IN THE MATTER OF *THE AGROLOGISTS ACT, 1994*, S.S. 1994 c. A-16.1

Section 26(1)(a) and (b)

AND IN THE MATTER OF THE HEARING OF A COMPLAINT AGAINST MR. GARRY MEIER, PAg

# DECISION OF DISCIPLINE COMMITTEE ON BIAS APPLICATION AND ON PENALTY

**Discipline Committee:**

John Spencer, PAg, Chairperson

George Lewko, PAg

Kurt Sawatzky, PAg

Vern Racz, PAg

Valerie Pearson, PAg

**Counsel for Professional Conduct Committee:**

Jay Watson

**Counsel for Mr. Garry Meier:**

Grant Carson

**Assessor to the Discipline Committee:**

Christopher Boychuk, Q.C.

## I. INTRODUCTION

1. This is a continuation of the hearing of a complaint that first came before the Discipline Committee (the "Committee") for hearing on April 1 and 2, 2013. At that time, the Committee heard evidence with respect to a complaint against Mr. Garry Meier, PAg as set out in the Formal Complaint and Notice of Hearing dated June 4, 2012 which states:

> "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."*

2. At the conclusion of the hearing in April 2013, the matter was adjourned to allow the Committee to reach a decision on whether Mr. Meier's conduct was in breach of s. 28(1) of *The Agrologists Act, 1994*. The Committee, in its written decision dated July 31, 2013, unanimously determined that the complaint had been proven. The matter was set down for a sentencing hearing on March 17, 2014.

3. Prior to the sentencing hearing, the lawyer for Mr. Meier, Grant Carson, provided notice to the lawyer for the Professional Conduct Committee ("PCC") and the assessor of the Committee that he intended to bring an application that the decision of the Committee dated July 31, 2013 be set aside on the basis of reasonable apprehension of bias on the part of one of the Committee members, George Lewko.

4. At the outset of the hearing on March 17, 2014, Mr. Lewko stood down as chairperson of the Committee as the allegation of bias related directly to him and Mr. John Spencer took over the role as chairperson for the balance of the hearing. There being no other objections raised by the parties to Mr. Meier's application to vacate the decision of July 31, 2013 on the basis of bias was then heard by the Committee.

## II. MEIER BIAS APPLICATION

5. Objections based on reasonable apprehension of bias are generally raised at the outset of the hearing. In this case, the remarks that are attributed to Mr. Lewko were made after the hearings were commenced in April of 2013. As such, there is no issue with respect to the timing of the application.

6. There was no objection by either counsel as to the application being heard, in first instance, by the Committee itself or the participation of Mr. Lewko on the Committee in hearing the application.

### *A. Evidence*

7. In support of the application, Mr. Carson tendered the affidavit of Eugene Eggerman sworn January 20, 2014. Counsel for the Professional Conduct Committee (the "PCC") objected to the tendering of the affidavit into evidence on the following grounds:

a. An allegation of bias is a serious matter and Mr. Carson ought to have made arrangements to have Mr. Eggerman appear before the Discipline Committee to give *viva voce* testimony;

b. Mr. Watson would be in no position to cross-examine Mr. Eggerman on the contents of the affidavit.

8. Mr. Watson submitted that, in the event that the Committee accepted the affidavit into evidence, that the Committee should not give the evidence much weight as Mr. Eggerman was not subject to cross-examination.

9. Mr. Carson submitted that the affidavit was admissible under the rules of evidence governing the committee and that affidavit evidence was often admitted in relation to applications of this type.

10. The Committee then considered whether to admit the affidavit of Mr. Eggerman into evidence. The conduct of discipline hearings is governed by s. 26 of *The Agrologists Act, 1994*. The relevant provisions of s. 26 are:

> 26(4) The discipline committee may accept any evidence that it considers appropriate and is not bound by rules of law concerning evidence.
>
> …
>
> (6) The testimony of witnesses is to be under oath administered by the chairperson of the discipline committee

11. Notwithstanding s. 26(6), the Committee was of the view that it had the discretion to admit the affidavit into evidence pursuant to s. 26(4). That being said, the Committee was concerned that Mr. Carson did not offer any good reason why Mr. Eggerman could not attend and give his evidence in person. If the affidavit is not received into evidence there would be no evidentiary foundation for the allegation of bias.

12. The Committee took notice that Mr. Lewko himself would be given the opportunity to read a statement of facts into the record and that this would, in part, address the concerns that Mr. Watson had regarding his inability to cross-examine on the affidavit. For this reason, the Committee ruled that the affidavit of Eugene Eggerman be entered into evidence. The affidavit was marked as Exhibit R-8.

13. A summary of the evidence contained in Mr. Eggerman's affidavit is as follows:

a. Mr. Eggerman operates a family farm consisting of 80.5 quarter sections of land;

b. In 2013, 49 quarter sections of the farm were dedicated to the production of a high acid variety of canola;

c. Within one block of 21 quarters seeded with canola, there were 2 quarter sections that suffered some crop damage. Mr. Eggerman has attributed to an incident of chemical drift from a neighbour. The loss was discovered early in the growing season when the unaffected crop was approximately 4 inches high;

d. Mr. Eggerman engaged Mr. Lewko to provide advice with respect to the damage. Overall, the damage affected approximately 192 acres according to Mr. Eggerman;

e. Mr. Eggerman alleged that Mr. Lewko advised him that the crop loss had resulted from the use of his seeding equipment, which is manufactured by Bourgault Industries Ltd. According to Mr. Eggerman's affidavit, this conversation he had with Mr. Lewko occurred several weeks after a field visit by Mr. Lewko in June of 2013;

f. Mr. Eggerman then contacted Bourgault Industries with respect to information that Mr. Lewko had allegedly provided;

g. It was Mr. Eggerman's own observation that the seed placement in the field with the Bourgault equipment was accurate and placed at the optimum depth;

14. Mr. Garry Meier was called as a witness to give evidence on the bias application. After being sworn, he testified that his first contact with Mr. Eggerman was sometime during the first week of October 2013. According to Mr. Meier, the matter had been brought to Bourgault's attention by Cropper Motors in Naicam. This is the dealer through which Mr. Eggerman had purchased his Bourgault air seeder and Mr. Eggerman had contacted Cropper Motors with the information that the Bourgault air seeder may have contributed to the damage to his canola crop. The matter was then referred on to Mr. Meier.

15. Consequently, Mr. Meier met with Mr. Eggerman on or about October 16, 2013 to discuss the matter. At that meeting, Mr. Eggerman advised Mr. Meier that his agrologist had said that the Bourgault air seeder was the cause of the crop damage. At the time, Mr. Meier did not know that Mr. Lewko was the agrologist referred to by Mr. Eggerman. An investigation carried out by Bourgault reached the conclusion that its air seeder was not the cause of the damage to the canola crop.

16. Mr. Meier testified that he later found out that the agrologist Mr. Eggerman was referring to was George Lewko. Upon learning this, he called Mr. Lewko and asked for a meeting. Mr. Meier and Mr. Lewko subsequently met in Mr. Meier's shop on his farm sometime in early November 2013. The last contact that Mr. Meier had with Mr. Eggerman was in late November 2013.

17. On cross-examination, Mr. Meier admitted that during the course of his meeting with Mr. Lewko that Mr. Lewko stated that he had never determined that the Bourgault air seeder was the cause of the damage and that Mr. Lewko had actually concluded that the Bourgault air seeder

was not the cause of the damage. Mr. Lewko had only raised the possibility with Mr. Eggerman that the air seeder may be the cause of the damage and that this needed to be investigated.

18. Mr. Meier acknowledged receiving a copy of a letter from Mr. Lewko addressed to Mr. Eggerman dated October 25, 2013. The letter states:

> "On Oct. 24, 2013, I received a professional courtesy call from Mr. Garry Meier PAg. Mr. Meier PAg was concerned that that I had blamed the Bourgault 3320 QDA 76' for the damage in the above mentioned field.
>
> On Oct. 10, 2013, I had attended the unusual damaged canola field SE & SW 18 37 18 W2 and had ruled out that the Bourgault 3320 QDA caused the problem. When I had met with you, on Oct. 10, 2013, we had agreed that the Bourgault 3320 QDA was not the problem."

19. The letter is signed by Mr. Lewko and is shown as being copied to Mr. Meier. A copy of the letter was entered into evidence and marked as Exhibit PCC-3.

20. Mr. Watson did not call any witnesses on behalf of the PCC on the bias application.

21. Mr. Lewko then made an oral statement for the record setting out his recollection of his involvement with Mr. Eggerman. A summary of Mr. Lewko's statement is as follows:

a. At the time that the hearings were conducted on April 1 and 2 of 2013, Mr. Eggerman was not a client of Mr. Lewko.

b. Mr. Lewko was retained sometime in July 2013 by Mr. Eggerman with respect to damage to a canola field. Mr. Eggerman suspected spray drift as the cause of the damage.

c. Mr. Lewko attended at the field on 12 July 2013. At that stage, Mr. Lewko had not come to any conclusion as to the cause of the damage.

d. In the period between-July to October 4, 2013, Mr. Lewko consulted with a number of other specialists as he could not determine a cause of the damage through his own investigation. Even after his consultation without other specialists, Mr. Lewko was unable to make a determination as to whether the cause of the damage may have been insects, disease or chemical damage. Having eliminated those possible causes, he considered whether the damage could be a seeding issue.

e. On October 4, 2013, Mr. Lewko spoke with Mr. Eggerman and indicated that he could not determine the cause of the damage. Mr. Lewko suggested to Mr. Eggerman that they should investigate the possibility of a seeding issue. In order to do so, he suggested to Mr. Eggerman that he contact the manufacturer of the seeder to review the field before he worked the field further that fall.

f. On October 10, 2013, Mr. Lewko personally attended to inspect Mr. Eggerman's field again. As a result of that inspection, he ruled out the possibility that the air seeder was the cause of the damage and informed Mr. Eggerman as such.

g. On October 24, 2013, Mr. Meier contacted Mr. Lewko by phone. Mr. Meier stated that Mr. Eggerman informed him that Mr. Lewko had said that the damage was caused by the seeding equipment.

h. In response, Mr. Lewko told Mr. Meier that he had never reached that conclusion and he had never advised Mr. Eggerman that the air seeder equipment caused the damage.

i. After the conversation with Mr. Meier, Mr. Lewko sent the letter to Mr. Eggerman dated 25 October 2013 with a copy to Mr. Meier (Exhibit PCC-3).

22. Mr. Carson made application to cross-examine Mr. Lewko on his statement of facts. The Committee denied the request on the grounds that it was not appropriate for a member of an adjudicative body to be subject to cross-examination by counsel for one of the parties.

### *B. Position of the Parties*

23. In argument, Mr. Carson submitted that he was bound to raise the issue of bias with respect to Mr. Lewko as part of his duty to his client. His position was that if there was a reasonable apprehension of bias that it amounted to a jurisdictional error and that the decision of the Committee with respect to misconduct dated July 31, 2013 is void. Further, if the PCC chose to continue to prosecute the matter, it would have to be set down for a rehearing before a new Discipline Committee that was constituted of members that had not participated in the present hearing.

24. The Committee agrees that if reasonable apprehension of bias is established on the part of Mr. Lewko that the decision of July 31, 2013 ought to be set aside and any rehearing of the

matter would have to be conducted before another disciplinary committee whose members had not participated in the current proceedings.

25. Mr. Carson submitted that the determination of the complaint against Mr. Meier in these proceedings largely turned on the science of two competing air seeding technologies including the technology used by Bourgault Industries ("Bourgault"). Bourgault is Mr. Meier's employer. The submission is that any expression of an opinion by Mr. Lewko that Bourgault air seeder may have caused crop damage was sufficient to establish a reasonable apprehension of bias on the part of Mr. Lewko.

26. He also submitted that whether the allegations made by Mr. Eggerman in his affidavit are true or accurate is not relevant to the determination of whether there is a reasonable apprehension of bias on the part of Mr. Lewko. A determination of the factual discrepancies between Mr. Eggerman's affidavit and the statement given by Mr. Lewko is to be determined in a different venue at a different time. The assertion by Mr. Eggerman alone that Mr. Lewko expressed an opinion that the Bourgault air seeder was the cause of the crop loss would be sufficient to establish a reasonable apprehension of bias.

27. In support of his position, Mr. Carson referred the Committee to the case of *Newfoundland Telephone Company Limited v. The Board of Commissioners of Public Utilities* [1992] 1 S.C.R. 623, decision of the Supreme Court of Canada and the case of *Bennett v. British Columbia (Securities Commission),* (1992) 94 D.L.R. (4th) 339, a decision of the British Columbia Court of Appeal.

28. On behalf of the PCC, Mr. Watson submitted that the only evidence relevant to the bias application in Mr. Eggerman's affidavit are contained in paragraphs 9 and 10 of the affidavit that state Mr. Lewko had provided an opinion that his crop loss was the result of using a Bourgault seeding equipment. It is Mr. Watson's position that this evidence was inconsistent with Mr. Lewko's version of events. Further, Mr. Meier's own evidence supported that of Mr. Lewko in that during the course of his discussions with Mr. Lewko Mr. Meier was informed as follows:

a. Mr. Lewko never made the allegation to Mr. Eggerman that the Bourgault seeding equipment was the cause of the crop loss only that it might be considered as a possibility;

b. Mr. Lewko informed Mr. Meier that he eventually concluded that the Bourgault seeding equipment had not caused Mr. Eggerman's crop damage;

c. Mr. Meier actually received a copy of the correspondence to Mr. Eggerman from Mr. Lewko stating that the Bourgault seeding equipment was not the cause of the crop loss.

29. It was Mr. Watson's submission that even if Mr. Lewko did attribute Mr. Eggerman's crop loss to the Bourgault air seeder this was not an indication of bias on the part of Mr. Lewko in relation to the complaint against Mr. Meier. The matters were wholly unrelated and any opinion that Mr. Lewko gave Mr. Eggerman was not indicative of any bias against Mr. Meier. Accordingly, the application to void the decision and order a rehearing ought to be dismissed.

### *C. Analysis*

30. Mr. Meier's application raises several issues. First, there are evidentiary issues as to the inconsistencies between Mr. Eggerman's affidavit and the evidence of Mr. Meier and the statement of Mr. Lewko and Mr. Carson's submission that the Committee ought to proceed solely on the basis of Mr. Eggerman's allegations.

31. Second, whether the facts do give rise to a reasonable apprehension of bias on the part of Mr. Lewko.

32. In support of his submission that the Committee should find reasonable apprehension of bias solely on the basis of the allegations made in Mr. Eggerman's affidavit, Mr. Carson cited the *Newfoundland Telephone Company* case referred to above. In that case, a commissioner of the Board of Commissions of Public Utilities for the Province of Newfoundland had made several statements outside the hearing room that were reported by the press both before, during and after the hearing of the application by the telephone company for a rate increase. In his public statements, the commissioner had been strongly critical of the executive compensation policies of the telephone company whose application was before the Commission.

33. In *Newfoundland Telephone*, the commissioner's statements outside the hearing room implied that he was not prepared to agree to a rate increase for the telephone company because

that would support an excessive level of compensation to its executives. The Court concluded that those statements evidenced that the commissioner had made up his mind on the issue to be determined by the Board prior to hearing all of the evidence. In the *Newfoundland Telephone* case the public statements made by the commissioner related to the very issue to be decided by the Board.

34. In the *Newfoundland Telephone Company* case, there was no factual issue as to whether the member of the Committee had made the statements that were subject to the bias application. In that sense, the case is distinguishable and does not support the contention that this Committee should reach a conclusion solely based on the allegations contained in Mr. Eggerman's affidavit without considering what weight to give to those assertions or considering them against the other evidence led during the hearing. There is no support for this position in the *Bennett* case from the British Columbia Court of Appeal referred to by Mr. Carson.

35. On the contrary, in *Mugesera v. Canada (Minister of Citizenship and Immigration)* [2005] 2 S.C.R. 91, the Supreme Court, and it states as follows with respect to the burden of proof on a bias allegation:

> "…There is a presumption of impartiality. The burden of proof is on the party alleging a real or apprehended breach of the duty of impartiality, who must establish actual bias or a reasonable apprehension of bias."

36. The reference in the *Mugesera* case to the burden of proof clearly implies that the Committee ought to treat the evidentiary issues raised in a bias application in a manner similar to that during the proceedings in general. That is that the Committee ought to hear and weigh all the evidence presented on the issue and were there are any inconsistencies in the evidence make findings of fact.

37. The onus of establishing a reasonable apprehension of bias lies on Mr. Meier. The facts put forward by him to support the allegation may be summarized as follows:

a. Mr. Lewko had advised Mr. Eggerman that a Bourgault air seeder was the cause of his canola crop damage;

b. Mr. Meier is an employee of Bourgault;

c. The complaint against Mr. Meier was, at its essence, involved a consideration and/or determination with respect to two competing air seeding technologies;

d. As Mr. Lewko had made a determination that the Bourgault air seeder was the cause of the canola crop damage, this would be sufficient to raise a reasonable apprehension of bias.

38. There is an inconsistency in the evidence before the Committee on this issue. Contrary to Mr. Eggerman's affidavit evidence, Mr. Lewko stated that he did not advise Mr. Eggerman that the Bourgault air seeder was the actual cause of the canola crop damage. What he advised Mr. Eggerman was that, after investigating and not being able to identify another cause of the crop damage, he suggested that the possibility that the air seeder may be a possible cause should be investigated. And that the manufacturer ought to be contacted so they could review the field before the field was worked in the fall.

39. A further inconsistency between the evidence of Mr. Lewko and Mr. Eggerman is around the date that their conversation regarding the air seeder being the cause of the damage actually occurred. According to Mr. Lewko, this conversation took place on or about October 4, 2013. According to Mr. Eggerman's affidavit, this conversation occurred several weeks after a field visit in June of 2013.

40. Mr. Meier's reporting of his conversations and communications with Mr. Lewko, including the letter of 25 October 2013, supports Mr. Lewko's version of events. In particular, Mr. Meier's evidence that the issue surrounding the Bourgault air seeder was raised with Bourgault in October confirms Mr. Lewko's version of events as to when his conversation with Mr. Eggerman occurred. Further, the conversations between Mr. Meier and Mr. Lewko, as reported by Mr. Meier, confirmed that Mr. Lewko had only identified the air seeder as a possible cause that needed to be investigated and that this had been ruled out as a possible cause by Mr. Lewko on or about October 10, 2013.

41. Given the lack of specificity in Mr. Eggerman's affidavit and the fact that Mr. Meier's testimony supports Mr. Lewko's version of events, the Committee finds that in the event of any inconsistency between the evidence of Mr. Eggerman and Mr. Lewko that Mr. Lewko's evidence is to be preferred. In particular, that sometime in early October of 2013 Mr. Lewko had a

conversation with Mr. Eggerman wherein he advised Mr. Eggerman that the possibility that the damage could be a seeding issue be investigated. Further, that Mr. Lewko had advised Mr. Eggerman on or about October 10, 2013 that he concluded that the air seeder was not a cause of the damage.

42. The Committee must now consider whether, on these facts, Mr. Meier has established a reasonable apprehension of bias on the part of Mr. Lewko.

43. The test to be applied on an application raising bias was set out by the Supreme Court of Canada in *Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369 at p. 394 as follows:

> "The proper test to be applied in a matter of this type was correctly expressed by the Court of Appeal. As already seen by the quotation above, the apprehension of bias must be reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude."
>
> …
>
> I can see no real difference between the expressions found in the decided cases, be they 'reasonable apprehension of bias', 'reasonable suspicion of bias', or 'real likelihood of bias'. The grounds for this apprehension must, however, be substantial and I entirely agree with the Federal Court of Appeal which refused to accept the suggestion that the test be related to the "very sensitive or scrupulous conscience"."

44. The Committee recognizes that as an adjudicative body it is expected to apply a standard similar to that of a court in relation to matters of bias.

45. The determination to be made by the Committee is whether those statements made by Mr. Lewko to Mr. Eggerman would raise an apprehension of bias in the mind of a reasonable and well informed person. This involves the consideration of who the parties are to the proceeding and the matter in issue before the Committee.

46. The essence of the complaint against Mr. Meier was that he continued to publish photographs and text that attributed a difference in crop development at Redland Farms to the fertilizer placement technology of certain air seeder manufacturer when he had information from the manager of the farm that the cause of the difference was due to the depth of seed placement.

47. While it is true that Mr. Meier is an employee of Bourgault, Bourgault itself was not a party to the proceedings. On this basis alone, it is difficult to see how an expression of opinion by Mr. Lewko on whether or not the Bourgault air seeder was the cause of crop damage to a farmer unrelated to these proceedings could be seen to raise a reasonable apprehension of bias.

48. Mr. Carson submitted that, on the hearing of the complaint against Mr. Meier, a key to any determination made with respect to the complaint involved a consideration between two competing air seeding technologies, one used by Bourgault and the other used by a competitor. As Mr. Lewko had expressed some opinion as to whether the Bourgault air seeder may have caused damage to Mr. Eggerman's crop this, of necessity, raised a reasonable apprehension of bias on the part of Mr. Lewko. There is no allegation of actual bias.

49. The Committee does not see the merit in this submission. The Committee did need to decide between the two competing technologies in order to reach a decision on whether Mr. Meier had been guilty of professional misconduct. As the Committee noted in its decision of July 31, 2013 at paragraph 102:

> 102. Although, the Committee heard extensive evidence as to the importance of fertilizer placement in seeding and the various advantages and disadvantages of the mid-row banding method versus the dual knife side-row banding method for seeding, it is not necessary for the Committee to determine which method provides the best fertilizer placement and under what conditions. Although this evidence provided useful background to the Committee, the important consideration for the Committee is Mr. Meier's collection and use of information obtained through observations at the Redland Farms near Balcarres, Saskatchewan.

50. The issue that the Committee had to determine is whether Mr. Meier met the standards expected by a professional agrologist generally and under the Code of Conduct in presenting and publishing the results of his observations with respect to Redland Farms. The Committee

concluded that Mr. Meier had failed to meet those professional standards both in his original publication of the materials and that he failed, upon being provided additional information by the manager of Redland Farms, to investigate the new information or to question the data he was presenting to the public.

51. It is difficult in the circumstances to see how a recommendation made by Mr. Lewko, as a forensic agrologist, to Mr. Eggerman with respect to the scope of the investigation into Mr. Eggerman's crop damage would raise any apprehension of bias in the mind of a reasonable and rightly informed individual. That matter was wholly unrelated to the facts and issues to be considered by this Committee in relation to the complaint against Mr. Meier. Further, Bourgault itself is not a party to the proceedings. The mere fact that Mr. Meier's employment is with Bourgault does not in and of itself raise concern with bias. Lastly, the recommendation made by Mr. Lewko to Mr. Eggerman was in October of 2013 well after this Committee had heard and decided the issue of misconduct against Mr. Meier. Even if Mr. Lewko had a negative opinion about the technology used by Bourgault in its air seeder, this would not prevent him from keeping an open mind with respect to the allegations with Mr. Meier as it was Mr. Meier's conduct not the air seeding technology that was in issue.

52. For these reasons, the Committee finds that Mr. Meier has failed to establish a reasonable apprehension of bias and the application to void the decision is dismissed.

## III. PENALTY

53. In the submissions with respect to sentencing, both counsel for the PCC and Mr. Meier agreed that a reprimand with no fine would be an appropriate penalty. Counsel for the PCC also sought an order for costs. It was the PCC's position that Mr. Meier pays the full cost of the hearing including all legal fees and expenses.

54. Counsel for the PCC also requested that as part of the sentence Mr. Meier be required to prepare a retraction satisfactory to the PCC and request that the Western Producer print such retraction. The Western Producer is the publication in which Mr. Meier first presented his results with respect to his observations at Redland Farms.

55. The Committee was also of the view that given the nature of the misconduct that it is appropriate to order that Mr. Meier successfully complete the professionalism and ethics course offered by the Saskatchewan Institute of Agrologists within the next six months.

56. Mr. Carson took the position that if an order for costs should be made that it should be capped to an amount similar to those currently allowed under the Queen's Bench Rules of Court for an expedited procedure. Under Rule 8-11 of the Queen's Bench Rules, the costs of a successful party in an expedited procedure are as follows:

a. If the time spent on the hearing of the trial is one day or less, $5,000.00

b. If the time spent on the hearing of the trial is two days or less but more than one day, $6,000.00;

c. If the time spent on the hearing of the trial is more than two days, $7,000.00.

57. Taking into account the time spent on hearing the bias application and sentencing, the total hearing time was somewhat in excess of two days. On Mr. Carson's submission, any costs should be capped at $7,000.00.

58. In terms of the costs, counsel for the PCC provided the following information in the form of statements of account and summaries of expenses from the Institute. A summary is as follows:

| | |
|---|---|
| Legal fees for assisting PCC in investigation, preparation for and conduct of discipline hearing | $20,250.76 |
| Transcript costs | $2,350.69 |
| Cost of hearing rooms and reimbursement of travel expenses of the PCC and DC members | $2,569.17 |
| Forensic agrologist expert report | $2,872.43 |
| Legal fees and expenses of assessor to PCC | $5,472.50 |
| Total | $33,515.55 |

59. Pursuant to s. 27(1) of *The Agrologist Act, 1994* (the "Act"), the Committee has broad discretion is terms of fixing penalty including making an order for reprimand or any other order that may seem just. With respect to the costs, s. 27(2)(a)(ii) and (b) read:

> …
>
> 27(2)(a)(ii) the costs of the investigation and hearing into the member's conduct and related costs, including the expenses of the professional conduct committee and the discipline committee and costs of legal services and witnesses
>
> (b) where the member fails to make payment in accordance with an order pursuant to clause (a), that the member be suspended from the institute.

60. The setting of the level of a cost award in proceedings under the Act was subject to an appeal before Mr. Justice Ball in *Jacob Wallace Hamm v. Saskatchewan Institute of Agologists*, Q.B. No. 166 (2002) (unreported). With respect to the awarding of costs, Mr. Justice Ball stated as follows:

> "I accept that the standard of review on this appeal is as set out in Brand v. The College of Physicians and Surgeons (1990), 72 D.L.R. (4th) at 446. The excerpt setting out the standard is quoted by both counsel in their briefs, and I refer to the excerpt quoted by the appellant at page 2 of his brief.
>
> > The awarding of compensation is discretionary and must be exercised judicially. The reasonableness of the assessment or awarding of compensation to the investigating body is therefore, subject to judicial review. The standard of review is whether the assessment is reasonable and not whether there has been clear error.
>
> In my view, what is reasonable in terms of the assessment of costs must depend on all of the relevant circumstances. I will not attempt to provide an exhaustive list of all of the circumstances that are relevant, but I agree with counsel for the respondent, that what is reasonable in terms of costs should be reflective of the nature of the tribunal, including its expertise and the requirements imposed upon the tribunal by the governing statute.
>
> I also agree with counsel for the appellant that costs should not be imposed on an individual simply because they were incurred. They should reasonably relate to the charge against the member, to his conduct to the length and complexity of the

> hearing, and to the end result. In summary, the process itself should not become the most significant penalty."

61. In the *Hamm* case, the discipline committee had ordered costs in the amount of $12,909.99. In that case, the hearing lasted two days. Having regard to all the circumstances, Mr. Justice Ball fixed costs at $9,000.00.

62. In this case, the legal fees and expenses for the PCC included the cost of the attendance of a second lawyer during the hearing. Although the second lawyer may have been of assistance to Mr. Watson the Committee's view this is not a cost that Mr. Meier should bear. Likewise, the PCC did not call a forensic agrologist as an expert and the cost of obtaining that report should not be borne by Mr. Meier. The Committee also recognizes that there is an educational component contained within the fees and disbursements for both counsel for the PCC and this Committee and as Mr. Justice Ball noted, these are not expenses that should be borne by the member.

63. In this case, the total hearing time was close to three days including the hearing of the bias application and the submissions on penalty. Mr. Meier did call an expert to provide an opinion as to the professional standards of an agologist in the conduct of research and clinical trials. As well, there was technical evidence lead as to the mechanics of the two different types of air seeders. In that sense, the evidence at the hearing was somewhat complex.

64. The Committee agrees that Mr. Meier should not be required to pay all the costs incurred by the Institute. The *Hamm* case was decided by Mr. Justice Ball in 2002. In that case, he ordered costs in the amount of $9,000.00 for a hearing that lasted just under two days. In this case, the hearing lasted just under three days and involved both expert and technical evidence largely lead on behalf of Mr. Meier.

65. Given the length of the hearing and the complexity of the evidence and having regard to the quantum assessed by Mr. Justice Ball in the *Hamm* case in 2002, it is the Committee's decision that a reasonable assessment of the costs would be $15,000.00.

66. With respect to the request of the PCC that Mr. Meier arrange for a further retraction in the Western Producer, the Committee is not prepared to order this. The printing of the retraction is a matter outside Mr. Meier's control. Further, the evidence during the hearing was that the Western Producer had previously published a form of retraction in its 28 May 2009 issue under the heading "Story Errors Corrected" that included the information from the manager at Redland Farms attributing the difference in crop development to a seed depth error rather than to the differences in the two air seeder systems.

67. The Committee therefore orders as follows:

a. Garry Meier, PAg is hereby reprimanded for his misconduct;

b. Mr. Meier, PAg successfully complete the professionalism and ethics course conducted by the Saskatchewan Institute of Agrologists within six months of the date of this order;

c. In the event that Mr. Meier, PAg does not successfully complete the professionalism and ethics course within six months, it is ordered that he be suspended as a member of the Institute until such time as he successfully completes the course;

d. Mr. Meier, PAg pay costs to the Saskatchewan Institute of Agrologists an amount fixed at $15,000.00. The said costs to be paid within six months from the date of this order;

e. In the event that the costs are not paid within six months, it is ordered that Mr. Meier, PAg be suspended as a member of the Institute until such costs are paid in full.

DATED this 25th day of April, 2014.

John Spencer, PAg, Chairperson

Vern Racz, PAg

Valerie Pearson, PAg

Kurt Sawatsky, PAg

George Lewko, PAg