Court of Appeal for Saskatchewan
Docket: CACV2652

Citation: *Meier v Saskatchewan Institute of Agrologists,* 2016 SKCA 116
Date: 2016-09-08

Between:

Garry Meier

Appellant

And

Saskatchewan Institute of Agrologists

Respondent

Before:	Richards C.J.S., Ottenbreit and Ryan-Froslie JJ.A.
Disposition:	Appeal allowed
Written reasons by:	The Honourable Chief Justice Richards
In concurrence:	The Honourable Mr. Justice Ottenbreit The Honourable Madam Justice Ryan-Froslie
On Appeal From:	2014 SKQB 389, Melfort
Appeal Heard:	March 16, 2016
Counsel:	Heather MacMillan-Brown, Q.C., for the Appellant Jay Watson for the Respondent

Richards C.J.S.

I. INTRODUCTION

[1] Garry Meier is a member of the Saskatchewan Institute of Agrologists (the "Institute"). He published photographs and commentary indicating that differences in crop performance in a particular field were a function of how fertilizer had been placed by two competing models of seed drills. It was alleged that he had done this even though he was aware that the differences were due, not to fertilizer placement, but to seeding depth. Mr. Meier was found guilty of professional misconduct by the Discipline Committee of the Institute.

[2] Mr. Meier then appealed to the Court of Queen's Bench pursuant to the provisions of *The Agrologists Act, 1994*, SS 1994, c A-16.1 [*Act*]. He was unsuccessful.

[3] Mr. Meier now appeals to this Court and argues, most centrally, that his conviction should be set aside because the Discipline Committee found him guilty of a different kind of professional misconduct – a failure to employ proper scientific methods – than what had been alleged against him. He contends this was a violation of both principles of procedural fairness and of s. 26(10) of the *Act*. That provision requires the Discipline Committee to notify a person in Mr. Meier's position of his possible jeopardy in relation to an allegation different than the one that had formally been made against him or her.

[4] As explained below, this appeal must be allowed. I agree with Mr. Meier that the Discipline Committee both denied him procedural fairness and failed to comply with s. 26(10). As a result, the decision of the Discipline Committee is set aside.

II. FACTS

[5] Mr. Meier is an agrologist and a farmer. He is also employed by Bourgault Industries. He has considerable background in the development and testing of seed drills and fertilizer placement technologies.

[6] Bourgault manufactures seed drills that use a "mid-row banding" fertilizer placement technology. It places nitrogen between seed rows.

[7] The Seed Hawk company, owned by agrologist Pat Beaujot, manufactures drills that use a competing fertilizer placement technique known as “side-row banding.” Its machines place the nitrogen band below and to the side of the seed.

[8] In 2008, Redland Farms, located near Balcarres, Saskatchewan, decided to conduct a side-by-side comparison to assess the relative efficacy of Bourgault and Seed Hawk seed drills. One side of a field would be seeded with a Bourgault machine, the other with a Seed Hawk. Early that spring, Lorne Ozipko, a manager with Bourgault, attended a Redland Farms’ field being seeded to wheat (the “Field”) four miles north of the Redland Farms’ site. He was there to deal with a mechanical problem on a Bourgault drill. Mr. Ozipko met with Rodney Priddell, Redland Farms’ lead hand, and learned of the side-by-side tests being done by Redland Farms. Mr. Ozipko testified that, while he was at the Field, he checked the seeding depths in the Bourgault and Seed Hawk areas and found them to be the same.

[9] Mr. Meier and Mr. Ozipko visited Redland Farms on June 19, 2008, and, according to Mr. Meier, examined the Field for an hour and a half. Mr. Meier observed that, on the high ground, the Bourgault-seeded side of the Field had better germination. Mr. Meier testified that, during the course of the visit, he did a significant amount of digging to determine seeding depths and concluded that the Bourgault and Seed Hawk parts of the Field had been seeded to the same depth of one-and-a-half to two inches. Mr. Ozipko’s testimony was to the same effect. Mr. Meier concluded that, on the high ground where the soil conditions had been less than ideal, the Seed Hawk machine had placed the nitrogen too close to the seed and that this had added some stress to the plants.

[10] Some time after June 19, 2008, Mr. Beaujot visited Redland Farms to compare the crops in fields where the Seed Hawk and Bourgault seed drills had been used. He was accompanied by Mr. Priddell. According to Mr. Beaujot, they visited at least two wheat fields and two barley fields. Mr. Beaujot decided that an error had been made in the operation of the Seed Hawk machine in that the seed had been planted too deeply. He concluded this had occurred because the drill had been set so that the seed had been inadvertently delivered through the fertilizer chutes. This, in turn, had led to the slow emergence of the crops. Mr. Priddell accepted this conclusion. These views were not communicated to Mr. Meier at that time.

[11] Mr. Meier went to the Field with Mr. Ozipko again on August 7, 2008, to see how the crops were progressing. He took photographs and observed that the Seed Hawk seeded areas of the high ground were still struggling.

[12] Mr. Meier was later interviewed by *The Western Producer* for an article published on April 23, 2009. The article referred to side-by-side field tests using different fertilizer placement techniques. The article featured a photograph of Mr. Ozipko standing in a field where the crop on one side was greener and shorter than the crop on the other. The photograph had not been provided by Mr. Meier. The field was described as being near Choiceland, Saskatchewan, and as revealing the different results produced by a Bourgault seed drill and a "dual-knife system" which, significantly, is the Seed Hawk technology.

[13] Mr. Beaujot saw the article and believed the picture to be one taken at Redland Farms, not on a farm near Choiceland. Mr. Beaujot then contacted *The Western Producer* and advised that it should talk to the farmers involved and dig deeper into the story. On May 28, 2009, *The Western Producer* published a correction, pointing out that the photograph had been taken near Balcarres, *i.e.*, at Redland Farms, and that it did not involve a fair comparison between a mid-row banding drill and a dual-knife drill. The correction went on to say:

> The farmer of the land in the photograph said the crop seeded with the dual knife drill was inadvertently planted 3.5 inches deep, while the crop seeded with the mid-row unit was planted properly. The photo is representative of the effects of seeding a crop too deeply, but nothing else.

[14] Mr. Meier was not contacted by *The Western Producer* before the correction was published. When it appeared, he considered the correction to be essentially false and wrong. He contacted Mr. Priddell and Mr. Priddell then advised that he and Mr. Beaujot had concluded there had been a Seed Hawk seeding depth error. Mr. Meier testified that he chose to disagree with Mr. Priddell on this issue.

[15] A photograph of Mr. Ozipko standing in the Field was also published in the Winter 2008–Spring 2009 edition of *The Cutting Edge*, a Bourgault magazine. It was accompanied by commentary to the effect that a Redland Farms' test had revealed a better crop response to mid-row fertilizer placement than side-band placement.

[16] In late 2009, Mr. Meier and Mr. Beaujot were both at an agricultural conference. Mr. Meier used photographs of the Field in his presentation and, afterward, Mr. Beaujot told him the photographs should not be referenced because the differences in the crops shown in them had been caused by seeding depth, not fertilizer placement. Mr. Meier says he did not agree.

[17] In 2011, Mr. Meier made a presentation at another conference and again used photographs of the Field. Mr. Beaujot was not in attendance but learned of the presentation from a friend.

[18] Mr. Beaujot then filed a complaint with the Institute on March 24, 2011. He wrote as follows:

> Mr. Meier appears to be knowingly misleading the public contrary to the Code of Ethics for Agrologists. In particular, he is representing to the public that differences in stand and maturity of crop as depicted in pictures from a Balcarres farm is attributable to Side Band Fertilizer verses [*sic*] Mid Row Band. Mr. Meier is aware that the differences are a result of seeding depth not fertilizer placement.

[19] The complaint was considered by the Professional Conduct Committee. The Committee then produced a "Formal Complaint and Notice of Hearing" dated June 4, 2012:

> Between April 1, 2009 and February 1, 2011, you published photographs and text to the effect that the difference in crop development at Redland Farms in the Balcarres area of East Central Saskatchewan was due to the crop's response to fertilizer placement despite the fact that you were aware that the difference in rate of development was due to the depth of seed placement, contrary to Section 28(1) of *The Agrologists Act, 1994*.

III. THE DECISION OF THE DISCIPLINE COMMITTEE

[20] Mr. Meier defended the charge of professional misconduct by pursuing two themes. The first was that there had, in fact, been no difference in seeding depth in the Field as between the Bourgault and Seed Hawk machines. In this regard, he relied on his own observations from June 19, 2008, and on the observations of other Bourgault personnel as well. Second, and relatedly, Mr. Meier stressed that the evidence called by the Professional Conduct Committee did not establish the seeding depth problems identified by Mr. Beaujot with the Seed Hawk drill had occurred at the Field, as opposed to other pieces of land owned by Redland Farms.

[21] The Discipline Committee found Mr. Meier guilty of professional misconduct. The detail of its reasoning is most profitably examined in the context of the "Analysis" section of these

reasons. However, I note at this point that the Committee was unable to determine if Mr. Beaujot had been at the Field or whether he had examined seeding depths at that location. It then went on to base its decision on the notion that Mr. Meier had failed to employ proper scientific principles and practices in his work relating to the Field.

IV. THE QUEEN'S BENCH DECISION

[22] Mr. Meier appealed his conviction to the Court of Queen's Bench pursuant to s. 32 of the *Act*. See: 2014 SKQB 389.

[23] The Chambers judge employed the reasonableness standard of review in his examination of the Discipline Committee's decision. In the course of his analysis, the Chambers judge commented specifically on Mr. Meier's argument to the effect that the entire decision of the Discipline Committee was based on an erroneous assumption that there had, in fact, been a seeding depth error. In the opinion of the Chambers judge, this was inconsequential to the Committee's finding because it had found more generalized and other problems with respect to the research methodology employed by Mr. Meier.

[24] In the end, the Chambers judge was satisfied that the Discipline Committee's decision was reasonable. He said the Committee's decision was clear and cogent and contained a thorough justification of its findings.

V. ANALYSIS

[25] Mr. Meier is represented by new counsel in this Court. He advances three main lines of argument. First, Mr. Meier submits the key findings of fact made by the Discipline Committee were not supported by the evidence. Second, he contends his conviction was based on a ground different than the one set out in the Formal Complaint. Third, he suggests the Discipline Committee erred by relying on the knowledge and experience of its own members, rather than the evidence placed before them, to find him guilty of professional misconduct.

[26] As noted at the outset of these reasons, this appeal can be resolved on the basis of the second argument, *i.e.*, the notion that the Discipline Committee denied Mr. Meier procedural

fairness and failed to comply with the *Act* by basing a conviction on something different than the allegation set out in the Formal Complaint. However, before turning to the substance of that argument, it is necessary to consider whether it should be entertained by the Court.

A. Mr. Meier's Right to Raise the Argument

[27] Mr. Meier's original counsel did not contend in the Court of Queen's Bench that the Discipline Committee had erred by finding professional misconduct on a basis different than the one alleged in the Formal Complaint. That argument is being raised in this Court for the first time by Mr. Meier's new counsel. The starting point question, therefore, is whether this argument is one that the Court can or should address.

[28] The settled rule, of course, is that this Court is generally loath to entertain a wholly new argument on appeal. See, for example: *The "Tasmania" (Owners) v The "City of Corinth" (Owners)* (1890), 15 AC 223 (HL); *Lamb v Kincaid* (1907), 38 SCR 516; *R v Perka*, [1984] 2 SCR 232; *Howell v Stagg*, [1937] 2 WWR 331 (Sask CA); *Saskatchewan (Workers' Compensation Board) v Gjerde*, 2016 SKCA 30, [2016] 4 WWR 423.

[29] That said, this principle is not absolute and it does admit of exceptions. In this regard, it is important to note that the rule is grounded largely in the self-evident proposition that it would be unfair to allow an argument to be introduced on appeal in circumstances where the opposing party would have wanted to introduce additional evidence in the court below if it had been aware of the issue. When those concerns are not present, there is necessarily room for more flexibility.

[30] In this case, the Institute does not suggest that it is prejudiced in any way by Mr. Meier's new counsel raising the issue of whether he was convicted of misconduct different than that alleged in the Formal Complaint. More specifically, there can be no suggestion that any further or different evidence might have been adduced before the Discipline Committee if this issue had been identified earlier. Of course, given the nature of the issue – an error in the decision-making approach taken by the Committee itself – this is all entirely clear.

[31] However, there are at least two other considerations that might suggest the Court should refuse to deal with Mr. Meier's argument. The first is that, by raising a point for the first time at

this stage of the proceedings, Mr. Meier has denied the Court the benefit of the analysis and insight that would have been provided by the Chambers judge's decision on the point. This is a relevant consideration and, in at least some cases, it might be a determinative one. See, for example: *Newell v Director of Community Operations*, 2013 SKCA 110 at para 23, 368 DLR (4th) 731. However, it is not particularly important here. The question of whether Mr. Meier was found guilty of a kind of unprofessional conduct different than that alleged in the Formal Complaint is reasonably straightforward and the decision-making of this Court will not be hampered by the absence of a Queen's Bench decision on the point.

[32] A second reason for being concerned about Mr. Meier's ability to raise a new argument on appeal is rooted in the terms of s. 35 of the *Act*. It reads as follows:

> 35 The institute or a member who appeals pursuant to section 32 may appeal a decision of a judge of the court on a question of law to the Court of Appeal for Saskatchewan within 30 days of the decision.

[33] As the Institute suggests, s. 35 might be read as meaning that Mr. Meier may appeal only in relation to a question of law rooted in the reasons for decision provided by the Chambers judge. In other words, if the Chambers judge did not deal with an issue in his decision, it is not subject to appeal.

[34] This line of thinking might have some superficial appeal but, in my respectful view, it should not be adopted. I say this because, as a matter of general principle, appeals are not taken from the *reasons* given for a decision. Rather, they are taken from the bottom-line decision itself. See: John Sopinka & Mark A. Gelowitz, *The Conduct of an Appeal*, 3d ed (Markham: LexisNexis, 2012) at 6-8. Thus, when s. 35 says a person in Mr. Meier's position "may appeal a decision of a judge of the court on a question of law," I am reluctant to read those words as meaning, in effect, "may appeal a question of law arising from the judge's reasons for a decision." The better approach is to take the Legislature to have meant what it said, *i.e.*, that Mr. Meier, and other individuals in his situation, may appeal a *decision* of a Chambers judge and, subject to the usual principles about raising new arguments on appeal and so forth, may appeal on any question of law that goes to whether that decision can be sustained.

[35] In the end, therefore, I conclude the Court is entitled to deal with Mr. Meier's argument that he was found guilty of something different than the misconduct with which he was charged.

B. The Merits of Mr. Meier's Argument

[36] In order to properly examine Mr. Meier's argument, it is useful to consider (a) the way in which the hearing before the Discipline Committee unfolded, (b) the decision of the Discipline Committee, and (c) the legal consequences of the Discipline Committee deciding as it did. I will examine each of these matters in turn.

1. The Hearing

[37] As noted above, the Formal Complaint against Mr. Meier alleged specific misconduct – that he had attributed the difference in crop performance at Redland Farms to fertilizer placement after he knew that those differences were due to the depth of seed placement. For ease of reference, I reproduce the Formal Complaint below:

> Between April 1, 2009 and February 1, 2011, you published photographs and text to the effect that the difference in crop development at Redland Farms in the Balcarres area of East Central Saskatchewan was due to the crop's response to fertilizer placement despite the fact that you were aware that the difference in rate of development was due to the depth of seed placement, contrary to Section 28(1) of *The Agrologists Act, 1994*.

[38] At the Disciplinary Committee hearing, the Professional Conduct Committee carried the burden of making out the allegation of professional misconduct. Counsel for the Conduct Committee opened his part of the proceedings by confirming his sense of what the case was about:

> And just as an overview, Mr. Chair, it might be helpful, at issue here is whether or not there was unprofessional conduct on behalf of Mr. Meier with respect to the use of certain photographs and whether or not it was unprofessional to continue to use them, given some knowledge that we say he had at the time. And that's basically an overview of the case.

[39] The Conduct Committee's evidence focused on the seeding depth issue. Its first witness was Mr. Beaujot. He testified in examination-in-chief about his first visit to Redland Farms in 2008 and about the steps he had taken to determine the Seed Hawk seeding depths in four fields, two barley and two wheat. He said the Seed Hawk depths were consistently two-and-a-quarter to three-plus inches and obviously different than the Bourgault depths. He also explained his conclusion that the Seed Hawk had been adjusted improperly so that seed had gone down the fertilizer chutes. In addition, he described the meeting where he had told Mr. Meier that the reason for the crop differential at Redland Farms was because of seeding depth, not fertilizer placement.

[40] At one point in his cross-examination of Mr. Beaujot, counsel for Mr. Meier, by reference to a document he had in hand, attempted to ask Mr. Beaujot if what Mr. Meier had done was in accord with the scientific method. Counsel for the Conduct Committee interjected and questioned the relevance of the inquiry. In explaining his position, counsel for Mr. Meier said: "… essentially my case is based upon proving that my client has followed the scientific method. So if this witness accepts that these are the correct steps to follow, then I -- then I will -- then I will say in argument that he followed these steps, he met what were the requirements of him as an agrologist and as a responsible member of this -- of this profession." In response, counsel for the Conduct Committee stated that the question was "not relevant" because it was for the Discipline Committee, not a witness, to decide if proper procedures had been followed. After an adjournment, the Chairperson of the Discipline Committee ruled that it was not appropriate for counsel for Mr. Meier to attempt to enter the scientific method document as evidence through Mr. Beaujot and indicated that counsel might consider entering the document through his own witness at a later time. Counsel for Mr. Meier then moved on to different lines of questioning and focused on issues including seeding depth and the location of the fields where Mr. Beaujot had made his observations. The document was apparently never introduced into evidence.

[41] The Conduct Committee's only other witness was Mr. Priddell. The questions put to him, in both examination-in-chief and cross-examination, focused on the seeding depth and land location issues.

[42] The Discipline Committee then heard the evidence called on behalf of Mr. Meier. It was aimed at two main targets. The first was establishing that the Bourgault and Seed Hawk drills had, in fact, seeded the Field at the same depth. The key evidence in this regard was as follows:

(a) Mr. Ozipko's testimony that he had checked seed depth at the Field both when he first visited it in the early spring and then again on June 19, 2008, with Mr. Meier and that, on both occasions, he had determined the Seed Hawk and Bourgault seeding depths to have been the same.

(b) The testimony of Mark Cresswell, Vice-President of Research and Development for Bourgault. Mr. Cresswell had visited the Field during seeding time with Mr. Ozipko and had determined that the Bourgault and Seed Hawk seeding depths were very close to being the same, showing no more than one quarter inch difference.

(c) Mr. Meier's testimony that he had checked both the Bourgault and Seed Hawk seeding depths when he visited the field on June 18, 2008, and had found them to be the same.

(d) Mr. Priddell's evidence on cross-examination that all of the Redland Farms' seeding done with the Seed Hawk would not have taken place with the seed going down the fertilizer chutes because seeding depths were changed on most crops and because Redland Farms' personnel "religiously" check seeding depths.

[43] The second main track of the evidence called on behalf of Mr. Meier was that the seeding depth observations made by Mr. Beaujot had not been made at the Field. In this regard, Mr. Meier testified he had taken GPS coordinates when he was at the Field. He confirmed the Land Titles description of the Field, which was located four miles north of the Redland Farms' base on Highway 10. Counsel for Mr. Meier also had Mr. Beaujot acknowledge, in cross-examination, that he had simply relied on Mr. Priddell to take him to the same fields as had been checked by Mr. Meier. He did not know the locations of the fields he had visited. Mr. Priddell, in cross-examination, then indicated that the wheat field he had examined with Mr. Beaujot was *six* miles north of the Redland site, not four.

[44] Counsel for Mr. Meier also introduced some evidence with respect to what might be called "scientific method." Most particularly, he called Donald Hoover, an agricultural consultant, and asked him to describe the standard of care applicable to the work of an agrologist. Mr. Hoover offered the opinion that Mr. Meier had followed the scientific method in reporting his observations about the crop in the Field.

[45] As *per* the standard practice, the Discipline Committee next heard closing submissions. Counsel for the Professional Conduct Committee spoke first and focused on the seeding depth

issue. He took the position that, in light of *The Western Producer* correction and his conversation with Mr. Priddell, Mr. Meier at least should have had doubts about whether the Seed Hawk and Bourgault machines had been seeding at the same depth. Relying on the Redland Farms' side-by-side tests in the face of such doubt, according to counsel, was enough to ground a conviction:

> … At the very least, in my respectful opinion, there is a doubt as to whether that -- the seed was in the same depth. There has to be a doubt, in my respectful submission.
>
> And that's all that is needed for a professional agrologist who is supposed to follow the scientific method to lay off that particular claim, in my respectful submission.

However, counsel did not go so far as to suggest that Mr. Meier could be convicted of professional misconduct for failing to use proper scientific procedures in his work. While counsel made reference to the scientific method in the passage quoted above, he clearly saw the key to establishing Mr. Meier's liability as being the seeding depth issue in and of itself.

[46] Not surprisingly, and no doubt with his eye on the Formal Complaint, counsel for Mr. Meier began his closing arguments to the Discipline Committee by zeroing in on the seeding depth question. He stated as follows:

> Yes, thank you, Mr. Chairman and Committee members. The central question here is one of whether Mr. Meier had knowledge of a seeding depth error prior to publishing the results of the Balcarres trial … we're just down to one issue now, and that single issue is did Mr. Meier have the knowledge that there was a seeding depth error when he made the representations and is he justified in promoting the science that he discovered. That's -- that's the central question.
>
> So why did he -- why did he have or not have knowledge of a seeding depth error? …

[47] Counsel then proceeded to highlight the evidence about seeding depth that had been given by Mr. Ozipko, Mr. Meier and Mr. Cresswell. He also stressed that, in his view, Mr. Beaujot's evidence should be given no weight because Mr. Beaujot did not know what field he had been in when he had checked seeding depths.

[48] Counsel for Mr. Meier referred to the scientific method only four times, and each of those times the reference was effectively made in passing. The first was in suggesting that Mr. Beaujot had not acted scientifically in making a complaint against Mr. Meier when he could not even show that he, Mr. Beaujot, had visited the Field. The second was in saying that the final step of a scientific inquiry was advising the public of findings. The third was in connection with a somewhat obscure comment about the importance of a particular photograph. The fourth was a suggestion that Mr. Beaujot's method of checking seeding depths involved no more scientific

method than Mr. Meier's method. Overall, it is readily apparent that counsel was not attempting to defend Mr. Meier against an allegation of failing to follow the scientific method. He was focused on the Formal Complaint as it was worded.

2. The Discipline Committee Decision

[49] With that background, I turn now to the decision of the Discipline Committee. Although the precise basis of its ruling is not set out with particular clarity, it is nonetheless apparent that the Committee grounded its finding of professional misconduct on something substantially broader than the notion that Mr. Meier had published photos and text about the differentials in the Redland Farms' crop being due to fertilizer placement when he had knowledge that the differentials had been caused by the depth of seed placement. At the end of the day, the fairest and best reading of the Committee's decision is that it found Mr. Meier guilty of professional misconduct because he did not follow proper scientific methods and/or did not qualify his conclusions when presenting them.

[50] The key features of the "Analysis and Decision" part of the Discipline Committee's decision are summarized below:

(a) To a large extent, the issue was properly framed by counsel for Mr. Meier when he said "… the conduct or misconduct of Mr. Meier can be judged on the one hand by determining whether or not he religiously followed the scientific method" (para 103).

(b) Whether Mr. Meier was following the proper scientific method, and in particular how he collected and presented the observations from Redland Farms, is relevant to whether he complied with the Code of Conduct (para 104).

(c) It is not possible to say with certainty that Mr. Beaujot examined seeding depths at the Field, but that is not necessary to conclusions about Mr. Meier's conduct (para 107).

(d) The observations at Redland Farms were not part of a trial that followed any scientific method expected of an agrologist (para 111).

(e) Mr. Hoover's opinion that Mr. Meier met the professional standard of care in publishing his observations and photographs of Redland Farms cannot be accepted (paras 113-115).

(f) The field comparison conducted at Redland Farms cannot be said to be part of a proper scientific trial. There were no controls established over variables that impact seed development including soil conditions, type of seed, type of fertilizer, rate of application of fertilizer, and seeding depth. This alone should have made Mr. Meier cautious about using information from Redland Farms (para 116).

(g) The observations made by Mr. Meier at Redland Farms did not accord with any recognized scientific practice or protocol (para 117).

(h) There was no qualification in the presentations made by Mr. Meier that the information collected at Redland Farms was not part of proper scientific trial. This was a clear breach of the Code of Practice (para 117).

(i) Of equal concern is Mr. Meier's failure to take steps to review or consider his presentations after it had been brought to his attention that the difference in crop emergence may have been due to seeding error (para 119).

(j) When information is received that questions and challenges the assumptions of a professional agrologist, the onus is on the agrologist to investigate the new information or question the data he or she is presenting to the public (para 120).

(k) Although there is some uncertainty as to whether Mr. Beaujot was in the same field as the one Mr. Meier had examined, this is not relevant to a determination of the complaint (para 121).

(l) Mr. Priddell's comment that the difference in crop emersion had been caused by seeding depth error should have caused Mr. Meier to initiate further investigation. This is especially so given the lack of a proper field trial or proper recording of data at Redland Farms by Mr. Meier (para 122).

[51] The Discipline Committee then went on, by way of conclusion, to write as follows:

> [123] In conclusion the Committee finds that Mr. Meier has not met the standards expected by a professional agrologist generally and under the Code of Conduct in presenting and publishing the results of his observations at Redland Farms.
>
> [124] The essence of the practice of agrology is the application of scientific principles and practices. It requires the maintenance of high standards in the conduct of the work of each agrologist. In the case of whether presenting research findings or otherwise. When research is presented the professional agrologist is obligated to clearly set out the constraints on that research and any relevant qualifying circumstances, facts and assumptions. Mr. Meier, in his presentation of the Redland Farms [*sic*] did not meet those standards for the reasons set out above and constitutes a breach of the Code of Practice.
>
> [125] His presentation of the observations at Redland Farms is [*sic*] part of some sort of scientific method or study was likely misleading to the public or at the very best at a high risk of doing so. As such it was both harmful to the interest of the public and tended to harm the standing of the profession of agrology within the meaning of s. 28(1) of the Act. Accordingly, the Discipline Committee finds that the complaint has been made out and that Mr. Meier is guilty of professional misconduct.

[52] In light of all of this, it is apparent that Mr. Meier was convicted of unprofessional misconduct on a broader and different basis than what was alleged in the Formal Complaint and in relation to which he had mounted his defence, *i.e.*, the allegation that he had published photos and text to the effect crop differences at Redland Farms were due to fertilizer placement despite the fact he was aware that the difference was due to the depth of seed placement. In fact, the conviction was based on a conclusion that Mr. Meier had generally failed to follow scientific practices and principles when presenting his observations and/or had failed to qualify his conclusions when presenting them.

3. The Legality of the Decision

[53] In convicting Mr. Meier of unprofessional conduct on the basis noted above, the Discipline Committee ran afoul of s. 26(10) of the *Act*. It reflects a basic principle of procedural fairness and, as indicated, requires the Committee to notify a person who is the subject of a hearing if the evidence shows that the person may be guilty of a charge other than the one specified in the Formal Complaint. It says this:

> (10) If, during the course of a hearing, the evidence shows that the member whose conduct is the subject of the hearing may be guilty of a charge different from or in addition to any charge specified in the formal complaint, the discipline committee shall:
>
> (a) notify the member of that fact; and

> (b) if the discipline committee proposes to amend, add to or substitute the charge in the formal complaint and unless the member otherwise consents, adjourn the hearing for any period that the discipline committee considers sufficient to give the member an opportunity to prepare a defence to the amended formal complaint.

[54] Mr. Meier was charged with publishing materials to the effect that crop differentials had been caused by fertilizer placement when he knew they had been caused by seeding depth. The Committee did not notify Mr. Meier that he was in jeopardy of being convicted on the ground that he had failed to apply proper scientific principles and/or had failed to qualify his conclusions when presenting them.

[55] In my opinion, the Discipline Committee's approach also ran afoul of the *audi alteram partem* principle. It requires that the party in a hearing of the sort in issue here be given adequate notice of the case to be met. As explained by James T. Casey in *The Regulation of Professions in Canada*, loose-leaf (2012 Rel 4), Vol 1 (Scarborough: Carswell, 1994) at § 8.4:

> The charge must set out the offence in "relatively precise terms". As always, the overriding question is whether the combination of the formal charge and disclosure of particulars by the professional body provides sufficient notice to the professional of the case that he has to meet to ensure that there will be a fair hearing. Tribunals must not operate pursuant to a hidden agenda when the rights of individuals are at stake.

[56] The decision of this Court in *Kapoor v Law Society of Saskatchewan* (1987), 52 Sask R 110 (CA) [*Kapoor*], is also helpful here. After acknowledging that administrative tribunals are not bound by the technical rules concerning the drafting of indictments and informations, the Court went on to say:

> [58] … Such freedom, however, does not extend to charging a member of the Law Society with conduct unbecoming by contravening the *Rules* in a particular fashion, discovering that there was other conduct which could have constituted conduct unbecoming, and making a determination of conduct unbecoming on the facts discovered and proved at the hearing, which do not conform to the charge as particularized. I refer to *R. v. Custer*, [1984] 4 W.W.R. 133, 32 Sask. R. 287, at p. 153-4, W.W.R.; *Order of Chartered Accountants of Que. v. Goulet*, [1981] 1 S.C.R. 295; 38 N.R. 91. As noted by Bayda, C.J.S., in *Custer* (p. 154):
>
> > "In that case [Goulet], a certified general accountant was charged [p. 98] under a provincial statute of Quebec *[Professional Code, 1973* (Que.) c. 43] with '"act[ing] in such a way as to lead to the belief that he was authorized to engage in a professional activity reserved to members of the Professional Corporation of Chartered Accountants of Quebec …"' The court found [at p. 101] that the evidence 'could perhaps have been a basis for a finding that respondent was guilty on a charge of having engaged in public accountancy, but not on one of acting in such a way as

> to lead to the belief that he was authorized to do so.' The court found, in short, that the charge as laid was not made out. That, of course, was not to say that, had the charge been worded differently, there was not evidence upon which the charge could be supported."

[57] In shifting the ground for a finding of misconduct as it did, the Discipline Committee acted in precisely the way *Kapoor* says is inappropriate. It found professional misconduct on a basis that did not conform to the allegation of misconduct as particularized in the Formal Complaint.

[58] It follows from all of this, in my respectful view, that the Discipline Committee both acted contrary to s. 26(10) of the *Act* and breached a basic principle of procedural fairness. As a result, the Committee's decision must be quashed.

VI. CONCLUSION

[59] I conclude that Mr. Meier's appeal must be allowed and the decision of the Disciplinary Committee set aside. Mr. Meier is entitled to costs on Column 2.

"Richards C.J.S."

Richards C.J.S.

I concur. "Ottenbreit J.A."

Ottenbreit J.A.

I concur. "Ryan-Froslie J.A."

Ryan-Froslie J.A.