QUEEN'S BENCH FOR SASKATCHEWAN

Citation: **2014 SKQB 389**

Date: **2014 11 26**
Docket: QBG 28 of 2014
Judicial Centre: Melfort

IN THE MATTER OF A COMPLAINT OF PROFESSIONAL MISCONDUCT BEFORE THE DISCIPLINE COMMITTEE OF THE SASKATCHEWAN INSTITUTE OF AGROLOGISTS AGAINST GARRY MEIER, RIDGEDALE, SASKATCHEWAN

BETWEEN:

GARRY MEIER,

APPELLANT

- and -

SASKATCHEWAN INSTITUTE OF AGROLOGISTS,

RESPONDENT

Counsel:

Grant Carson	for the appellant
Jay D. Watson	for the respondent

JUDGMENT LAYH J.
November 26, 2014

I. INTRODUCTION

[1] The appellant, Garry Meier, a member of the Saskatchewan Institute of Agrologists [Institute], was found guilty of professional misconduct by the Discipline Committee of the Institute [Discipline Committee]. The Discipline Committee conducted its hearing on April 1 and 2, 2013 and released its decisions on July 31, 2013 with the matter of penalty reserved.

[2] The charge against Mr. Meier was based on a complaint from Patrick Beaujot, a member of the Institute and the designer of a method of seed and fertilizer placement in crop planting known as "side-row banding". He and his brother designed and now manufacture the Seed Hawk air seeder near Langbank, Saskatchewan.

[3] Mr. Meier is an employee of Bourgault Industries Ltd. at St. Brieux, Saskatchewan. It manufactures a seeding system referred to as a "mid-row banding." Mr. Meier is also a farmer and a plant breeder, having obtained his degree in crop science and economics at the University of Saskatchewan in 1976. He has been an agrologist since the mid to late 1980s.

[4] The formal charges against Mr. Meier allege that he published photographs and text stating that the difference in crop development at Redland Farms at Balcarres was due to the crop's response to fertilizer placement by the two different methods of fertilizer and seed placement [side-row band versus mid-row band] even though Mr. Meier knew that the difference in rate of crop development was not due to fertilizer placement.

[5] Of pivotal significance to the Institute's measure of professionalism was Mr. Meier's failure to adhere to an agrologist's need to draw and publish conclusions only after an appropriate scientific investigation. As stated at para. 104 of the Discipline Committee's decision, the issue was whether Mr. Meier had observed the expected scientific protocol of an agrologist:

> 104. Whether Mr. Meier was following proper scientific method is relevant to whether he was complying with the provisions of the Code of Conduct set out above. In particular, whether Mr. Meier complied with his obligation as a professional agrologist in the manner in which he collected and presented the observations at Redland Farms as supporting his conclusion that the side-row banding method imposed a greater risk of fertilizer damage to the seed than the mid-row banding

method.

[6] The Discipline Committee found that although "Mr. Meier had developed a hypothesis that the side-row banding method posed a greater risk … of fertilizer damage to the seed," the study was not a "proper scientific trial." The Discipline Committee found rather abject disregard for a proper inquiry to support Mr. Meier's published conclusions. The Discipline Committee wrote:

> 116. … There were absolutely no controls established over any variables that may impact seed development including soil conditions, nature of the seed used, nature of the fertilizer used, the rate of application of the fertilizer, the settings on the respective equipment and the actual seeding depth. …[N]either Mr. Meier, nor any professional agrologist, was on site to do a proper observation of the seeding conditions at Redland Farms. This alone should have made Mr. Meier cautious about the use of the information he obtained from Redland Farms in June and August of 2008 to support his hypothesis.

[7] The Discipline Committee described shortcomings in Mr. Meier's investigation at paras. 117-119: a lack of recording or documenting seed depths; stating opinions without identifying qualifying circumstances, facts and assumptions; failure to set up a proper trial or record his observations; continued public presentations of his opinions; and failure to alter his presentations when he knew that the difference in emergence may have been due to seeding depth, not fertilizer placement.

[8] At the penalty hearing on March 17, 2014, Mr. Meier raised a new issue which he stated unexpectedly had arisen after the Discipline Committee had released its decision in July 2013. He alleged that the chairperson of the Discipline Committee, George Lewko, had shown bias when he provided an opinion on an unrelated matter to a third party. Mr. Meier alleged that this opinion suggested that Mr. Lewko held disfavour toward Bourgault Industries Ltd., a farm machinery manufacturer who

employed Mr. Meier and whose air seeder used the "side-row banding" system of seed and fertilizer placement.

[9] The Discipline Committee heard Mr. Meier's request for a new hearing based on the allegation of bias. It received affidavit evidence from the third party – Eugene Eggerman – that Mr. Lewko had provided to him professional advice that Mr. Meier alleged showed bias against his case. Mr. Lewko absented himself from any further deliberations, but presented a statement in response to the allegations of bias made against him. The Discipline Committee heard representation from counsel for Mr. Meier and the Institute and, in a written decision of April 25, 2014, dismissed the bias application and imposed a penalty upon Mr. Meier, namely that he stand reprimanded, complete the professionalism and ethics course conducted by the Institute and pay costs in the amount of $15,000.00 within six months. Failing completion of the latter two conditions, Mr. Meier was to be suspended as a member of the Institute. By consent order issued June, 2, 2014, the penalty was stayed until determination of this appeal.

[10] Mr. Meier appeals from the Discipline Committee's decisions. His appeal may be summarized as advancing four grounds:

a) As to the substance of the findings against him, Mr. Meier contends that the Discipline Committee erred in convicting him since the evidence did not warrant the Discipline Committee's conclusions.

b) As to an alleged finding "contrary to law" – as phrased by Mr. Meier – he contends that the Discipline Committee failed to apply the applicable legal standard of care expected of an agrologist.

c) Respecting a procedural matter, Mr. Meier contends that the Discipline Committee's decision was tainted by bias given the involvement of one of its members, George Lewko.

d) Finally, Mr. Meier appeals the order for costs against him in the amount of $15,000.00.

[11] I conclude, for the reasons set out below, that Mr. Meier's appeal must be dismissed. Respecting the substance of the complaints in question – both the substantive factual findings and the finding of the appropriate standard of professional conduct – the Discipline Committee's conclusions fall within the parameters of reasonableness afforded the Discipline Committee under *The Agrologists Act, 1994,* SS 1994, c A-16.1 [*Act*]. I also uphold the Discipline Committee's finding of an absence of bias and the appropriateness of costs.

II. STATUTORY FRAMEWORK

[12] An administrative body, like the Discipline Committee of the Institute, is a creature of its statute: without the statute, no Institute, and no ability for professional self-regulation. Accordingly, the Discipline Committee's decision must find its legitimacy within the *Act* and within the principles of constitutional and common law which give the court certain circumscribed powers of intervention in the decision-making process of an administrative body.

[13] So, in this instance, the *Act* mandates that matters of complaint against members of the Institute are first channeled through the Professional Conduct Committee. It then determines whether the complaint will either be referred to the Discipline Committee or whether no further action will be taken. If referred, a hearing is conducted and governed by the following provisions of the *Act*:

> 26(3) The discipline committee shall hear the complaint and decide whether or not the member is guilty of professional misconduct or professional incompetence, notwithstanding that the determination of a question of fact may be involved, and the discipline committee need not refer any question to a court for adjudication.
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> (4) The discipline committee may accept any evidence that it considers appropriate and is not bound by rules of law concerning evidence.
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> (5) The discipline committee may employ, at the expense of the institute, any legal or other assistance that it considers necessary, and the member whose conduct is the subject of the hearing may be represented by counsel at his or her own expense.

[14] As permitted by s. 26(5), the Institute retained legal counsel to bring the charges against Mr. Meier and further independent legal counsel to act as assessor to the Discipline Committee.

[15] The *Act* also states that the witnesses' testimony must be under oath, with right of examination and cross-examination. Subpoenas are expressly authorized. The registrar of the Institute must notify the complainant of the hearing and who is entitled to attend the hearing, unless the Discipline Committee orders otherwise. If found guilty, the Discipline Committee's jurisdiction for penalty is found in s. 27, as follows:

> 27(1) Where the discipline committee finds a member guilty of professional misconduct or professional incompetence, it may make one or more of the following orders:
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> (a) an order that the member be expelled from the institute and that his or her name be struck from the register;
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> (b) an order that the member be suspended from the institute for a specified period of time;
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> (c) an order that the member be suspended pending the satisfaction and completion of any conditions specified in the order;

> (d) an order that the member may continue to practise only under conditions specified in the order that may include, but are not restricted to, an order that the member:
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> (i) not do specified types of work;
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> (ii) successfully complete specified classes or courses of instruction;
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> (iii) obtain treatment, counselling or both;
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> (e) an order reprimanding the member; or
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> (f) any other order that to it seems just.
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> (2) In addition to any order made pursuant to subsection (1), the discipline committee may order:
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> (a) that the member pay to the institute within a fixed period:
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> (i) a fine in a specified amount not exceeding $2,000 for each finding and $6,000 in the aggregate for all findings; and
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> (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; and
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> (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.

[16] The *Act* provides wide discretion to the Discipline Committee to determine matters of professional misconduct and, important to this appeal, expressly states that a determination of professional misconduct is a question of fact. Section 28 states:

> 28(1) Professional misconduct is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonourable, that:
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> (a) is harmful to the best interests of the public or the members of the institute;
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> (b) tends to harm the standing of the profession of agrology;
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> (c) is a breach of this Act or the bylaws; or
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> (d) is a failure to comply with an order of the professional conduct committee, the discipline committee or the council;

> is professional misconduct within the meaning of this Act.

[17] A disciplined member has the right to appeal the decision of the Discipline Committee to the Court of Queen's Bench, as permitted by s. 32. Section 33 details the broad discretion of the court and s. 35 permits a further appeal to the Court of Appeal, but only on a question of law:

> 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.
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> 33 In hearing an appeal pursuant to section 32, the judge shall:
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> (a) dismiss the appeal;
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> (b) quash the finding of guilt;
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> (c) direct a new hearing or further inquiries by the discipline committee;
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> (d) vary the order of the discipline committee; or
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> (e) substitute his or her own decision for the decision of the discipline committee;
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> and may make any order as to costs that the judge considers appropriate.
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> 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.

[18] These provisions of the *Act* and the principles of judicial review as developed by the courts, inform and instruct me in the disposition of Mr. Meier's appeal.

III. STANDARD OF REVIEW

[19] The court must understand the task before it: what level of intervention must the court bring in its review of the decision of the Discipline Committee? In this regard, the position of the Institute is stated with clarity at para. 27 of its brief of law: "The standard of review of administrative decisions was determined in the Supreme Court of Canada's decision, *Dunsmuir v New Brunswick*, 2008 SCC 9 … [where the court] stated that there are two standards: correctness and reasonableness."

[20] Mr. Meier's position is less clear. When Mr. Meier's counsel was asked why *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*], was not mentioned in either the brief of law or in oral argument, he stated that the statutory right of appeal under s. 32 of the *Act* obviated the need to refer to *Dunsmuir*. Seemingly then, in the absence of *Dunsmuir*, Mr. Meier suggests that this appeal is akin to an appeal from a trial court to an appellate court on the grounds of an erroneous finding of fact. Mr. Meier's notice of appeal alleged the Discipline Committee's "overriding and palpable error which goes to the root of the decision", the commonly articulated measure of an appellate court's ability to interfere with a lower court's finding of fact: *Housen v Nikolaisen*, 2002 SCC 33, [2002] 2 SCR 235.

[21] In support of his position that the standard of appellate review effectively replaces *Dunsmuir* and the principles respecting judicial review, Mr. Meier cites *Long Lake School Division No. 30 v Schatz*, [1986] 5 WWR 355 (Sask CA), and *Lensen v Lensen*, [1987] 2 SCR 672. Both of these cases address the standard of appellate court review of a trial court, not judicial review of an administrative tribunal.

[22] I cannot accept Mr. Meier's position. The statutory right of appeal under s. 32 of the *Act* does not replace the *Dunsmuir* standard with another standard of review. Judicial review of an administrative tribunal's decision is a different creature

than appellate review of a trial court's findings and a statutory right of appeal does not morph from the former to the latter as recognized in *Dr. Q v College of Physicians and Surgeons of British Columbia*, 2003 SCC 19, [2003] 1 SCR 226 [*Dr. Q*], where the Supreme Court of Canada addressed the standard of review of an administrative tribunal's decision where a right to appeal, stating:

> 20 This brings us to the second erroneous assumption – that because the Act grants a right of appeal, the matter could be dealt with without recourse to the usual administrative law principles pertaining to standard of review.
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> 21 … The term "judicial review" embraces review of administrative decisions by way of both application for judicial review and statutory rights of appeal. In every case where a statute delegates power to an administrative decision-maker, the reviewing judge must begin by determining the standard of review on the pragmatic and functional approach. …

[23] Justice Currie, in *Sydiaha v Saskatchewan College of Psychologists*, 2014 SKQB 112, at para 11 [*Sydiaha*], similarly cited *Dr. Q* and similarly concluded, as have I, that an "administrative decision on a statutory appeal is to be addressed in the same manner as is a judicial review." Judicial review of an administrative tribunal and appellate review of a trial court are different, in both a practical sense and in their legal underpinnings.

[24] Practically, expertise is in play when the decision of an administrative body is appealed to the court; it is not in play when the decision of a trial court of general jurisdiction is appealed to an appellate court. Trial judges have no recognized expertise outside the law, unlike members of specialized tribunals. Accordingly, an appeal from a tribunal of specialized fact-determiners, like the Institute's Discipline Committee, to a generalist court, like this Court, should understandably attract a different standard of review. Justice Cameron identified this principle in *Canada (Attorney General) v H.L.*, 2002 SKCA 131, at para 87, 227 Sask R 165, rev'd in part

on other grounds, 2005 SCC 25, [2005] 1 SCR 401:

> [87] … The standards of review associated with that doctrine [judicial review] are highly deferential, of course, given the constraining bases of law and jurisdiction and judicial policy that underlie the doctrine—constraining bases which serve, necessarily, to restrict the scope of both the person's right to take issue with the decision and the court's power to interfere with the decision. Appeal, especially appeal from a decision of a judge alone, rests on fundamentally different footings, and we must be careful to avoid drawing upon the former for the purposes of the latter lest we end up placing similar restrictions, unwarranted by statute, on the person's right of appeal … .

[25] Mr. Meier's position respecting the standard of review is untenable. The appropriate standard of review is the *Dunsmuir* standard: "correctness" for matters of jurisdiction or questions of law of general application which are of central importance to the legal system as a whole and outside the tribunal's specialized area of expertise, and "reasonableness" for questions which relate to the interpretation and application of the *Act* within the tribunal's expertise which do not raise issues of general legal importance. (See also, *Workers' Compensation Board of Saskatchewan v Mellor,* 2012 SKCA 10, 385 Sask R 210.)

[26] Which standard applies: correctness or reasonableness? I must first ascertain whether jurisprudence has already determined which standard is appropriate in the instance of professional discipline. Several Queen's Bench and Court of Appeal decisions in Saskatchewan have held that in relation to decisions of professional discipline and penalty, the appropriate standard of review is reasonableness: *Merchant v Law Society of Saskatchewan,* 2009 SKCA 33, 324 Sask R 108; *McLean v Law Society of Saskatchewan,* 2012 SKCA 7, 385 Sask R 182; *Peet v The Law Society of Saskatchewan,* 2014 SKCA 109; *DeMaria v Law Society of Saskatchewan,* 2013 SKQB 178, 420 Sask R 230; *Ali v College of Physicians and Surgeons of Saskatchewan,* 2013 SKQB 37, 418 Sask R 51; and *Sydiaha*.

[27] Although these cases emphatically confirm the appropriateness of the "reasonableness" test, I am also mindful that s. 28 of the *Act* expressly states, "Professional misconduct is a question of fact…" This provision, alone, may leave the court with little option but to adopt the reasonable test in matters of professional discipline. My research shows that no other Canadian jurisdiction uses this phrase in its professional discipline statutes, although it is commonplace in many of Saskatchewan's professional discipline statutes. Findings of fact are the purview of the discipline committee and command a high degree of deference when subjected to judicial review – thence the appropriateness of the "reasonableness" standard.

[28] Implementing the reasonableness standard implies significant deference to the tribunal, as described by Justices Bastarache and LeBel in *Dunsmuir* at para. 47:

> ...A court conducting a review for reasonableness inquiries into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[29] A practical restatement of the test of reasonableness is well put by Justice Currie in *Sydiaha*, at para. 30:

> In any event, the reasonableness standard of review does not require the decision under review to be correct. Indeed, the lack of that requirement is the fundamental characteristic that distinguishes the reasonableness standard of review from the correctness standard of review. So it is that, if the council's decision meets the test of reasonableness, even if the decision is not correct it may stand.

IV. APPLICATION OF THE STANDARD OF REASONABLENESS

[30] So, the application of the *Dunsmuir* test requires me to consider whether the Discipline Committee came to defensible conclusions, not necessarily correct in my view, but that can be justified, are transparent and intelligible.

[31] I will start with a general observation respecting the Discipline Committee's approach in determining Mr. Meier's case, cognizant that if the reasons provided by a tribunal are inadequate, the decision may not be justifiable, transparent or intelligible: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board),* 2011 SCC 62, [2011] 3 SCR 708. On this measure, though, the Discipline Committee cannot be faulted. In a decision exceeding 27 single spaced pages (excluding the bias and penalty hearing which was another 17 page document), the Discipline Committee laboriously detailed and summarized the evidence offered by seven witnesses. Following this comprehensive summary, the Discipline Committee's reasons continue for eight single spaced pages, applying the facts to its standards of professionalism established by reference to the *Act* and to the Institute's Code of Ethics. While sheer volume of a tribunal's reasons alone will not meet the three-pronged measure of reasonableness, in this instance I find that the Discipline Committee was attentive in hearing the witnesses and studious in applying the facts to the expected professional conduct of an agrologist.

[32] Aware then that the Discipline Committee's disposition must be justifiable, transparent and intelligible, I turn to Mr. Meier's specific allegations of the Discipline Committee's errors in reaching its conclusions, as follows:

> (a) The entire decision rests upon an erroneous finding or assumption by the Discipline Committee that a seeding depth error actually occurred in the particular field observed and commented upon by the Appellant [Meier] as part of his research. … This fundamental error leaves no evidence supporting the decision with the result of overriding and palpable

error.

(b) The Discipline Committee erred in determining the existence of a "seeding depth error" based upon evidence from the complainant (Pat Beaujot) when such evidence on the entirety of evidence called, was demonstrated to be false, misleading, irrelevant and sourced from an obvious conflict of interest on the part of Beaujot. As a result there is overriding and palpable error which goes to the root of the decision.

(c) The decision of the Discipline Committee is erroneous and unsustainable in the face of uncontradicted highly qualified expert testimony that the Appellant, in conducting his legitimate research and observations, met the expected ethical standards of an agrologist.

(d) The Decision of the Discipline Committee is in itself contrary to the Code of Ethics and Professionalism in that it denies the Appellant the right to express a professional opinion based upon his training, knowledge, experience, scientific experimentation, scientific observation and the opinion of other recognized experts in the field. As such overriding and palpable error is present in the decision.

(e) The decision of the Discipline Committee in itself is contrary to the Code of Ethics and Professionalism in that it thwarts the "good stewardship of agricultural resources based on sound scientific principles", that it restricts the public's right of knowledge in sustainable agricultural systems, and hampers and restricts the research, development and improvement to agricultural implements by manufacturers.

(f) The Decision of the Discipline Committee is contrary to law and fails to apply the applicable legal standard of care to an Agrologist in the intelligent exercise of judgment and use of the scientific method.

[33] Although Mr. Meier suggests that a matter of law has been raised in clause (f), I find that all the above grounds of appeal challenge findings of fact or mixed fact and law, all of which attract the reasonableness standard. I have taken each of Mr. Meier's grievances of the Discipline Committee's fact finding and have considered the ability of each finding to withstand the test of reasonableness.

[34] First, Mr. Meier's grounds often raise matters of no consequence to the Discipline Committee's determination. For example, seeding depth *per se* is inconsequential to the Discipline Committee's finding. The Discipline Committee found fault with Mr. Meier's published opinions when he attributed findings to the two methods of seed and fertilizer placement absent controls to rule out other explanations, **including** seed depth, but also "soil conditions, nature of the seed used, …and the rate of application of fertilizer."

[35] Clause (c) above merits specific, but brief comment. The Discipline Committee heard from Donald Hoover, a member and past president of the Alberta Institute of Agrologists who had taught ethics courses for the Canadian Consulting Agrologists Association and was involved in developing the Code of Ethics and the Code of Practice with the Alberta Institute of Agrologists. Mr. Hoover stated that in his view, Mr. Meier had followed the scientific method in his investigation. However, the Discipline Committee, after summarizing the essence of Mr. Hoover's evidence, stated at para. 115 it could not accept his conclusion.

[36] I find that the Discipline Committee heard, summarized, considered, but dismissed Mr. Hoover's evidence. Professional misconduct must be determined by the Discipline Committee and the Discipline Committee need not and cannot delegate this authority to anyone else. In this regard, I refer to *Kaminski v Assn. of Professional Engineers and Geoscientists of British Columbia,* 2010 BCSC 468, at para 51, 90 CLR (3d) 263, who stated:

> … While it would not have been unreasonable for the Panel to have concluded that the evidence of the appellant's experts was more compelling in view of their particular experience, the Panel's conclusion to the contrary was certainly within the range of possible, acceptable outcomes, and it is not for me to substitute my own view should it differ. For the reasons already articulated, I am satisfied that the Panel's interpretation of its own professional standards was "justified, transparent and intelligible".

[37] In summary, I have satisfied myself that the Discipline Committee has met the test of reasonableness based on the same considerations that Justice Caldwell brought to bear in *Oledzki v Law Society of Saskatchewan*, 2010 SKCA 120, 362 Sask R 86 [*Oledzki*]. I can similarly state in this appeal, as Justice Caldwell did in *Oledzki*, that the Discipline Committee "carefully set out the analysis … in a … decision that is clear and cogent and contains thorough justification for each finding of guilt …". Further, I can similarly say that the Discipline Committee's decision, in this instance, "is internally-justified, transparent and intelligible."

V. THE ALLEGATION OF BIAS

[38] Mr. Meier maintains that the actions of the chairperson of the Discipline Committee, George Lewko, give rise to a reasonable apprehension of bias. The allegation of bias arose in the fall of 2013, after the Discipline Committee's initial finding of Mr. Meier's guilt. At the sentencing hearing on March 17, 2014, the allegation of bias was given a full airing before the Discipline Committee. As taken from the Discipline Committee's findings of fact at pages 6 and 7 of its April 25, 2014 decision, based on an affidavit sworn by Mr. Eugene Eggerman on January 20, 2014 and a statement given by Mr. Lewko at the hearing (respecting which he did not otherwise participate), the Discipline Committee made the following findings of fact.

[39] Subsequent to the Discipline Committee's decision in July 2013, Eugene Eggerman, a Watson area farmer, unrelated to Mr. Meier's discipline proceedings, independently engaged George Lewko to examine his canola crop because of unexplained damage. Between July and October 4, 2013, Mr. Lewko consulted with other specialists but was unable to determine whether the crop damage arose because of insects, disease or chemical damage. He postulated to Mr. Eggerman

that the damage may have arisen from a seeding failure. Mr. Eggerman had used a Bourgault air seeder. Later, though, Mr. Lewko attended the Eggerman farm and ruled out a seeding problem with the air seeder. In the intervening time, though, Mr. Eggerman informed Mr. Meier of Mr. Lewko's suggested theory. On October 24, 2013, Mr. Meier contacted Mr. Lewko and stated that Mr. Eggerman informed him that Mr. Lewko had said that the crop damage was caused by the Bourgault seeding equipment. In response, Mr. Lewko told Mr. Meier that he had never concluded that the damage was caused by a seeding problem. Mr. Lewko then sent a letter to Mr. Eggerman, dated October 25, 2013, in which he wrote:

> On Oct. 24, 2013, I received a professional courtesy call from Mr. Garry Meier PAg. Mr. Meier PAg was concerned that I had blamed 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.

[40] Central to Mr. Meier's allegation of bias is the contention that Mr. Lewko harboured a hostile pre-disposition against the Bourgault "mid-row banding" air seeder which created an apprehension of bias against Mr. Meier.

[41] Critical to a tribunal's duty of fairness is its obligation to discharge adjudicative functions independently and impartially – that is, without bias. The Saskatchewan Court of Appeal has recently provided a test to determine the legitimacy of a claim of reasonable apprehension of bias in *Aalbers v Aalbers*, 2013 SKCA 64, at paras 74, 75, and 77, 417 Sask R 69:

> [74] On numerous occasions, the Supreme Court of Canada has adopted the test for a reasonable apprehension of bias established by de Grandpré J. in dissenting reasons in *Committee for Justice and Liberty v. National Energy* Board, [1978] 1 S.C.R. 369 at pp. 394-95.

> See: *R. v. R.D.S.*, [1997] 3 S.C.R. 484 at para. 31; *R. v. Valente*, [1985] 2 S.C.R. 673 at para. 12 and *Wewaykum* at paras. 60 and 76. See also from this Court *R. v. Dickhoff* (1998), 172 Sask. R. 1 (Sask. C.A.) at para. 11.
>
> [75] The test is whether an informed person, viewing the matter realistically and practically – and having thought the matter through, – would think that is more likely than not that the decision-maker, whether consciously or unconsciously, would not decide fairly (*Committee for Justice and Liberty* at p. 394). The grounds for an apprehension of bias must be "substantial" (*Committee for Justice and Liberty* at p. 395). A real likelihood or probability of bias must be demonstrated; a mere suspicion is not enough (*R.D.S.* at para. 112). The Supreme Court of Canada has also consistently rejected the notion that the reasonableness of an apprehension of bias depends on the "very sensitive or scrupulous conscience" (*Wewaykum*, para. 76).
> …
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> [77] When these principles are applied the outcome can vary depending on the context. As the court stated in *Wewaykum*, whether an apprehension of bias exists is a "highly fact-specific" inquiry for which there are no shortcuts:
>
> > 77 … As a result, it cannot be addressed through peremptory rules, and contrary to what was submitted during oral argument, there are no "textbook" instances. Whether the facts, as established, point to financial or personal interest of the decision-maker; present or past link with a party, counsel or judge; earlier participation or knowledge of the litigation; or expression of views and activities, they must be addressed carefully in light of the entire context. There are no shortcuts.

[42] The Discipline Committee performed a 22 paragraph analysis respecting Mr. Meier's allegation of bias and concluded that Mr. Meier failed to establish a reasonable apprehension of bias and his application to void the initial decision of the Discipline Committee was dismissed. I see no error made by the Discipline Committee in reaching this decision.

[43] The only way that an allegation of bias could gain any traction is to characterize the nature of the proceedings against Mr. Meier as a hearing between two competing air seeding systems. On the one side would be Mr. Meier and his

employer, Bourgault Industries, the manufacturer of the "mid-row banding" equipment, and on the other side would be Mr. Beaujot, the complainant, and the company he established, Seed Hawk, the manufacturer of the "side-row banding" equipment. However, this supposition would be a mischaracterization of the entire essence of the discipline hearing. The essence of the charge was that Mr. Meier had drawn certain unscientific conclusions about "side-row banding" in comparison to "mid-row banding." The Discipline Committee held that Mr. Meier's lack of professionalism arose from his poor science and made no finding, nor was it concerned about, which method of fertilizer and seed placement was preferred.

[44] Neither Bourgault air seeders nor Seed Hawk air seeders were impugned, either in the charge or in the findings of fact. The Discipline Committee, in dismissing the allegation of bias, squarely said so at para. 49:

> 49 … The Committee did [not] 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.

[45] If the Discipline Committee was disinterested, both in a practical and legal sense, in the performance of Bourgault air seeders, then, even if Mr. Lewko harboured skepticism or ill-will against the mid-row banding system (which the Discipline Committee did not find as a fact), then no reasonable apprehension of bias

can arise.

[46] Mr. Meier casts a broad net in his brief of law, implicating not only Mr. Meier, but broadening an allegation of bias to include Patrick Beaujot, the original complainant. At para. 41 of his brief he states, "The conduct of Pat Beaujot in this case clearly demonstrates his motive of protecting market share with little regard for the science involved. … That conduct that creates a reasonable apprehension of bias includes adjudicating and proceedings involving business competitors."

[47] To suggest that a complainant alleging misconduct against another member of a professional body constitutes bias of the Discipline Committee is an odd allegation indeed. Complaints of professional misconduct not infrequently arise from a member of the same profession, aggrieved in some way of the conduct of another. Mr. Beaujot chose to lay a complaint. However, after laying the complaint, Mr. Beaujot had no further standing other than to offer evidence if called upon. He certainly had no role in the Discipline Committee's decision-making – thence an allegation of bias is inapplicable.

[48] In summary, I am not persuaded that an informed person, viewing the matter realistically and practically on an objective standard, would conclude that the outcome of the Discipline Committee's decision could be influenced by Mr. Lewko's alleged, but unproven, disfavour of mid-row banding systems.

VI. THE MATTER OF COSTS

[49] Section 27(2)(a)(ii) of the *Act* allows the Discipline Committee to order the member to pay the costs of the investigation and hearing, including the expenses of the Professional Conduct Committee and the Discipline Committee and costs of

legal services and witnesses. The Discipline Committee again took this task into deep consideration and cited a case with which it had familiarity – *Jacob Wallace Hamm v Saskatchewan Institute of Agrologists*, QB No. 166 (2002) (unreported) [*Hamm*], where Justice Ball, quoting from *Brand v College of Physician and Surgeons of Saskatchewan* (1990), 72 DLR (4^{th}) 446 (Sask CA), found that costs were discretionary and subject to judicial review to determine whether the assessment of costs is reasonable. The Discipline Committee then considered Justice Ball's finding in *Hamm* that costs for a two day hearing were more appropriately $9,000.00 rather than the sought amount of $12,090.99. Given that Mr. Meier's hearing was three days and the *Hamm* decision was over 10 years old, the Discipline Committee ordered costs of $15,000.00 against Mr. Meier, essentially a prorated extrapolation of the costs permitted in *Hamm*.

[50] I am hard pressed to disagree with the logic employed by the Discipline Committee in arriving at a suitable amount of costs and confirm that costs shall remain as ordered.

VII. CONCLUSION

[51] I conclude that Mr. Meier's appeal should be dismissed.

[52] The Institute is entitled to costs in the usual manner.

_____ J.
D.H. LAYH