

# QUEEN'S BENCH FOR SASKATCHEWAN

Citation: 2014 SKQB 112

Date: 2014 04 15  
Docket: Q.B.G. No. 1352/2013  
Judicial Centre: Saskatoon

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BETWEEN:

DANIEL SYDIAHA,

Appellant

- and -

SASKATCHEWAN COLLEGE OF PSYCHOLOGISTS,

Respondent

**Counsel:**

Jay D. Watson  
Karen M.T. Prisciak, Q.C.

for the appellant  
for the respondent

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FIAT  
April 15, 2014

CURRIE J.

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[1] Dr. Daniel Sydiaha appeals from a decision of the council of the Saskatchewan College of Psychologists. In that decision, the council adopted the reasons and conclusions of the discipline committee of the College. The discipline committee had found Dr. Sydiaha guilty of professional misconduct in connection with the manner in which he advertised.

[2] The College is responsible for governing the psychology profession in

Saskatchewan, pursuant to *The Psychologists Act, 1997*, S.S. 1997, c. P-36.01 (the “Act”). Since March 2002, Dr. Sydiaha has been registered with the College as a non-practising psychologist. As such, he is a member of the College.

[3] On occasions since March 2002, Dr. Sydiaha has identified himself in advertising as a psychologist, without specifying that he is non-practising. For example, he placed listings in the SaskTel telephone directories for Saskatoon, for 2010-2011 and 2011-2012, in which he was identified as “Sydiaha Dan Dr. Psychologist”, both in the white pages and in the yellow pages under the category “Psychologists”.

[4] The College wrote to Dr. Sydiaha to advise that, according to the College’s regulatory bylaws, as a non-practising member of the College he is not entitled to hold himself out as a “psychologist”, but rather is entitled only to hold himself out as a “psychologist (non-practising)”. Dr. Sydiaha did not change his advertising in response to these communications from the College, and in January 2012 the College charged him with:

... professional misconduct and/or professional incompetence contrary to the provisions of Sections 25 and 26 of *The Psychologists Act, 1997, amended 2004* and/or Regulatory Bylaws from May of 2010 to the present day in that he:

1. Registered as a non-practising member with the College and failed to use the designation “non-practising” in advertising, correspondence and communication, in violation of the College’s Regulatory Bylaw Section 11 and contrary to the Canadian Code of Ethics for Psychologists (Third Edition 2000) Sections III.1, III.2 and III.36;
2. Practiced and continues to practice as a psychologist registered with the College or held himself out as being entitled to practice as a psychologist registered with the College contrary to the College’s Regulatory Bylaw Section 11 and Code violations III.1, III.2, III 36.

[5] In July and August 2012 the discipline committee of the College conducted a hearing at which Dr. Sydiaha attended and was represented by counsel. In October 2012 the committee issued a written decision in which it found Dr. Sydiaha guilty of professional misconduct with respect to both counts of the charge, specifically that he had failed to use the title “non-practising” in advertising, and that in advertising he had held himself out as being entitled to practise as a psychologist. The committee delivered its sentence of Dr. Sydiaha in January 2013.

[6] Dr. Sydiaha appealed the committee’s finding of guilt to the council of the College. The council heard the appeal in June 2013. In September 2013 the council issued a written decision in which it dismissed the appeal for the reasons expressed by the discipline committee.

[7] Dr. Sydiaha now appeals from that decision of the council, asking that the finding of professional misconduct be set aside.

**A. Standard of review**

[8] Dr. Sydiaha appeals to this court pursuant to s. 37 of the *Act*:

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.

[9] The pertinent provision of s. 36 is subsection (5):

- (5) In hearing an appeal, the council 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 its own decision for the decision of the discipline committee.

[10] This matter comes before me by way of statutory appeal, but the manner in which I address it is the same as the manner in which I would address a judicial review. This principle was established by the Supreme Court of Canada in *Dr. Q v. College of Physicians and Surgeons of British Columbia*, 2003 SCC 19, [2003] 1 S.C.R. 226, in which Chief Justice McLachlin said at paragraphs 20 and 21:

[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.

[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. ...

[11] Subsequently, in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the Supreme Court clarified the approach to be taken in determining the standard of review. The Supreme Court did not change the principle, however, that the review of an administrative decision on a statutory appeal is to be addressed in the same manner as is a judicial review.

[12] In this matter the College asserts that the standard of review is reasonableness, and Dr. Sydiaha does not quarrel with that assertion. The following factors are pertinent to determining whether the standard of review is correctness or reasonableness:

- (a) the College is empowered under the *Act* to govern the psychology profession;
- (b) in this matter, the council of the College is interpreting and applying its enabling *Act* and its own bylaws;
- (c) the subject of this matter, being the use of the title “psychologist” by a psychologist when communicating with the public, is within the council’s expertise; and
- (d) in this matter there is no issue of general legal importance, as the issues herein relate virtually exclusively to the governance of the psychology profession.

[13] All of these factors lead to the conclusion that the standard of review is reasonableness, so that the council is entitled to deference when its decision is being reviewed. Deference is reflected in the approach that was discussed in *Dunsmuir* by Justices Bastarache and LeBel at paragraph 47:

[47] ... A court conducting a review for reasonableness inquires 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.

## **B. Issues**

[14] Dr. Sydiaha’s grounds of appeal are best addressed by grouping them according to the following rulings that were made, by way of adopting the reasons and

rulings of the discipline committee, by the council:

1. The ruling that, in his advertising, Dr. Sydiaha was prohibited from using the title “psychologist” alone, and was permitted to use only the title “psychologist (non-practising)”;
2. The ruling that, in his advertising, Dr. Sydiaha held himself out as being entitled to practise psychology;
3. The ruling that, in his advertising, Dr. Sydiaha breached the *Canadian Code of Ethics for Psychologists* (Third Edition, 2000); and
4. The exclusion from evidence of the opinion of Dr. Sydiaha’s expert witness.

### C. Relevant provisions

[15] Sections 24 and 25 of the *Act* provide:

24(1) Subject to subsection (3), no person other than a member shall use the title “psychologist” or any word, title or designation, abbreviated or otherwise, to imply that the person is a member.

(2) No person other than a member who is registered and licensed pursuant to section 20 or 21 and who holds a doctoral degree may use the title “doctoral psychologist” or any word, title or designation, abbreviated or otherwise, to imply that the person is a member who is registered and who holds a doctoral degree.

(3) A person who is not a member and who is employed as a psychologist at The University of Regina, the University of Saskatchewan, Saskatchewan Indian Federated College or the Saskatchewan Institute of Applied Science and Technology may use the title “psychologist” provided that that person is not providing or directing the provision of counselling, clinical psychology or psychological assessment.

...

**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.

[16] Section 11 of the College's regulatory bylaws provides:

**11(1)** Non-practising membership in the college is available to an applicant who:

- (a) is eligible for registration as a practising member in accordance with the Act and the bylaws;
- (b) was in good standing when last registered with the college (if applicable);
- (c) is not currently practising as a psychologist in Saskatchewan.

(2) Non-practising membership entitles a person to the following privileges:

- (a) to use the title "Psychologist (non-practising)" or "Doctoral Psychologist (non-practising)";
- (b) to have a voice, but no vote at annual and special meetings of the college;
- (c) to be appointed to committees of the college;
- (d) to receive a copy of college documents appropriate for distribution; and
- (e) to receive the publications of the college.

(3) Persons who are registered as non-practising members may not practise as psychologists or hold themselves out as being entitled to practise as psychologists.

[17] The provisions of the *Code of Ethics* that are cited in the charge against Dr. Sydiaha do not appear in the evidence in this matter, but they are quoted in the discipline committee's decision as follows:

- III.1 Not knowingly participate in, condone, or be associated with dishonesty, fraud, or misrepresentation.
- III.2 Accurately represent their own and their colleagues' credentials, qualifications, education, experience, competence, and affiliations, in all spoken, written, or printed communications, being careful not to use descriptions or information that could be misinterpreted (e.g., citing membership in a voluntary association of psychologists as a testament of competence).
- ...
- III.36 Familiarize themselves with their discipline's rules and regulations, and abide by them, unless abiding by them would be seriously detrimental to the rights or welfare of others as demonstrated in the Principles of Respect for the Dignity of Persons or Responsible Caring.

[18] This excerpt makes sense only if it is read as having been preceded by an introductory clause such as "Members shall:". The contents of the *Code of Ethics* provisions were not in issue on this appeal, and so I proceed on the basis that the above excerpt is preceded by an introductory clause of this nature.

#### **D. Use of the title "psychologist"**

[19] The council ruled that, in his advertising, Dr. Sydiaha was prohibited from using the title "psychologist" alone, and was permitted to use only the title "psychologist (non-practising)". In so ruling, the council interpreted s. 11(2)(a) of the regulatory bylaws to provide that a non-practising psychologist may use only the title "psychologist (non-practising)", not the title "psychologist" alone.



[20] Dr. Sydiaha argues that none of the items referred to in s. 11(2) is mandatory. Rather, he says, s. 11(2) provides that a non-practising member is entitled to do the things listed there, if he or she wishes. That is, a non-practising member may – not must – receive publications, be appointed to committees and have a voice at meetings. Likewise, a non-practising member may – not must – use the title “psychologist (non-practising)”.

[21] If s. 11 were to mean that a non-practising member must use the title “psychologist (non-practising)”, says Dr. Sydiaha, then such meaning has to be spelled out clearly in the regulatory provision. He says that such mandatory language is not spelled out in s. 11. In this regard, he relies on the Supreme Court of Canada decision in *Laporte v. College of Pharmacists of Quebec*, [1976] 1 S.C.R. 101, in which Justice de Grandpré said at pages 102-103:

This question [of whether the appellant medical doctor had the right to give his patient a drug, and to charge the patient the drug’s cost and “a portion for profit and expenses”] must be considered in the light of the principle laid down by this Court in *Pauze v. Gauvin* [ [1954] S.C.R. 15.]. In particular I adopt the following passage from the reasons of Taschereau J., as he then was (at p. 18)

[TRANSLATION] The statutes creating these professional monopolies, sanctioned by law, access to which is controlled and which protect their members in good standing who meet the required conditions against any competition, must however be strictly applied. Anything which is not clearly prohibited may be done with impunity by anyone not a member of these closed associations.

[22] In any event, says Dr. Sydiaha, the council’s decision is clearly at odds with the express provision in s. 24 of the *Act* that a member – including a non-practising member – may call himself or herself a “psychologist”. He says that s. 11 of the regulatory bylaws cannot overrule the *Act*. The *Act*, he says, permits him as a member to use the title “psychologist”, and that right cannot be modified or eliminated by the

College's regulatory bylaws.

[23] The council's position is that s. 24 of the *Act* establishes the general principle that no one but a member may use the title "psychologist", and the *Act* goes on to empower the College to implement regulatory bylaws to regulate members as appropriate – including regulation of the use of the title "psychologist".

[24] The College enacted the regulatory bylaw under the authority of ss. 14(1) and 15(2) of the *Act*, which provides:

14(1) The council, with the approval of not less than a two-thirds majority of the members of the council, may make bylaws for any purpose set out in section 15.

...

15 ...

(2) Subject to this Act, regulatory bylaws may be made pursuant to section 14 for the following purposes ...

and in s. 15(2) there follow 24 purposes relating to regulation of the psychology profession, including regulating the qualifications and competency of psychologists, providing for a code of professional ethics, setting standards of conduct and competency, and regulating advertising by members.

[25] The council says that a psychologist who is a member is entitled to use the title "psychologist" as provided in s. 24 of the *Act*, but that the psychologist is entitled to do so only as prescribed by the College in its regulatory bylaws.

[26] The council's approach to the issue, then, is that s. 24 of the *Act* sets out the rule that no one other than a member may use the title "psychologist", and the regulatory bylaws set out the details as to how and when a member may use the title. Thus, this is

not a matter of the regulatory bylaws overruling the *Act*. Rather, it is a matter of the College regulating the members' use of the title "psychologist", as expressly authorized by the *Act*.

[27] The council's interpretation of the *Act* and of the regulatory bylaws is consistent with one of the purposes of the *Act*, as demonstrated by the list in s. 15(2). That purpose is to protect the public by ensuring that the public receives the services of a psychologist only from a person who is qualified to provide them.

[28] As to the *Laporte* decision of the Supreme Court of Canada, the College observes that Justice de Grandpré adopted the remarks of Justice Taschereau in a different context. In *Laporte* the court was considering the case of a medical doctor who had prescribed medication to a patient, where the statute governing the pharmacy profession seemed to prohibit anyone who was not a member of the pharmacy profession from doing so. That is, the case was about the protection of the profession's monopoly from a non-member of that profession.

[29] Here the context is not one of protecting the psychology profession's monopoly from Dr. Sydiaha. He is a member of the profession himself. The remarks in *Lapointe*, focused as they are on the protection of monopoly, are less applicable to these circumstances than is the consideration of the protection of the public.

[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.

[31] As described in *Dunsmuir* at paragraph 47, a decision is reasonable if it is justifiable, transparent and intelligible, and if it falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and law. The council's decision with respect to use of the title "psychologist" is justifiable in that it is based on a logical, reasonable approach. It is transparent in that the council has explained its reasoning. The decision is intelligible in that it is understandable. Finally, the decision falls within a range of possible, acceptable outcomes because it is not fundamentally inconsistent with the circumstances or with the provisions of the *Act*, the regulatory bylaws or the *Code of Ethics: University of Saskatchewan v. Peng*, 2013 SKQB 188, [2013] 12 W.W.R. 157 at paragraphs 30-38.

[32] The council's decision, that Dr. Sydiaha was prohibited from using the title "psychologist" alone, was reasonable.

#### **E. Holding out as being entitled to practise psychology**

[33] The council ruled that, in his advertising, Dr. Sydiaha held himself out as being entitled to practise psychology. Discussion of this issue includes discussion of three of the grounds relied on by Dr. Sydiaha. He says that the council erred in:

- (a) finding that Dr. Sydiaha held himself out as being entitled to practise psychology;
- (b) finding that the use of the title "psychologist" implies that one is entitled to practise psychology; and
- (c) failing to consider evidence of how practising psychologists hold themselves out to the public.

[34] On the evidence of the telephone directory advertising, the council concluded (by way of adopting the reasons and conclusions of the discipline committee) that by advertising himself as a psychologist Dr. Sydiaha was holding himself out as being entitled to practise psychology. At paragraph 20 of its decision, the discipline committee said:

... By listing his name in the yellow pages under the heading "Psychologists" there is no other reasonable conclusion to be drawn than that he is holding himself out as entitled to provide professional services as a psychologist, which as a non-practising member he is prohibited from doing. ...

[35] Dr. Sydiaha says that there is no evidence on which the council could base the conclusion that listing oneself as a psychologist in the telephone directory is a *prima facie* holding out. There is evidence, though. There is the evidence of the telephone directory listings. Those listings are evidence from which the council was entitled to draw inferences, including this one.

[36] Dr. Sydiaha points out that, while he was using the title "psychologist" in the telephone directory, practising psychologists were using the title "registered psychologist". Therefore, he says, the public could not have been misled into thinking that he was holding himself out as entitled to practise psychology, because the distinction was there for members of the public to see.

[37] Members of the public, though, do not necessarily understand that there may be a difference between a "registered psychologist" and a "psychologist". Reasonable members of the public may think that both are entitled to practise psychology. Indeed, a reasonable member of the public might conclude that anyone advertising himself in the yellow pages as a psychologist is doing so because he or she is a practising psychologist who is available to provide psychology services.

[38] Few among the general public would be familiar with any distinction between being a psychologist and being a psychologist who is entitled to practise psychology. Without a distinction being placed squarely before them, reasonable members of the public likely would assume that a person who says that he is a lawyer is entitled to practise law, a person who says that she is a doctor is entitled to practise medicine, and a person who says that he is a psychologist is entitled to practise psychology.

[39] Dr. Sydiaha also points to the right of academic psychologists – who are not members under the *Act* – to call themselves psychologists, pursuant to s. 24(3) of the *Act*. He says that this provision supports his argument that, in effect, “a psychologist is a psychologist” as recognized by the *Act*, and there can be no wrong in Dr. Sydiaha – who is a psychologist – identifying himself as one.

[40] This approach, however, is too simplistic to take into account how the public perceives the advertising of a person as a psychologist, and to take into account the need for protection of the public. In some contexts, the distinction among practising psychologists, non-practising psychologists and academic psychologists may not matter. The council has concluded, however, that where members of the public are seeking psychology services, the public needs the protection of rules that permit only those psychologists who are registered to do so to hold themselves out to the public for that purpose.

[41] The council’s decision, that Dr. Sydiaha held himself out as being entitled to practice psychology, meets the reasonableness test in the same manner as does the council’s decision with respect to use of the title “psychologist”. The decision is justifiable, transparent and intelligible, and it falls within a range of possible, acceptable outcomes.

**F. Breach of the *Code of Ethics***

[42] The council found, by adoption of the discipline committee's findings, that in using the title "psychologist" rather than "psychologist (non-practising)", and in holding himself out as entitled to practise as a psychologist, Dr. Sydiaha breached the excerpted sections of the *Code of Ethics*, which is a breach of the bylaws (regulatory bylaw s. 6(2)(j)), which by operation of s. 25(c) of the *Act* is professional misconduct.

[43] In relation to *Code of Ethics* article III.1, Dr. Sydiaha says that there was no evidence before the discipline committee or the council that he knowingly participated in, condoned or was associated with a misrepresentation. The council, however, was entitled to draw inferences from the evidence. One such inference is that a person intends the natural consequences of his or her actions. The council was entitled to infer, from Dr. Sydiaha's placement of the advertising, that he knowingly represented himself as being entitled to practise as a psychologist.

[44] With respect to article III.36, it is apparent that Dr. Sydiaha did familiarize himself with the rules. In the circumstances, the council was entitled to infer from his conduct that he decided that he would not abide by the rules, and in any event the council was entitled to conclude that in his advertising Dr. Sydiaha did not abide by the rules.

[45] The council's decision that Dr. Sydiaha breached the *Code of Ethics* also meets the reasonableness test, in the manner discussed above. The decision is justifiable, transparent and intelligible, and it falls within a range of possible, acceptable outcomes.

**G. Exclusion of opinion evidence**

[46] Dr. Sydiaha says that the council erred, through its adoption of the decisions and reasons of the discipline committee, in excluding the evidence of his expert witness,

Dennis Arbuthnott. The discipline committee declined to admit Mr. Arbuthnott's evidence on the basis that his evidence was not relevant to the charges.

[47] Prior to the hearing before the discipline committee, Dr. Sydiaha had delivered a notice of expert witness relating to Mr. Arbuthnott. The notice is lengthy and addresses the points summarized below:

- (a) Mr. Arbuthnott has known Dr. Sydiaha and his work for many years;
- (b) Mr. Arbuthnott has experience as a clinical psychologist and psychotherapist;
- (c) Mr. Arbuthnott is familiar with Dr. Sydiaha's work and contribution to psychology in Saskatchewan;
- (d) Dr. Sydiaha was a long-time member of the psychology department at the University of Saskatchewan, having developed a unique view in light of his background;
- (e) Dr. Sydiaha was a committed professor who encouraged and guided students in many areas of psychology;
- (f) Dr. Sydiaha was the first director of the University's Student Counselling Services, having worked hard to see the creation of the facility;
- (g) Student Counselling Services had been innovative and remains in operation;



- (h) Dr. Sydiaha, throughout his career, was an effective and trusted therapist and counsellor;
- (i) Dr. Sydiaha studied widely in the fields of counselling and psychotherapy;
- (j) in the communication skills training course that he presents, Dr. Sydiaha adapts an approach that is commonly used in North America;
- (k) such courses are useful to many people in society; and
- (l) Dr. Sydiaha has made a large and long-term difference to the helping professions in Saskatchewan, especially in psychology.

[48] These points demonstrate Dr. Sydiaha's lengthy and laudable service in the field of psychology in Saskatchewan. None of the points is relevant to any issue that was before the discipline committee or the council, however. The decision to exclude the evidence, based on the notice of expert witness, meets the reasonableness test.

[49] The notice of expert witness aside, Dr. Sydiaha relies on his counsel having tendered Mr. Arbuthnott at the discipline committee hearing to give his opinion "on some of the history of psychotherapy in the province, including Dr. Sydiaha's involvement in that history and also with regard to communication skills and helping skills workshops that are part of the subject matter in evidence before this Committee." (Transcript, page 119).

[50] In fact, the history of psychotherapy in the province, communication skills and helping skills workshops were not in issue before the discipline committee or the

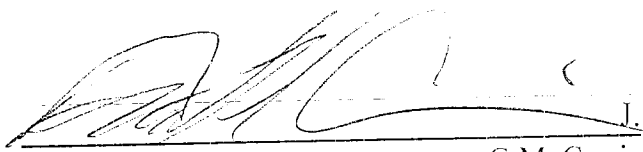
council. Nor were they relevant to the issues.

[51] In any event, whether to admit the evidence was a matter of the discretion of the committee, as was adopting that ruling by the council.

[52] The council's decision not to allow into evidence the opinion of Dr. Sydiaha's expert witness meets the reasonableness test in the manner discussed above. The decision is justifiable, transparent and intelligible, and it falls within a range of possible, acceptable outcomes.

#### H. Conclusion

[53] Dr. Sydiaha's appeal is dismissed with costs.



G.M. Currie