of articles from the SRNA, the Saskatchewan Union of Nurses, the Canadian Nurses Protective Society and the Registered Nurses Association of Ontario – all of which address social media and professionalism. In the article from the SRNA entitled “*Social Media and Professional Registered Nursing: Can the Two Mix?*” (Exhibit P-1, tab 12), this statement is made:

RNs/RN (NP)(s) should treat the virtual world of social media with the same professionalism as shown in the physical world.

57. Social media has been compared to a billboard. In the article from the Canadian Nurses Protective Society on social media (Exhibit P-1, tab 16):

Twitter is a great place to tell the world what you’re thinking before you’ve had a chance to think about it. (Chris Pirillo)

58. The Discipline Committee accepts that Ms. Strom’s Facebook post and the subsequent online communication she engaged in was motivated by perhaps grief and anger. It is accepted that Ms. Strom was not driven by malice. Carolyn Strom is a professional bound to act with integrity and in accordance with the *Code of Ethics*. The Discipline Committee does not seek to “muzzle” registered nurses from using social media. However, registered nurses must conduct themselves professionally and with care when communicating on social media.

SECOND STAGE HEARING

The Discipline Committee will reconvene to hear submissions regarding penalty pursuant to Section 31 of the *Act*. The hearing will be scheduled at a date convenient to both legal counsel and the Discipline Committee.

Date: October 18, 2016



Christopher Etcheverry, RN, Chairperson
on behalf of Members of the Discipline Committee:
Michell Jesse, RN
Janna Willis, RN
Patricia LeBlanc, RN
Daniel Kishchuk, Public Representative

APPENDIX A

Canadian Nurses Association Code of Ethics (2008):

- A1. Nurses have a responsibility to conduct themselves according to the ethical responsibilities outlined in this document and in practice standards in what they do and how they interact with persons receiving care as well as with families, communities, groups populations and other members of the health-care team.
- A3. Nurses build trustworthy relationships as the foundation of meaningful communication, recognizing that building these relationships involves a conscious effort. Such relationships are critical to understanding people's needs and concerns.
- B3. Nurses collaborate with other health-care providers and other interested parties to maximize health benefits to persons receiving care and those with health-care needs, recognizing and respecting the knowledge, skills, and perspectives of all.
- D1. Nurses, in their professional capacity, relate to all persons with respect.
- D10. Nurses treat each other, colleagues, students and other health-care workers in a respectful manner, recognizing the power differentials among those in formal leadership positions, staff and students. They work with others to resolve differences in a constructive way.
- E1. Nurses respect the right of people to have control over the collection, use, access and disclosure of their personal information.
- E3. Nurses collect, use and disclose health information on a need-to-know basis with the highest degree of anonymity possible in the circumstances and in accordance with privacy laws.
- E4. When nurses are required to disclose information for a particular purpose, they disclose only the amount of information necessary for that purpose and inform only those necessary. They attempt to do so in ways that minimize any potential harm to the individual, family or community.
- E5. When nurses engage in any form of communication, including verbal or electronic, involving a discussion of clinical cases, they ensure that their discussion of persons receiving care is respectful and does not identify those persons unless appropriate.
- E7. Nurses respect policies that protect and preserve people's privacy, including security safeguards in information technology.

F2. Nurses refrain from judging, labelling, demeaning, stigmatizing and humiliating behaviours toward persons receiving care, other health-care professionals and each other.

G1. Nurses, as members of a self-regulating profession, practise according to the values and responsibilities in the *Code of Ethics for Registered Nurses* and in keeping with the professional standards, laws and regulations supporting ethical practice.