Q.B.G. No.638 of 2016 - J.C.S.
Doug Cameron v. Saskatchewan Institute of Agrologists

Doug Cameron appearing for himself as the appellant
John Agioritis appearing for the respondent

FIAT - OCTOBER 12, 2017 MAHER J.

[1] The appellant has requested of the Registrar of the Court for a transcript of the proceedings on this appeal. This was an appeal on the record and there was no *viva voce* evidence. I decline to order production of a transcript given the fact there was no evidence. If the appellant wishes to obtain a copy of the proceedings of the hearing of the appeal, he is entitled to apply to the Registrar of the Court of Queen's Bench in Saskatoon for discs of the proceeding provided that he pays any costs associated therewith. If the appellant wishes to have them transcribed, he may have them done provided, however, such costs of such transcription will be his costs.

J.

R. D. Maher

QUEEN'S BENCH FOR SASKATCHEWAN

Date: **2017 10 12**
Docket: QBG 638 of 2016
Judicial Centre: Saskatoon

BETWEEN:

DOUG CAMERON

APPELLANT

- and -

SASKATCHEWAN INSTITUTE OF AGROLOGISTS

RESPONDENT

Counsel:

Doug Cameron — for himself as the appellant
John Agioritis — for the respondent

JUDGMENT
October 12, 2017

MAHER J.

Introduction

[1] Douglas Cameron, the appellant, is a member of the Saskatchewan Institute of Agrologists [Institute]. He was found guilty of professional misconduct by the Institute's Discipline Committee [DC] in a decision of the DC rendered on July 22, 2015. The DC in a decision dated March 25, 2016, imposed a penalty where they

reprimanded the appellant, fined the appellant $2,000 and imposed a 30-day suspension from practicing his profession. In addition, they ordered that he take a professional ethics course and pay costs of $15,000.

[2] The initial complaint against the appellant alleging the professional misconduct of the appellant was made by Jim Schille by way of a complaint dated January 13, 2014. The appellant received the following particulars as to the complaint of his alleged professional misconduct:

> That between the dates of March 26, 2013 and November 2, 2013, you authored, published and distributed by email under the title "Grassroots" material that is in breach of the Code of Ethics and Practice Standards of the Institute and that such conduct constitutes professional misconduct within the meaning of the s. 28(1) of *The Agrologists Act, 1994*. Full particulars of the allegations are set out in the correspondence addressed to you from the Professional Conduct Committee of the Institute dated April 30, 2014, a copy of which is also attached hereto.

[3] The DC in its ruling of July 22, 2015, found that Douglas Cameron had on numerous occasions through his newsletter "Grassroots" distributed by email "breached the standards expected of a professional agrologist as set out in the Code of Ethics and Practice Standards of the Saskatchewan Institute of Agrologists". The DC having found the appellant in breach of the Code of Ethics and Practice Standards of Saskatchewan Institute of Agrologists found him guilty of professional misconduct.

[4] The appellant appeals this decision of the DC pursuant to ss. 32 and 33 of *The Agrologists Act, 1994*, SS 1994 c A-16.1, which provides the following:

> 32(1) A member who has been found guilty by the discipline committee, or who has been expelled pursuant to section 29, may appeal the decision or any order of the discipline committee within 30 days of the decision or order to a judge of the court by serving the registrar with a copy of the notice of appeal and filing the notice with a local registrar of the court.

(2) On receipt of a notice of appeal, the registrar shall file with the local registrar of the court a true copy of:

(a) the formal complaint and notice served pursuant to subsection 26(1) or the report of the professional conduct committee pursuant to section 29;

(b) the transcript of the evidence presented to the discipline committee; and

(c) the decision and order of the discipline committee;

(3) The appellant or the appellant's solicitor or agent may obtain from the registrar a copy of the documents filed pursuant to subsection (2) on payment of the costs of producing them.

33 In hearing an appeal pursuant to section 32, the judge shall:

(a) dismiss the appeal;

(b) quash the finding of guilt;

(c) direct a new hearing or further inquiries by the discipline committee;

(d) vary the order of the discipline committee; or

(e) substitute his or her own decision for the decision of the discipline committee;

and may make any order as to costs that the judge considers appropriate.

The Notice of Appeal

[5] The appellant in his Notice of Appeal particularized his grounds as follows:

(a) The Committee erred in law by failing to afford the Appellant procedural fairness insofar as it did not provide adequate reasons to substantiate a breach of the *Act*;
(b) The Committee erred in its interpretation of the provisions of the *Act* and the Code of Practice as it relates to the Appellant's conduct;

(c) The Committee erred by relying upon its own knowledge and experience in order to convict the Appellant of professional misconduct rather than relying only upon the evidence before it;

(d) The Committee erred in law by concluding that the Appellant failed to meet the ethical standards of an agrologist governed by the *Act* and the Code of Practice on the facts before it;

(e) The Committee erred in law by concluding that the Appellant failed to meet the ethical standards of an agrologist governed by the *Act* and the Code of Practice on the facts before it, *inter alia*;

(i) By relying on evidence in the form of written communications by the Appellant that did not form part of the complaint against the Appellant;

(ii) By relying on evidence in the form of correspondence between counsel for the respondent's council and the Appellant which did not form part of the original complaint;

(iii) By relying on evidence in the form of a prior disciplinary order against the Appellant;

(iv) By refusing to consider relevant evidence related to council bylaws requested by the Disciplinary Committee.

(f) The Committee erred in law by failing to apply the appropriate standard of proof to the alleged conduct of the Appellant, which standard requires strong and convincing evidence, *inter alia*:

(i) By not accepting uncontroverted testimony related to the development and adoption of bylaws in 2011, referred by the Appellant in his communications to membership;

(ii) By determining that the Appellant's communications were public in nature, which was contrary to the evidence;

(iii) By determining that the Appellant was responsible for a failure to resolve the issues of the complaint, when no such evidence was tendered;

(iv) By determining that the Appellant's communications negatively affected the public perception of the Agrology Profession to the detriment of the ability of Agrologists to effectively serve the public.

(g) The Committee erred by failing to apply, or to properly apply, the onus of proof in establishing a breach of the *Act*;

(h) The Committee erred in law its interpretation and application of the relevant authorities as related the Appellant's constitutionally protected right to freedom of expression;

(i) There exists a reasonable apprehension of bias by the Committee in favour of the PCC insofar as the PCC's counsel had previously acted for and provided guidance to, *inter alia*, members of the Committee;

(j) There exists a reasonable apprehension of bias by the PCC against the Appellant because the PCC's counsel was subject of a professional misconduct complaint by the Appellant at the time of the investigation and hearing;
(k) The Committee erred in law and failed to afford a reasonable level of procedural fairness in admitting evidence produced by counsel for the PCC and the respondent that the Appellant could not test in cross-examination;
(l) Any such further grounds as counsel may advise and as may appear from the transcript of the evidence and of the decisions and orders of the Committee.

[6] The respondent raises for consideration two preliminary issues:

1. Is the appellant permitted to adduce fresh evidence on this appeal hearing?
2. Is the appellant permitted to raise new issues on this appeal?

Position of the Appellant

1. That the appellant is entitled to adduce fresh evidence;
2. The appellant is entitled to raise new issues on this appeal;
3. It is the appellant's position that the decision of the Discipline Committee convicting the appellant of professional misconduct be overturned in its entirety, that the appellant receive costs of the appeal and such further relief as this Court may advise.

Position of the Respondent

1. That the appellant's application to adduce fresh evidence on this appeal be dismissed;
2. That the appellant's application to raise new issues on the appeal be dismissed;
3. That the appeal be dismissed as the Discipline Committee findings with respect to the comments made by the appellant in "Grassroots", being a public communication, are reasonable and well-supported by the evidence;

4. That the appeal of the penalty hearing and determination of costs be dismissed as well.

The Determination of the Preliminary Issues

1. Is the appellant permitted to adduce fresh evidence on this appeal?

[7] The appellant swore and filed with the Court his own affidavit of December 9, 2016. Section 32 of *The Agrologists Act, 1994*, provides that an appeal of a discipline committee decision is an appeal on the record of the hearing. The Court has inherent jurisdiction to grant relief to allow the appellant filing of his affidavit of December 9, 2016, but the appellant must meet the fresh evidence test as set out by the Supreme Court of Canada in *Palmer v R*, [1980] 1 SCR 759, where they said the following at para 35:

> (1) The evidence **should generally not be** admitted if, by due diligence, it could have been adduced at trial provided that this general principle will **not** be applied as strictly in a criminal case as in civil cases.
>
> (2) The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial.
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> (3) The evidence must be credible in the sense that it is reasonably capable of belief.
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> (4) It must be such that if believed it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result.

[8] I am satisfied that the evidence in Mr. Cameron's affidavit was available to the appellant during and prior to the conclusion of the DC proceedings. I find that the appellant had ample opportunity to bring these matters of evidence before the DC during the hearing process, therefore, I will not allow it to be admitted.

2. Is the appellant entitled to raise new issues on this appeal?

[9] On reviewing the documents in question, I am satisfied that the appellant is attempting to raise new issues that should have been raised at the initial hearing before the DC. I am also satisfied that the issue of bias as raised refers to a training session in November of 2016, which occurred several months after the decisions of the DC and would, therefore, have had no impact on the decision-making process of the DC. I am satisfied from review of the decisions of the DC and the transcript of the proceedings that the appellant was ably represented by counsel.

[10] I find, having reviewed the reasons of the DC, that the appellant received a fair and objective hearing of this matter. The decisions of the DC had all been concluded by July 22, 2015, and March 25, 2016. The training session that counsel for the Institute participated in was in November 2016. I dismiss the application to raise new issues.

The Standard of Review of the Decisions of the Discipline Committee

[11] There has been much judicial comment on the standard of review in an application for judicial review. The most current determination is by the Saskatchewan Court of Appeal in *Skyline Agricultural Finance Corp v Saskatchewan (Farm Land Security Board)*, 2017 SKCA 26 [*Skyline*]. The standard of review was analyzed initially in *Skyline Agricultural Finance Corp v Saskatchewan (Farm Land Security Board)*, 2015 SKQB 82, by Layh J. when he made the following determination:

> **23** In determining the standard of review, Canadian courts invariably take their starting instructions from the Supreme Court's decision in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*] when the court moved from 20 years of the "pragmatic and functional analysis" to a revamped "standard of review" analysis. The new approach was to obviate the previous need to categorize review into a three-hued spectrum of review: correctness, "patent unreasonableness" and an intermediate

"reasonableness *simpliciter,*" and move to correctness and reasonableness. The Court then laid out a two-step inquiry to determine the appropriate standard of review:

> [62] In summary, the process of judicial review involves two steps. First, courts ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question. Second, where the first inquiry proves unfruitful, courts must proceed to an analysis of the factors making it possible to identify the proper standard of review.
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> ...
>
> [64] The analysis must be contextual. As mentioned above, it is dependent on the application of a number of relevant factors, including: (1) the presence or absence of a privative clause; (2) the purpose of the tribunal as determined by interpretation of enabling legislation; (3) the nature of the question at issue, and; (4) the expertise of the tribunal. In many cases, it will not be necessary to consider all of the factors, as some of them may be determinative in the application of the reasonableness standard in a specific case.

24 As the first step, reviewing courts must ascertain whether existing jurisprudence has previously determined "in a satisfactory manner" the degree of deference to be accorded "with regard to a particular category of question." So, if a court has previously stated a standard of review for that tribunal, respecting that question, then further inquiry is unnecessary - the standard of review has been set. One might say that the first step is little more than the Court reiterating the principle of *stare decisis* and judicial common sense. If the first step yields no jurisprudential direction, then the second step of the analysis applies, calling for a four-factored consideration to determine the applicable standard of review.

Layh J. held that the standard of review was reasonableness, which finding was upheld by Jackson JA. in *Skyline*, where she said at para 46, "In short, the Chambers judge found the Board's decision to be reasonable". Jackson JA. made the following comments at para. 75:

75 This argument is compelling, but only facially so. A privative clause

> informs the analysis and makes it more likely that the standard of review is reasonableness, but the absence of such a clause does not mean that the standard of review will be correctness. In ss. 27.51 and 27.6 of the *Act*, the Legislature clearly signaled its intention that the standard of review of the Board's decision should be reasonableness. The presence of a right of appeal of the Board's decision elsewhere in the same *Act* does not necessarily mean that the common law approach to judicial review changes from reasonableness to correctness. The question remains one of statutory interpretation.

[12] I am satisfied based on the right of appeal as set out in the provisions of the *Act,* and the comments of Jackson JA. in *Skyline* that the standard of review is reasonableness. I will make my determinations based on that direction from the Statute and from the Court of Appeal of Saskatchewan.

ANALYSIS

The Bias Hearing and Decision

[13] The appellant at the initial hearings was represented by counsel throughout. The appellant makes allegations that the DC hearings were "lawyer controlled". I am satisfied on the evidence that the appellant had selected his own legal counsel who presented the case on his behalf. If the appellant was dissatisfied with his representation, then he had an obligation to terminate his counsel at that time and seek different legal counsel. It is apparent from the record that he did not do that and, therefore, I am satisfied and find that the bias hearing and its decision was procedurally fair and reasonable in all the circumstances.

Did the Appellant have a fair hearing?

[14] Upon reviewing the transcripts of the *viva voce* evidence of the various witnesses at the various hearings, plus reviewing the submissions made by counsel, I am satisfied that the DC facilitated and provided an opportunity for a fair and objective

hearing of the issues between the appellant and the institute. I can find no evidence that there was a reasonable apprehension of bias or lack of objectivity on the part of one or more of the members of the DC. This ground of appeal is dismissed.

Was the appellant aware of the complaint against him?

[15] A review of the documents and record clearly indicate that the original complaint was received by the registrar and provided to the appellant. I am satisfied on reviewing the documents and the transcripts that the appellant knew the full details of the misconduct complaint that was before the DC. The appellant and/or his counsel did not take any objection when the presentations were made at the hearing. I am satisfied that full and complete disclosure was made and the appellant was fully informed as to the nature of the complaint as set out in the letter of January 13, 2014, by Mr. Schille, and as well in the notice provided by the registrar to the appellant. I, therefore, dismiss this ground of appeal.

Was the conduct of the counsel for the Professional Conduct Committee appropriate?

[16] The appellant complains that the counsel for the respondent failed to disclose three issues of "Grassroots" and a letter of May 30, 2014, from the appellant to the DC.

[17] I am satisfied on a review of the proceedings as a whole that there was full disclosure to the appellant and the appellant and his counsel were well aware that the documents were part of the proceedings, which were included in his own letters. It was open to the appellant to have submitted these documents to the DC during the initial hearing, but this was not done. This was a decision made in presentation of his case and does not bear any impact on these proceedings. I, therefore, dismiss this ground.

Did the DC correctly apply the Rules of Evidence?

[18] The letters complained about were tendered as part of the proceedings to establish the fact that the letters were sent and received by the appellant. There is no indication that the letters were tendered to the DC for a purpose to establish the truth of their contents. The purpose of them being provided to the DC was simply to satisfy the DC that the statements had been made. There is nothing to indicate an opinion to the contrary. I find no merit to the appellant's submissions in this regard.

Did the DC apply the appropriate onus and standard of proof?

[19] I am satisfied on a review of the evidence that the findings of the DC were supported by evidence before it. The issue that the DC was to determine was whether on a balance of probabilities the appellant committed misconduct contrary to the Code of the Institute based on the evidence presented to it at the misconduct hearing. I find that that onus has been discharged. It is apparent that the DC made its decision after receiving the transcripts. The decision of the DC indicates that the DC's findings of fact were based on the evidence before it on a balance of probabilities.

Did the DC err in the interpretation application of the *Canadian Charter of Rights and Freedoms*?

[20] The issue of the appellant's ability to comment on issues and whether the ruling of the DC amounted to an infringement of the appellant's right to freedom of speech was raised at the misconduct hearing and the penalty hearing. I find that the disposition of those issues by the DC was reasonable in the circumstances and there is no basis for interfering with them.

Were the findings of misconduct by the appellant supported by the evidence and facts before it?

[21] The DC had before it the editions of the "Grassroots" that were at issue. The DC heard the testimony of the appellant on the circulation of the "Grassroots" and it was open to the DC to make the determination that they did. I find that all of those determinations with regard to "Grassroots" were reasonable in the circumstances.

Was the DC's finding of public communication reasonable and supported by the evidence?

[22] I am satisfied on reviewing the transcripts that there is significant evidence to establish that the appellant's publication was publicly circulated and that the contents of such publications were offensive to the Institute, which was contrary to the Code of Ethics and Practice Standards of the respondent.

The Penalty Hearing

[23] The appellant alleges that he was not permitted to address the DC at the penalty hearing. It is clear from the record that the appellant was represented at the penalty hearing and his counsel was provided an opportunity to speak on the issue of the penalty before the determination of the penalty occurred. I am satisfied that the penalty decision was reasonable and supported by the evidence. The DC had the power to impose such a penalty pursuant to s. 27(1) and s. 27(2) of the *Act*. I find that the DC considered previous determinations of costs in other cases and that its finding is reasonable and supported by the evidence.

CONCLUSION

[24] I dismiss all of the appellant's grounds of appeal and the Institute is entitled to its costs to be taxed.

J.
R. D. Maher