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August 6, 2015

OUR FILE: 99702-003/JW

YOUR FILE:

McDougall Gauley LLP
500, 616 Main Street
Saskatoon SK S7H -0J6

Attention: Christopher C. Boychuk, Q.C.

and to:

COPY

Kowalchuk Law Office
#101, 2222 Albert Street
Regina SK S4P 2V2

Attention: Larry W. Kowalchuk and Micah Kowalchuk

Dear Sirs:

**Re: Decision of the Discipline Committee of the
Agrologists Association of Saskatchewan
With respect to Doug Cameron**

Further to the above-captioned matter, please find enclosed the Decision of the Discipline Committee with respect to the Douglas Cameron, PhD, PAg. matter. I would appreciate it if legal counsel would provide me with dates and times that they could attend on a short conference call to discuss possible dates for the penalty hearing. In the meantime, I will canvass the Discipline Committee for dates that are available to all members.

I look forward to hearing from you.

Yours truly,

CUELENAERE, KENDALL, KATZMAN & WATSON

Per:


Jay D. Watson

JDW:bmb

Enclosures

Direct Line: (306) 477-7228

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bcc: Al Sholtz

In the Matter of a Complaint of Professional Misconduct Against Mr. Douglas Cameron, PhD, PAg Pursuant To S.24 Of The Agrologists Act, 1994 C. A-16:1.

Professional Conduct Committee of the Saskatchewan Institute of Agrologists

And

Douglas Cameron, PhD, PAg. Of Swift Current Saskatchewan a Member of the Saskatchewan Institute of Agrologists

The Discipline Committee (DC) for the Saskatchewan Institute of Agrologists (SIA), composed of Mr. Vernon Racz PAg (chair), Mr. Glenn Clarke (public representative), Ms. Brenda Stefanson PAg, Mr. Keith Head PAg and Ms. Shannon Ruzesky PAg, met to hear the charge of professional misconduct against Mr. Cameron PAg at the Saskatoon Inn on March 20, 2015.

The DC had as advisor Mr. Jay Watson (firm of Cuelenare, Kendall, Katzman and Watson).

The Professional Conduct Committee of SIA was represented by their counsel Mr. Chris Boychuck.

Mr. Cameron was represented by co-counsels Mr. Larry Kowalchuck and Mr. Micah Kowalchuck.

Arguments and testimony were heard on March 20, 2015. The DC, after receiving transcripts and additional materials requested at the time of the hearing has, based on careful scrutiny of the evidence as presented, reached a unanimous decision.

The findings and decision of the Discipline Committee are:

- That Mr. Douglas Cameron had on numerous occasions, through his newsletter "Grassroots" distributed by e-mail, 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.
- That his continued unsubstantiated questioning of the integrity and honesty of other agrologists and his negative comments regarding the conduct of SIA Council members have demonstrated Mr. Cameron's disregard for his professional responsibility to abstain from undignified or misleading public communication about other members of the Saskatchewan Institute of Agrologists.
- That the public nature of the attacks on the integrity and honesty of individual agrologists could negatively affect the public perception of the Agrology Profession to the detriment of the Profession and the ability of agrologists to effectively serve the public. These

attacks repeatedly over multiple issues of "Grassroots" increase the seriousness of the breach of the code of ethics and standard of practice.

- That there could have been ample opportunity to resolve the issues in a responsible rather than confrontational manner had Mr. Cameron and the SIA Council decided to do so rather than using an inappropriate forum.
- Mr. Cameron has submitted this his Section 2(b) right to freedom of expression would be infringed upon if he were found guilty of professional misconduct.

Expression was defined by the Supreme Court of Canada [SCC], in *Irwin toy ltd. v Quebec (Attorney General)*, [1989] 1 SCR 927 as:

If the activity conveys or attempts to convey a meaning, it has expressive content and *prima facie* falls within the scope of the guarantee.

Mr. Cameron's comments clearly attempt to convey a meaning and therefore fall within the scope of expression. As a finding of professional misconduct by the Professional Conduct Committee would amount to a restriction of Mr. Cameron's ability to communicate expression in his chosen form, his section 2(b) rights have been infringed. As Mr. Cameron's expressive rights have been infringed under Section 2(b), the Professional Conduct Committee the onus to prove, on a balance of probabilities, this infringement is justified under Section 1 of the Charter.

The rationale and procedure for justifying a limitation under Section 1 was set out in *R v Oakes*, [1986] 1 SCR 103 [*Oakes*] at para 65:

The rights and freedoms guaranteed by the *Charter* are not, however, absolute. It may become necessary to limit rights and freedoms in circumstances where their exercise would be inimical to the realization of collective goals of fundamental importance. For this reason, s. 1 provides criteria of justification for limits on the rights and freedoms guaranteed by the *Charter*.

Section 1 of the *Charter* further states:

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

To justify a limitation under Section 1, the limit must first be prescribed by law. This is apparent in this case as the definition and procedure for professional misconduct is set out in *The Agrologists Act, 1994*. The limitation under Section 1 must also be demonstrably justified in a free and democratic society. The first requirement in this inquiry is that a pressing and substantial goal must be served in limiting the right or freedom at hand.

The objective of the decision in this case is clear: The promotion of respect for the status and standing of the profession of agrolgy and its members. This goal is pressing and substantial as it furthers the goals of the Act set out in Section 28(1).

Once an objective of sufficient importance is found, the next step in the inquiry requires the party relying on Section 1 to show the means chosen to achieve the goal are reasonable and demonstrably justified. This involves a form of proportionality test having three elements. This test was explained and expanded upon in *Oakes* at para 70:

There are, in my view, three important components of a proportionality test. First, the measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective. Second, the means, even if rationally connected to the objective in this first sense, should impair "as little as possible" the right or freedom in question: *R. v. Big M Drug Mart Ltd.*, *supra*, at p. 352. Third, there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of "sufficient importance".

The first step of the test requires a rational connection between the means chosen to further the objective and the objective itself. In regards to the comments of Mr. Cameron, there is a rational and logical connection between the goal of maintaining the status and standing of the profession of agrolgy and limiting comments that attack the integrity and honesty of members of the profession in an unfair way.

While Mr. Cameron submits the decision of *Whatcott v Saskatchewan Association of Licensed Practical Nurses*, 2008 SKCA 6 [*Whatcott*] where a rational connection was not found, it is distinguishable on the facts.

Mr. Whatcott's picketing was found not to relate to the standing of the nursing profession as a whole as they were not undertaken in his capacity as a nurse. The comments made by Mr. Cameron, however, directly refer to his standing as a member of the profession of agrolgy and to the integrity and honesty of other members of the profession. His comments clearly affect the standing and reputation of the profession of agrolgy as a whole.

The second step of the proportionality test requires that the means used to achieve the substantial goal should impair as little as possible the right or freedom in question.

However, this does not require perfection. In *RJR-MacDonald Inc. v Canada (Attorney General)*, [1995] 3 SCR 1999, the Court stated at para 160:

The impairment must be "minimal", that is, the law must be carefully tailored so that rights are impaired no more than necessary. The tailoring process seldom admits of perfection and the courts must accord some leeway to the legislator. If the law falls within a range of reasonable alternatives, the courts will not find it overbroad merely because they can conceive of an alternative which might better tailor objective to infringement:

In this case, members of the profession are allowed to levy “direct and honest criticism against other professionals” as long as it is characterized by fairness and propriety under S. 4(b) of the Institute’s Code of Practice. As only undignified or misrepresentative public communication with or about the profession of agrology is limited, the minimal impairment test is passed.

The third and final requirement is that there must be a proportionality between the effects of the action taken in limiting the *Charter* right or freedom, and the pressing and substantial goal it aims to serve.

In *Doré v. Barreau du Québec*, [2012] 1 SCR 395 [*Dore*] at para 8, the SCC upheld the discipline committee’s decision to reprimand the lawyer as it reflected a proportionate balancing of its public mandate to ensure that lawyers behave with “objectivity, moderation and dignity” and the lawyer’s expressive rights. In that case the Disciplinary Council found that:

[t]his is a limitation on freedom of expression that is entirely reasonable, even necessary, in the Canadian legal system, where lawyers and judges must work together in the interest of justice.

The discipline committee in *Dore* also found that the lawyer had willingly joined a profession that was subject to rules of discipline that he knew would limit his freedom of expression. This restriction was made in exchange for the “privileges conferred on lawyers as members of an “exclusive profession.””

The reasoning upheld in *Dore* is applicable in this case. The limit on Mr. Cameron’s freedom of expression is reasonable and necessary for Agrologists to work together for the best interests of their profession and the general public. While Mr. Cameron’s rights are limited, he willingly joined a profession that he knew would limit his right to expression in exchange for privileges conferred on Agrologists as members of an exclusive profession. The effects of the action taken are proportional to the substantive goal they aim to serve.

As the three-part proportionality test has been satisfied, the means chosen to achieve the goal are reasonable and demonstrably justified.

While Mr. Cameron’s freedom of expression was infringed under Section 2(b), the limitation is prescribed by law and reasonably and demonstrably justified in a free and democratic society under Section 1.

Specific examples from the “Grassroots” newsletters that crossed the line from free speech and expressions of opinions to communication that is in breach of the Code of Ethics and Professional Standards are as follows:

Grassroots Edition	Quote
August 2, 2012	"Thank you for having Rick Koller on the Committee. It is nice to see a conscientious and fair-minded individual. I hope he doesn't get drowned out by the others."
January 24, 2013	<p>"Related question: Do lawyers control SIA council? In the last letter (3 October 12) sent to me, Mr. Boychuk stated the following ". . . . this is to inform you that council, the Executive Director and myself will not be providing any further responses to any future correspondence from you"</p> <p>The actual quote from Mr. Boychuk's October 3, 2012 letter reads as follows: "Lastly, this is to inform you that council, the Executive Director and myself will not be providing any further responses to any future correspondence from you that raises (sic) that have been previously dealt with. It is simply not fair to the other dues paying membership that the Institute expends significant resources in dealing with issues that are primarily personal to you or those issues of general interest to the membership that have been previously responded to."</p>
August 24, 2013	<p>"Two-tiered Code of Ethics: one for council and another for the rest of us?"</p> <p>"What's good for the goose is good for the gander or vice versa: So if we have a council setting an example of unethical behaviour (and it would appear that they are able to get away with it), then it would seem that it is okay for the rest of us to let our professional ethical standards slip a lot lower."</p>
November 2, 2013	"However, if SIA cannot develop an appropriate methodology to conduct a fair, honest and open investigation, free of conflict of interest biases, then we jeopardize our right to self-regulation. Not only do unethical procedures impact on our right to self-regulate, but the example we set will reflect on all other provincial regulatory bodies."

Taken in the context of all of the "Grassroots" newsletters that were filed as Exhibit DC 1 in this hearing, the above noted specific statements are in breach of the Code of Ethics and Practice Standards of the Saskatchewan Institute of Agrologists.

Based on these findings, the Discipline Committee finds Mr. Cameron in breach of the Code of Ethics and Practice Standards of the Saskatchewan Institute of Agrologists and, as such, is guilty of professional misconduct.

Obiter: The DC considered the question of why this action had to be taken against Mr. Cameron. The DC feels that this case should not have reached the point of requiring a discipline hearing, the cost of which in terms of time and resources for all involved, is beyond the significance of the problem. The DC strongly suggests that other means, such as mediation, be used to resolve similar problems before they reach the adversarial stage.

Dated at Saskatoon, Saskatchewan, this 22 day of July, 2015.

DISCIPLINE COMMITTEE OF THE
AGROLOGISTS ASSOCIATION
OF SASKATCHEWAN

Per: Vernon J. Racz
Vernon Racz

Per: Keith Head
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Per: _____
Brenda Stefanson

Per: _____
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