

**IN THE MATTER OF *THE MEDICAL RADIATION TECHNOLOGISTS ACT, 2006*  
AND BYLAWS AND A FORMAL COMPLAINT DATED APRIL 28, 2015  
AGAINST CULLEN McIVER OF REGINA, SASKATCHEWAN**

**Decision  
Saskatchewan Association of Medical Radiation Technologists  
DISCIPLINE COMMITTEE**

Discipline Committee Members:

Darin Humphreys, RTR, Chair  
Arlene Binner, RTNM  
Maria McLaren, RTR  
Bonnie Caven, Public Representative

Merrilee Rasmussen, Q.C., appearing on behalf of the Professional Conduct Committee,  
appearing via teleconference

Cullen McIver, appearing via teleconference

Karen Prisciak, Q.C., legal counsel for the Discipline Committee

**INTRODUCTION:**

1. The Discipline Committee convened on March 1, 2016 at the SAMRT Office, 202-1900 Albert Street, Regina, Saskatchewan. Mr. Cullen McIver (“the Member”) was served with the Notice of Hearing dated January 25, 2016 as required by *The Medical Radiation Technologists Act, 2006* (“the Act”) and with the Formal Complaint. The Notice of Hearing alleged Mr. McIver was guilty of professional misconduct, within the meaning of Section 23 of the Act.

**COMPLAINT:**

2. The Formal Complaint states as follows:

....you, Cullen McIver, are guilty of professional misconduct, pursuant to section 23 of *The Medical Radiation Technologists Act, 2006* in that your actions are harmful to the best interests of the public or the members contrary to clause 23(a), tend to harm the standing of the profession contrary to clause 23(b), and/or are a breach of the Bylaws, specifically section 19 of the *Code of Professional Conduct* contained in Schedule A to *The Medical Radiation Technologists Regulatory Bylaws*, in that you failed to conduct yourself with honesty and integrity in your professional interactions by:

- a) Allowing a friend who was not a member of the SAMRT to complete an on-line questionnaire from the SAMRT in March or April of 2015 and to provide rude, profane and threatening comments in answers to the questions of the questionnaire; and
- b) Responding to an email from the Executive Director of SAMRT on or about March 2, 2015 in a rude, disrespectful and unprofessional manner.

**FACTS:**

3. An Agreed Statement of Fact and Documents was submitted to the Discipline Committee. The relevant paragraphs are as follows:

1. Cullen McIver ('the Member') became a member of the Saskatchewan Association of the Medical Radiation Technologists ("SAMRT") on September 30, 2014 and was assigned Registration No.2473. He submitted his resignation to the SAMRT on November 29, 2015.
2. Membership in SAMRT and the conduct of members is governed by *The Medical Radiation Technologists Act, 2006*, ("the Act") and the SAMRT bylaws, including the Code of Ethics. As a self-regulation profession, the SAMRT is authorized by the Act to discipline its member for failure to adhere to the requirements of the Act, the bylaws, or the Code of Ethics. Subsection 22.2(1) of the Act permits discipline proceedings to be taken against a former member within two years after the day on which person ceased to be a member.
3. On April 28, 2015 the Professional Conduct Committee ("PCC") received a complaint from the SAMRT Executive Director/Registrar raising concerns about the Member's conduct.
8. Concerns first arose with the Member's conduct on March 2, 2015. On that date, the SAMRT Executive Director/Registrar emailed all members to remind them to complete an online survey being conducted on behalf of the Association by Parker-Taillon Consulting. The Member replied to her email as follows:
 

*Stop emailing me. I honestly do not know what SAMRT does, other than charge money. At least you can do is take the money and STOP emailing me. Thank you, Cullen.*
9. The Executive Director/Registrar replied immediately explaining the role of SAMRT and the importance of receiving communications from the Association.
10. On April 21, 2015, Diane Parker-Taillon, who was conducting the survey referred to in the March 2, 2015 email contacted the Executive Director/Registrar about concerns she had arising from responses to the survey questionnaire. The responses that caused her concern were the following:

*Q9 Seriously, I pay you so I can work. At the very least you can leave me alone*

*Q16 I paid you, yet you still spam my email to get me to jump through hoops. The SAMRT is literally worse than a virus.*

*Q20 Just go away.*

*Q24 If I was locked in a room with Hitler, Stalin and the SAMRT, I had a gun with two bullets, I'd shoot the SAMRT twice.*

*Q28 Go away you stupid little people.*

*Q32 You realize if I was getting my hourly wage to do this stupid survey you'd owe me \$20 already. Yet you still won't piss off.*

*Q40 You're a fucking parasite, you are.*

*Q44 Dick heads.*

*Q48 I hate you.*

*Q52 No! No! Stop with the questions you twats.*

*Q56 Idiots.*

*Q60 Twat*

*Q62 I hate your*

*Q74 I'm still baffled by the fact more people in Saskatchewan can't fucking drive properly. Seriously, it's not that hard. Is this the result of generations of inbreeding?*

*Q76 We should just get rid of SAMRT. What do you do that the CAMRT doesn't? Other than charge more for dues of course.*

11. On May 7, 2015 a letter was sent to the Member advising him about the investigation. On May 10, 2015 he responded to the Investigator by email acknowledging that he had allowed a friend to complete the survey for him (not a member of SAMRT), that the responses the friend provided were inappropriate and that he regretted having allowed him to do this.
14. The Member acknowledges that it was a breach of the *Code of Professional Conduct* for him to allow a non-member of SAMRT to complete a survey from the regulatory body for his profession and to provide rude, profane and threatening comments in that response. The Member also acknowledges that

he was rude disrespectful and unprofessional in his communications with the SAMRT Executive Director/Registrar on March 2, 2015.

15. The Member therefore acknowledges that he is guilty of professional misconduct, as defined in section 23 of *The Medical Radiation Technologists Act, 2006*.

## LEGISLATION:

4. The Act defines professional incompetence in Section 23:

**23** Professional incompetence is a question of fact, but the display by a member of a lack of knowledge, skill or judgment or a disregard for the welfare of a member of the public served by the profession of a nature or to an extent that demonstrates that the member is unfit to:

- (a) continue in the practice of the profession; or
- (b) provide one or more services ordinarily provided as a part of the practice of the profession;

is professional incompetence within the meaning of this Act.

5. Professional misconduct is defined in Section 24:

**24** Professional misconduct is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonourable, is professional misconduct within the meaning of this Act if:

- (a) it is harmful to the best interests of the public or the members;
- (b) it tends to harm the standing of the profession;
- (c) it is a breach of this Act or the bylaws; or
- (d) it is a failure to comply with an order of the professional conduct committee, the discipline committee or the council.

6. Section 19 of the Regulatory Bylaws requires members to comply with the Code of Professional Conduct which contains further guidance as to what constitutes professional conduct.

7. Once the Discipline Committee finds professional misconduct or incompetence, it then decides the appropriate penalty in accordance with Section 30 of the Act:

**30 (1)** Where the discipline committee finds a member guilty of professional misconduct or professional incompetence, it may make one or more of the following orders:

- (a) an order that the member be expelled from the association and that the member's name be struck from the register;
- (b) an order that the member's licence be suspended for a specified period;
- (c) an order that the member's licence be suspended pending the satisfaction and completion of any conditions specified in the order;
- (d) an order that the member may continue to practise, but only under conditions specified in the order, which may include, but are not restricted to, an order that the member:
  - (i) not do specified types of work;
  - (ii) successfully complete specified classes or courses of instruction;
  - (iii) obtain medical or other treatment or counselling or both;
- (e) an order reprimanding the member;
- (f) any other order that the discipline committee considers just.

(2) In addition to any order made pursuant to subsection (1), the discipline committee may order:

- (a) that the member pay to the association, within a fixed period:
  - (i) a fine in a specified amount not exceeding \$5,000; and
  - (ii) the costs of the investigation and hearing into the member's conduct and related costs, including the expenses of the professional conduct committee and the discipline committee and costs of legal services and witnesses; and
- (b) where a member fails to make payment in accordance with an order pursuant to clause (a), that the member's licence be suspended.

## **DECISION:**

8. The Discipline Committee accepts the guilty plea provided by Mr. McIver in the Agreed Statement of Facts regarding the charges contained in the Formal Complaint. Mr. McIver acknowledged the conduct occurred and this conduct constitutes failure to comply with section 23 of *The Medical Radiation Technologists Act, 2006* and section 19 of *The Medical Radiation Technologists Regulatory Bylaws*.

9. The Discipline Committee notes the Formal Charges refer to Section 23 addressing professional incompetence whereas the narrative in the Formal Charge refers to Section 24 addressing professional misconduct. The Charges and Section 24 refer to conduct which tends to harm the standing of the profession and/or a breach of the Bylaws. Section 23 uses different terminology as set out above.

10. Accordingly, the Discipline Committee assumes the member pled guilty to professional misconduct (as stated in the Agreed Facts) pursuant to Section 24 rather than Section 23.

11. The Discipline Committee therefore finds Mr. McIver guilty of professional misconduct as a result of the guilty plea contained in the Agreed Statement of Facts.

12. The Discipline Committee must therefore determine the appropriate consequences to follow as a result of these findings.

13. Counsel for the Professional Conduct Committee and Mr. McIver presented a joint submission regarding penalty and costs.

14. The Saskatchewan Court of Appeal in *Rault v. Law Society of Saskatchewan* 2009 SKCA 81 (CanLII) commented on the significance of joint penalty submissions in matters involving the discipline of lawyers by their regulatory body. The Court applied a principled approach to the consideration of joint submissions similar to the approach taken in criminal matters which compels a trial judge to “give serious consideration to a joint submission on sentencing agreed upon by counsel unless the sentence is unfit or unreasonable; or contrary to the public interest; and, it should not be departed from unless there are good or cogent reasons for doing so”.

15. The Court recognized the value of a joint submission. The professional regulatory body is spared the burden of proving the allegations in what could be a complicated and protracted hearing. If the parties negotiate an agreement, it must be respected by the regulatory body. Otherwise, there is little incentive to negotiate a resolution. In circumstances involving a joint submission, the discipline committee retains its statutory discretion in determining an appropriate penalty but **cannot** ignore, without proper consideration, a joint submission.

16. The Discipline Committee takes its guidance from the Court of Appeal in its review of the joint submission in this case. The joint submission accomplishes the goal of protecting the public from substandard conduct of Medical Radiation Technologists. The Discipline Committee does not find any reason to depart from the joint submission and agrees with its terms.

**ORDER:**

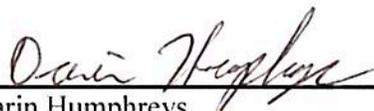
17. The Discipline Committee of the Saskatchewan Association of Medical Radiation Technologists finds Cullen McIver guilty of professional misconduct and pursuant to section 30 of *The Medical Radiation Technologists Act, 2006*, and section 19 of *The Medical Radiation Technologists Regulatory Bylaws* and orders that:

1. the Member is hereby reprimanded;
2. the Member be permitted to resign in the face of discipline; and

3. the Member pay costs to the SAMRT in the amount of \$1,000.00 within 30 days of the date of this Order.

Dated at Saskatoon, Saskatchewan this 26 day of April, 2016

SASKATCHEWAN ASSOCIATION OF  
MEDICAL RADIATION TECHNOLOGISTS,  
DISCIPLINE COMMITTEE

  
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Darin Humphreys,  
Medical Radiation Technologist, Chair