QUEEN'S BENCH FOR SASKATCHEWAN

Citation: **2018 SKQB 110**

Date: **2018 04 11**
Docket: QBG 597 of 2017
Judicial Centre: Saskatoon

BETWEEN:

CAROLYN STROM

APPELLANT

- and -

THE SASKATCHEWAN REGISTERED NURSES' ASSOCIATION

RESPONDENT

- and -

SASKATCHEWAN UNION OF NURSES and BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

INTERVENORS

Counsel:

Marcus R. Davies	for the appellant
Roger J.F. Lepage and Jonathan Martin	for the respondent
Daniel S. LeBlanc	for the intervenor, Saskatchewan Union of Nurses
Kara D. Moen	for the intervenor, British Columbia Civil Liberties Association

---

JUDGMENT
April 11, 2018

CURRIE J.

Summary of this judgment

[1] In 2015 Carolyn Strom posted comments on social media relating to the end-of-life care that her grandfather had received at a care facility in Saskatchewan. In

the comments Ms. Strom, a registered nurse, criticized the competence and professionalism of staff -- including registered nurses -- who worked at the facility.

[2] After a hearing, the discipline committee of the Saskatchewan Registered Nurses' Association (the association) ruled that, in publicly posting the comments, Ms. Strom had engaged in professional misconduct. The discipline committee assessed a fine and ordered Ms. Strom to pay costs of the proceedings.

[3] Ms. Strom now appeals the discipline committee's decisions. The appeal has attracted the attention of many commentators, some of whom have characterized this appeal as being about a registered nurse's right to freedom of expression, and whether the professional association has the power to restrict a registered nurse's right to freedom of expression.

[4] Ms. Strom's right to freedom of expression is indeed one of the subjects of this appeal. Freedom of expression is not the focus of the appeal, however. The focus of the appeal is whether the discipline committee made the kind of mistake that requires the court to interfere with the committee's decisions.

[5] By law, the committee had a great deal of leeway in coming to its decisions. The focus of this appeal is whether the committee's decisions fall within that leeway or exceed that leeway so as to constitute unreasonable decisions that must be reversed.

[6] I have concluded that the committee's decisions fall within the leeway that the law allows the committee, and so the decisions stand. The appeal is dismissed.

Circumstances

[7] In February 2015 Ms. Strom posted comments on her Facebook page in which she remarked on the care that her grandfather had received during his final days at a care home in Saskatchewan. Ms. Strom did not work in the care home. In fact, in February 2015 she was not working in the health care system at all, because she was on maternity leave.

[8] Ms. Strom's initial post follows:

> My Grandfather spent a week in "Palliative Care" before he died and after hearing about his and my family's experience there (@ St. Joseph's Health Facility in Macklin, SK) it is evident that Not Everyone is "up to speed" on how to approach end of life care ... Or how to help maintain an Ageing Senior's Dignity (among other things!)
> So ... I challenge the people involved in decision making with that facility, to please get All Your Staff a refresher on the topic AND More.
> Don't get me wrong, "some" people have provided excellent care so I thank you so very much for YOUR efforts, but to those who made Grandpa's last years less than desirable, Please Do Better Next Time! My Grandmother has chosen to stay in your facility, so here is your chance to treat her "like you would want your own family member to be treated".
> That's All I Ask!
> And a caution to anyone that has loved ones at the facility mentioned above: keep an eye on things and report anything you Do Not Like! That's the only way to get some things to change.
> (I'm glad the column reference below surfaced, because it has given me a way to segway into this topic.)
> The fact that I have to ask people, who work in health care, to take a step back and be more compassionate, saddens me more than you know!

[9] Below these remarks Ms. Strom posted a copy of an article written by a physician who criticized end-of-life care in Canada.

[10] In response to an entry on her Facebook page by another person, who had concluded her comments with "Isn't it unfortunate that we have to have this

discussion at all?", Ms. Strom posted the following:

> It is VERY UNFORTUNATE Alex. And this has been an ongoing struggle with the often subpar care given to my [surname] Grandparents (especially Grandpa) for many years now....Hence my effort to bring more public attention to it (As not much else seems to be working).
> As an RN and avid health care advocate myself, I just HAVE to speak up! Whatever reasons/excuses people give for not giving quality care, I Do Not Care. It. Just. Needs. To. Be. Fixed. And NOW!

[11] After a person's comment that concluded with "... we all deserve to be treated with respect" Ms. Strom posted the following:

> Absolutely, and that's why I am also now asking people to just rethink... "Why do you do your job?" "Do you actually care about the people you WORK FOR/Care For?" "Or is it JUST A JOB, WITH A PAYCHEQUE?" ... If so, maybe it's time to take a step back.
> Either way I just want my Grandmother (and everyone else in that facility) to be treated well, ALWAYS!

[12] Ms. Strom decided to make her Facebook discussion known to the provincial Minister of Health and the provincial Leader of the Opposition. She did this by tweeting to them both a link to the Facebook discussion that included the above comments. By doing so she changed her Facebook settings so that the discussion, which to that point had been accessible only by her Facebook friends, became accessible by anyone who followed the link that she had tweeted.

[13] Ms. Strom testified before the discipline committee that she had made this change inadvertently, and that when she discovered the change she reversed it so that access became restricted once again. The discipline committee, however, found as a fact (discipline decision, para. 39) that "[a]s a sophisticated user of Facebook and Twitter social media platforms, Ms. Strom knew that her comments would become public and widely viewed."

[14] The association is responsible for governing the profession of registered nurses under *The Registered Nurses Act, 1988*, SS 1988-89, c R-12.2, (the *Act*). Arising from Ms. Strom's posts on Facebook, the association charged her with professional misconduct. Five particulars of the charges were set out in the notice of hearing. At the hearing before the discipline committee, only the following four particulars were pursued:

> Failure to follow proper channels
>
> 2. You publicly posted on Facebook information about the healthcare provided to your grandparents in order to criticize the health care given to them at a specific named healthcare facility. You publicly criticized the care provided by the staff. This violates your obligation as a professional to take concerns you may have to the appropriate channels starting with the individual care providers and if matters cannot be resolved at that level then to report it to their manager. If that does not result in a positive change, raise it with the director of the facility and ultimately the health board of the facility and the health region and the minister. It is only if all of those efforts have not led to a positive change would you be able, with the consent of your grandparents or their power of attorney to take the matter to the public. You have failed to take your concerns to the appropriate people using the appropriate channels.
>
> Impact on reputation of facility and staff
>
> 3. By communicating your concerns to the general public rather than to the appropriate people using the appropriate channels you have publicly called into question the capacity of that health facility and its employees and directors to deliver appropriate healthcare. This has an impact on the reputation of the facility and its employees and directors. You have alleged that the facility and its employees are not "up to speed" on how to approach end of life care or how to maintain a senior's dignity. You have alleged that they lack compassion and that your grandparents were not treated well or fairly. You have stated that "this has been an ongoing struggle with the often subpar care given to my X Grandparents (especially Grandpa) for many years now ..." You have charged that some employees are not giving quality care and implied that they are simply there for the paycheck. All of these are serious allegations that tarnish reputations.
>
> Failure to first obtain all the facts
>
> 4. As a registered nurse you made accusations in a public forum by publishing them on your personal Facebook without having first having obtained all of the facts directly from the facility and the care

> providers. You have made public your conclusions without first having obtained all of the relevant facts.
>
> Using status of registered nurse for personal purposes
>
> 5. The publication in your personal Facebook on February 25, 2015 discloses that you are a registered nurse. By so doing you engage the professional image of registered nurses in general as well as your personal professional obligations. A registered nurse is required to conduct herself in a professional manner towards not only patients but also colleagues. You made negative comments about other registered nurses and other healthcare providers and management. By identifying yourself as a registered nurse you have engaged your obligation to abide by the standards and code of ethics of your profession. You have failed to protect your integrity and your profession's integrity when you used inappropriate communication channels to discuss, report and resolve workplace issues. Your conduct has fallen below the standards established by the SRNA.

[15] In the notice of hearing, the association alleged that Ms. Strom had engaged in professional misconduct contrary to the *Act*, by breaching the following provisions of s. 26 of the *Act*:

> 26(1) For the purpose of this Act, professional misconduct is a question of fact but any matter, conduct or thing, whether or not disgraceful or dishonourable, that is contrary to the best interests of the public or nurses or tends to harm the standing of the profession of nursing is professional misconduct within the meaning of this Act.
>
> (2) Without restricting the generality of subsection (1), the discipline committee may find a nurse guilty of professional misconduct if the nurse has:
>
> ...
>
> (c) inappropriately used the nurse's professional status for personal gain;
>
> ...
>
> (h) failed to exercise discretion with respect to the disclosure of confidential information about a client;
>
> ...
>
> (l) failed to comply with the code of ethics of the association; ...

[16] With respect to s. 26(2)(l) of the *Act*, in the notice of hearing the

association alleged that Ms. Strom had engaged in professional misconduct contrary to the following provisions of the *Code of Ethics for Registered Nurses* (Ottawa: Canadian Nurses Association, 2008):

> A1. Nurses have a responsibility to conduct themselves according to the ethical responsibilities outlined in this document and in practice standards in what they do and how they interact with persons receiving care as well as with families, communities, groups, populations and other members of the health-care team.
>
> ...
>
> A3. Nurses build trustworthy relationships as the foundation of meaningful communication, recognizing that building these relationships involves a conscious effort. Such relationships are critical to understanding people's needs and concerns.
>
> ...
>
> B3. Nurses collaborate with other health-care providers and other interested parties to maximize health benefits to persons receiving care and those with health-care needs, recognizing and respecting the knowledge, skills and perspectives of all.
>
> ...
>
> D1. Nurses, in their professional capacity, relate to all persons with respect.
>
> ...
>
> D10. Nurses treat each other, colleagues, students and other health-care workers in a respectful manner, recognizing the power differentials among those in formal leadership positions, staff and students. They work with others to resolve differences in a constructive way.
>
> ...
>
> E1. Nurses respect the right of people to have control over the collection, use, access and disclosure of their personal information.
>
> ...
>
> E3. Nurses collect, use and disclose health information on a need-to-know basis with the highest degree of anonymity possible in the circumstances and in accordance with privacy laws.
>
> E4. When nurses are required to disclose information for a

> particular purpose, they disclose only the amount of information necessary for that purpose and inform only those necessary. They attempt to do so in ways that minimize any potential harm to the individual, family or community.
>
> E5. When nurses engage in any form of communication, including verbal or electronic, involving a discussion of clinical cases, they ensure that their discussion of persons receiving care is respectful and does not identify those persons unless appropriate.
>
> ...
>
> E7. Nurses respect policies that protect and preserve people's privacy, including security safeguards in information technology.
>
> ...
>
> F2. Nurses refrain from judging, labelling, demeaning, stigmatizing and humiliating behaviours toward persons receiving care, other health-care professionals and each other.
>
> ...
>
> G1. Nurses, as members of a self-regulating profession, practise according to the values and responsibilities in the *Code of Ethics for Registered Nurses* and in keeping with the professional standards, laws and regulations supporting ethical practice.

[17] In the notice of hearing the association alleged as well that Ms. Strom had engaged in professional misconduct contrary to the following provisions of the *Standards and Foundation Competencies for the Practice of Registered Nurses* (Regina: Saskatchewan Registered Nurses Association, 2013).

> STANDARD 1 – PROFESSIONAL RESPONSIBILITY AND ACCOUNTABILITY
>
> The registered nurse:
>
> 1. Is accountable and accepts responsibility for own actions and decisions.
>
> ...
>
> 5. Consistently identifies self by first and last name and professional designation to clients and co-workers.
>
> ...
>
> 8. Demonstrates effective collaborative problem solving strategies, including conflict resolution.

> ...
>
> 15. Reports unsafe practice or professional misconduct of a health care worker to appropriate authorities.
>
> ...
>
> STANDARD III – ETHICAL PRACTICE
>
> The registered nurse:
>
> 62. Practices in accordance with the current CNA *Code of Ethics for Registered Nurses* and the accompanying responsibility statements.
>
> ...
>
> 71. Demonstrates ethical and legal responsibilities related to maintaining client privacy and confidentiality in all forms of communication.
>
> STANDARD IV – SERVICE TO THE PUBLIC
>
> 76. Participates and contributes to registered nursing and health care team development by:
>
> a. promoting interprofessional collaboration through application of principles of decision-making, problem solving and conflict resolution;
>
> ...
>
> f. using appropriate channels of communication.

[18] There is no dispute that the *Code* and the *Standards* were in force at the time, and there has been no challenge to their validity.

[19] After a hearing, the discipline committee concluded that Ms. Strom had not violated s. 26(2)(c) of the *Act* (use of status for personal gain) or s. 26(2)(h) of the *Act* (breach of confidentiality, an allegation that had been withdrawn at the hearing). The committee also concluded, though, that she had violated s. 26(1) and s. 26(2)(l) (failure to comply with the *Code*). The committee found that she had failed to comply with clauses A.1, A.3, B.3, D.1, D.10, F.2 and G.1 of the *Code*.

[20] With respect to the *Standards*, the committee did not expressly find

Ms. Strom to be in breach of any of the *Standards*, but it stated that the *Standards* cited in the notice of hearing (except for items 15 and 71) are "the key provisions that apply to Ms. Strom and this case".

[21] In its decision, the discipline committee recognized that the effect of its conclusion -- that Ms. Strom had engaged in professional misconduct -- was to infringe Ms. Strom's right to freedom of expression under s. 2(b) of the *Canadian Charter of Rights and Freedoms*. The committee therefore engaged in an analysis, under s. 1 of the *Charter*, to determine whether the infringement was justified. The committee concluded that the infringement of Ms. Strom's right to freedom of expression was justified, so that in the end the ruling of professional misconduct was not in breach of the *Charter*.

[22] Following a subsequent penalty hearing the committee reprimanded Ms. Strom, set conditions for the continuation of her practice, and imposed on her a fine of $1,000. The committee also ordered Ms. Strom to pay costs of the proceedings in the amount of $25,000, giving her three years to pay those costs.

[23] Ms. Strom appeals both her conviction and the costs order.

Decisions for review on this appeal

[24] In this case, it would be an oversimplification to say that the committee's decision was simply that Ms. Strom engaged in professional misconduct. In reality, the committee made four fundamental decisions:

(a) The committee decided that Ms. Strom's off-duty conduct is subject to discipline.

(b) The committee decided that Ms. Strom engaged in professional

misconduct.

(c) The committee decided that the infringement of Ms. Strom's *Charter* right to freedom of expression was justified.

(d) The committee determined an award of costs to be paid by Ms. Strom.

[25] I will review each of these four decisions.

Standard of Review

[26] In a practice that is common across Canada in relation to professions, the Saskatchewan Legislature in *The Registered Nurses Act, 1988* gave to the association the power to govern the registered nurses profession in the province. That power is not absolute, but for the most part the Legislature has empowered the association to do what it thinks is best.

[27] When there is an appeal from a decision of such an association or, as here, from one of its committees, the reviewing court must determine the appropriate standard to use in the review. There are two choices in that regard: the correctness standard and the reasonableness standard.

[28] The correctness standard requires the reviewing court to examine the decision under review to see if it was decided correctly. The reasonableness standard requires the reviewing court to examine the decision to see if it was reasonable. In so doing, the reviewing court is to give deference to the administrative body that made the decision.

[29] Giving deference means that the court does not examine the decision to

ensure that no errors were made. Rather, recognizing the broad power that the Legislature gave to the administrative body, the court examines the decision to ensure that it falls within an acceptable range of possible decisions. Even if the court might have decided the matter differently, the court will not change the administrative body's decision unless the court is persuaded that the decision is unreasonable.

[30] The significance of giving deference is that such an administrative body's decision can be reasonable even if it is not correct. More important than absolute correctness is allowing the administrative body leeway to make such decisions in an area with which the administrative body's members are familiar and in which they have expertise. Fundamental to the practice of empowering associations and committees in this way is the concept that the members of the associations are the most appropriate people to make decisions as to the governance of the associations. In the context of their knowledge and experience, they know what is fitting and what is not, and they know what is workable and what is not.

[31] The Supreme Court of Canada addressed the approach of a court to reviewing the decision of such an administrative body in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190. As Justices Bastarache and LeBel outlined at paras. 51-64, for most decisions the reasonableness standard of review applies, requiring the deference to which I have referred.

[32] While each case must be examined on its own circumstances, the presence of some or all of the following factors tend to indicate that the reasonableness standard of review applies:

(a) the Legislature has indicated the need for deference by including in the empowering legislation a privative clause, which essentially is a provision limiting the scope of an appeal or other review of the

administrative body's decisions;

(b) in its decision, the administrative body was interpreting its empowering legislation to the end of administering an area in which it is knowledgeable and in which it has expertise; and

(c) the decision under review does not involve a question of law that is outside the expertise of the administrative body, and does not involve a question of law that is of central importance to the legal system.

[33] The correctness standard of review applies when the decision under review involves a question of law that is outside the expertise of the administrative body and that is of central importance to the legal system. Examples of questions of law that are of central importance to the legal system include true constitutional questions and true questions of jurisdiction.

[34] In this case, the Legislature has not included a privative clause in the *Act*. The absence of a privative clause means that the Legislature has not, in that way, signalled a need for deference. As Justices Bastarache and LeBel observed at para. 52 of *Dunsmuir*, however, the presence or absence of a privative clause is not determinative of the standard of review.

[35] In making its decisions with respect to the first, second and fourth issues to be determined on this appeal, the discipline committee was interpreting its empowering legislation, the *Act*, to the end of administering an area in which it is knowledgeable and has expertise -- namely, the rules governing the conduct of registered nurses. All of the members of the discipline committee, except the public representative, were registered nurses. In determining whether certain of the rules

apply to members of the association, those members were setting the rules for all registered nurses, including themselves. Likewise, when the committee members considered whether Ms. Strom's conduct amounted to professional misconduct, they were using a measure that applies to all registered nurses, including themselves. The same applies to the committee's determination of costs.

[36] These are issues that are best determined by the people who are most familiar with all aspects of being a registered nurse. As Justices Bastarache and LeBel said in *Dunsmuir* at paras 53 and 54:

> [53] Where the question is one of fact, discretion or policy, deference will usually apply automatically ...
>
> [54] ... Deference will usually result where a tribunal is interpreting its own statute or statutes closely connected to its function, with which it will have particular familiarity ....

[37] Further, with respect to each of the first, second and fourth issues, the decision under review does not involve a question of law that is outside the expertise of the discipline committee, and it does not involve a question of law that is of central importance to the legal system. Rather, each issue relates to how the conduct of registered nurses in Saskatchewan is governed.

[38] In these circumstances I conclude that the standard of review with respect to the first, second and fourth issues is reasonableness. This is the standard of review that does not require the discipline committee's decisions to have been correct, but rather requires the discipline committee's decisions to have been reasonable.

[39] Ms. Strom has observed that, when a matter of procedural fairness is being reviewed, the standard of review is correctness. That generally is so, but in her submissions she has not pointed to any instance of alleged lack of procedural fairness, and I see no lack of procedural fairness in the proceedings. Procedural fairness is not

in issue on this appeal.

[40] The third issue to be addressed on this appeal relates to Ms. Strom's *Charter* rights, specifically to whether the infringement of her s. 2(b) right is justified. Ms. Strom and the intervenors assert that, because this is a legal *Charter* issue, it is beyond the knowledge and expertise of the discipline committee. Instead, they say, this issue falls within the knowledge and expertise of the court -- and because it is a legal *Charter* issue the court should ensure that it is decided correctly.

[41] Ms. Strom and the intervenors refer to the discussion in *Dunsmuir* of the kinds of issues that must be reviewed on the correctness standard, in particular to the reference to true constitutional issues. They further point to other decisions of the Supreme Court that confirm that the correctness standard of review applies in relation to determining the constitutionality of a law.

[42] In fact, the principle that the correctness standard of review applies in relation to determining the constitutionality of a law refers to "a law" in the sense of a statute that was generated by a legislature, rather than to a decision of an administrative body such as the association's discipline committee. This distinction has been made clear by the Supreme Court in *Doré v Barreau du Québec*, 2012 SCC 12, [2012] 1 SCR 395, in which the court addressed the standard to be used in reviewing a *Charter* decision that had been made by an administrative body such as the discipline committee.

[43] The court's decision in *Doré* was written by Justice Abella. Her analysis and conclusion can be understood by referring to the following excerpts from her decision:

[3] This raises squarely the issue of how to protect *Charter* guarantees and the values they reflect in the context of adjudicated administrative decisions. Normally, if a discretionary administrative decision is made by an adjudicator within his or her mandate, that decision is judicially reviewed for its reasonableness. The question is whether the presence of a *Charter* issue calls for the replacement of this administrative law framework with the *Oakes* test [*R v Oakes,* [1986] 1 SCR 103], the test traditionally used to determine whether the state has justified a law's violation of the *Charter* as a "reasonable limit" under s. 1.

[4] It seems to me to be possible to reconcile the two regimes in a way that protects the integrity of each. The way to do that is to recognize that an adjudicated administrative decision is not like a law which can, theoretically, be objectively justified by the state, making the traditional s. 1 analysis an awkward fit. ... How then do we ensure this rigorous *Charter* protection while at the same time recognizing that the assessment must necessarily be adjusted to fit the contours of what is being assessed and by whom?

[5] We do it by recognizing that while a formulaic application of the *Oakes* test may not be workable in the context of an adjudicated decision, distilling its essence works the same justificatory muscles: balance and proportionality. ...

[6] In assessing whether a law violates the *Charter*, we are balancing the government's pressing and substantial objectives against the extent to which they interfere with the *Charter* right at issue. If the law interferes with the right no more than is reasonably necessary to achieve the objectives, it will be found to be proportionate, and, therefore, a reasonable limit under s. 1. In assessing whether an adjudicated decision violates the *Charter*, however, we are engaged in balancing somewhat different but related considerations, namely, has the decision-maker disproportionately, and therefore unreasonably, limited a *Charter* right. In both cases, we are looking for whether there is an appropriate balance between rights and objectives, and the purpose of both exercises is to ensure that the rights at issue are not unreasonably limited.

[7] As this Court has noted, most recently in *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5 (S.C.C.), the nature of the reasonableness analysis is always contingent on its context. In the *Charter* context, the reasonableness analysis is one that centres on proportionality, that is, on ensuring that the decision interferes with the relevant *Charter* guarantee no more than is necessary given the statutory objectives. If the decision is disproportionately impairing of the guarantee, it is unreasonable. If, on the other hand, it reflects a proper balance of the mandate with *Charter* protection, it is a reasonable one.

> ...
>
> [36] ... When *Charter* values are applied to an individual administrative decision, they are being applied in relation to a particular set of facts. *Dunsmuir* tells us this should attract deference ...
>
> [43] ... There is no doubt that when a tribunal is determining the constitutionality of a law, the standard of review is correctness (*Dunsmuir*, at para. 58). It is not at all clear to me, however, based on this Court's jurisprudence, that correctness should be used to determine whether an administrative decision-maker has taken sufficient account of *Charter* values in making a discretionary decision.
>
> ...
>
> [47] An administrative decision-maker exercising a discretionary power under his or her home statute, has, by virtue of expertise and specialization, particular familiarity with the competing considerations at play in weighing *Charter* values. ...

[44] Ms. Strom points to Justice Abella's reference to an administrative body making a discretionary decision, and Ms. Strom suggests that this is an invitation to examine whether the decision being made by the discipline committee here was a discretionary decision. It may be, though, that Justice Abella was simply describing the nature of what an administrative body does when it determines a matter: by its nature the administrative body is exercising discretion, and it is for that reason that its decision is given deference on review.

[45] In any event, in this case the decisions of the discipline committee -- whether the rules apply to off-duty conduct, whether there was professional misconduct, and the award of costs -- all were discretionary decisions. Each decision required the discipline committee to weigh the factors and to exercise its discretion to determine the issue.

[46] In decisions subsequent to *Doré* the Supreme Court has observed that, in some cases, there can be exceptions to the presumption of deference described by

Justice Abella. For example, in *Mouvement laïque québécois v Saguenay (City)*, 2015 SCC 16, [2015] 2 SCR 3, Justice Gascon determined that the circumstances of that case required use of the correctness standard of review.

[47] The question in *Saguenay* related to the practice of the Saguenay city council commencing each meeting with a Christian prayer. A human rights tribunal determined that the prayer displayed a preference for one religion over others, so that -- because a city is part of "the state", meaning "the government" -- the practice breached the state's duty of religious neutrality.

[48] As Justice Gascon described the issue at para. 49, the question in *Saguenay* concerned "the scope of the state's duty of religious neutrality that flows from the freedom of conscience and religion protected by the *Quebec Charter*". He said at para. 51 that "the importance of this question to the legal system, its broad and general scope and the need to decide it in a uniform and consistent manner are undeniable." This fundamental importance to the legal system, said Justice Gascon, rebutted the presumption of deference so that the appropriate standard of review was correctness.

[49] In contrast to the question in *Saguenay*, which related to the state's duty of religious neutrality, the question before the court in *Doré* concerned the interaction of a professional association's rules of conduct with the *Charter* right to freedom of expression of a member of the association. In *Doré* that question was not of such fundamental importance to the legal system that the presumption of deference was rebutted.

[50] So it is here. Just as in *Doré*, the question here concerns the interaction of a professional association's rules of conduct with the *Charter* right to freedom of

expression of a member of the association. Just as in *Doré*, that question is not of such fundamental importance to the legal system that the presumption of deference is rebutted.

[51] Justice Abella's analysis as to the standard of review applies to this case. The standard of review on the third issue on this appeal is reasonableness as described in *Doré*. Thus, the standard of review on all four issues is reasonableness.

[52] So it is that this appeal is not about whether the committee was correct in determining the four issues as it did. Rather, this appeal is about whether the decisions of the committee were reasonable.

Review on the reasonableness standard

[53] Justices Bastarache and LeBel described the reasonableness standard in *Dunsmuir* at para 47:

> [47] Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. 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.

[54] When I review each decision of the discipline committee in this case, I am to apply the reasonableness standard to the committee's final decision -- not to the

elements of that decision. That is, I am not to examine the reasonableness of the various approaches that the committee took in getting to its ultimate decision. Rather, I am to consider the committee's final decision on the issue, to determine whether that decision meets the requirements of a reasonable decision: *Pillay v College of Physicians and Surgeons of Saskatchewan*, 2018 SKQB 54 at paras 5-11.

Whether Ms. Strom's off-duty conduct is subject to discipline

[55] At all relevant times, Ms. Strom was on maternity leave. She was not engaged in either the nursing practice or a professional relationship with another registered nurse.

[56] For this reason, says Ms. Strom, the rules governing a registered nurse's conduct do not apply to her online comments. She says that she communicated those comments as a private individual, not as a registered nurse.

[57] To the contrary, though, Ms. Strom testified at the hearing that she communicated the comments online as an advocate nurse. In response to being asked what was on her mind when she wrote the comment that people should keep an eye on things at the facility, she said (hearing transcript, pages 247-248):

> Right. Okay, so, I mean, part of being a nurse is being an advocate and - - and I realize that, you know, family members, I mean, you are visiting people and so it was just by way of telling people, and I did mention - - say this facility - - but anybody, you know, that has family members, whether in acute care or long term care, I do think it is important to - - to be there and if something that - - something is occurring that you're concerned about you need to - - you need to speak up; and even myself as a nurse it's - - it's tough to speak up because you are on the other side of that care. You know, you are a family member. So it - - so if I sometimes have trouble speaking up, because you don't want to come across as being negative, so then, you know, it - - and so I was - - that's where it came from. I just feel that it is important to give feedback so you can improve things.
>
> (Emphasis added)

[58] Further, when asked why she identified herself in the comments as a registered nurse, Ms. Strom testified (hearing transcript, pages 324-325):

> I actually did it just to frame that I feel that registered nurses - - as registered nurses we're supposed to advocate, and that's what I felt I was doing.

[59] The discipline committee concluded that Ms. Strom, in communicating her views, was not acting only as a private individual but also was acting as a registered nurse. In support of this conclusion was the above testimony that she was motivated as an advocate nurse, and the fact that in her communications she identified herself as a registered nurse. The discipline committee concluded that Ms. Strom had identified herself as a registered nurse in order to "give credibility and legitimacy to her comments." As the discipline committee said (discipline decision, para. 38), "[i]t is Ms. Strom who made that link between her views of the care provided to her grandfather and her position as a registered nurse."

[60] Ms. Strom argues, though, that the rules governing registered nurses apply only to nurses when they are engaged in the practice of nursing, because the focus of the *Code* and the *Standards* is on the practice of nursing. In so arguing, however, she overlooks the provisions of the *Act* giving the association the power to determine professional misconduct. Those provisions are broad and can only be read to mean that the association decides the reach of the rules governing the conduct of registered nurses. This makes sense, particularly when one remembers that the registered nurses who make those decisions have the knowledge and expertise to understand the context and effect of those decisions, and they know that they themselves will be subject to those decisions.

[61] Ms. Strom, though, says that the provisions are so broad that they are too vague for a registered nurse to understand that they could apply to off-duty

conduct. She says that the decision that the rules can apply to off-duty conduct, arising from such vague provisions, is arbitrary.

[62] Throughout the proceedings Ms. Strom has not sought to have any of the *Act*, the *Code* or the *Standards* declared invalid, whether for vagueness or for some other reason. It must be, then, that her suggestion that the provisions of the *Code* and the *Standards* are too vague really is a suggestion that it is the discipline committee's interpretation of those provisions that is too broad or too vague. She can advance that suggestion only by arguing that the committee's ultimate interpretation is unreasonable.

[63] In this regard I take guidance from the approach of Justice Abella in *Doré* at para 60, where she noted that the subject provision of the professional *Code* in that case "sets out a series of broad standards that are open to a wide range of interpretations." Even though the *Code* provisions were so broad, Justice Abella was not concerned that their breadth rendered them -- or the interpretation of them -- vague. I hold the same view of the interpretation of the provisions of the *Code* and the *Standards* in this case.

[64] In its analysis of whether Ms. Strom's off-duty conduct is subject to discipline, the discipline committee adopted as applicable to registered nurses the following remarks of the Alberta Court of Appeal in *Erdmann v Institute of Chartered Accountants of Alberta*, 2013 ABCA 147 at para 20, 544 AR 321, made in relation to chartered accountants:

> 20 Professionals in every walk of life have private lives and should enjoy, as much as possible, the rights and freedoms of citizens generally. A chartered accountant's status in the community at large means that his/her conduct will from time to time be the subject of scrutiny and comment. While acknowledging the legitimate demands of one's personal life, and the rights and privileges that we all enjoy,

> private behaviour that derogates from the high standards of conduct essential to the reputation of one's profession cannot be condoned. It follows that a chartered accountant must ensure that her conduct is above reproach in the view of reasonable, fair-minded and informed persons.

[65] The discipline committee's adoption of these remarks in Ms. Strom's case is logical and reasonable, and it falls within the range of available decisions.

[66] Ms. Strom and the intervenors criticize the path that the discipline committee took to reach its conclusion on this issue. They suggest other steps that the committee might have taken. They suggest different factors that the committee might have considered. Again, though, I am not to determine the reasonableness of individual elements of the committee's decision. I am to determine the reasonableness of the decision itself -- the decision that Ms. Strom's off-duty conduct is subject to discipline.

[67] The essence of some of the arguments advanced by Ms. Strom and the intervenors is that the committee was wrong to have concluded that the *Code* and *Standards* apply to Ms. Strom's conduct. As I have said, though, the question for me to determine is not whether the decision was correct. The question is whether the decision falls within the realm of reasonable decisions in the circumstances, and I conclude that it does.

[68] The decision to be made here -- whether Ms. Strom's off-duty conduct is subject to discipline -- is the kind of decision that the Legislature had in mind when it empowered the association under the *Act*. The decision is made by people who have knowledge and expertise in the area. When such a decision is made by such people, registered nurses are being governed through the lens of that knowledge and expertise.

[69] In light of the foregoing, I find that the decision of the discipline committee -- that Ms. Strom's off-duty conduct is subject to discipline -- meets the criteria of a reasonable decision. The committee explained its decision so that the decision is justified, transparent and intelligible. Particularly in light of similar decisions that have been made with respect to other professions (the legal profession as in *Doré* and the chartered accountant profession as in *Erdmann*), and in light of Justice Abella's remarks in *Doré*, I conclude that the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[70] Accordingly, the decision is reasonable. I will not interfere with the decision that Ms. Strom's off-duty conduct is subject to discipline.

Whether Ms. Strom engaged in professional misconduct

[71] The essence of the discipline committee's decision -- that Ms. Strom engaged in professional misconduct -- is set out at paras. 50 and 58 of the discipline decision:

> 50. The purpose and objective of the SRNA is to protect the public by investigating complaints of professional misconduct and professional incompetence. Section 26(1) of the *Act* contains a broad definition of professional misconduct as being conduct that is contrary to the best interests of the public or nurses or tends to harm the standing of the nursing profession. The Discipline Committee finds that Ms. Strom's comments harmed the reputation of the nursing staff at St. Joseph's and undermined the public confidence in the staff at that facility. Ms. Strom argues that nowhere in her post does she refer to nursing staff directly. While strictly speaking that may be true, the Discipline Committee finds that her intentions were to direct criticisms at those providing direct care to her grandparents meaning the nursing staff.
>
> ...
>
> 58. The Discipline Committee accepts that Ms. Strom's Facebook post and the subsequent online communication she engaged in was motivated by perhaps grief and anger. It is accepted that Ms. Strom was not driven by malice. Carolyn Strom is a professional bound to

> act with integrity and in accordance with the *Code of Ethics*. The Discipline Committee does not seek to "muzzle" registered nurses from using social media. However, registered nurses must conduct themselves professionally and with care when communicating on social media.

[72] The discipline committee's analysis of this question took into account several factors. Among those factors were the committee's findings of fact that Ms. Strom knew that her comments would become public and widely viewed, and that Ms. Strom identified herself in the comments as a registered nurse in order to "give credibility and legitimacy to her comments."

[73] Further, there was before the discipline committee direct evidence as to the effect of Ms. Strom's comments. Shirley McNeil, the interim executive director of the facility, testified that the posted comments caused "quite a disruption" at the facility, observing that registered nurses were distraught and demoralized as a consequence of learning of the comments.

[74] Ms. McNeil and two of the registered nurses who worked at the facility, Candace Kloster and Donna Pichie, testified that community members had approached them, asking about the Facebook posting and asking what was going on at the facility.

[75] In addition to the direct evidence of the effect of Ms. Strom's comments, as is set out at paras. 50 and 58 of the discipline decision the committee drew inferences as to the effect of Ms. Strom's comments. These included the inference that Ms. Strom's online comments "harmed the reputation of the nursing staff at St. Joseph's and undermined the public confidence in the staff at that facility". The committee determined that this harm was "contrary to the best interests of the public or nurses or tends to harm the standing of the nursing profession".

[76] It was open to the discipline committee to draw these inferences from the evidence that was before it. In light of the nature of Ms. Strom's online comments about the nursing staff at the facility (criticizing their competence and questioning their professionalism), particularly coupled with the direct evidence of reaction from the public, it was reasonable to infer that those comments harmed the reputation of the nurses at the facility, thereby undermined public confidence in those nurses, and thereby harmed the standing of the nursing profession. This is especially so in light of the breadth of s. 26(1) of the *Act*, particularly the reference to conduct that "tends to harm the standing of the profession of nursing".

[77] Further in support of the reasonableness of the decision, the evidence before the discipline committee included copies of publications for nurses that had been distributed by the intervenor, Saskatchewan Union of Nurses (SUN), before Ms. Strom published her comments. Registered nurses who testified at the hearing said that, in the normal course, they had received these publications. The publications included the following content:

> It is vital registered nurses always remember they remain bound by the same ethical and professional standards that have always applied -- even when posting to their personal social media accounts.
>
> ... Online content and behavior has the potential to enhance or undermine not only an individual's career, but also the registered nursing profession.
>
> Never make disparaging remarks about employers, patients, or co-workers, even if they are not identified. ...
>
> Remember your options for reporting workplace, patient safety or nursing practice issues -- social media is not a place to vent about your work life. ...

[78] Similarly, in evidence before the discipline committee was a copy of a news bulletin for nurses that had been distributed by the association before Ms. Strom published her comments. Registered nurses who testified at the hearing said that, in

the normal course, they had received this bulletin as well. The bulletin included the following content:

> If you are identifying yourself as a RN/RN(NP), maintain the integrity of the profession of registered nursing by ensuring photos, videos and comments are respectful.

[79] Ms. Strom reasonably can be expected to have received these publications, as did other registered nurses. She did not claim to be unaware of their content. Her position was not that she did not know about the content. Rather, her position was that she did not think that what she published was any cause for concern.

[80] Ms. Strom's knowledge of such cautions also was a factor taken into account by the discipline committee.

[81] One of the discipline committee's concerns about Ms. Strom's comments related to her lack of personal knowledge of the circumstances that she criticized in her comments. She testified that she had attended the facility about five times per year, and she acknowledged that she had little direct knowledge of the care that her grandparents received there. In that regard, her online comments were based on information provided to her by relatives. Ms. Strom acknowledged that she did not ever discuss any concerns about care with people working at the facility. The only complaint that she made related to an expired liquid hand sanitizer in the recreation room.

[82] In these circumstances, the discipline committee formed the view that Ms. Strom had published her criticisms of the care provided to her grandfather without knowing the facts, and without endeavouring to know the facts. She was, in the view of the committee, communicating an uninformed, emotional reaction rather than communicating an informed, thoughtful opinion. As I have just reviewed, there

was evidence before the discipline committee on which the committee could base this conclusion.

[83] SUN observes that s. 26(1) of the *Act* refers to "nurses" and the "profession of nursing", and SUN argues that the discipline committee drew an unreasonable connection between those references and the circumstances here. The discipline committee, SUN says, found that Ms. Strom's comments damaged the reputation of a handful of nurses -- those working at the facility. But, says SUN, a handful of nurses do not constitute "nurses" or the "profession of nursing" under s. 26(1). That is, damage to the reputation of a handful of nurses is not damage to nurses as a whole, is not damage to the nursing profession.

[84] Once again, I must return to the nature of my review of the decision. My review is not aimed at ensuring that the committee correctly interpreted s. 26(1). My review is aimed at ensuring that the committee reasonably interpreted s. 26(1). While the interpretation advanced by SUN was available to the committee, it was not the only reasonable interpretation that was available. There is logic and sense in reading s. 26(1) so that the reference to "nurses" can include some, but not all, of the nurses in the province. Therefore, if the discipline committee's decision was limited to finding damage to the reputations of the nurses working at the facility, that decision reasonably fell within an available interpretation of s. 26(1).

[85] In any event, the discipline committee's decision seems to have been broader than this. The committee concluded that, by way of harming the reputation of the nurses working at the facility, and by way of undermining public confidence in those nurses, Ms. Strom had engaged in conduct that was "contrary to the best interests of the public or nurses or tends to harm the standing of the profession of nursing". From the tenor of the committee's remarks it appears that the committee

inferred that the direct harm to the reputations of the nurses at the facility caused harm to the reputation of the nursing profession.

[86] Ms. Strom argues that the discipline committee's decision was unreasonable because the committee relied, in part, on court decisions in which the subject professional broke the law. Such cases, she says, are inapplicable to her case. This, though, really is an argument that the discipline committee was incorrect in referring to those decisions, and I am not reviewing the committee's decision for correctness. The committee's reference to such cases was only a part -- an element -- of the committee's decision. The reference is not subject to review for reasonableness. It is the final decision -- that Ms. Strom engaged in professional misconduct -- that is subject to that review.

[87] Similarly, Ms. Strom argues that the discipline committee should have been guided by the concept of "reprehensible" conduct in determining professional misconduct. Aside from the fact that s. 26(1) is not so restricted ("... professional misconduct is a question of fact but any matter, conduct or thing, whether or not disgraceful or dishonourable ..."), this element of the decision is not subject to review, as I have just discussed.

[88] The discipline committee may have chosen to take the path of looking for "reprehensible" conduct, but that was just one of several paths that were available to the committee. Again, my focus is not on the particular path that the committee took, or could have taken. My focus is on the reasonableness of the decision reached at the end of that path.

[89] Likewise, the intervenor British Columbia Civil Liberties Association suggests that the discipline committee ought to have drawn a distinction between the

conduct of a person who is known to be a member of the registered nursing profession and the conduct of a person who is commenting as a member of the registered nursing profession. Aside from the committee's finding of fact that Ms. Strom was commenting as a registered nurse, this element of the committee's decision is not subject to review on its own. It was part of the path taken to the final decision.

[90] The same analysis applies to Ms. Strom's argument that the discipline committee misunderstood or misapplied some court decisions.

[91] In the end, Ms. Strom and the intervenors have identified several points where the discipline committee could have taken a different approach to its determination. It may even be that some of these suggestions would have been better approaches for the committee to have taken. Nothing that Ms. Strom and the intervenors have advanced, however, persuades me that the committee's final decision -- that Ms. Strom engaged in professional misconduct -- was unreasonable.

[92] It was within the range of possible, acceptable outcomes for the committee to conclude that Ms. Strom chose to criticize other registered nurses publicly, rather than through the avenues described in the *Code*. It was within that range for the committee to conclude that Ms. Strom's comments could be and were understood by the public to mean that registered nurses working at the facility were not competent and were unprofessional. It was within that range for the committee to conclude that the public consequently would hold a lower opinion of those registered nurses and of registered nurses generally, so that the comments were contrary to the best interests of the public or nurses, or tended to harm the standing of the profession.

[93] It was within the leeway allowed the discipline committee to find that these conclusions established that Ms. Strom was guilty of charges 2, 3 and 4, being

"failure to follow proper channels"; "impact on reputation of facility and staff"; and "failure to first obtain all the facts".

[94] It also was within the leeway allowed the discipline committee to find that these conclusions established that Ms. Strom had committed the breaches identified in the particulars, namely:

(a) breach of s. 26(1) of the *Act* -- engaging in "conduct that is contrary to the best interests of the public or nurses or tends to harm the standing of the profession of nursing"; and

(b) breach of s. 26(2)(l) of the *Act* -- breaching the *Code* provisions identified by the committee.

[95] The decision was within the range of possible, acceptable outcomes. The discipline committee considered Ms. Strom's position and her arguments. In a decision that was justified, transparent and intelligible the committee explained why it did not accept her position or her arguments, instead finding that she had engaged in professional misconduct.

[96] The decision is not shown to have been unreasonable, and so I will not interfere with it.

Whether the infringement of Ms. Strom's *Charter* right is justified

[97] While the main focus of Ms. Strom's appeal with respect to the *Charter* is on her s. 2(b) right to freedom of expression, she also suggests that the discipline committee breached her s. 7 right:

> 7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

[98] As Ms. Strom has framed it, she says that the committee breached her s. 7 right by:

> (a) exercising enforcement of its statutes and policies in a manner which violates the principles of fundamental justice by virtue of vagueness, overbreadth, and arbitrariness; or
>
> (b) applying unreasonable, incorrect and inappropriate interpretations of its governing statutes, policies and directions.

[99] In support of this suggestion, Ms. Strom effectively argues that the discipline committee's interpretations of the *Act*, the *Code* and the *Standards* were unreasonable. In other parts of this judgment, though, I conclude that the committee's decisions were reasonable.

[100] In any event, I adopt the views of courts in Nova Scotia and British Columbia that the s. 7 right to life, liberty and security does not apply in the context of the practice of one's profession: *Osif v College of Physicians & Surgeons of Nova Scotia*, 2009 NSCA 28, 276 NSR (2d) 118; *Law Society of British Columbia v Carten*, 2017 BCSC 1044.

[101] Section 7 of the *Charter* does not come into play in this case.

[102] The discipline committee recognized that the effect of its conclusion -- that Ms. Strom had engaged in professional misconduct -- was to infringe her right to freedom of expression under s. 2(b) of the *Charter*:

> 2. Everyone has the following fundamental freedoms:
>
> ...

> (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
>
> ...

[103] Throughout these proceedings there has been no dispute that the *Charter* applies to this matter, since the association derives its authority to govern registered nurses from statute. There has been no dispute as to the infringement of Ms. Strom's right to freedom of expression. Throughout these proceedings the question has been whether, under s. 1 of the *Charter*, that infringement is justified:

> 1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

[104] The discipline committee decided that the infringement of Ms. Strom's right to freedom of expression was justified. In considering whether that decision was reasonable, I am guided by further remarks of Justice Abella in *Doré*:

> [24] It goes without saying that administrative decision-makers must act consistently with the values underlying the grant of discretion, including *Charter* values. ... The question then is what framework should be used to scrutinize how those values were applied?
>
> ...
>
> [34] ... Today, the Court has two options for reviewing discretionary administrative decisions that implicate *Charter* values. The first is to adopt the *Oakes* framework, developed for reviewing law for compliance with the Constitution. This undoubtedly protects *Charter* rights, but it does so at the risk of undermining a more robust conception of administrative law. In the words of Prof. Evans, if administrative law is bypassed for the *Charter*, "a rich source of thought and experience about law and government will be overlooked".
>
> [35] The alternative is for the Court to embrace a richer conception of administrative law, under which discretion is exercised "in light of constitutional guarantees and the values they reflect" ... Under this approach, it is unnecessary to retreat to a s. 1 *Oakes* analysis in order to protect *Charter* values. Rather, administrative decisions are *always* required to consider fundamental values. ...

> ...
>
> [55] How then does an administrative decision-maker apply *Charter* values in the exercise of statutory discretion? He or she balances the *Charter* values with the statutory objectives. In effecting this balance, the decision-maker should first consider the statutory objectives. ...
>
> [56] Then the decision-maker should ask how the *Charter* value at issue will best be protected in view of the statutory objectives. This is at the core of the proportionality exercise, and requires the decision-maker to balance the severity of the interference of the *Charter* protection with the statutory objectives. This is where the role of judicial review for reasonableness aligns with the one applied in the *Oakes* context. As this Court recognized in *RJR-Macdonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199, at para. 160, "courts must accord some leeway to the legislator" in the *Charter* balancing exercise, and the proportionality test will be satisfied if the measure "falls within a range of reasonable alternatives". ...
>
> [57] On judicial review, the question becomes whether, in assessing the impact of the relevant *Charter* protection and given the nature of the decision and the statutory and factual contexts, the decision reflects a proportionate balancing of the *Charter* protections at play. As LeBel J. noted in *Multani*, when a court is faced with reviewing an administrative decision that implicates *Charter* rights, "[t]he issue becomes one of proportionality" (para. 155), and calls for integrating the spirit of s. 1 into judicial review. Though this judicial review is conducted within the administrative framework, there is nonetheless conceptual harmony between a reasonableness review and the *Oakes* framework, since both contemplate giving a "margin of appreciation", or deference, to administrative and legislative bodies in balancing *Charter* values against broader objectives.
>
> [58] If, in exercising its statutory discretion, the decision-maker has properly balanced the relevant *Charter* value with the statutory objectives, the decision will be found to be reasonable.
>
> (Emphasis added)

[105] The discipline committee's decision -- that the infringement was justified -- can only be reasonable if the committee proportionately balanced the right to freedom of expression with the objectives of the *Act*, in the context of Ms. Strom's circumstances. As with other reviews on the reasonableness standard, within this requirement the committee is allowed deference. The committee's balancing of the rights and objectives is not required to be correct. It is required to be reasonable.

[106] In that regard, Justice Abella added in *Loyola High School v Quebec (Attorney General)*, 2015 SCC 12 at para 42, [2015] 1 SCR 613:

> [42] *Doré*'s approach to reviewing administrative decisions that implicate the *Charter*, including those of adjudicative tribunals, responds to the diverse set of statutory and procedural contexts in which administrative decision-makers operate, and respects the expertise that these decision-makers typically bring to the process of balancing the values and objectives at stake on the particular facts in their statutory decisions: para. 47; ... As Lorne Sossin and Mark Friedman have observed in their cogent article ["Charter Values and Administrative Justice" (2014), 67 SCLR (2d) 391]:
>
> > While the *Charter* jurisprudence can shed light on the scope of *Charter* values, it remains for each tribunal to determine ... how to balance those values against its policy mandate. ...

[107] The *Doré* case related to the right of a lawyer to express his views, and to the extent to which his governing professional body could restrict his exercise of that right to freedom of expression. The following remarks by Justice Abella apply to Ms. Strom's case:

> [61] No party in this dispute challenges the importance of professional discipline to prevent incivility in the legal profession ...
>
> ...
>
> [63] But in dealing with the appropriate boundaries of civility, the severity of the conduct must be interpreted in light of the expressive rights guaranteed by the *Charter*, and, in particular, the public benefit in ensuring the right of lawyers to express themselves about the justice system in general and judges in particular ...
>
> ...
>
> [66] We are, in other words, balancing the fundamental importance of open, and even forceful, criticism of our public institutions with the need to ensure civility in the profession. Disciplinary bodies must therefore demonstrate that they have given due regard to the importance of the expressive rights at issue, both in light of an individual lawyer's right to expression and the public's interest in open discussion. As with all disciplinary decisions, this balancing is a fact-dependent and discretionary exercise.

[108] Here the discipline committee considered both Ms. Strom's s. 2 right to freedom of expression and the objective, set out in s. 26(1) of the *Act*, of governing registered nurses in the best interests of the public and of the profession. The committee did not elaborate on its consideration to the extent that may be expected of a court, but such an administrative body is not expected to do so. What is expected is that the committee considered the matter, proportionately balanced the factors that were to be balanced, and then explained its decision.

[109] The discipline committee did this. It was alive to the importance of the right to freedom of expression, as indicated in its review of the issues beginning at para. 43 of the discipline decision. The committee's resolution of the balancing is demonstrated in the final lines of para. 58 of the discipline decision:

> 58. ... The Discipline Committee does not seek to "muzzle" registered nurses from using social media. However, registered nurses must conduct themselves professionally and with care when communicating on social media.

[110] The discipline committee balanced the right to freedom of expression with the need, under the *Act*, to address Ms. Strom's professional misconduct. Having found professional misconduct not because she expressed her concerns but because of how she went about it, the committee observed that Ms. Strom was not left without an avenue for expressing her concerns. As is plain from the evidence that was before the committee, avenues were available to Ms. Strom for asserting her criticisms of other registered nurses -- so that the criticisms could be addressed -- without causing the harm that the committee found had been caused.

[111] In the end, when the discipline committee balanced the objective of governance of the profession with the right to freedom of expression, the committee concluded that the infringement of the right to freedom of expression was justified, in

part because of the nature and extent of the harm to the profession and in part because the infringement still left Ms. Strom with another avenue of expressing her concerns. In effect, the committee concluded that Ms. Strom still was in a position to be an advocate nurse, to exercise her right to freedom of expression, by advancing her criticisms in a way that would not harm registered nurses and the nursing profession.

[112] In this way the discipline committee addressed, as Justice Abella put it at para. 56 of *Doré*, "how the *Charter* value at issue will best be protected in view of the statutory objectives". Bearing in mind the deference that is to be given to the committee in its balancing of the *Charter* right and the statutory objectives, I conclude that the committee's decision falls within the range of possible, acceptable outcomes that could arise from a proportionate balancing.

[113] The discipline committee's decision -- that the infringement of Ms. Strom's *Charter* right to freedom of expression was justified -- is not shown to have been unreasonable. Accordingly, I will not interfere with it.

The costs decision

[114] After a costs hearing, the discipline committee reprimanded Ms. Strom, set conditions for the continuation of her practice, and imposed on her a fine of $1,000. The committee also ordered Ms. Strom to pay costs of the proceedings in the amount of $25,000, giving her three years to pay those costs.

[115] Ms. Strom says that the committee did not have the statutory authority to impose the costs award. She says that a review of the statutes relating to other professions in Saskatchewan reveals that the Legislature specified in those other statutes that a costs award may include legal expenses, but the Legislature did not

include such a provision in the *Act* governing registered nurses. She says that this circumstance indicates that the Legislature chose to single out the association governing registered nurses to not be entitled to an award of costs that includes legal expenses.

[116] For two reasons, I am not persuaded by this argument. First, I see no reason to resort to a consideration of other statutes unless I find ambiguity in the *Act* that is before me. The relevant provision of the *Act* is s. 31(2)(a)(ii):

> 31(1) Where the discipline committee finds a nurse guilty of professional incompetence or professional misconduct, it may:
>
> ...
>
> (2) In addition to any order made pursuant to subsection (1), the discipline committee may order:
>
> (a) that the nurse pay to the association within a fixed period:
>
> (i) a fine in a specified amount;
>
> (ii) the costs of the inquiry and hearing into the nurse's conduct and related costs, including the expenses of the investigation committee and the discipline committee; or
>
> (iii) both of the things mentioned in subclauses (i) and (ii);
>
> ...
>
> (Emphasis added)

[117] There is no limitation on the nature of the costs that may be awarded under s. 31(2)(a)(ii). There is no ambiguity in the meaning of the provision. The costs that may be awarded cannot be stated more broadly than by using phrases such as "the costs" and "the expenses". There is no need to resort to another statute to aid in interpreting this provision. It means what it says.

[118] Second, it is not apparent that the $25,000 costs award represents legal expenses. The evidence before the discipline committee established that the expenses

relating to the proceedings totalled $142,847.42, of which $99,378.19 was identified as being for "legal consultation". Therefore, over $40,000 of the expenses appears not to have related to legal expenses. I am not persuaded that there is reason to conclude that the $25,000 costs award is an award of legal expenses.

[119] Ms. Strom also argues that the costs award is unreasonable. She notes that, over the years, costs awards against registered nurses have increased. She calls this arbitrary and therefore unreasonable. I do not see it as either. It appears that there has been a progression in costs awards recognizing that, when a nurse is found guilty, whichever costs of the proceedings are not paid by that nurse are borne by all of the nurses who are members of the association.

[120] Reviewing the discipline committee's penalty decision, I find that the committee conducted a thoughtful and thorough review of considerations relating to both the fine and the award of costs. The key to the committee's costs decision is set out in the following parts of the penalty decision:

> 29. The rationale for a costs order in discipline proceedings is succinctly set out in a case from the Alberta Court of Queen's Bench called *Hoff v Pharmaceutical Assn. (Alberta)*: *Hoff v. Pharmaceutical Assn. (Alberta)*, 1994 CanLII 8950 (ABQB)
>
> > As a member of the pharmacy profession the appellant enjoys many privileges. One of them is being part of a self-governing profession. Proceedings like this must be conducted by the respondent association as part of its public mandate to assure to the public competent and ethical pharmacists. Its costs in so doing may properly be borne by the member whose conduct is at issue and has been found wanting.
>
> 30. The Discipline Committee accepts that statement. The legislature has entrusted the SRNA to regulate the profession of registered nursing in Saskatchewan and discipline proceedings are an essential function of the SRNA. The fees paid by the membership allow the SRNA to fulfill its statutory mandate. The membership as a whole should not bear all of the costs

> when a registered nurse is found to have engaged in professional incompetence and/or professional misconduct.
>
> ...
>
> 32. A costs order should not be so large that it is punitive nor should the spectre of costs deter a member from raising legitimate defences in a hearing. It also is appropriate for discipline committees to consider a professional's financial circumstances if evidence is presented on those circumstances.
>
> 33. In this case, Ms. Strom has not referred to her financial circumstances as a basis for the Discipline Committee to decline to make any order as to costs. ...

[121] In addressing the amount of the costs award, the discipline committee noted that "the actual costs exceed almost six times the amount proposed to be paid by Ms. Strom", namely $25,000.

[122] The committee explained the rationale for its costs decision. In light of the circumstances, including the amount of the actual costs and the time given to Ms. Strom to pay the costs, I conclude that the costs decision falls with a range of possible, acceptable outcomes as to costs.

[123] The costs decision is not shown to be unreasonable. For that reason, I will not interfere with it.

Conclusion

[124] Ms. Strom's appeal is dismissed.

[125] As she has been unsuccessful on her appeal and the association has been successful in defending the appeal, the association will have the taxable costs of the appeal from Ms. Strom.

[126] No costs are awarded with respect to the intervenors.

J.
G.M. CURRIE