

Date: 20230613
Docket: CI 22-01-38915
(Winnipeg Centre)
Indexed as: Agnew v.
The Manitoba Dental Association
Cited as: 2023 MBKB 98

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

EDWARD AGNEW,)	
	)	<u>Joseph A. Pollock</u>
	)	<u>Avery A.E. Sharpe</u>
applicant,	)	for the applicant
)	
- and -)	
)	
THE MANITOBA DENTAL ASSOCIATION,	)	<u>Helga Van Iderstine, K.C.</u>
	)	<u>Anjali Sandhu</u>
respondent.	)	for the respondent
)	
)	
	)	<u>Judgment Delivered:</u>
	)	June 13, 2023

Corrected Judgment: An Erratum was issued on March 13, 2024. The text of the original judgment is reproduced; the Erratum is appended at the end of the Corrected Judgment.

HARRIS J.

INTRODUCTION

[1] The applicant, Edward Agnew ("Dr. Agnew"), is a dentist practising in the Province of Manitoba. Dr. Agnew challenges a decision of the Board of Directors ("the Board") of the Manitoba Dental Association ("the MDA") to remove him from the Board

for failing to sign the MDA's Code of Conduct ("the Code") in accordance with amendments to the General Bylaw ("the Bylaw") and the Code.

[2] In particular, he seeks orders of certiorari:

- (a) Quashing amendments to the MDA's General Bylaw and the Code passed at a meeting of the MDA Board on June 16, 2022 and ratified by the membership on August 2, 2022;
- (b) Quashing the resolution of the Board of November 4, 2022 removing the him from the Board for his refusal to sign the Code as required under the amendments referred to above;
- (c) An order of *mandamus* requiring the MDA to reinstate him as a member of the Board of Directors of the MDA effective November 4, 2022; and
- (d) Costs.

[3] For the reasons that follow, the application is dismissed with costs.

BACKGROUND

[4] The MDA is established by ***The Dental Association Act***, C.C.S.M. c.D30 ("the ***Act***") which provides for a Board of Directors, elected by members, to regulate the practice of dentistry in Manitoba. Its mandate and mission includes governance of the MDA, education, and establishing standards of practice and upholding the public trust by regulating in the public interest. It has broad authority for making bylaws to manage the affairs of the Association, the election and appointment of officers and to fulfill the function and duties of the Board as set out in s. 9(1) of the ***Act***.

[5] Dr. Agnew was elected to the Board in January 2019 for a two-year term, which was renewed in January 2022. Dr. Thomas Colina ("Dr. Colina") was the President of the MDA from January 28, 2022 to January 27, 2023 and is now the past President.

[6] According to Dr. Agnew, at a Board meeting in February 2022, Dr. Anastasia Cholakis, the Dean of the College of Dentistry at the University of Manitoba, who was new to Canada, stated that "she felt that Canadians had been guilty of badly mistreating the Indigenous population of Canada". Dr. Agnew took note of Dr. Cholakis' statement and decided to e-mail information defending Canada to two Past Presidents of the MDA, Dr. Colina and the Registrar. In his e-mail, Dr. Agnew refers to an 18 BILLION a year "Indian industry" and advises that many of his patients "have nothing but 'good' to say about their time as students in the Residential Schools", that the money (presumably the 18 billion dollars) goes "...into the pockets of the Band Leaders. Very little reaches the band members who are NOT related to the Band Chief and the Council Members".

[7] The e-mail included a link to a video which Dr. Agnew asked be forwarded to Dr. Cholakis. The reference to the website for the video link is disturbing – "Kamloops: Greatest Hate Hoax Ever – American Renaissance".

[8] In reference to the video link, Dr. Agnew adds in his e-mail:

"Hope you can download! VERY INTERESTING"

[9] Below the link, the following comment is found:

We're all used to phony hate crimes. The demand for white racism so exceeds the supply that hate hoaxes have to be ginned up to meet the need. Last year,

the entire nation of Canada – and the whole world – fell for what must be one of the grandest hoaxes ever.

[10] The video featured a person who is described in a Wikipedia article as an American white supremacist accused of promoting racist ideologies and self-described advocate of white interests. In the video, this person states that “Indians know how to milk the white man...”, minimizes the atrocities of the cultural genocide of Indigenous peoples in Canada and denies the existence of graves of students at the Kamloops Residential school.

[11] Dr. Agnew wanted Dr. Cholakis to receive the e-mail to provide her with “another side of the story” because “...she believes everything that the First Nations have to say”.

[12] Those who received the e-mail were very disturbed by Dr. Agnew’s comments and the link to a white supremacist who denied the atrocities of the residential schools in Canada. The Board had discussed its commitment to participate in the Truth and Reconciliation process in detail at the Board meeting on October 29, 2021. It decided that the Truth and Reconciliation Commission’s (“TRC”) Calls to Action Numbers 18 to 24 with respect to “Health” applied to the MDA and that the MDA would work towards implementing them, along with creating pathways to reconciliation for the MDA and the profession to pursue. Dr. Agnew was present at that meeting. In addition, the Board had arranged for several presentations related to the TRC Calls to Action, both before and after Dr. Agnew’s e-mail.

[13] The Executive Committee of the Board considered Dr. Agnew's e-mail and the video link and concluded that the communication contained statements and allegations which would be considered to be insensitive and harmful to the goals of the MDA and the Board, and its responsibility of promoting and working towards reconciliation with First Nations communities. The Committee was of the view that the statements in Dr. Agnew's e-mail and the content of the video were contrary to current societal values that the MDA shares and that communication could be construed as racist, or at least harmful to vulnerable constituencies to whom the MDA provides health and dental care. The Executive Committee was concerned that the materials being promoted by Dr. Agnew would "bring the reputation of the MDA into disrepute and undermine the work it [the MDA] does as dentists in the healthcare field". The mission statement of the MDA includes the requirement that it "uphold the public trust by regulating in the public interests".

[14] On February 21, 2022, the Board responded to Dr. Agnew's February e-mail by letter, informing him that the Board found the contents of his e-mail to be offensive and in violation of the principles and values of the MDA. The Board note that "[t]he MDA is fully committed to the principles of inclusivity and reconciliation and your letter is in contravention of our Code of Conduct, specifically, Sections 3 (Conflict of Interest) and 8 (Discrimination)", the text of each of which was set out in the letter. The Board requested Dr. Agnew's resignation from the Board.

[15] In his affidavit sworn January 31, 2023, Dr. Colina says (at para. 22):

While Board members are entitled to their personal opinions, the Board must respect the facts found by the TRC. It is inappropriate for the Board to engage in debate to what extent Indigenous peoples in Canada have been disadvantaged, the extent of abuse including the number of deaths in residential schools, as this work has been assigned to and completed by the TRC and various communities continue to investigate and review these facts. The MDA is part of the health community, and as such, the MDA Board is working to implement TRC Calls to Action Nos. 18-24, which guides our actions as a Board of a health care regulatory organization. Fulfilling our responsibilities as outlined in the TRC Calls to Action is a critical goal of the MDA in fulfilling its mandate to the public.

[16] On March 14, 2022, Dr. Agnew provided the Executive Committee with additional articles regarding First Nations and residential schools which did not reflect the values of inclusiveness and reconciliation held by the Board.

[17] On April 21, 2022, Dr. Agnew was provided with an opportunity to address an in-camera meeting of the Board regarding the contents of his February e-mail. Dr. Agnew expressed his disagreement with the concerns of the Board about the content of the materials at issue and his views. Dr. Agnew attempted to justify the contents of the e-mail and reaffirmed that he would not resign.

[18] When Dr. Agnew refused to resign, the Board realized that the Bylaw did not provide a mechanism which would enable it to remove a member whose behaviour or actions were detrimental to the operation of the Board. The Board therefore resolved to direct the Registrar to amend the MDA General Bylaw and Code to allow for removal of a Board member based on behaviour unbecoming of a member. Ten members of the Board voted in favour, while one member (Dr. Agnew) abstained. There were no votes against the direction.

[19] The Registrar drafted the amendments to the Bylaw and the Code to include a process for the Board to discipline and remove a Board member if that member is, or at any time previous (including prior to the adoption of the amendments to the Bylaw and Code), has engaged in any conduct or activity that is in the Board's opinion, unprofessional, or contrary to the duties of a Director or contrary to the best interests of the MDA. It included a requirement for Board members to respect, read and sign the Code at the commencement of their term on the Board and following any amendment. A Director failing to comply with the Code or failing to sign the Code at the commencement of the member's term and following any amendment thereto would be subject to disciplinary action as determined by a 2/3 majority vote of the Board, up to and including removal from the Board.

[20] The amendments to the Bylaw and Code were considered and approved by vote of the Board at a meeting on June 16, 2022. Dr. Agnew recused himself from the discussion about the amendments and did not vote. The amendments to the Bylaw and Code were thereafter ratified by the members of the MDA on August 2, 2022.¹

[21] At the Board meeting held on September 15, 2022, a motion was made to form a sub-committee consisting of three Board members to investigate whether Dr. Agnew's prior conduct constituted a breach of the Code, as amended. However, the Board had concerns that the composition of the sub-committee could be challenged by Dr. Agnew for perceived bias as a result of previous Board member discussion and

¹ The amending Bylaw and the amended Code of Conduct are attached to these reasons as Appendix A and B respectively,

decisions. Accordingly, to ensure fairness, on October 24, 2022, the Board moved to appoint an independent administrative lawyer to review whether the Code had been breached by Dr. Agnew. Dr. Agnew abstained from the vote. However, prior to that review being undertaken, another issue arose.

[22] In accordance with the amendments to the Bylaw, all members of the Board were required to sign the Code at the beginning of their term and upon the Code being amended. As the Code had been amended, all members were asked to do so by September 15, 2022. Dr. Agnew advised on September 14, 2022, that he refused to sign the Code. By October 27, 2022, Dr. Agnew was advised that if he did not sign the Code and return it to the MDA by November 3, 2022, the Board would consider his removal from the Board pursuant to the Bylaw. He was also given the opportunity to provide a written submission opposing his removal, should he choose not to sign the Code. As Dr. Agnew did not sign the Code by November 4, 2022, and in the absence of any written submission from him, the Board voted to remove him and advised him of that decision by letter dated November 8, 2022. This is the decision at the heart of this litigation.

[23] No determination was made as to whether Dr. Agnew has breached any other provision of the Code.

ISSUES

[24] Dr. Agnew submits that the Code was not amended, but in fact was a new Code (the “new Code”), which did not exist when he became a member of the Board in 2020. Accordingly, the MDA had no justification in fact or law to remove him on the basis that

he refused to sign the new Code, as there was no such requirement at the beginning of his term, January 1, 2022. Furthermore, as it was a new Code, there have been no amendments which would trigger the requirement for him to sign it. Accordingly, he says, the Board cannot rely on his failure to sign the new Code to justify his removal from the Board.

[25] Alternatively, Dr. Agnew asserts that the amendments to the Bylaw and Code were implemented in bad faith to create a mechanism to get rid of him. He says that the amendments to the Bylaw and Code were created for the sole reason that the Board could not remove him under the Bylaws and Code without the amendments.

[26] The MDA says that when Dr. Agnew refused to resign following his sharing of the video, e-mails and articles, it realized that it did not have a process to enable it to respond to such refusals. The MDA has a legislative mandate to regulate to protect the public and provide services to healthcare providers. The MDA had embraced the TRC's Calls to Action, and it was important to be able to distance itself from Dr. Agnew's offensive materials which were in violation of the principles and values of the MDA. At the direction of the Board, the Registrar drafted amendments to the Bylaw and the Code which would provide a process to determine whether a member breached the Code and what action, if any, should be taken, up to removal from the Board. Dr. Agnew was present at all Board meetings wherein these proposed amendments were discussed. There is no evidence that he ever objected. His then counsel wrote two letters to the Board making various threats of legal action, none of which addressed

concerns about the amendment process. Dr. Agnew's only response was to abstain from voting.

[27] The MDA adds that it is important to note that passage of the amendment to the Code did not result in Dr. Agnew's removal from the Board. The amendment to the Bylaw created a process to determine what action could be undertaken had the Board determined that Dr. Agnew's conduct violated the Amended Code. The outcome of that process is unknown as Dr. Agnew refused to sign the Code and was removed from the Board for that reason. It is speculative to say what the outcome of the independent review would have been and whether any of the review findings would have justified removal or some other sanction.

[28] No issue was taken with respect to whether the Board had authority to enact a bylaw enabling it to remove a Board member for refusing to sign the Code.

Removal of Dr. Agnew from the Board for failing to sign the Code

[29] Dr. Agnew says that the question that needs to be answered by the court is whether he violated what he refers to as the "new" Code. As that Code did not exist when he became a Board member, he could not have signed it at that time. Moreover, it had not been amended so he could not have been asked to sign it for that reason.

[30] Dr. Agnew says that the standard of review for this question is correctness, i.e., did he violate the new Code. It is only if the Code was not new, but amended, that the court should consider the reasonableness of the decision to remove Dr. Agnew from the Board for not signing the Code.

[31] In my opinion, a review of the totality of the evidence leads to the conclusion that the Code which Dr. Agnew was asked to sign was not a new Code but simply an amended Code.

[32] The MDA responded to what Dr. Colina referred to as a “gap” when it amended the Bylaw and Code to tighten up the provisions regarding the expectations of conduct by Board members in order to protect the Board and dental profession from reputational harm by giving the Board the authority to sanction a Board Member who breaches the Code of Conduct. The amendments are intended to enhance the confidence of the public and members that the Board is aligned with current societal and social values. In all other respects, both the Bylaw and Code remain substantively unaltered. The changes do not lead to the conclusion that either the Bylaw or the Code is new. The periodic usage of the word “new” by Dr. Colina in his affidavit and on cross-examination in reference to the Code does not alter this conclusion.

[33] Having reached the conclusion that the Code was not a new Code, the focus is on the Board’s decision to remove Dr. Agnew from the Board for failing to sign the Code.

[34] On this question, the parties agree that the appropriate standard of review is reasonableness, in accordance with the principles set out in ***Canada (Minister of Citizenship and Immigration) v. Vavilov***, 2019 SCC 65, (***Vavilov***) (at paras. 16 and 17). None of the exceptions to the reasonableness standard identified by the court (at para. 17) apply.

[35] The focus of review is on the decision made by the decision maker, including both the decision maker's reasoning process and the outcome. The court is to refrain from deciding the issue before the decision maker. A court applying the reasonableness standard does not ask what decision it would have made in place of the administrative decision maker, attempt to ascertain the "range" of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the "correct" solution to the problem (**Vavilov** at para. 83).

[36] As reflected in the Minutes of the June meeting of the Board, the purpose of the amendments to the Bylaw and Code was to:

- (a) protect the Board and Profession from reputational harm;
- (b) give the Board the authority to sanction and/or remove a Board member who breaches the Code; and
- (c) enhance the confidence of the public and members that the MDA Board is aligned with current societal values.

[37] The amendments to the Bylaw establish that a Board member may be removed by a 2/3 majority vote of the Board if the member is found guilty of a criminal offence, if the member engaged in conduct which was unprofessional, contrary to the duties of a Director, or has engaged in any conduct contrary to the best interests of the Association. It also includes the provision that members are expected to respect the Code and to sign the Code at the commencement of their terms and following any amendment to the Code. A member who fails to do so "shall be subject to disciplinary

action as determined by a 2/3 majority vote of the Board up to and including removal from the Board”.

[38] A Board member facing potential removal is given notice and is afforded the opportunity to make a submission to the Board before a vote is held.

[39] The amendments were validly passed and ratified on or about August 2, 2022.

[40] The requirement that Board members sign the Code was to ensure that members acknowledge the expectations of those who serve the interests of the MDA and its commitments to the public and profession. The removal of Dr. Agnew for failing to sign the Code was reasonable as:

- (a) The Board was entitled to do so pursuant to section 1(1) of the amended Bylaw;
- (b) Every voting Board member was required to sign the amended Code and each of them, with the exception of Dr. Agnew, did so;
- (c) Dr. Agnew was asked to sign the amended Code on numerous occasions, including on September 7, 2022, September 15, 2022 and October 27, 2022;
- (d) Dr. Agnew was given notice that his failure to sign the amended Code by November 3, 2022 may result in his removal from the Board; and
- (e) Dr. Agnew was provided with the opportunity to provide written submission to the Board against his removal and chose not to do so.

[41] The Board acted reasonably when it removed Dr. Agnew from the Board for failing to sign the Code.

Were the amendments to the Bylaw passed for an improper purpose and/or in bad faith?

[42] When questions about the fairness of the process and good faith, or lack thereof, in making a decision are raised, the analysis is whether the rules of procedural fairness or natural justice have been adhered to. If procedural fairness or good faith is found to be lacking, the decision is subject to being set aside as void (***Beedie (Keefer Street) Holdings Ltd. v. Vancouver (City)***, 2021 BCCA2021 at para. 3).

[43] This standard was applied in ***Right to Life Association of Toronto v. Canada et al***, 2021 FC 1125:

[64] The Applicants' allegations of bad faith and bias or closed mind are issues of procedural fairness that are reviewed on the standard of correctness. As noted in *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54–55, correctness is not so much a standard of review as an assessment of whether the process was fair having regard to all the circumstances. (emphasis added)

[44] In ***Beaulieu v. Alexander (Rural Municipality)***, 2011 MBQB 213 (***Beaulieu***), Perlmutter J. (as he then was) considered an application to quash a bylaw which the applicants alleged had been passed not in the public interest but simply to sub-serve the interests of private persons. Perlmutter J. concluded that "to establish bad faith would at a minimum require proof that a majority of councillors voting for the bylaw and resolution were acting in bad faith" (at para. 64).

[45] He determined that the bylaw may be quashed if the tribunal:

- (a) was not using its power in good faith in the interests of the public but simply to sub-serve the interests of private persons; or

- (b) acts in furtherance of an authorized purpose without regard to relevant considerations or on the basis of an irrelevant consideration.

[46] The onus of establishing bad faith falls squarely on the party alleging it. Supposition and suspicion are no substitutes for evidence. (*Stevenson v. Winnipeg et al.* (1984), 1984 CanLII 3773 (MB KB) at para. 50, per Kroft J.)

[47] In *Beaulieu*, Perlmutter J. adopted the heavy onus on a party pleading bad faith:

[62] The caution expressed by David Phillip Jones & Anne S. de Villars, *Principles of Administrative Law*, 5th ed. (Toronto: Carswell, 2009) at 183-84, as adopted in *Lehn, supra* at para. 52, also bears noting:

On the other hand, although the courts have given a very broad definition to what constitutes "bad faith" in administrative law and particularly in municipal law, it nevertheless may be unwise to plead bad faith unless actual *mala fides* or malice can be demonstrated conclusively. In private law, **the courts have tended to place a heavy onus on a person pleading bad faith**, and it is unnecessarily dangerous to count on the courts to remember that the term has taken on a much less odious meaning in public law. Because "unauthorized or ulterior purpose" or "irrelevant considerations" probably apply as well to virtually every abuse of discretion which could qualify as "bad faith", the latter phrase should be avoided whenever possible. [Emphasis added]

[48] I agree with the MDA that Dr. Agnew has not met the heavy onus of establishing that a majority, or any of the voting members, have acted in bad faith or for an improper purpose.

[49] Dr. Agnew points to the extensive detail in Dr. Colina's affidavit regarding issues taken with Dr. Agnew's comments relating to First Nations communities, residential schools and the Board's commitment to residential schools to support his argument that the Board enacted the Bylaw for an improper purpose. I do not accept that assertion. Dr. Agnew raised all of these issues in his originating affidavit and it was

appropriate for the Board to provide its perspective on these background issues to the court.

[50] Having regard to all of the evidence, I accept Dr. Colina's evidence that when Dr. Agnew refused to resign, the Board recognized that there was a governance gap that needed to be addressed.

[51] The amendments provide for fairness such that the member is required to be given notice of an alleged breach and is provided with an opportunity to respond. The range of decisions that the Board could reach is open and includes the possibility of a decision to remove the member from the Board. The amendment also addresses matters completely unrelated to the concerns raised by Dr. Agnew's conduct, including members who are convicted of criminal offences and/or professional misconduct.

[52] I am satisfied that the amendment to the Bylaw was to enable the Board to carry out its "duty to govern, determine, control and administer" the MDA's affairs. At the time the Bylaw was amended, no decision had been made as to whether Dr. Agnew would be removed from the Board or if in fact, he had breached the Code. The Board was concerned about fairness and declined to have members review Dr. Agnew's conduct. In order to ensure fairness, the Board decided to retain an independent lawyer to assess whether there had been a breach and what action, if any, should be taken.

[53] Dr. Agnew has failed to establish that the Board, or any of its members, acted in bad faith or for an improper purpose.

[54] The application is dismissed with costs, which, if not agreed to between counsel, may be spoken to.

_____. J.

**AMENDMENT NO. 1 TO THE GENERAL BYLAW FOR THE
MANITOBA DENTAL ASSOCIATION**

The General Bylaw (the "By-Law") for the Manitoba Dental Association (the "Association") enacted by the board of directors on the 2nd day of November, 2013 adopted, ratified, sanctioned and confirmed by the members of the Association on the 16th day of December, 2013 pursuant to section 43(2) of *The Dental Association Act* (Manitoba) (the "Act"), is hereby amended as follows:

1. The addition of a new Section XX.I immediately following the Section entitled "SECTION XX - DECISIONS OF THE BOARD" which reads as follows:

SECTION XX.I – CODE OF CONDUCT FOR DIRECTORS

1. Every member of the Board shall respect the Code of Conduct for Directors, as adopted and amended by the Board from time to time (the "Code of Conduct") and shall at the commencement of their term and following any amendment thereto, sign the Code of Conduct.
 2. The purpose of the Code of Conduct is to ensure that Directors perform their duties in a manner that promotes the highest standard of public trust and integrity.
 3. Any Director who fails to comply with any of the terms of the Code of Conduct, or fails to sign the Code of Conduct at the commencement of their term and following any amendment thereto shall be subject to disciplinary action as determined by a 2/3rd majority vote of the Board up to and including removal from the Board.
2. The addition of a new Section XX.II immediately following the Section entitled "SECTION XX.I – CODE OF CONDUCT FOR DIRECTORS" which reads as follows:

SECTION XX.II – REMOVAL OF A MEMBER OF THE BOARD

1. All Directors accept their election or appointment to the Board with the understanding that they must work within all governance policies, exclude their personal interests; and make collective decisions in the best interests of the Association and must not take any action that would create any real or perceived situation where the Association's impartiality or commitment to its mandate to protect and serve the public interest could be under question.
2. A Director who is an elected member may be removed from the Board upon a 2/3rd majority vote of the Board if:
 - a. they are found guilty of an offence under the Criminal Code of Canada; or

- b. they are or have been at any prior time (including for certainty prior to the adoption of this By-Law, as amended from time to time) engaged in any conduct or activity that is, in the opinion of the Board, unprofessional or contrary to the duties of a Director, or has engaged in any conduct contrary to the best interests of the Association in any way, including without limitation, following a suspension or cancellation of the license of the member (as defined by the Act) by an inquiry panel pursuant to the Act (as may be amended or supplemented time to time); and
 - c. the President, Vice-President or a designate of either of them shall give the Director subject of the proposed removal in addition to all other Directors no less than seven (7) days prior written notice of the date on which a vote is to be held to consider the removal resolution and to allow the Director facing the removal the opportunity to make written submissions to the Board before the vote is held.
- 3. A Director who is a public representative may be removed from the Board by the Province as determined by the Province, including following a Board resolution passed by 2/3rd majority vote that the public representative Director has engaged in conduct or activity that is contrary to the duties of a Director or has engaged in conduct that is contrary to the best interests of the Association, following which the President of the Board or the President's designate shall forward a letter to the relevant minister outlining the concerns with a request for the removal of the public representative as a Director.
- 3. The addition of the following language to clause 1 and 3 in the Section entitled "SECTION V - DIRECTOR TERMS OF OFFICE" immediately following the words "his or her position on the Board": " , subject to Sections XX.I and XX.II"
- 4. The addition of the following language to clause 2 in the section entitled "SECTION V — DIRECTOR TERMS OF OFFICE" immediately following the words "nominated from the District": " , subject to Sections XX.I and XX.II."
- 5. The addition of the following language to clause 3 and 4 in the section entitled "SECTION V - DIRECTOR TERMS OF OFFICE" immediately following the words "in the first year of a two year term" "subject to Sections XX.I and XX.II:"

[Signature Page to Follow]

This amendment no. 1 to the By-Law was passed by the Board of Directors at Winnipeg, in Manitoba on the 16 day of June, 2022.

President

Secretary

This amendment will become effective on the 3rd day of August, 2022 unless 10 members request on or before 2nd day of August, 2022, in writing, its ratification at a general meeting of the Association pursuant to section 43(2) of the Dental Association Act of Manitoba.

**MANITOBA DENTAL ASSOCIATION
CODE OF CONDUCT FOR MDA BOARD MEMBERS**

SECTION I – COMPLIANCE

1. Board members must comply with *The Dental Association Act* (Manitoba) (the "Act"), its Regulations, Bylaws created under the authority of the Act and any other applicable provincial legislation relating to the practice of dentistry (as defined in the Act).
2. Board members must comply with the policies of the Association related to the Board, subject to Section 36 of the Act (as amended from time to time).

SECTION II – INAPPROPRIATE BEHAVIOUR, RACISM, DISCRIMINATION AND HARASSMENT

1. Board members who attend meetings as a representative of the Association and display inappropriate behaviour shall be subject to disciplinary procedures as set out formally in the Act and corresponding Bylaws. Inappropriate behaviour would include but is not limited to: insobriety, influence under illegal drugs, marijuana, and bullying (physical, mental and cyber).
2. Board members should promote an inclusive and diverse culture in the Association and his or her actions should help to create an environment where different perspectives and backgrounds are encouraged and valued. Board members shall not actively voice, promote, support, sanction and approve racist remarks and behaviours. Board members are expected to comply with provincial human rights legislation and not discriminate by reason of race, religious belief, colour, gender, mental or physical disability, marital status, ancestry, age, place of origin, family status, source of income or sexual orientation.
3. Harassment, such as unwelcome conduct, comment, gesture, contact, intimidating and offensive behaviours or remarks that are likely to cause offense or humiliation, will not be tolerated.

SECTION III - CONFIDENTIALITY, CONFLICT OF INTEREST & GIFTS OR HONORARIA

1. Board members must act in the best interests of the Association and avoid situations where their personal interests or relationships interfere with acting in good faith on behalf of the Association. Board members must not engage in activities that are in conflict with the interests of the Association, may negatively impact the reputation of the Association, or that interfere with employees' performance of their jobs.
2. Board members must maintain strict confidentiality regarding information obtained directly or indirectly through their involvement as Board members of the Association. This includes information about volunteers, members and employees and the affairs of the Association. Board members must not disclose such confidential information while as a Board

member and following membership on the Board and must also avoid inadvertent disclosures of confidential information through casual or public discussion, which may be overheard or misinterpreted.

3. It is not permissible to offer or accept gifts, gratuities, excessive favours or personal rewards intended to influence the Association's decisions or activities. It is permissible to accept gifts of a nominal value such as but not limited to: pens, calendars and advertising items in recognition of work well done. Board members are not permitted to accept cash under any circumstances.

SECTION IV – USE OF MATERIAL AND PROPERTY

1. Materials and programs developed for the Association are the property of the Association and are not to be used for purposes external to the Association without prior approval. Office equipment is not to be used for personal purposes. Board members are required to obtain permission from the Chief Executive Officer before removing any of the Association's property from the premises. Internet and email are to be used in a responsible and professional manner. Board members are prohibited from sending material that is threatening, obscene, hateful, racist or otherwise inappropriate.

SECTION V – GENERAL

1. The MDA President is the official spokesperson for the Board. Board members must refrain from speaking on behalf of the Association unless designated to do so in writing by the President or the Board as a whole.

2. Board members must not use their authority when dealing on an individual basis with staff or volunteers.

SECTION VI - BOARD MEETINGS

1. When a Board meeting is in progress, Board Members must:
 - (i) represent the best interests of the Association over and above personal and professional interests;
 - (ii) respect confidentiality of information received in the course of the Board meeting and activities and to comply with Section III above.
 - (iii) ensure that, prior to meetings, they receive and read all documents and reports on which voting will be anticipated;
 - (iv) review all minutes of meetings;
 - (v) declare any potential conflict and to refrain from discussion and voting when applicable and to comply with Section III above;

- (vi) give recognition to others who contribute to the success of the Association and its activities;
- (vii) treat staff and fellow Board members with respect and listen to their points of view and to comply with Sections I to V above;
- (viii) participate in Board Meetings; and
- (ix) support decisions of the Board regardless of their personal opinion.

SECTION VII – EXECUTION

1. Each Board member shall at the commencement of his or her term and promptly per any amendment to this Code of Conduct, read, agree to and sign this Code of Conduct.
2. A Board member who fails to comply with the terms as set out in this Code of Conduct or refuses to sign may be subject to removal from the Board pursuant to the General Bylaw.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the individual agreeing to the terms and conditions as set out in the Code of Conduct has executed this Code of Conduct on the day ____ of _____, _____

SIGNED, SEALED AND DELIVERED))

in the presence of:)

)

)

)

WITNESS

Signatory

Date: 20230613
Docket: CI 22-01-38915
(Winnipeg Centre)
Indexed as: Agnew v.
The Manitoba Dental Association
Cited as: 2023 MBKB 98

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

EDWARD AGNEW,	)	<u>Joseph A. Pollock</u>
	)	<u>Avery A.E. Sharpe</u>
applicant,	)	for the applicant
)	
- and -)	
)	
)	
THE MANITOBA DENTAL ASSOCIATION,	)	<u>Helga Van Iderstine, K.C.</u>
	)	<u>Anjali Sandhu</u>
respondent.	)	for the respondent
)	
	)	<u>Judgment Delivered:</u>
	)	June 13, 2023

HARRIS J.

E R R A T U M

The following amendment has been made:

- (i) the original judgment included an Appendix A and B referenced in the footnote on page 7, which is now included as part of the published document.

DATED this 13th day of March, 2024.

_____ J.