IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Pottie v. Nova Scotia (Real Estate Commission), 2005NSSC177

Date: 20050627
Docket: S.H. 223574A
Registry: Halifax

Between:

Pat Pottie

Appellant

v.

The Nova Scotia Real Estate Commission

Respondent

Judge: The Honourable Justice Gregory M. Warner.

Heard: June 9, 2005, in Halifax, Nova Scotia

Counsel: J. Brian Church, Q.C., counsel for the Appellant.

Alan J. Stern, Q.C., counsel for the Respondent.

By the Court:

[1] Pat Pottie, a licensed realtor, appeals the finding of unprofessional conduct made by a discipline sub-committee ("Committee") of the Nova Scotia Real Estate Commission ("Commission"), and the sanctions imposed, including a two year license suspension and order to pay costs of $9,980.08.

[2] Four grounds of appeal are set out:

> (a) the decision was quickly made which did not reflect the time needed to consider the totality of the evidence presented.
>
> (b) the decision of the Commission was arbitrary and contrary to the principles of natural justice resulting in a denial of the principles of fairness.
>
> (c) the Commission erred in law by having no juristic basis to apply such a harsh and severe penalty.
>
> (d) The penalty of the board was excessive having regard to this case.

BACKGROUND

[3] In the fall of 2002 Pottie arranged for the purchase by Helen Howell of Texas of a condominium on Hammonds Plains Road, Halifax, Nova Scotia. He

also agreed to act as her rental agent for the condominium, as she was not immediately moving from Texas.

[4] As of October 1, 2002, he had rented the condominium to a tenant who had paid him a $500.00 security deposit and rent of $1,000.00 per month (of which his fee was $175.00 per month).

[5] Mr. Pottie did not set up or use a trust account, but rather deposited the security deposit and the monthly rental cheques in his personal account.

[6] Ms. Howell did not receive rent or a copy of the lease and was having difficulty getting Mr. Pottie to answer her inquiries. In December, 2002, she asked her brother-in-law, Mr. Cormier, who resided in Sydney, Nova Scotia, to make inquiries for her. Mr. Pottie provided Mr. Cormier with a false lease showing that the premises were rented as of December 1, 2002; thereafter he apparently began remitting some rent payments to Ms. Howell.

[7] By May or June, 2003, Ms. Howell still had not received all the expected rent and Mr. Pottie was not answering her messages. At this point Mr. Cormier

contacted the tenant and learned that she had rented the condominium since October 1st. On the advise of a lawyer, Ms. Howell instructed Mr. Cormier to complain to the police, the Commission, and Mr. Pottie's broker.

[8] At this point Mr. Pottie made arrangements to pay what he claimed was owed (approximately $4,000.00). As part of the arrangement to pay he requested Ms. Howell to withdraw her complaint to the police, to the Commission and to his broker. Further untruthful advice by Pottie was uncovered, and led to a revised formal settlement agreement by which the full $8,500.00 paid by the tenant was remitted to Ms. Howell in exchange for a release and agreement to drop the complaints.

[9] The Commission did not drop the matter and continued the investigation. Mr. Pottie did not co-operate. Eventually the Commission subpoenaed Mr. Pottie's personal bank records, which records confirmed that he had deposited all rent cheques and the security deposit in his personal account and had used them for personal living expenses.

[10] Mr. Pottie blamed the failure to advance to Ms. Howell the rent when due, and properly account for the rent, on a bookkeeper he said he met at Tim Hortons and who had experience in rentals but who was out of work and homeless; he hired her out of sympathy " to give her a bit of a start".. He stated that he was busy and delegated to her (for the commission of $175.00 per month) the job of remitting the rent to Ms. Howell and providing an accounting. Because she advised him that she did not have a bank account, he decided to use his personal account to process the rent cheques. Initially he advised Mr. Cormier that the name of the bookkeeper was "Donna". At the hearing before the Committee he advised that her name was "Kathy Hynes". He met her only at Tim Hortons and could only contact her by a cellphone that belonged to her or her friend. Pottie could not provide a phone number or address for Ms Hynes during the investigation or hearing; he advised that when he attempted to contact her at the time of the initial complaint to the Commission, he was told she had moved to Korea and he was unable to locate her. He also blamed her for the false lease that showed the rental starting on December 1 (not the real date of October 1).

[11] On April 19, 2004, a hearing was held before the Committee on six allegations of misconduct. The Commission withdrew one of them. Three of the

remaining allegations related to the false lease and the failure to remit rent to Ms. Howell. The other two allegations related to Pottie's failure to co-operate with the investigation and giving false and misleading information to the investigator.

[12] At the end of the hearing, both counsel submitted that the decision of the Committee hinged primarily on the credibility of the witnesses and in particular, Mr. Pottie. After hearing evidence and representations from both sides, the Committee adjourned for twenty minutes and returned to declare Mr. Pottie guilty of all five allegations of misconduct. The Committee stated that it did not believe Mr. Pottie. After the Committee's decision, counsel made representations with regards to sanctions and the Committee adjourned.

[13] In his submissions, Mr. Stern advised the Committee of their obligation to provide reasons for any sanctions. It was clear from the submissions of both counsel that the circumstances of the case before the Committee were unique and that no precedent existed in Nova Scotia to provide guidance. Mr. Stern did provide the Committee with a summary of some discipline sanctions from other jurisdictions (which summary was not included in the record submitted to this Court); he represented that these decisions were too inconsistent to provide any

guidence, and that it was entirely in the discretion of the Committee to impose the appropriate sanction.

[14] In a written decision filed on May 6, 2004, the Committee imposed sanctions. The entire written decision with respect to sanctions reads as follows:

> . . .Due to the seriousness of these violations it is the hearing panel's decision that Mr. Pottie's rights and entitlement to hold a license to trade in real estate in Nova Scotia in any capacity be suspended.
>
> It is the Hearing Panel's unanimous decision that the following sanctions be implemented:
>
> 1. Mr. Pottie's license to trade in real estate be suspended for a period of two years effective immediately.
>
> 2. Mr. Pottie must complete the new Salesperson Licensing course prior to applying for license re-instatement.
>
> 3. Mr. Pottie is to pay the hearing costs of $9980.08 within 30 days of the date of this decision.
>
> 4. A letter of reprimand is to go in Mr. Pottie's file.

STANDARD OF REVIEW

Statuatory Provision

[15] The Real Estate Trading Act, S.N.S. 1996, Chapter 28, as amended, creates the framework for the regulation of real estate brokers and salespersons in Nova Scotia. It creates a Commission of ten persons, most of whom are members of the Real Estate Association or licensed persons, to act as an independent self-governing authority for the real estate profession.

[16] The Commission is authorized to, and has, prescribed bylaws setting the standards for professional conduct and the procedures for investigation of complaints and disciplinary action.

[17] For the purposes of this proceeding, subsections 22, 24 (1), and 24 (2), of the Act are relevant and read as follows:

> 22 (1) Unprofessional conduct is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonourable, is unprofessional conduct within the meaning of this Act if it is
>
> (a) harmful to the best interests of the public, licensed persons or the Commission;

(b) fraudulent;

(c) a breach of this Act, the regulations or the by-laws or any terms or restrictions to which a licence is subject; or

(d) a failure to comply with an order of the Discipline Committee

(2) Whether or not a person is in breach of this Act, the regulations or the by-laws is a question of fact, but if a person displays

(a) a lack of knowledge, skill or judgment; or

(b) a disregard for the welfare of members of the public served by the real estate industry,

of a nature or to an extent that demonstrates that the person is unfit to continue to be licensed pursuant to this Act, that person is in breach of this Act, the regulations or the by-laws for the purpose of this Act.

. . . .

24 (1) Any person may appeal from any order made by the Discipline Committee to a judge of the Supreme Court of Nova Scotia within thirty days after the order is made, and the judge, on hearing the appeal, may make such order either confirming, amending or setting aside the order appealed from or for further inquiries by the Discipline Committee into the facts of the case as to the judge seems right.

(2) The appeal shall be by motion, notice of which shall be served upon the registrar at least fourteen days before the time fixed for hearing the appeal, and shall be founded ;upon a copy of the proceedings before the Discipline Committee, the evidence taken and the decision or report of the Discipline Committee in the matter, certified by the registrar and the Registrar shall, upon

> the request of any person desiring to appeal, at the expense of that person, furnish that person with a certified copy of all evidence, proceedings, reports, orders and papers upon which the Discipline Committee has acted.

The Law

[18] The Supreme Court of Canada in **Dr. Q. v. College of Physicians and Surgeons of British Columbia** 2003 SCC 19, **Ryan v. Law Society (New Brunswick)** 2003 SCC 20, and **Re Cartaway Resources Corp.** 2004 SCC 26, established that there are three standards of review of administrative decisions: correctness, reasonableness simpliciter and patent unreasonableness.

[19] The appropriate standard to be applied to a particular issue will vary with the degree of deference that the reviewing court should give to the particular administrative decision.

[20] The Supreme Court emphasized that the degree of deference results from a pragmatic and functional analysis that begins with the weighing, in each case, of four contextual factors, described in **Pushpanathan v. Canada (Minister of Employment & Immigration)**, [1998] 1 S.C.R. 982, as:

> the presence or absence of a privative clause or statutory right of appeal;
>
> the expertise of the tribunal relative to that of the reviewing court on the issue in question;
>
> the purposes of the legislation and the provision in particular; and
>
> the nature of the question -- law, fact, or mixed law and fact.

[21] As noted by McLachlin, C.J., in **Dr. Q.**, the factors may overlap and the overall aim is to discern the legislative intent.

FIRST GROUND OF APPEAL

[22] The central feature of the appellant's first ground is that it appears to have taken a very short time for the Committee to reach a decision that the appellant was guilty of five acts of professional misconduct. From page 238 of the transcript it appears the Committee recessed for twenty minutes after a full day hearing, before returning with a decision.

[23] Because the Committee's function was a *quasi-judicial* one, it owed a duty of fairness to the appellant.

[24] Section 22 of the **Real Estate Trading Act** expressly states that questions of unprofessional conduct are questions of fact. The **Act** does not contain a privative clause. Subsection 24(1) provides for an appeal; on hearing the appeal, the judge may confirm, amend, or set aside the order appealed from or order further inquiry by the Committee into the facts "as to the judge seems right". By subsection 24(2), the appeal is on the record of the Committee proceedings.

[25] Bastarache, J., in **Pushpanathan**, at paragraph 26, stated that the central inquiry in determining the standard of review is the legislative intent creating the tribunal whose decision is being reviewed.

[26] To the extent that the first ground of appeal challenges the factual findings of the Committee, this Court finds that, based on section 22 of the **Act** and, more specifically, on the credibility of the witnesses, the standard of review is reasonableness.

[27] A review of the transcript supports the Committee's finding that Mr. Pottie lied to Ms. Howell about when the rental started, and provided her with a fraudulent lease to back up his lie, and failed to pay her the rent owed to her either

at all (with respect to October and November, 2002) and late (with respect to December, 2002 to May, 2003); and that Pottie intentionally failed to co-operate with, and mislead, the Commission in its investigation. Not only does the reasoning as a whole logically flow from the evidence, but each element of the reasoning given by the Committee, is easily justified.

[28] To the extent that the first ground of appeal may constitute a submission that the Committee could not, acting judiciously, make a decision on the allegation so quickly and that this constitutes evidence that the Committee acted unfairly or with bias, the issue is a question of mixed law and fact.

[29] The standard of review most often applied in situations analogous to this (questions of mixed law and fact) is reasonableness. An application of this standard to this case cannot support the appeal. The Court disagrees with counsel for the appellant that the Committee could not make such a determination in short order, and, by finding the appellant to be not credible, satisfy themselves that he was guilty of all the allegations of misconduct.

[30] The Commission's counsel, in his submission to the Committee, quoted at length from **Farnya v. Chorny** (1952) 2 D.L.R. 354 (B.C.C.A.), with respect to advice to triers of fact on determining credibility. The appellant's credibility was central to all five allegations. Both Counsel made credibility the issue for the Committee to determine.

[31] The short time it took to make their decision is not evidence of bias or unfairness. The evidence was straightforward and uncomplicated; both the fraud committed on Ms. Howell, and the cover up during the Commission's investigation, were resolved primarily by their finding on the appellant's credibility, or lack of credibility.

[32] In **Dr. Q.**, the Court held that the reviewing judge erred in applying two exacting a standard of review and for substituting her own view of the evidence for that of the Committee. In that case the Committee's decision involved issues of credibility. This Court finds no factual basis for questioning the Committee’s finding on credibility, or the length of time it took them to reach it.

SECOND, THIRD & FOURTH GROUNDS OF APPEAL

[33] The third ground of appeal incorporates the relevant issues set out in the second and fourth grounds, and are dealt with as one issue.

[34] The Committee did not explain the reason for its sanctions against the appellant except in the preface to the first statement which reads: "Due to the seriousness of these violations . . .".

[35] The standard of review as it applies to the imposition of sanctions by administrative tribunals has been discussed by the Supreme Court of Canada in **Cartaway,** and **Ryan,** and by the Nova Scotia Court of Appeal in **Creager v. Nova Scotia (Provincial Dental Board)** 2005 NSCA 9.

[36] In **Cartaway,** the British Columbia Securities Commission fined two brokers/directors $100,000.00 each for violations of the **Securities Act**. The British Columbia Court of Appeal found the fines inappropriate, given the penalties imposed on other brokers involved in the matter. The Supreme Court overturned the Court of Appeal and upheld the Commission's fines. The Court determined that the standard of review was one of reasonableness. Like the case at

bar, no privative clause prevented appeals of the Commission's decision. The Supreme Court held that determining whether general deterrence was an appropriate consideration in formulating a penalty fell within the Commission's expertise, and the Court found their determination was reasonable.

[37] In **Ryan**, the Law Society disbarred a lawyer for fabricating documents to cover negligence in conducting his client's legal action. The New Brunswick Court of Appeal held that because of the seriousness of the sanction, while the standard of review was reasonableness *simpliciter*, that less deference should be given to the decision than just reasonableness; it should come closer to correctness than to patent unreasonableness. The Supreme Court overturned the Court of Appeal. It made clear that there were only three standards of review and that reasonableness *simpliciter* set out a single standard and the standard did not "float". The Supreme Court set out how a reviewing court should test for unreasonableness at paragraphs 54 to 56. A decision will be unreasonable only if, after a careful review of the reasons given by the tribunal, there is no line of analysis that could reasonably lead to the tribunal's conclusion; that means the reasoning is considered as a whole - not each element separately.

[38] In **Creager**, a discipline committee found that Creager committed unprofessional conduct in the treatment of six patients. The committee imposed a sanction of fourteen months suspension, and ordered the appellant to pay the hearing costs of almost $100,000.00. The Nova Scotia Court of Appeal made the following relevant findings:

> (a) in selecting and applying the standard of care for unprofessional conduct, the standard of review was reasonableness;
>
> (b) on questions of law or procedural fairness (such as whether the Committee had the power to define the standard of care), or with respect to the question of the giving of reasons for the sanctions, the standard of review was correctness;
>
> (c) on the question of the quantum of sanctions, the standard of review was reasonableness.

[39] Fichaud, J.A., beginning at paragraph 23, makes the further point that issues of procedural fairness - such as a failure to give reasons to explain a sanction or a

substantial costs award, do not merit any deferential standard of review; that is, that the standard is one of correctness. He cites in support of this position: **Moreau-Berube v. New Brunswick,** [2002] 1 S.C.R. 249; **C.U.P.E. v. Ontario (Minister of Labour)**, [2003] 1 S.C.R. 539; and **Baker v. Canada (Minister of Citizenship and Immigration),** [1999] 2 S.C.R. 817.

Duty to Give Reasons

[40] The traditional common law position is that statutory authorities were not obliged to provide reasons for their decisions.

[41] In **Yarmouth Housing Ltd. v. Rent Review Commission** (1982) 54 N.S.R.(2d) 28, and in **RDR Construction Co. Ltd. v. Rent Review Commission** (1982) 55 N.S.R.(2d) 71, the Appeal Division of the Nova Scotia Supreme Court held that providing reasons was necessary in cases where there was a statutory right of appeal.

[42] In **Future Inns Canada Ltd. v. Nova Scotia (Labour Relations Board)**, (1997) 160 N.S.R.(2d) 241, the Nova Scotia Court of Appeal held, at paragraphs

76 and 77, that since judicial review for jurisdictional error was a constitutionally guaranteed right, it was patently unreasonable and contrary to the principles of natural justice and fair play for an administrative board not to give reasons for its decisions.

[43] The Supreme Court of Canada accepted the position that the failure to give reasons could breach the duty of fairness in **Baker v. Canada (Minister of Citizenship & Immigration)** [1999] 2 S.C.R. 817. Among the reasons for giving reasons, the Court listed:

> (a) the discipline of giving reasons promotes better decision making;
>
> (b) reasons inspire greater public confidence in the integrity of the decision and
>
> (c) reasons facilitate the rights of appeal and judicial review.

[44] More recently the Supreme Court in **R. v. Sheppard** [2002] 1 S.C.R. 869, emphasized, in the criminal law context, the bases for requiring reasons. While

careful to note at paragraph 19 that there are differences between criminal courts and administrative tribunals and that the rationale for giving reasons may therefore differ, the analysis of Binnie, J., is, in general terms, applicable to judicial review of administrative decision-making.

[45] Of some significance in **Sheppard** is Binnie J.'s analysis of situations where no reasons are given and situations where inadequate reasons are given. The Court considered "generic" or "boilerplate" reasons to be no reasons. The Court emphasized that reasons had to be meaningful in the sense of providing some proper basis for review.

[46] Relevant legal textbooks on the subject matter include:

> (a) Administrative Law by David J. Mullan, (looseleaf: Irwin Law, Toronto), Chapter 13, section O (4) "Content of Reasons"; and
>
> (c) Judicial Review of Administrative Action in Canada by Brown and Evans, at sections 12:5000 to 12:5330.

[47] Section 12:5212 in Brown & Evans' text is inciteful: while the absence of reasons should not lead a reviewing court infer bad faith or that no legally valid

reasons existed, it can be taken into account in considering whether the administrative tribunal complied with a requirement to consider various factors.

[48] While adequacy depends upon the context and there may be no precise single test of adequacy, reasons must be sufficiently clear, precise and intelligible as to set out the reasoning process of the tribunal and demonstrate a consideration of all of the relevant factors.

[49] Inadequate reasons and the failure to give reasons offends the principle of procedural fairness.

[50] In determining the degree of deference to be given to the Committee's failure to give reasons, this Court notes (a) there is no privative clause and that there is a statutory right of appeal, and (b) the issue of procedural fairness is a matter of law and something for which the Committee has no special expertise. For these reasons, this Court finds that, on the issue of the absence or adequacy of reasons, the standard of review is one of correctness. For the appropriateness of reasons that are given, the standard of review is reasonableness.

[51] The decision of the Committee, other than noting that the seriousness of the violation, does not provide the appellant, or other persons who may be subject to the Act, or the public, or the reviewing Court, a clear explanation of how it arrived at the sanctions it imposed. It does not disclose what factors (aggravating or mitigating) with regards to the acts of misconduct or Mr. Pottie it considered.

[52] The imposition of sanctions by a Discipline Committee should not be standardized or generic. There is a requirement for the provision of reasons demonstrating a consideration of the factors relevant to the particular circumstances of each case. The fact that the type of infractions committed in this case are unique an unusual to the Commission, is all the more reason that the appellant, and others who are subject to the Act, and the public, are entitled to an explanation. The sanctions imposed do not speak for themselves.

[53] It is for the Commission, whose members have the expertise and the knowledge of their industry to outline a framework for the imposition of penalties and sanctions. It is not a function for this Court, even if this Court has the record and transcript of the proceedings before the Committee, to usurp its role.

[54] Having stated that the standard of review on matters of law is correctness, this Court finds that the complete inadequacy of the explanation of the suspension, and the absence of any explanation for the imposition of the other sanctions, fails to meet the standards placed on the Committee.

Remedy

[55] The options available to the Court include: (a) imposing the appropriate sanction or (b) remitting the matter to the Committee to state reasons, or (c) remitting the matter to the Committee with a direction that it redetermine the appropriate sanctions after hearing any new evidence the parties may submit and after receiving full representations from both the Commission and the appellant as to the various factors that are relevant to the imposition of sanctions.

[56] The court rejects the first option. The Commission is a self-governing body with power to make rules and enforce them because it is in a better position to do so. The court rejects the second option. The Committee from which this appeal was taken was directed by Mr. Stern to state its reasons and failed to do so; the Committee was not given sufficient guidance by either counsel on how it should

carry out its task, especially since the circumstances were unique and more serious that the Commission had experienced before.

[57] The court adopts the third option. As Brown and Evans state, at section 12:6300, it is a matter of fairness, after the sanctions have been quashed, that the decision be reconsidered, taking into account all the relevant factors.

FACTORS RELEVANT TO SANCTIONS

[58] The Commission's counsel requested the Court to provide some guidance to the Commission. Because it is the Commission itself that has the expertise to determine what is in the best interests of the public when dealing with its members, it is not appropriate for a Court to give directions that may fetter the exercise of the discretion given to the Commission to set standards and enforce them.

[59] The imposition of sanctions is not a mechanical exercise. While it is not improper for a Discipline Committee to take into account informal rules or guidelines and previous decisions for which written reasons have been given - all of which increase certainty, reduce inconsistency and raise the level of

accountability to the public - the Discipline Committee must treat each case according to its own circumstances; that is, in accordance with the nature of the offence and the unique circumstances of the offender. It must not feel bound to automatically follow a rule, policy, guideline or precedent.

[60] While proceedings before the Discipline Committee are not criminal, but rather civil, the object of the imposition of sanctions resulting from breaches of the Act or of professional misconduct are not dissimilar to the purpose and principles of sentencing contained in the **Criminal Code** beginning with s. 718, 718.1 and 718.2. The principles of sentencing in the criminal context reflect the requirement to protect the public by the denunciation of unlawful conduct, specific deterrence, general deterrence, rehabilitation, and the promotion of a sense of responsibility by the offender.

[61] The process of sentencing requires the decision maker to consider the particular gravity of the offence itself and the degree of responsibility of the offender. In respect of both of these factors there may be aggravating or mitigating circumstances.

[62] While the criminal law clearly prohibits a “cookie cutter” approach to sentencing, it is a factor that, in similar circumstances involving similar offences and similar offenders, consideration of precedent is one factor that promotes fairness, certainty and consistency.

[63] Without intending in any way to restrict or direct the redetermination to be made by the Committee in the case at bar, it is relevant for the Committee to consider not only the seriousness of the offence itself (which its decision stated it had), but also the factors related to the appellant himself. Is he a first time offender? Is he a person with a long record of good behaviour who can provide a logical and credible explanation for this glitch in his behaviour? These may constitute mitigating factors. On the other hand, if the offender has extensive business experience, does not have a long record of good behaviour, and has no credible excuse (such as an some unusual personal crisis that is unlikely to be repeated), then these may constitute aggravating factors.

[64] With regards to the offence itself, offences of the nature that adversely affect the public, or are deliberate (as opposed to negligent or careless) might be

aggravating factors. Certainly the seriousness of the offence is an aggravating factor.

[65] The decision of Green, J. (as he then was) of the Newfoundland Supreme Court in **Jaswal v. Newfoundland Medical Board** [1996] N.J. 50, is instructive; in particular, the thirteen factors set out in paragraph 36 of his decision, which I paraphrase as follows:

1. The nature and gravity of the proven allegations

2. The age and experience of the offender

3. The previous character of the offender and in particular the presence or absence of any prior complaints or convictions

4. The age and circumstances of the victim (if there was one)

5. The number of times the offence was proven to have occurred

6. The role of the offender in acknowledging what had occurred

7. Whether the offender had already suffered other serious financial or other penalties as a result of the allegations having been made

8. The impact of the incident on the victim (if there was one)

9. The presence or absence of any mitigating circumstances

10. The need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper conduct of the real estate profession

11. The need to maintain the public's confidence in the integrity of the real estate profession

12. The degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct

13. The range of sentence in other similar cases

[66] With regards to the issue of the costs of the discipline proceeding, several factors might be relevant in any particular case. One of them obviously is the quantum of the costs as described by Fichaud J.A. in **Creager**. Factors that might be relevant on the circumstances of the case at bar include the evidence which appears to show that the appellant is impecunious, that he is 52 years old with a dependant spouse, and that he will be unable to pursue his occupation for two years (or such other period as the Committee may decide). What is the likelihood that the appellant has or will have the resources to pay the costs. Again, the decision in **Jaswal**, supra, beginning at paragraph 40, and in **Creager** at paragraphs 96 and 97, are relevant.

CONCLUSION

[67] Applying the standard of review of reasonableness to the Committee's findings of unprofessional conduct, the court dismisses the appeal.

[68] Applying the standard of review of correctness to the Committee's failure to explain its reasons for the sanctions (including costs), the court grants the appeal, and remits the issue of sanctions back to the Committee with a direction that it reconsider its decision. This will involve hearing such additional evidence as the parties may wish to present on matters relevant to the possible sanctions, considering all relevant factors, both aggravating and mitigating, as to the offences themselves and as to the circumstances of the offender, and giving reasons for whatever sanction the Committee may impose.

[69] This court makes no comment on the appropriateness of the sanctions that were imposed. The absence of reasons makes it impossible to assess the decision. No one should take this decision as implying that the sanctions imposed were too heavy or too light or just right, or that this court intended to place any restriction on the range of sanctions that the Committee may, after considering all relevant factors, impose on Mr. Pottie. Obviously, however, a primary concern should be the protection of the public and thereby the integrity of the real estate profession.

[70] The court will hear the parties with respect to costs if requested.

J