

Session: Substantive Constraints

Topic: Standard of Review – Reasonableness

Recommended time: 55 Minutes

Score: 40 Marks

Author: **Manuel Akinshola**

Robert carries on business in Saskatchewan as a member of the Canadian Electrical Contractors Association (Association). In June last year, a complaint was made against him to the local head of the Association, Juliette, bordering on fraud. At a meeting scheduled by Juliette to discuss these issues, Robert admitted that he had failed to render services for money collected from some of his clients. Juliette then referred the matter to the Local Arbitration Committee (Committee) of the Association and the matter proceeded to a hearing where Robert appeared and made submissions before the Committee. At the conclusion of hearing, he was found guilty of misconduct and it was decided that he should be expelled permanently from the Association, effective immediately.

Robert was aggrieved and appealed to the Provincial Appeal Board (Board). His grouse was that matters concerning discipline of members of the Association were governed by the Regulations on Member Professional Conduct (Regulations) which prescribed certain procedural and substantive rules for conducting hearings in cases of misconduct. He argued that the stipulated procedure in s. 43(1) of the Regulations was not followed in his case.

The Board dismissed Robert's appeal holding that s. 43(1) is not mandatory but advisory, and though the Committee indeed made procedural errors in not adhering to the Regulations, it had correctly interpreted and applied the Regulations. Moreover, the errors were not material and did not seriously affect the outcome. The Board ruled, therefore, that the decision of the Committee was correct.

Robert has retained you to file an application for judicial review to the Court of Queen's Bench against both the decisions of the Committee and the appeal Board. He believes that there were quite a number of procedural and substantive deficiencies in the two decisions.

In your application, you have specified the following ground as the basis for judicial review:

That the Committee had committed procedural and substantive errors by imposing expulsion while failing to abide by the provisions of s. 43(1) of the Regulations.

Section 43 of the Regulations provides as follows:

43

- (1) Before making a decision, the Committee will request and receive from the Legal Advisor of the Association records of sanctions imposed on members for similar professional misconduct by other previous Committees of the Association.
- (2) In reaching a decision on what sanctions to impose, the Committee will take these records into account and shall invite and consider submissions from all parties before it in the adoption of applicable sanctions.

Questions

In your opinion, what standard of review should apply to the ground of your application for judicial review? Please provide reasons.