QUEEN'S BENCH FOR SASKATCHEWAN

Citation: **2013 SKQB 191**

Date: **2013 05 17**
Docket: Q.B.G. No. 1357 of 2011
Judicial Centre: Saskatoon

BETWEEN:

DR. JO NANSON,

APPELLANT

- and -

SASKATCHEWAN COLLEGE OF PSYCHOLOGISTS,

RESPONDENT

Counsel:

Davin R. Burlingham — for the appellant
Gwen V.G. Goebel — for the respondent

JUDGMENT
May 17, 2013

DANYLIUK J.

Facts

[1] This is an appeal brought pursuant to *The Psychologists Act, 1997*, S.S. 1997, c. P-36.01 ("the Act"), coupled with an application for judicial review. The appellant is a psychologist. She faced some professional disciplinary matters, the adjudication of which have led to this appeal. She has been represented by counsel throughout.

[2] Those complaints were the subject of negotiations between her lawyer and

the lawyer for the College's Professional Conduct Committee ("PCC"), Ms. K. Prisciak Q.C. Counsel reached an agreement and made a joint submission.

[3] The matter was initially dealt with by the College's Discipline Committee, an entity established by s. 30 of the Act. The purpose of the Discipline Committee is to hear and adjudicate on complaints against psychologists and, if a complaint is founded, to deal with sentence.

[4] The joint submission was made to the Discipline Committee on December 8, 2009 at Saskatoon. An agreed statement of facts was presented. Originally nine complaints were in issue. The appellant accepted six charges as framed, which the Committee saw as the equivalent of entering a plea of guilty to those charges. The agreement also dealt with remedies, which consisted of certain undertakings from the appellant to conduct her future practice in a specific manner. It had been agreed that no sanctions would be levied against the appellant, and that she would pay costs in the sum of $2,500.00. The Discipline Committee reserved decision. The entire hearing lasted five minutes, according to the transcript.

[5] On April 20, 2010 the Discipline Committee rendered a 13-page written decision. It rejected the joint submission and substituted its own order for the terms recommended by counsel. The appellant was found guilty of professional misconduct for failing to comply with the College's code of ethics, and was issued a reprimand. The Committee issued an order as to the appellant's future practice, refusing to accept the undertaking. Finally, the agreed costs were increased to $3,000.00.

[6] During the December 8, 2009 hearing no member of the Discipline Committee expressed concern as to the terms of the joint submission. Once counsel had

filed the joint submission, the only exchange pertaining to same occurred at pages 108 to 109:

> THE CHAIRPERSON: Okay, all right. So we will consider these document [sic], and then we will consider your submission of penalty or your suggestions for penalty.
>
> MS. PRISCIAK: The penalty is right inside that document as well.
>
> THE CHAIRPERSON: Okay, we will consider that. And if I'm looking at our procedure, now the Discipline Committee has received the agree-upon facts. We will consider all the evidence and arguments of both parties. This hearing is adjourned, hey?
>
> MS. PRISCIAK: Yes.
>
> THE CHAIRPERSON: Okay. We will meet, the Committee will meet, to deliberate and come to its decision on the question of penalty. Once the Committee has reached its decision, a written copy of it will be provided to the member, the complainant and the counsel of the College, and we may inform the member's employer as directed by the Act.
>
> So the hearing is therefore adjourned. Thank you very much.

[7] In its written decision, the Discipline Committee specifically reviewed the then recent Saskatchewan Court of Appeal decision in *Rault v. Law Society of Saskatchewan*, 2009 SKCA 81, 331 Sask.R. 160. The Committee concluded that it was unable to accept undertakings from the appellant, and that an order must be made (paras. 12 to 14). It also concluded (para. 15) that costs of $2,500.00 were not "fair in relation to similar orders made in other discipline cases it has decided". There were no inquiries from the Discipline Committee to counsel, nor any advice that it was having trouble accepting the joint submission.

[8] This led to an appeal by the appellant to the College's Council. The Council is established by s. 7 of the Act. Amongst its duties is to hear appeals from the Discipline

Committee. The appellant argued, *inter alia*, that the Committee erred in making guilty findings of professional misconduct and issuing reprimands, and that the Committee erred in failing to give proper deference to the parties' joint submission.

[9] The hearing of this appeal by Council was held March 1 and 8, 2011. The conduct of that hearing raised additional issues in the mind of the appellant. In the course of that appeal hearing Ms. Prisciak, as PCC counsel, made submissions that appellant's counsel saw as supportive of the Discipline Committee's decision. The appellant argued counsel for the PCC could not do this, as it was taking a position contrary to the joint submission originally advanced in front of the Discipline Committee. The appellant went further, stating this position created a reasonable apprehension of bias. Council dismissed these objections.

[10] On August 22, 2011, Council issued its decision on the appeal. It applied reasonableness as the standard of review. Council determined that when the appellant acknowledged the facts set out in some of the complaints, this amounted to an admission of a breach of the code of ethics and a plea of guilty to same. As a result, the Discipline Committee was held to be correct in finding the appellant guilty on that basis and in imposing a reprimand. As well, Council decided the Committee was correct in rejecting the joint submission as being unfit or contrary to public policy. Finally, Council did make some changes to the decision of the Committee - specifically, the variation of the costs agreed to was overturned, as was the order that the appellant comply with the code of ethics in the future. The appellant takes no issue with those last two findings.

[11] The appellant now appeals Council's decision to this court, under s. 37 of the Act. As well, she states she seeks judicial review. The notice of appeal is treated as the commencing document of the judicial review application.

[12] The appeal is taken on five grounds:

(a) Council erred in failing to find that the Discipline Committee exceeded its jurisdiction when it issued a reprimand and order in relation to matters not constituting breaches of the code of ethics.

(b) Council erred by failing to find that the Discipline Committee erred in refusing to accept a joint submission which was not unfit, unreasonable, or contrary to the public interest.

(c) Council erred by finding the appellant's admissions amounted to admissions of guilt of professional misconduct.

(d) Council erred by determining it was mandated by the Act to impose sanctions upon the appellant as a consequence of the findings of professional misconduct.

(e) It was a breach of natural justice to allow counsel for the PCC to make representations at the appeal hearing, when those representations amounted to a withdrawal of support for the joint submission.

[13] The appellant seeks, firstly, an order quashing the discipline proceedings pursuant to Part Fifty-Two of *The Queen's Bench Rules*. In the alternative, the appellant seeks an order allowing this appeal and substituting the joint submission for the determination of the Discipline Committee, as amended by Council. Finally, costs of this appeal/application are sought.

Issues

[14] The issues in this case are:

(a) What is this court's jurisdiction to act, and what is the appropriate standard of review?

(b) Did Council err in failing to find that the Discipline Committee exceeded its jurisdiction when it issued a reprimand and order in relation to matters not constituting breaches of the code of ethics?

(c) Did Council err by failing to find that the Discipline Committee erred in refusing to accept a joint submission which was not unfit, unreasonable, or contrary to the public interest?

(d) Did Council err by finding the appellant's admissions amounted to admissions of guilt of professional misconduct?

(e) Did Council err by determining it was mandated by the Act to impose sanctions upon the appellant as a consequence of the findings of professional misconduct?

(f) Was it a breach of natural justice to allow counsel for the PCC to make representations at the appeal hearing if those representations amounted to a withdrawal of support for the joint submission?

Analysis

What is this court's jurisdiction to act, and what is the appropriate standard of review?

[15] With respect to the appeal, the court's jurisdiction emanates from the Act, in particular s. 37:

> 37. A member whose conduct is the subject of an order of the council pursuant to section 36 may appeal that order to a judge of the court within 30 days after the order of the council, and section 36 applies with any necessary modification.

[16] Section 36 deals with Council's powers on review. The same powers are granted to this court. Under s. 36(5) the court may do the following on hearing an appeal:

> (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 its own decision for the decision of the discipline committee.

[17] The appellant also brings this proceeding as a Part Fifty-Two judicial review. Same may be commenced by means of a notice of appeal: *Bailey v. Saskatchewan Registered Nurses' Assn.* (1996), 142 Sask. R. 1, [1996] S.J. No. 147 (QL) (Q.B.). In this case, the issues on appeal and on review are virtually identical, such that the court is able to deal with them simultaneously.

[18] The parties agree the proper standard of review with respect to the decisions of Council and the Discipline Committee is that of reasonableness. The court agrees, and has considered:

> *Moll v. College of Alberta Psychologists*, 2011 ABCA 110, [2011] 8 W.W.R. 687;
>
> *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190;
>
> *Smith v. Alliance Pipeline Ltd.*, 2011 SCC 7, [2011] 1 S.C.R. 160;
>
> *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R 708.

[19] Here, the primary matters in issue relate to the in-house tribunals' interpretation of their enabling statute - a consideration falling squarely within the standard of reasonableness. The court acknowledges that when the applicable standard of review is reasonableness, deference is required with respect to the original tribunal. The train of inquiry here is whether the decision made was reasonable, not only in terms of the outcome but also in the process of determining and articulating the reasons for same. One must ask whether the decision falls inside a range of outcomes that are possible and acceptable, and if it is defensible in fact and in law. A court's quest is not to substitute its own reasoning and outcome, but rather to assess the reasonableness of the outcome reached below. Deference is required.

[20] The court must therefore determine whether Council's decision was a reasonable one.

Did Council err in failing to find that the Discipline Committee exceeded its jurisdiction when it issued a reprimand and order in relation to matters not constituting breaches of the code of ethics?

[21] The appellant's position is that Council erred in upholding the Discipline Committee's decision (para. 9) that the appellant was guilty of professional misconduct as a result of the acknowledgements in the agreement reached. The appellant's position is that the Discipline Committee lacked jurisdiction to make findings of professional misconduct (or to issue reprimands or orders) on any matter which is not a clear breach of the code of ethics, the College's bylaws, or the Act. Of the six complaints before the Committee only three (F, G and I) could be seen as code infractions. The other three (A, D and H) deal only with issues of professional practice and are not matters addressed by the code. Further, the appellant points out that neither the charging documents nor the

Committee's decision identifies which code sections she breached. The appellant says she never fully knew the case she had to meet.

[22] The Discipline Committee hears the evidence surrounding a complaint and then decides whether the member is guilty of "professional misconduct or professional incompetence" (s. 31(3)). The legislation provides relatively wide definitions of professional misconduct and incompetence at ss. 25 and 26:

> 25. Professional misconduct is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonourable, that:
>
> (a) is harmful to the best interests of the public or the members of the college;
>
> (b) tends to harm the standing of the profession;
>
> (c) is a breach of this Act or the bylaws; or
>
> (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.
>
> 26. Professional incompetence is a question of fact, but the display by a member of a lack of knowledge, skill or judgment, or a disregard for the welfare of a member of the public served by the profession of a nature or to an extent that demonstrates that the member is unfit to:
>
> (a) continue in the practice of the profession; or
>
> (b) provide one or more services ordinarily provided as a part of the practice of the profession;
>
> is professional incompetence within the meaning of this Act.

[23] This wide scope is similar to "conduct unbecoming" under *The Legal Profession Act, 1990,* S.S. 1990-91, c. L-10.1, in s. 2:

> (d) **"conduct unbecoming"** means any act or conduct, whether or not disgraceful or dishonourable, that:
>
> (i) is inimical to the best interests of the public or the members; or
>
> (ii) tends to harm the standing of the legal profession generally;
>
> and includes the practice of law in an incompetent manner where it is within the scope of subclause (i) or (ii).

[24] Professional regulators frequently have a wide or inclusive definition of prohibited conduct. This is to ensure that a regulator is not restricted from dealing with conduct that requires attention from the perspective of protection of the public.

[25] While the appellant argues that it was not "fair or proper" for the Committee to find that there were code breaches, that argument conflicts with the appellant's acknowledgement that this matter is operating under the standard of reasonableness. The appellant's admissions as to the facts behind the charges (her "acceptance of the charges as they are") were tantamount to guilty pleas. If she is consciously pleading guilty, she must be acknowledging guilt of *something*. The appellant's assertion that she could not be found guilty of regulatory offences in the absence of an express plea of guilt is somewhat disingenuous. If that was her position it ought to have been made crystal clear in front of the Discipline Committee. A plain reading of the transcript reveals no such thing.

[26] This is a review of and appeal from the College's Council. Council specifically examined the issue of whether the three enumerated complaints constituted breaches of the code of ethics. At paras. 19 to 23, Council dealt with this issue and held (para. 22): "It is not difficult however, from a perusal of the Code, to determine that each of the three complaints described as A, D, and H also breach certain provisions of the Code".

[27] The court agrees. From a plain reading of the three complaints impugned by the appellant, it is readily apparent that they could comprise ethics code breaches. It was open to, and perhaps incumbent upon, Council to look at the decision of the Discipline Committee and assess whether the record shows that the outcome and reasons

are reasonable, falling within a range of possible outcomes. As well, the *Newfoundland and Labrador Nurses* case instructs one to examine the reasons and sometimes supplement them from the record before overturning same.

[28] This examination of Council's decision, while keeping the principle of deference in mind, leads the court to conclude that Council's approach and conclusion on this ground of appeal were appropriate. A full reading of the Council decision permits the reader to gain a full understanding of why and how it made its decision. Certainly, given the language of ss. 25 and 26 of the Act, the decision of Council to uphold the findings of "guilty pleas" is well within the range of possible decisions. It can be easy, even tempting, to substitute one's own reasoning for that of the tribunal appealed from. But that is not the test on the reasonableness standard. Having found that the decision of Council is reasonable, the court's inquiry on this ground of appeal and review is concluded.

Did Council err by failing to find that the Discipline Committee erred in refusing to accept a joint submission which was not unfit, unreasonable, or contrary to the public interest?

[29] The appellant argues that Council erred in upholding the Discipline Committee in imposing sanctions on the appellant, and therefore refused to accept the joint submission of counsel when it was not unfit, unreasonable, or contrary to the public interest. Two concerns arise. First, the joint submission was rejected on its merits when it ought to have been accepted. Second, no opportunity was given to counsel to address the Committee's concerns with the joint submission.

[30] First, the merits. The Discipline Committee was clearly alive to the seriousness with which a joint submission is to be taken. It cited, at length, the

Saskatchewan Court of Appeal's decision in *Rault, supra*. However, the appellant argues the Committee failed to consider the seriousness of the charges facing the appellant, or the circumstances giving rise to same. It is argued there is no express consideration as to whether addressing the charges through the appellant's acceptance of the practice standards in issue was an adequate alternative to sanctions.

[31] Central to the Committee's decision was its interpretation of s. 32 of the Act as requiring "consequences" or "sanctions" to be imposed following a finding of professional breach. Section 32(1) reads as follows:

> 32(1) Where the discipline committee finds a member guilty of professional incompetence or professional misconduct, it may make one or more of the following orders:
>
> (a) an order that the member be expelled from the college and that the member's name be struck from the register;
>
> (b) an order that the member be suspended from the college for a specified period;
>
> (c) an order that the member be suspended from the college 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, which may include, but are not restricted to, an order that the member:
>
> (i) not do specified types of work;
>
> (ii) successfully complete specified classes or courses of instruction;
>
> (iii) obtain treatment, counselling or both;
>
> (e) an order that reprimands the member; or
>
> (f) any other order that to it seems just.

[32] The difficulty with the appellant's argument is that the enabling legislation is not as broad as some other regulatory laws. There is only an enumerated power to make orders. There is no power to accept undertakings from members set out in the legislation. The Discipline Committee and Council both recognized this situation. While the court acknowledges the Discipline Committee may well have been overly broad when stating

it must "sanction" all members guilty of professional misconduct, it appears the Committee and Council were actually trying to articulate that they could only speak and act through orders. In particular, s. 32(1)(d) and (f) appear to contemplate rehabilitative or corrective measures, as opposed to punitive. This provision does not require the Committee to take action or to make an order in every case. However, if the Committee does wish to take some form of action, s. 32 would appear to compel the Committee to operate only by way of making orders. The Committee has considerably more discretion than it afforded itself in its decision.

[33] The Committee essentially "translated" the agreed undertakings into orders. That is not an error on its part. It is reasonable and it is one amongst a number of possible outcomes, given the construction of the enabling statute. It incorporated the essence of that portion of the joint submission into its order. The modifications to the undertakings were relatively slight, in the nature of housekeeping amendments rather than substantive changes, and in any event were reasonable.

[34] The Discipline Committee went further, however. At para. 13 it said:

> ... That failure, which she has acknowledged, must, however, result in a consequence. If there are no consequences for acknowledged failures to comply with the requirements of the legislation, the public interest is not properly protected. For that reason, the Discipline Committee is of the opinion that a reprimand should be ordered, in addition to an order directed at the manner in which Dr. Nanson shall be required to ensure that she complies with the Code of Ethics.

[35] This aspect of the Committee's decision was upheld by Council. It is that aspect of the decision that causes this court difficulty, with respect to both the merits and the procedure employed.

[36] This statement of the Committee, as affirmed by Council, seems to suggest a "one size fits all" mode of sentencing. In other words, irrespective of the charge and the circumstances giving rise to that charge, there must be some "consequences", i.e. a reprimand.

[37] This aspect of the Committee's duties is, in essence, akin to sentencing in criminal matters. Such a narrow approach is not in keeping with modern sentencing principles. In Canada, sentencing is now a highly individualized process. It is as much art as it is science. It proceeds on a case-by-case basis, and it is incumbent upon a sentencing judge or tribunal to consider all relevant factors under the applicable legislation and as enunciated in the case law. Sentencing is a flexible procedure, with relatively few predetermined results (such as minimum sentences). Fish J. put the matter this way at para. 1 of *R. v. Knott*, 2012 SCC 42, [2012] 2 S.C.R. 470: "Trial judges must retain as much flexibility as the *Criminal Code* permits in crafting individualized sentences that respect the principles and purposes of sentencing set out by Parliament in the *Code*."

[38] A sentence is to be proportionate to the gravity of the acts and the degree of responsibility of the offender. This principle is integral to modern sentencing in Canada. The Supreme Court recently dealt with this concept in *R. v. Ipeelee*, 2012 SCC 13, [2012] 1 S.C.R. 433. While the court appreciates the instant case is not a criminal matter, these sentencing principles resonate on disciplinary matters. Sentencing on matters of professional regulation is comprised of a complex calculus of factors. To say that *any* transgression of the Act *must* result in a psychologist receiving a reprimand or other "consequence" is not in accord with a proper and reasonable assessment of such calculus.

[39] Again, on the merits, the court acknowledges that it is operating on the

standard of reasonableness. However, it is not reasonable to predetermine the results of every sentence based on a misapprehension of a requirement for consequences in every case. Indeed, this is neither correct nor reasonable. It is not a reasonable interpretation of s. 32 of the Act. The necessity of requirement of a reprimand is not a clear result of a reasonable application of s. 32.

[40] Accordingly, the court would intervene with the Discipline and Council decisions to institute and uphold a reprimand on this basis. Those decisions are not reasonable.

[41] The court now turns to procedure. The appellant's complaint was that counsel were not afforded an opportunity to deal with any concerns the Discipline Committee had regarding the joint submission.

[42] The Discipline Committee ought to have been alive to this factor. At para. 10 of its decision it references *Rault, supra*, and provides an extended quote from that case. However, it appears the Committee failed to investigate and give credence to the last sentence from that citation: "For this reason, joint submissions on sentence should be considered by the Discipline Committee in a principled way **similar to the jurisprudence in criminal matters** and as applied by discipline committees in the provinces noted above" [emphasis added].

[43] From perusing *Rault,* the Committee ought to have been aware that one of the significant grounds of appeal advanced was the failure of the Law Society to afford counsel the opportunity to address its concerns with the joint submission. The Court of Appeal decided *Rault* on other grounds, but it is clear that this issue was very much alive in that case. This alone ought to have alerted the Discipline Committee to the requirement

to communicate with counsel.

[44] Further, the last line from the citation directed the Discipline Committee to deal with the joint sentencing submission "in a principled way similar to the jurisprudence in criminal matters". Surely that ought to have signified to the Committee, and to Council on review, that an exploration of the apposite principles from the criminal law sphere was required. There is no indication in either decision that such a review was undertaken. Had either tribunal done so, it would have determined that more was required in the first instance.

[45] A consideration of the process in questioning and/or rejecting joint submissions would have led both tribunals to see that counsel making the joint submission should have been recalled and given a chance to address the Committee's concerns about that submission. Such was the case in *R. v. G.W.C.*, 2000 ABCA 333, 150 C.C.C. (3d) 513. While it is clear that a sentencing body is not bound by a joint submission, it should be rejected sparingly and only after it has been given very serious consideration. The Alberta Court of Appeal said this in *G.W.C.*:

> 18 Joint submissions, however, should be accepted by the trial judge unless they are unfit ... or unreasonable ... It seems to me that a trial judge who fails to inquire into the circumstances underlying a joint sentencing submission would be hard pressed, indeed, to determine whether there was "good reason" to reject that joint submission on the basis that it was contrary to the public interest and, if accepted, would bring the administration of justice into disrepute.
>
> 20 But "serious consideration" cannot occur in a factual vacuum. In my opinion, no "thorough appreciation of the relevant facts" can occur in the absence of a careful and diligent inquiry of counsel as to the circumstances underlying a joint sentencing submission. Given the high level of deference afforded to sentencing judges in the exercise of their discretion to reject joint submissions, the need for a thorough inquiry takes on even greater significance. Yet, in the case at bar, the learned trial judge did not inquire into the circumstances which formed the

> basis of the joint sentencing submission.
>
> 26 In addition to the foregoing, the procedure followed by the sentencing judge in rejecting the joint submission in this case is a matter of concern. **Once a sentencing judge concludes that he might not accede to a joint submission, fundamental fairness dictates that an opportunity be afforded to counsel to make further submissions in an attempt to address the sentencing judge's concerns** before the sentence is imposed. ...
>
> [Emphasis added]

[46] The same position on affording an opportunity to counsel to address the concerns with a joint sentencing submission was adopted by the Saskatchewan Court of Appeal in *R. v. McKenzie*, 2006 SKCA 13, 275 Sask.R. 300. At para. 17, Vancise J.A. said: "Once the sentencing judge had concluded that he might not accept the joint submission fairness dictates that counsel be given an opportunity to make further submissions addressing the concerns expressed by a sentencing judge".

[47] Professional regulatory bodies have recognized this requirement. See *Law Society of Saskatchewan v. Tapp,* 2011 SKLSS 1 (CanLII). There, the Law Society considered *Rault* and said this at paras. 20 and 21:

> 20. If the Committee should decide to reject a joint submission, it must do so on a principled way and provide good and cogent reasons why it considers the resulting sentence is unfit or unreasonable, or contrary to public interest, in the particular circumstances.
>
> 21. An issue of procedure was also raised in the Court of Appeal in *Rault*. That issue was whether the discipline committee was required to grant counsel an opportunity to make further submissions when it determined that it would not accept the joint submission on penalty. The Court of Appeal found it unnecessary to deal with this issue. However, the Committee accepts that such practice should be adopted. In this case counsel were advised that if the joint submission was not accepted, it would grant counsel an opportunity to make further submissions before making a final decision.

[48] In assessing whether this procedural flaw led to a result that was unreasonable, the fundamental purpose and utility of joint sentencing submissions must be borne in mind. Very clearly, joint sentencing submissions have become established and important within the Canadian system of criminal justice. An accord following discussions between prosecution and defence (in either the criminal or regulatory context), who generally have spent more time and are more familiar with the intimate strengths and weaknesses of their case than is the sentencing judge or tribunal, is desirable for a large number of reasons:

- charges are resolved promptly
- the problems arising from extended pre-trial custody, or regulatory proceedings, are avoided
- the public is protected from some offenders who might re-offend while on pre-trial release or otherwise awaiting adjudication
- saving resources expended on trials which may not be necessary
- importantly, sparing complainants the ordeal of having to testify, perhaps numerous times
- allowing a transgressor to express an early and meaningful sense of remorse; and
- providing the offender, the profession, and the complainant with a measure of certainty about the ultimate resolution of the charges.

Generally, the negotiations that are needed to arrive at a joint submission can only work effectively if both the offender and the prosecutor are able to proceed with a considerable amount of confidence that the agreement will be implemented. There is, of course, no guarantee that this will be done by the sentencing judge. However, the cases clearly state that such a judge should only depart from a joint submission after applying carefully considered principles. This law respecting the rejection of a joint submission

is well known, and ought to have been known to the Discipline Committee here given the reference to *Rault*. The trial judge should not reject a joint submission unless it is unfit or unreasonable. A joint submission should only be departed from where the proposed sentence is contrary to the public interest, and, if accepted, would bring the administration of justice into disrepute. The obligation of a trial judge to give serious consideration to a joint sentencing submission stems from an attempt to maintain a proper balance between respect for the arrangement reached, and the sentencing court's role in the administration of justice. The certainty that is required to induce accused persons to waive their rights to a trial or hearing can only be achieved in an atmosphere where judges and tribunals do not lightly interfere with a negotiated disposition that falls within, or at least is very close to, the appropriate range for a given offence. These negotiations will certainly be undermined if the resulting joint submission is too readily rejected by the person(s) doing the sentencing. Detailed reasons for rejecting any joint submission must be provided - especially here, where highly capable and experienced counsel had arrived at the joint submission.

[49] The court is therefore of the view that both on the merits and procedurally, the Discipline Committee's process and outcome were not reasonable, in insisting a reprimand must be given in every case where there is a breach of professional standards or conduct. Such a conclusion was not within the reasonable range of outcomes available to the Committee or Council and defensible in fact and law. There are no proper lines of reasoning supporting the decision which could reasonably lead each of these tribunals to reach that decision on the absolute requirement for the imposition of a reprimand in every disciplinary case.

[50] Had the Committee afforded counsel with an opportunity to address their concerns with the joint submission, a different result may well have been obtained. This

process of rejecting a joint sentencing submission without entertaining further submissions was not reasonable. As well, the outcome that a reprimand as a "consequence" must apply in every case where professional misconduct is found is not reasonable. The insertion of a reprimand into the rest of the joint submission was not reasonable. Nor was the $500.00 increase in costs, which Council properly reversed and this court affirms. The need for deference is recognized, but deference bows to an error in principle - a lack of reasonableness, such as exhibited here. Converting the undertakings into forms of orders was reasonable in these circumstances, given the language of the enabling statute. Accordingly, the appellant's appeal/review must meet with some success in these areas.

Did Council err by finding the appellant's admissions amounted to admissions of guilt of professional misconduct?

Did Council err by determining it was mandated by the Act to impose sanctions upon the appellant as a consequence of the findings of professional misconduct?

[51] Both of these matters are dealt with above. The court has determined the Committee and Council did not err by finding the appellant's acknowledgements or admissions amounted to guilty pleas. Council did err by determining it was mandated by legislation to impose sanctions in each and every case where professional misconduct was found.

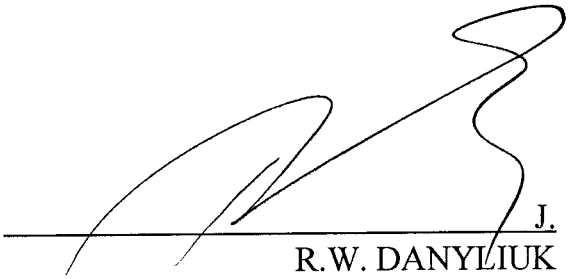
Was it a breach of natural justice to allow counsel for the PCC to make representations at the appeal hearing if those representations amounted to a withdrawal of support for the joint submission?

[52] In light of the findings above, it is not necessary for the court to deal directly with this matter. However, a comment on this ground of appeal/review is appropriate.

[53] In reviewing the transcript of Ms. Prisciak Q.C.'s address to Council, the court sees nothing untoward. The court would remind counsel that when they have engaged in making a joint submission to a sentencing judge or tribunal, and that judge or tribunal balks at the submission, counsel will in almost every circumstance have a duty to speak clearly and forcefully in support of that submission. There is no room to renege from the position originally taken on a joint submission. However, that is not what the court perceives Ms. Prisciak to have done in this instance. The court would not allow the appeal or base judicial review upon this ground, on these facts.

Conclusion

[54] The appeal is allowed in part, insofar as the reprimand is struck from the disposition. In all other respects the decision of the Council of the College of Psychologists of Saskatchewan is confirmed. As success has been divided, there is no order as to costs.



J.
R.W. DANYLIUK