September 24, 2026

In accordance with Chapter 11, Regulatory Policy and Procedures Manual the following reason for decision is being posted.

Darrin Pettitt vs. Sylvain Sirois

Replacement Discipline Committee Reasons for Decision

1. Preliminary Issues

a. Jurisdiction

i. Employment Relationship

Mr. Sirois argued that the complaint should not be heard by this Committee because Mr. Sirois should be treated as an employee of CKC in his role as moderator of the webinar.

Mr. Sirois is a member of the Board of Directors of CKC. This is an elected position, and throughout his submissions, Mr. Sirois referred to himself as a volunteer. He is not an employee. The question, then, is whether it was the intention of CKC when drafting its By-Laws and subsequent governing documents that individual Directors should be treated as employees if their actions while undertaking their duties give rise to a complaint.

The Committee finds that CKC did not have the intention that members of the Board of Directors should be treated as employees for the purposes of the by-laws.

CKC's disciplinary procedures are set out under CKC By-Law 15. At 15.1, it states:

> Any person or persons contravening the By-laws, rules, regulations, procedures and Club Policy shall be subject to discipline procedures. All complaints, for a first alleged offence, relating to the non delivery of certificates of registration as required under Section 29.1 shall be within the exclusive 29 jurisdiction of the Executive Director, who may exercise all authority in respect of such offence as is set out in Section 15.1(b). All other matters of discipline shall be within the jurisdiction of the Discipline Committee and administered in the manner hereinafter described…

The CKC Policies & Procedures Manual, Chapter XI, Section B(7) carves out an exception to this rule, as follows:

> (7) Complaints Against Club Employees
>
> (a) It is the interpretation of the Board of Directors that a complaint against a Canadian Kennel Club employee concerning anything done or omitted to be done by the employee in the course of his employment involves a matter within the responsibility and authority of the Executive Director under Section 14.1 of The By-laws rather than a contravention of The By-laws, rules, regulations, procedures and policies of the Club within the meaning of Section 15.1 of The By-laws. Such a complaint shall not be heard by the Discipline Committee and immediately upon its receipt, any such complaint shall be referred to the Executive Director and the fee shall be returned to the Complainant. A copy of the complaint shall be provided to the relevant Director.

(b) The complaint shall be promptly investigated by the Executive Director and the Complainant shall be informed of the results of that investigation and, if applicable, of the measures that will be taken to address the complaint. The relevant Director shall be informed of the outcome of the complaint.

Section 14.1 of the By-Laws sets out the responsibility and authority of the Executive Director of CKC, as follows:

> 14.1 RESPONSIBILITY AND AUTHORITY OF EXECUTIVE DIRECTOR
>
> Subject to the authority of the Board of Directors as set out in Section 9.1, the Executive Director 28 shall have overall responsibility and authority for all operations of the Club. Such authority and responsibility shall include the following:
>
> (a) The administration of Club operations.
> (b) The administration of matters relating to the Club's finances, including budget preparation and administration thereof, ensuring the Club's investment portfolio is properly administered and that monies are deposited in the bank account of record, ensuring that the accounts of the Club are reviewed and paid within the prescribed time limit and ensuring that all financial records are maintained in accordance with generally accepted accounting principles.
> (c) Exercising signing authority with respect to legal and financial matters subject to the limitations of the budget and the approval of the Board of Directors.
> (d) The administration of matters relating to staffing, including hiring and dismissal, reviewing performance, setting levels of compensation and benefits, designation of titles and the assignment of duties.
> (e) Acting as the Board Secretary, being responsible for the preparation, assembly and distribution of material, receiving responses to items published for comment, ensuring that the Board is kept informed of all matters requiring its attention.
> (f) Providing advice to the Board on matters which may affect the operations of the Club and to recommending any course of action which requires a decision from the Board.
> (g) Reporting to the Board of Directors on the general operations and financial condition of the Club.

By-Law 14.1 does not give the Executive Director any explicit authority over the Board of Directors or any action taken by any individual director, whether in the course of their duties or outside of them. To the contrary, as set out at By-Law 9.6, the authority to remove a Director from office rests not with the Executive Director (as it would in the case of an employee), but with the Board of Directors.

Moreover, to suggest that a complaint against a Director should proceed by way of By-Law 14.1 (intended to apply to employees) would ignore the fact that, as set out at By-Law 9.1, the Board of Directors has supervisory authority over the Executive Director, and <u>over the authority granted to the Executive Director by Section 14. 1.</u>

Such an interpretation would lead to an absurd result, wherein Directors could essentially operate without meaningful oversight.

It is also worth noting that, in the CKC Policies & Procedures Manual, Chapter XI, Section B(7), it is specifically noted that this is an interpretation of the Board of Directors. There is nothing in any CKC Policy which suggests that the Board of Directors intended that they should be considered employees or exempt from disciplinary proceedings under section 15.1.

Finally, the By-Laws stipulate, at section 12.3(b), that "A member who is in receipt of salary, wages, commission, bonus or any form of emolument from the Club may not move or second a nomination, be nominated, stand for election or be elected as a Board member." The index heading for this section is titled "Employees, Ineligible to Nominate or be Elected or Appointed."

Taken together, all of these provisions can only lead to the conclusion that it was not the intention of CKC, or its Board of Directors, that individual Directors should be excluded from the disciplinary process.

Mr. Sirois relied both on the statutory definition of "employee" in the *Canadian Human Rights Act (CHRA)* and cited the case of *Hannan v Scouts Canada*, 2024 ONSC 5361 in support of his arguments. The Committee rejected these arguments.

The *CHRA* does provide a definition of "employment" that relies on the contractual relationship between parties. However, this is not a widely accepted definition. To the contrary, there are a wide variety of contractual relationships which are not considered to be employment relationships by entitles such as the courts, Canada Revenue Agency, or Service Canada. There has been nothing provided by Mr. Sirois to support the proposition the CKC must accept the definition of "employment" as set out by the *CHRA* in its interpretation of its by-laws, policies, and procedures, or any compelling reason why it should.

Hannan stands only for the proposition that there can be a contractual relationship between volunteers and the organizations they serve. The Committee does not disagree. However, *Hannan* does not stand for the proposition that all organizations must apply the *CHRA* definition of employment in interpreting their specific by-laws or policies, nor does it even reference the *CHRA*.

There are purposive reasons to include a broader definition of "employment" in human rights legislation than might be found in other applications. The purpose of human rights legislation is to protect individuals from discrimination. Certainly, in such an instance, one would want to ensure that protection is as broad as possible, as discrimination should be discouraged at every possibility.

That is not the case here. Mr. Sirois is attempting to stretch the definition of employee to avoid facing disciplinary procedures. As noted above, he seeks to apply a definition which would create an absurd result, given the governance and structure of CKC.

Accordingly, the Committee rejects this argument.

ii. Timeliness

Mr. Sirois also raised what might be best described as a limitation period argument. Specifically, he argues that the webinar was a CKC "event" and accordingly that the time limit for filing a complaint was ten days. Alternatively, he argues that the nature of the complaint falls outside of any of the specified limitation periods, and that the Board should exercise its discretion not to hear the complaint as Mr. Sirois is prejudiced by the fact that the complaint was filed approximately 11.5 months after the incident in question.

The Committee rejects both of these arguments.

CKC has chosen to establish limitation periods for complaints, as set out in the Policy & Procedures Manual, Chapter XI, sec B(3)(e):

> 3 (e) Unless the Executive Director deems it to be in the interest of The Canadian Kennel Club to proceed with a complaint, the Discipline Committee has established the following time limitations on accepting formal complaints:
>
> (1) for complaints alleging a violation of Section 64(a) of the Animal Pedigree Act (i.e., submitting a registration document containing a material false statement or representation) – seven (7) years;
>
> (2) for complaints alleging a violation of the Codes of Ethics and Codes of Practice – seven (7) years; [Board Motion #28-09-13]
>
> (3) for complaints alleging other offences under the Animal Pedigree Act or violations of The Canadian Kennel Club By-Laws – three (3) years; and
>
> (4) for complaints alleging a violation at a show or trial of The Canadian Kennel Club rules or regulations for a violation at that activity related to that show or trial, Canadian Kennel Club licensed, sanctioned or sponsored activities – ten (10) days, except for:
>
> i. complaints alleging the tendering of a dishonoured cheque or declined credit card in payment of entry fees, in which case the allowable period is one hundred and twenty (120) days from the date of the show, trial or test; and
>
> ii. complaints laid by The Canadian Kennel Club as a result of a show/trial superintendent's report or an investigation conducted by The Canadian Kennel Club, in which case the allowable period is six (6) months…

The Committee does not accept that the webinar would fall under subsection (3) and be subject to a ten (10) day limitation period. While the language in the provision is somewhat cumbersome, the governing clause is "for complaints alleging a violation <u>at a show or trial…</u>". This was not a show or trial, nor did the webinar take place at or in association with a show or trial. None of the ordinary procedures that would apply to filing a complaint at a show or trial (such as having a Show Superintendent accept the complaint) could apply in this instance.

It is noted that Mr. Pettitt, in his complaint, wrote that "The dachshund webinar was a CKC advertised event." However, the fact that Mr. Pettitt characterized the webinar as "an event" does not mean that it was one or that it would fall under this provision. Even if it was a CKC advertised event, the policy does not extend itself to apply to any and all CKC advertised events.

Accordingly, the Committee rejects the argument that a ten day limitation period applies.

It then becomes an issue of whether or not there is a specified limitation period as to when the complaint could be filed. The webinar took place on February 28, 2024. The complaint was filed on February 19, 2025. There is an issue of discoverability, because Mr. Pettit did not know and could not have known about the statement that was made until Ms. Christiansen told him some time later.

Although Mr. Pettitt's complaint was not well organized or articulated, it is clear that this was a complaint alleging violations of the Code of Ethics, the CKC By-Laws, and CKC Policies. The first has a limitation period of seven years; the second, three years. There is no specified limitation period for complaints made alleging a violation of a CKC Policy.

Limitation periods are essentially a tool to ensure fairness. Defendants should not have to worry about defending themselves against allegations of activities which occurred in the distant past, as the passage of time impairs their ability to mount a fair defense. Witnesses become unavailable, memory becomes imperfect, and evidence is lost. However, the mere fact that there has been delay is not sufficient to find that it would be unfair to proceed. If Mr. Sirois is alleging that the delay gives rise to procedural unfairness, it is incumbent upon him to adduce evidence demonstrating same; see, for instance, *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44.

In this case, the complaint was filed less than a year after the event occurred. Mr. Sirois did not provide any specific examples of how any delay created prejudice for him, only asserted that it was prejudicial. The Committee also could not see how Mr. Sirois was prejudiced by the passage of time in the presentation of his case. The key witnesses to the event – himself and Ms. Weiss – were both available. Mr. Sirois did not appear to have any difficulty recalling his evidence of the event. Ms. Weiss provided an Affidavit, although she did not appear before the committee. A full video recording of the webinar was provided to Mr. Sirois by CKC, and, in turn, to the Committee. There was no recording available of the debrief, but none was created, so that would not have been different with the passage of time.

Mr. Sirois did submit that complaints related to bullying should be dealt with expeditiously and that complaints of this nature are serious and put Mr. Sirois's reputation and career at risk, and CKC's reputation at risk. The Committee agrees. It is incumbent on all involved to ensure that such complaints are brought forward promptly and dealt with expeditiously. However, there is no evidence that Mr. Pettitt unduly delayed in filing an application after he learned about the statement made by Mr. Sirois, and the mere fact that there is reputation at risk is not sufficient to impose a deadline that would prevent the matter from being fairly determined.

In the circumstances, the Committee takes the view that the Complaint was filed within a reasonable period of time, and that there is no principled reason to dismiss it due to delay.

iii. Other Proceedings

Mr. Sirois argued that the complaint should be held in abeyance pursuant to Policy & Procedures Manual, Chapter XI, Section A(5)(g), which states as follows:

> Any matter before the Discipline Committee in which legal proceedings have been filed in which the outcome may have a direct bearing on the Committee's decision, will be held in abeyance pending the completion of those proceedings. [Board Motion #20-12-16]

It was somewhat difficult to follow this line of argument, as it was not raised in Mr. Sirois's materials and only broached during closing submissions. In brief, Mr. Sirois argues that because Mr. Pettitt had filed a

complaint with the Canadian Human Rights Commission (CHRC) and because he had spoken to a lawyer about the incident, and therefore might be commencing legal proceedings, the matter should be held in abeyance. Mr. Sirois offered no evidence or submissions as to why the outcome of that proceeding should have a direct bearing on this Committee's decision.

Respectfully, the course of action put forward by Mr. Sirois is an unsupportable overreach of this provision. The provision is intended to address only those situations where legal proceedings have already been filed and where the outcome would have direct bearing on the Committee's decision. In such cases, the disciplinary proceedings would be held in abeyance, meaning that the Committee would wait until the legal proceedings were concluded before proceeding.

That is not the case here. There was no evidence before the Committee that Mr. Pettitt has filed legal proceedings other than the complaint with the CHRC. On that issue, it was unclear as to the status of the complaint, including whether or not it had even been accepted for investigation. Based on the facts before the Committee, it does not appear that there would have been a valid complaint against Mr. Sirois under the *Canadian Human Rights Act* (*CHRA*), given the limitations of that legislation.

Even if the Committee had been satisfied that there were other legal proceedings currently underway arising from the CHRC complaint, it would not have determined that the outcome would have a direct bearing on the Committee's decision. The CHRC is asked with determining if there has been discrimination based on a prohibited ground. Even if Mr. Sirois had been investigated by the CHRC and cleared of such allegations, it would not be relevant to whether or not he had breached any CKC by-laws, policies, rules or regulations.

Accordingly, this claim is dismissed.

iv. Filing Irregularities

During cross-examination, there were irregularities highlighted with respect to Mr. Pettitt's complaint. On the basis of those irregularities, Mr. Pettitt submits that the complaint should be dismissed.

The issue had to do with the signature, date, and jurat on the complaint form. Based on the materials and evidence provided, it appears that Mr. Pettitt originally filed the complaint without a date and without having had the document sworn before a notary public or commissioner of oaths. On February 19, 2025, Mr. Pettitt submitted the form by email. In a replay email, Kim Fraser, Regulatory Specialist for CKC, acknowledged receipt of the two emails filing the complaint, and advised that the official complaint did not have a complete date on the bottom. She instructed Mr. Pettitt to "complete the official complaint form with the full date (day) the form was notarized and provide the corrected form."

The issue, as raised by Mr. Sirois, appears to be whether or not the form was signed in the presence of the Commissioner of Oaths and whether or not it was signed on February 19th, 2025, or if the date was added after the fact.

Neither is salient to the merits of the case. Filing irregularities may give rise to grounds to dismiss a case where they have a significant impact on procedural fairness and create prejudice against the defendant. This is a relatively minor irregularity. Mr. Pettitt did not have the benefit of legal counsel at the time that he completed the complaint form. He appears to have followed the direction of CKC staff, who accepted the corrected form.

The irregularities with the complaint form do not impact Mr. Sirois's ability to know the case against him or prepare a response, which are key elements of procedural fairness arguments. The complaint form was unchanged but for the addition of a date. The grounds of complaint being advanced by Mr. Pettitt were clearly detailed, as were the alleged violations of by-laws, policies, rules and regulations.

In the absence of any demonstrated prejudice to Mr. Sirois caused by the irregularity with respect to the filing of complaint, the Committee is not prepared to dismiss the complaint on this ground.

b. Admissibility of Video Evidence

Mr. Sirois vehemently objected to the admissibility of the 14 second video submitted by Mr. Pettitt and allegedly recorded by and provided to him by Ms. Christiansen.

The lengthy list of objections to the video can be summarized as follows:

(1) The video and accompanying letter from Ms. Christiansen do not meet the requirements under the *Canada Evidence Act* to authenticate the video;
(2) The video may have been edited or altered in the time between its alleged recording on February 28, 2024 and when it was submitted to the Committee on January 9, 2026, and there is no evidence that it was not altered;
(3) Given that there was a delay in disclosing the video to Mr. Pettitt, the motives of Ms. Christiansen, who recorded the video, should be called into question;
(4) Given that Mr. Pettitt waited approximately a year after learning of the video and filing the complaint before disclosing the video, his motives should be called into question;
(5) Mr. Sirois was prejudiced in his ability to defend the complaint because the video was not disclosed to him until January 12, 2026, which gives rise to a concern regarding procedural fairness;
(6) Mr. Pettitt "should have known" that authenticating video evidence is essential when a person's career and reputation are at stake.
(7) Mr. Pettitt did not call Ms. Christiansen as a witness, and the Committee should draw a negative inference from his failure to do so;
(8) If the Committee had a complete video recording of the webinar and debriefing session, and therefore could put the comment into context, they would likely find that the complaint must be dismissed; and,
(9) Disclosure of the video violates certain elements of the *Personal Information Protection and Electronic Documents Act (PIPEDA)* and violated Mr. Sirois's privacy.

Mr. Sirois asserts that even if the video is admitted, it should be given no weight, based on the above objections.

The above objections can be fairly classified as falling into three separate categories: (1) concerns regarding authentication and application of the *Canada Evidence Act*; (2) considerations of procedural fairness; and (3) privacy and policy considerations.

Authentication of Video Evidence & Application of Canada Evidence Act

It is not disputed that the video evidence submitted by Mr. Pettitt was not authenticated in accordance with the procedure set out in the *Canada Evidence Act.* However, the Committee does not find that alone is sufficient grounds not to admit the video, and any deficiencies with respect to the authentication of the video would go to weight, not admissibility.

It is trite law that the *Canada Evidence Act (CEA)* does not strictly apply proceedings before an administrative tribunal as it would before a court of law; see, for instance *He v Canada (Minister of*

Citizenship and Immigration), [1999] FCJ No. 75 (QL). Similarly, in *Canada (Attorney-General) v. Canada (Restrictive Trade Practices Commission)*, 1980 CanLII 2554 (FC), the Court held that administrative tribunals were generally free to choose their own procedures, except where express provisions are contained in the governing statute:

> [50] It is generally accepted that administrative tribunals are prima facie free to choose their own procedure whether they have statutory authority to do so or not. The most frequent expression is that they are "the authors of their own procedure" except, of course, where express provisions are contained in the statute governing the particular tribunal.
>
> [51] Apart from express procedure imposed by statute the rule that is clear and upon which there is general agreement is that tribunals are not bound to follow the formal procedures of the Courts of law.

The CKC Discipline Committee is not a creature of statute (*Lee v Canadian Kennel Club Appeal Committee,* 2013 ABQB 51), and accordingly, there are no express procedures imposed by statute.

The Policy & Procedures Manual does offer direction as to the nature of evidence which can be considered at Chapt XI, Section A(1), as follows:

> (1) The Discipline and Appeal Committees may be defined as “domestic tribunals”. A domestic tribunal of an association investigating charges of misconduct against its members is not generally bound by the same strict rules of procedure as a criminal court and there is a significant difference between the evidence necessary to convict in a criminal court, and that required to convict in an ordinary society. Hearsay evidence, for example, is admissible at hearings of a domestic tribunal, but must be treated with circumspection and it is the question of the weight to be given it by the Committee. Further, there is no need to prove guilt or culpability “beyond a reasonable doubt” but rather of being satisfied on the “balance of the probability test” similar to a civil suit. (emphasis added)

Accordingly, non-compliance with the requirements of the *CEA* may be of assistance in determining the weight that any evidence should be given, but evidence is not inadmissible merely because it does not comply with the *CEA.*

Mr. Sirois raised concerns that the video might have been altered, and that there was no evidence that it had not been altered. The requirements under the *CEA* are intended to ensure that video evidence is a reliable reflection of events which occurred. However, Mr. Sirois was present for the conversation. Ms. Weiss was present for the conversation. If the video was not an accurate reflection of the conversation which occurred, either witness could have provided evidence of the inaccuracy of the video. They did not do so. In the absence of evidence, the Committee is not prepared to exclude the video based on speculation only.

Procedural Fairness

Mr. Sirois raises a number of concerns with respect to procedural fairness, largely arising from the delay first by Ms. Christiansen and then by Mr. Pettitt in disclosing the video. He also raises concerns that the Committee did not have the full video of the webinar and debrief, and therefore, could not put the comment “in context.”

Administrative tribunals do owe a duty of fairness to all parties who appear before them. As noted above, delay may give rise to concerns regarding procedural fairness. It does not automatically amount to procedural unfairness. If a party wishes to assert that delay has given rise to procedural unfairness, they bear the burden of adducing specific evidence of the prejudice that they have suffered.

In this instance, Mr. Sirois provided no evidence that he was prejudiced from defending himself against this claim due to the delay in having the video disclosed. He was certainly aware of the complaint, and the circumstances surrounding it, for nearly a year prior to the hearing. The video evidence submitted is consistent with the written complaint. Mr. Sirois acknowledges having made the statement, and provided context for the statement.

Mr. Sirois was able to access and provide a full copy of the webinar, so that the Committee could view it and, in particular, hear Ms. Alexander's statement. There was no video of the debrief, but the other participant in the conversation, Ms. Weiss, was still available to provide evidence. Mr. Sirois did not have her appear in front of the Committee, but provided a sworn Affidavit.

The production of the video did prevent Mr. Sirois from denying that he made the statement in question, but there is no indication that he intended to deny it. He acknowledges having made the statement.

It is also worth noting that there is nothing in CKC's rules or regulations which requires Mr. Pettitt to disclose all evidence of a complaint when the complaint is filed. To the contrary, the procedures specifically state that any evidence being relied upon by the Complainant is to be provided three weeks prior to the hearing. The Defendant is to provide their evidence one week prior to the hearing. All parties involved met the requisite filing deadlines.

There are certainly benefits to early production of evidence. In civil litigation cases, for instance, disclosure is very often the first step of the process, with both parties expected to make full disclosure of all evidence in their control. This is to allow each side to know the full particulars of the case and to encourage efficient litigation and early settlement. CKC may wish to revisit their policies, but at this stage, it would be profoundly unfair to Mr. Pettitt to disqualify evidence that was produced within the timelines set by CKC.

In his submissions, Mr. Sirois repeatedly encouraged the Committee to draw a negative inference relating to the "motives" of either Ms. Christiansen and/or Mr. Pettitt due to first the decision to record the exchange and the delay in disclosing the video. The Committee declines to do so. There was no evidence that either Ms. Christiansen or Mr. Pettitt had any reason to act improperly. There was no evidence that there were long-standing or ongoing disputes between Mr. Sirois and either Mr. Pettitt or Ms. Christiansen. To the contrary, Mr. Sirois's evidence was that when he and Mr. Pettitt had disagreed in the past, they had been able to discuss it reasonably and resolve their differences. There was nothing indicating that there ever had been any dispute between Mr. Sirois and Ms. Christiansen. The suggestion that either Ms. Christiansen or Mr. Pettitt was acting improperly or with malice in their conduct during this proceeding, without any evidence to support such allegations, is both unfair and inappropriate.

Privacy & Policy Considerations

Mr. Sirois also raised objections to the dissemination of the video, citing the *Personal Information and Protection and Electronic Documents Act (PIPEDA)*, as well as Mr. Sirois's right to privacy.

There are public policy reasons to support excluding evidence from a disciplinary proceeding. No tribunal, administrative or otherwise, should encourage individuals to behave inappropriately in gathering evidence to support a claim. Surreptitious recordings that breach an individual's reasonable expectation of privacy might be one such instance where the Committee chooses, for public policy reasons, to exclude evidence that would otherwise be inadmissible. However, this is not one of those cases.

First, with respect to the alleged violations of *PIPEDA*, this complaint is without merit. As a private individual, Ms. Christiansen is not bound by *PIPEDA*. *PIPEDA* applies to organizations engaged in commercial activity; Ms. Christiansen was acting personally and not as part of a business or commercial activity. Similarly, while Mr. Pettitt may have distributed the video to other entitles (including news organizations), he is not bound by *PIPEDA*.

While CKC is subject to *PIPEDA*, CKC did not create the recording in question. They only received the video as part of Mr. Pettitt's claim, and disclosed it to Mr. Sirois and to this Committee as part of these disciplinary proceedings. Section 5(3) of *PIPEDA* states that "an organization may collect, use or disclose personal information on for purposes that a reasonable person would consider are appropriate in the circumstances." It is difficult to imagine how a reasonable person would <u>not</u> consider it appropriate for CKC to collect the video from Mr. Pettitt while operating within the ambit of this disciplinary proceeding and then to distribute it to the Committee determining the matter.

Even without the protection of *PIPEDA*, Mr. Sirois enjoys a common law right to privacy. Arguably, if the recording, and then distribution, of this video violates Mr. Sirois's right to privacy, it may be grounds for the Committee to exclude the evidence.

The issue of surreptitious recordings, and more specifically, their admissibility in court proceedings and administrative tribunals is an ever-expanding area of the law as technology facilitates the easy recording of what was intended to be private conversation. The issue arises frequently in the context of family law proceedings, labour arbitration, and human rights disputes.

In *CC v SPR*, 2022 BCSC 1057, Justice Gibb-Carsley of the British Columbia Supreme Court applied a four part test to determine the admissibility of surreptitious recordings in a family law proceeding, at para 31:

i. the recordings must be relevant;

ii. the participants must be accurately identified;

iii. the recordings must be trustworthy; and

iv. the court must be satisfied that the probative value of the recordings outweighs its prejudicial effects.

Similar assessments have been undertaken in determining the admissibility of surreptitious recordings in labour tribunals and human rights tribunals. Accordingly, the Committee adopts the test for the purpose of determining admissibility of the recording in the present proceeding.

There is no dispute that the recording would be considered relevant to the issue under consideration, as it shows the very incident which Mr. Pettitt states forms the grounds for the complaint.

It is possible to accurately identify the participants. Indeed, neither Mr. Sirois nor Ms. Weiss deny that they are present on the video.

Mr. Sirois has urged the Committee to find that the video is not trustworthy, as there was no sworn evidence as to the creation and storage of the video, and since the creator was not made available for cross-examination. There was ample speculation raised about what might have happened to the video. However, there was no evidence given to suggest that the fourteen-second video was not an accurate representation of the events which occurred during those fourteen seconds. There is obviously an argument to be made that the statements are not in context, but such arguments go to weight, not admissibility.

Finally, the Committee has to decide if the probative value outweighs the prejudicial effect; that is, how much does the evidence help the Committee to decide if the complaint is merited as compared to how much that same evidence might unfairly sway the Committee due to emotional impact or bias.

In this instance, the probative value does outweigh the prejudicial effect. It is literally a video of the incident in question. To the extent that the lack of context might create prejudice to Mr. Sirois, such prejudice is overcome by the fact that Mr. Sirois was able to comment on the video and provide any context he deemed necessary for the Committee to make a determination on this complaint.

The mere fact that this was a recording of what was believed to have been a private conversation does not render it *prima facie* inadmissible. It is arguable as to whether Mr. Sirois had a reasonable expectation of privacy when talking on a video conference link that was distributed to and accessed by countless individuals. Videoconferencing software allow participants to see who is still on the video at any time; it does not appear that Mr. Sirois confirmed that he was alone on the call with Ms. Weiss before starting the debrief.

Even in situations of true surreptitious recordings, tribunals have not found that breach of privacy alone would be sufficient to exclude the evidence. In *Parsons v. A&B Tool Rentals and another*, 2018 BCHRT 154, the Tribunal considered whether to admit a recording taken from a pen camera during a private meeting between the complainant and her manager. In that case, the manager had scheduled a meeting with the complainant, and set up the pen camera without advising her. This type of recording has been found to be especially problematic, as one of the parties is aware that the recording is being made and is able to moderate their behaviour appropriately. However, despite that shortcoming, the Tribunal allowed the recording to be admitted as evidence, finding that there was no real dispute over the nature and content of the conversation.

Having regard for all of the competing factors, the Committee finds that it is appropriate to admit the video. However, even if the Committee was incorrect in reaching this conclusion regarding admissibility, we do not find that the conclusions ultimately reached on the merits of the complaint would have been different had we excluded the video evidence. Mr. Sirois acknowledged making the statement in question and confirmed the circumstances in which it had been made.

2. Merits of the Complaint and Disposition

Having dismissed the various preliminary issues that were raised, and determining that the Committee has jurisdiction to hear this matter, it is now necessary to turn to the merits of the complaint.

In filing his complaint, Mr. Pettitt took an expansive approach to identifying the by-laws, policies, procedures, and rules that he believed had been impugned by Mr. Sirois, and identified, in total, twelve separate violations. The Committee considered each alleged violations separately. In total, six of the alleged violations were dismissed and six were upheld. For the purposes of organization and readability, this decision will first set out those alleged violations which were dismissed, and the reasons for the dismissal, and well then addresses those alleged violations which were upheld.

a. Dismissed Complaints

i. Violation: 5.1 By-laws

Section 5.1 of the CKC By-Laws states as follows:

> *The Objects of the Club shall be as follows:*
>
> *(a) Encouraging, guiding and advancing in such ways as it sees fit, the interests of purebred dogs and their responsible owners and breeders in Canada;*
>
> *(b) Promoting the knowledge and understanding of the benefits which dogs can bring to Canadian society and the means by which these benefits can most effectively be enjoyed;*
>
> *(c) Co-operating with governments at all levels in Canada in the development of legislation which will effectively control the activities of irresponsible dog owners and breeders without unduly restricting responsible owners and breeders;*
>
> *(d) Maintaining a system of registration of purebred dogs that satisfies the requirements of the Act, Agriculture Canada and the Club members;*
>
> *(e) Maintaining a system whereby clubs and associations wishing to do so may hold dog shows, obedience trials, field trials and other trials, tests and activities for dogs under the auspices of, and in accordance with the rules, regulations, standards, policies and procedures established by the Club;*
>
> *(f) Encouraging and assisting persons and organizations engaged in activities referred to in these Objects and co-operating with other associations, persons, organizations and clubs engaged in furthering the interests of purebred animals*

Mr. Pettitt alleges that Mr. Sirois violated this by-law because his actions "did not 'encourage or guide or advance' the Dachshund or owners.'

The Committee dismisses this ground of the complaint. By-Law 5.1 is proclamatory in nature; it speaks to the objectives of CKC as an organization and does not impose any specific obligations on members.

ii. Violation: 7.9 By-laws

Section 7.9 of the CKC By-Laws states as follows:

> *The By-laws of the Club bind each member thereof fully as though he had prescribed his name and affixed his seal thereto. These By-laws shall be posted electronically to the CKC website and upon request a printed copy of same delivered or transmitted to the member's last known address of record in the Club. No person, whether a member or not, shall be absolved from the effect of these By-laws on any allegation of not having received them, or of ignorance of the contents or meaning.*

Mr. Pettitt's specific complaint states, "If Sylvain as a member is bound by these Bylaws [sic] then it is alleged that he as a CKC member is in violation of the Bylaws [sic] presented."

This is, again, a by-law which is proclamatory in nature. It is intended to aid in the interpretation of the by-laws, but does not, in itself, impose any obligations on members which could then be breached.

iii. Violation: 9.6(a)(iv) By-laws

Section 9.6(a)(iv) of the CKC By-Laws states as follows:

> *9.6 (a) A Board member shall cease to be qualified to hold office if, after being elected to the Board, the member:*
>
> *(iv) fails to comply with the Code of Conduct for Board Members, as prescribed in Club Policy*

Although Mr. Pettitt identified that Mr. Sirois violated this provision, he did not provide any explanation to support this allegation.

Regardless, this ground of the complaint is dismissed. Section 9.6(a) sets out the qualifications for Board members, and specifically, under what grounds they would cease to be qualified to hold office. Jurisdiction to determine if a specific Board member ceases to be qualified to hold office is not within the jurisdiction of the Discipline Committee. Pursuant to By-law 9.6(b), that jurisdiction is reserved to the Board of Directors.

There is no obligation placed on an individual member by this by-law which could then be breached to find a violation.

iv. Violation: P&PM Chapt IX Board of Directors SectD, Subs 1(b)

Chapter IX of the CKC Policy and Procedures Manual sets out the roles and obligations on the Board of Directors.

Subsection 1(b) states:

> *It is the legal responsibility of the Board, collectively and individually, to exercise due care and diligence in the performance of their duties as the corporate managers of The Canadian Kennel Club. To accomplish this, each Board member shall, with complete certainty, be aware of and fully understand all matters relating to the management of the corporation and shall, at all times, be comfortable that they are fully aware of all the facts prior to making any decision on any matter before the Board.*

Mr. Pettitt alleges that Mr. Sirois breached this provision because**,** he did not exercise due care and diligence, was not aware of and did not fully understand that this matter was before the board, and by his actions while the CKC crest was displayed behind him.

Mr. Pettitt has fundamentally misunderstood this provision. While it is possible for an individual Director to contravene this provision, it would need to concern the decisions that they are making relating to the management of the Club, not simply every action while acting as a Director. For instance, a Director who failed to review crucial documentation related to the Club's financial well-being, and then participated in a vote on the issue without being aware of all pertinent facts might be taken to have breached this provision. There is no evidence that Mr. Sirois has breached this provision.

v. Violation: P&PM Chapt IX Board of Directors Sect D, Subs 2(a)

Subsection 2(a) of Chapter IX of the CKC Policy and Procedures Manual states as follows:

> *Board members should exercise extreme caution not to place themselves in a situation where they will be deemed by others as having an unfair advantage due to their position as a member of the Board.*

Mr. Pettitt alleges that Mr. Sirois, as a Dachshund breeder-judge, should be deemed as having an unfair advantage.

Just as the Committee cannot accept blanket assertions of prejudice (as outlined above), we also cannot accept blanket assertions of unfair advantage. There was no evidence given by Mr. Pettitt as to how Mr. Sirois had gained an unfair advantage by virtue of his actions. Even if Mr. Sirois's comments had been intended to or caused anyone to discredit Mr. Pettitt's arguments regarding the Dachshund standard, it is not clear how that would create an advantage for Mr. Sirois as either a breeder or a judge. In the absence of such evidence, this ground must be dismissed.

vi. Violation: P&PM Chapt IX Board of Directors Appendix 1

Appendix A of Chapter IX of the CKC Policy and Procedures Manual is a job description for Directors. While it may be a helpful document for guidance, it does not create any clear obligations, and largely summarizes the obligations and expectations of Directors as articulated elsewhere in the By-Laws and Policies and Procedures.

b. Accepted Complaints

i. Violation: 7.2(a) Code of Ethics – 4th Bullet Point

By-Law 7.2(a) requires that all members of CKC agree and adhere to the Codes of Ethics, Codes of Practice, By-laws, rules, regulations, policies and procedures of the Club. The Code of Ethics is a separate document, and Mr. Pettitt alleges that Mr. Sirois specifically violated the fourth bullet point, which states:

> *In order to preserve and enhance each breed's characteristics, The Canadian Kennel Club supports and encourages participation in shows, trials and other events. All members, whether they are exhibitors, handlers, judges or assistants will participate in such activities with honesty, fairness and integrity, ever mindful of the practice of "good sportsmanship". Members shall not engage in any activity that might be considered malicious, threatening or constitute bullying, including but not limited to social media; [Board Motion #15-12-20]*

This is really the crux of Mr. Pettitt's complaint; by referring to him as a "princess" during the conversation with Ms. Weiss, Mr. Sirois was engaging in behaviour that would be considered bullying.

Mr. Sirois's response was that, when viewed in context, the comment would not be considered inappropriate, as he was only repeating or explaining a comment made by another individual. He also suggests that the comment was not serious enough to warrant a finding of bullying, and that bullying requires repeated behaviour and an imbalance of power, which he asserts was not present in this case. Finally, Mr. Sirois urges the Committee to consider that he intended the conversation to be private and was not aware of Ms. Christiansen's presence.

Impact of Slander Allegation

Briefly, there was an argument raised by Mr. Sirois that the complaint must be dismissed because in his materials, Mr. Pettitt wrote the Mr. Sirois had "slandered, bullied, AND discriminated" against him. Mr. Sirois correctly argued that the Committee has no jurisdiction to determine whether Mr. Sirois's comments constituted slander. However, he then suggested that, since Mr. Pettitt had phrased his complaint as ""slandered, bullied, AND discriminated", the entire complaint must be dismissed as the Committee could not determine the issue of slander.

Such an interpretation is frankly absurd. The allegation is that Mr. Sirois violated the Code of Ethics, and specifically the fourth bullet point. Mr. Pettit's argument is that he did so by engaging in behaviour that could be considered slanderous, bullying or discriminatory. While there *may* be some merit is arguing that the Committee would not be able to consider whether or not there were additional by-laws or rules violated outside of those identified by Mr. Pettitt, since doing so would impede upon Mr. Sirois's ability to provide an answer to such allegations, there is no merit in suggesting that the Committee is restricted from considering whether or not the statement made by Mr. Sirois was either discriminatory or constituted bullying simply because Mr. Pettitt used the word "and" rather than "or" in the complaint.

The purpose of the Code of Ethics is to ensure that a certain standard of behaviour is clearly communicated to all members. In enforcing the Code of Ethics, it would unreasonable and inappropriately restrictive to suggest that the Committee could not find any violation unless it occurred exactly as alleged in the Official Complaint Form.

The point of the Complaint Form is to ensure that the Defendant is aware of the allegations for which they need to answer. It is not intended to create loopholes and traps for complainants that a defendant can then exploit to avoid being held accountable for their behaviour. To do so would be antithetical to the disciplinary process.

Allegations of Bullying & Discrimination

Having addressed the above issue, the Committee now turns to the issue of whether or not Mr. Sirois's comment could be considered bullying or discrimination.

Mr. Sirois's explanation is that he was not calling Mr. Pettitt a "princess" but rather explaining why a different speaker, Sandy Alexander, had made the statement, "*If I say I will treat you like princess, it doesn't mean you are a princess*" during her presentation. He also states that he believed Ms. Weiss had inaccurately assumed that Ms. Alexander was referring to Mr. Pettitt's sexual orientation.

In considering this explanation, the Committee was required to make an assessment of Mr. Sirois's credibility. There are many court decisions which review the factors which impact credibility assessment. In ***Baker-Warren v Denault,*** 2009 NSSC 59 at para 17, which is oft-cited on the issue of credibility, the court adopted the following list of factors:

> a) What were the inconsistencies and weaknesses in the witness' evidence, which include internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony, and the documentary evidence, and the testimony of other witnesses
>
> b) Did the witness have an interest in the outcome or was he/she personally connected to either party;
>
> c) Did the witness have a motive to deceive;

d) Did the witness have the ability to observe the factual matters about which he/she testified;

e) Did the witness have a sufficient power of recollection to provide the court with an accurate account;

f) Is the testimony in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular place and conditions;

g) Was there an internal consistency and logical flow to the evidence;

h) Was the evidence provided in a candid and straight forward manner, or was the witness evasive, strategic, hesitant, or biased; and

i) Where appropriate, was the witness capable of making an admission against interest, or was the witness self-serving?

The Committee considered Mr. Sirois's explanation for his statements and found that, based on all of the evidence, it was not believable.

Mr. Sirois's explanation hinges on the suggestion that (1) Sandy Alexander had been referring to Mr. Pettitt when she made her statement during the webinar and (2) Ms. Weiss believed that Ms. Alexander was making a derogatory statement about Mr. Pettitt's sexual orientation.

Ms. Alexander was not called as a witness by any party, but the Committee did have the benefit of viewing the entire webinar, including Ms. Alexander's statement. Other than the fact that Ms. Alexander followed Mr. Pettitt in the order of speakers and disagreed with the argument he was making, there was no other connection between Mr. Pettitt and Ms. Alexander that was pointed out to the Committee or was evident from reviewing the webinar. Ms. Alexander was clearly speaking from prepared notes, which one can reasonably assume were prepared prior to hearing Mr. Pettitt's statement (as there were only minutes between the two speakers). Her head was down and she was obviously reading. She did not reference Mr. Pettitt during her presentation. No reasonable person, watching the webinar, would ever have believed that Ms. Alexander was referring to Mr. Pettitt.

Ms. Weiss was not called as a witness, but did put forward an affidavit, which was submitted by Mr. Sirois. What is glaring in that Affidavit is not what it contains, but what it does not contain. There is virtually no discussion of the webinar or the debrief, other than an acknowledgement that she and Mr. Sirois continued to "chat" after the webinar had concluded, and that she did not expect the live stream to have continued.

Ms. Weiss does not state that she interpreted Ms. Alexander to have been speaking about Mr. Pettitt. She does not state that she understood Ms. Alexander's use of the word "princess" to be referring to Mr. Pettitt's sexual orientation. She does not give any evidence as to what she said or what they were discussing prior to the comment that might have elicited Mr. Sirois's response. Given the subject of this complaint, such omissions are glaring. As Mr. Sirois did not produce Ms. Weiss for cross-examination, the Committee is left to infer that the evidence she would have given on those points would not have been helpful to Mr. Sirois.

Ms. Weiss does state, at paragraph 4 that she "cannot recall any occasion when Sirois made derogatory or offensive remarks about the Complainant, or any other person."

This statement alone gives rise to serious concerns about the credibility of Ms. Weiss's evidence. She was clearly present and heard Mr. Sirois make the statement in question. Mr. Sirois's own argument was that the term "princess" was not referring to Mr. Pettitt's sexual orientation, but rather making a comment about Mr. Pettit's sense of entitlement. Regardless of whether or not such an argument would constitute bullying, it is inescapable that it would be offensive to call another person "entitled." It is a pejorative term, which implies that the individual is looking for special or preferential treatment to which they are not entitled.

Mr. Sirois also provided an Affidavit from his former common-law partner, Denis Gros-Louis. Mr. Gros-Louis states that he was present in the home when Mr. Sirois was chairing the webinar and during the debrief, and was near enough to hear comments made by Mr. Sirois. He also asserts that Mr. Sirois did not make any "derogatory" comments towards Mr. Pettitt or any other person.

Again, Mr. Gros-Louis's Affidavit is notable for what it does not contain. Although he states he was sat near enough to listen to the webinar and debrief, he does not discuss the comment made by Mr. Sirois – which he admits to having made – directly. He does not address the context in which the comment was made. He does not mention having heard Ms. Alexander's comment, which is apparently what places Mr. Sirois's comment in context and negates the suggestion that he was speaking in a derogatory manner.

Like Ms. Weiss, Mr. Gros-Louis was not made available for cross-examination.

Taken together, there are glaring gaps in the evidentiary record put forward by Mr. Sirois to support his version of events. The Committee does not accept that Ms. Alexander intended to refer to Mr. Pettitt, implicitly or otherwise, when making her statement. The evidence does not support that there was a discussion between Ms. Weiss and Mr. Sirois wherein Ms. Weiss suggested that she believed Ms. Alexander to be speaking in a derogatory manner about Mr. Pettitt's sexual orientation. On a balance of probabilities, the Committee finds that while Mr. Sirois may have been referencing language used by Ms. Alexander, he was expressing his opinion that Mr. Pettitt is "well known as a princess."

Having rejected the explanation put forward by Mr. Sirois, the Committee must still consider whether or not the statement constitutes bullying within the meaning of the Code of Ethics.

Mr. Sirois suggested that the Committee could not find that the statement constitutes bullying, as bullying requires (1) repeated and aggressive behaviour; and (2) a real or perceived imbalance of physical or social power between the parties.

Respectfully, that is not the test "required by law" as suggested by Mr. Sirois. The prevailing case law on the issue of bullying remains the Supreme Court of Canada's decision in ***AB v Bragg Communications***, 2012 SCC 46. In that case, at para 21, the Court adopted the definition of bullying as set out in *Respectful and Responsible Relationships: There's No App for That: The Report of the Nova Scotia Task Force on Bullying and Cyberbullying* (2012) at pp 42-43, which states as follows:

> The Nova Scotia Task Force has reviewed these definitions and many others and has considered a range of possibilities and considerations in the process of crafting a relevant and useful definition. It recommends the following definition be adopted for the purposes of education legislation, regulations and policies in the province:
>
> > Bullying is typically a repeated behaviour that is intended to cause, or should be known to cause, fear, intimidation, humiliation, distress or other forms of harm to another

> person's body, feelings, self-esteem, reputation or property.
>
> Bullying can be direct or indirect, and can take place by written, verbal, physical or electronic means, or any other form of expression.
>
> Cyberbullying (also referred to as electronic bullying) is a form of bullying, and occurs through the use of technology. This can include the use of a computer or other electronic devices, using social networks, text messaging, instant messaging, websites, e-mail or other electronic means.
>
> A person participates in bullying if he or she directly carries out the behaviour or assists or encourages the behaviour in any way.
>
> The proposed definition is conceived broadly enough to encompass situations where there is no intent to cause harm on the part of the perpetrator and where there is no actual power imbalance between the people involved (although often, of course, there may in fact be a power imbalance). This definition reflects the reality that, although most bullying situations will involve repeated and persistent behaviour, there may be cases that can and should be characterized as bullying even where the element of repetition is lacking. (emphasis added)

Subsequent cases have continued to follow this definition and accept that conduct can be considered bullying even where it is a one-time incident and even where there is no power imbalance.

In this instance, the Committee considered whether or not Mr. Sirois's "intended to cause, or should be known to cause, fear, intimidation, humiliation, distress or other forms of harm to another person's body, feelings, self-esteem, reputation or property."

The Committee did not find that there was sufficient evidence to conclude the Mr. Sirois's comment was intended to be a slight on Mr. Pettitt's sexual orientation. However, it is arguable that he should have known that an independent observer might have construed it as such.

More troubling is Mr. Sirois's defense that the statement was not referring to Mr. Pettitt's sexual orientation, but rather his sense of entitlement, particularly within the context of the webinar that had just occurred. Mr. Pettitt was one of several speakers who expressed their opinions about how the Dachshund standard should be treated. It was clearly an issue of some discussion, since CKC elected to hold a webinar on the topic and invite multiple people to speak. Mr. Sirois was free to disagree with Mr. Pettitt's opinion, privately or publicly. Disagreeing with someone is not bullying. What he was not free to do was to engage in name-calling that was intended to diminish the other party's reputation.

Mr. Sirois did not suggest that Mr. Pettitt's reasoning was incorrect or that his logic was flawed. He said that Mr. Pettitt was "known to be a princess" – a statement which, by his own admission, was intended to convey that Mr. Pettitt had an attitude of entitlement. The only logical conclusion was the Mr. Sirois intended to diminish the impact of Mr. Pettitt's comments by making a personal attack on his character

and implying that Mr. Pettitt's arguments should fail because they are based only his own desire to be given special treatment.

There is a power imbalance between Mr. Sirois and Mr. Pettitt. Mr. Sirois is a member of the Board of Directors. He was mediating the webinar in his capacity as a Director. The conversation was taking place with another senior member of CKC's staff. Even if it could be argued there is no real power imbalance between a regular member and a Director of CKC, there is clearly an implied power imbalance.

Mr. Sirois has suggested that the comment cannot be considered bullying because it took place within the context of a private conversation. That does not absolve him of responsibility. This was not an entry in a diary, meant for Mr. Sirois alone. It was made during a conversation with another individual – it was made to another individual. The definition of bullying has never been so narrow as to exclude conversations that were intended to be private. Indeed, it is during the so-called "private" conversations that the most pervasive effects of bullying can be felt, as it poisons the environment in which people operate.

It is also worth noting that the Code of Ethics extols members to act with integrity. C.S. Lewis once wrote "Integrity is doing the right thing, even when no one is watching." Put simply, Mr. Sirois was not free to make disparaging comments about Mr. Pettitt merely because he believed he only had an audience of one.

Accordingly, the Committee accepts that the comment constitutes bullying within the meaning of the Code of Ethics and that Mr. Sirois has contravened By-Law 7.2(a) and the Code of Ethics.

ii. Violation: 9.11 By-laws

By-law 9.11 states as follows:

> *9.11 Under no circumstances should the Board of Directors as a whole, nor any individual member of the Board, entertain discussion, intervene, give direction to, attempt to influence or interfere in any way at any time with any member of the Discipline Committee, the Appeal Committee, the Registration Committee or members of staff, regarding any matter before such committees*

Mr. Pettitt argued that Mr. Sirois's actions, specifically calling him a princess, was intended influence her perception of the information the Mr. Pettitt presented during the webinar.

For the reasons set out above, the Committee agrees. Mr. Sirois's intent was clearly to diminish the impact of any argument made by Mr. Pettitt, by making comments about him personally. Ms. Weiss was appearing in her capacity as a CKC staff member who is apparently involved in this topic. Mr. Sirois knew, or ought to have known, that his comments would influence how Ms. Weiss perceived Mr. Pettitt.

iii. Violation: 11.1 By-laws

By-law 11.1 states as follows:

> *Members of the Board shall act in the best interests of the Club and its members.*

Mr. Pettitt argues that it was not in the best interests of the CKC for Mr. Sirois, in his role as a Director, to call him names and laugh about it, particularly with a member of staff.

The Committee agrees. Issues of bullying and unsportsmanlike behaviour have been before the Discipline Committee on various recent occasions; the Committee was referred to such decisions in Mr. Sirois's materials. CKC is not alone, as an organization, in seeking to address issues of bullying and unsportsmanlike conduct.

As a Director, acting in that capacity, it was incumbent upon Mr. Sirois to act with integrity and professionalism. He did not do so, and in that failure, his actions colour the organization as a whole.

Moreover, Mr. Sirois is required to act in the best interests of the Club's members, which includes Mr. Pettitt. It is difficult to imagine how he believed he could be acting in Mr. Pettitt's best interests when telling a senior member of CKC's staff that Mr. Pettitt was "known as a princess."

iv. Violation: P&PM Chapt IX Board of Directors SectD, Subs 1(c)

Section D, Subsection 1(c) of Chapt IX of the Policies and Procedures Manual states as follows:

> *The Board must be seen as a corporate body, managing as a whole and collectively acting in the best interests of The Canadian Kennel Club. It is therefore imperative that all Board members continually maintain a level of mutual respect in the performance of their duties, whether those duties being performed are at the table, in their respective zones or in communication with the membership of The Canadian Kennel Club or the general public.*

Mr. Pettitt argues again that Mr. Sirois did not act in the best interests of CKC and points specifically to the lack of respect in his actions.

The Committee agrees. It is not respectful to call other members names. Even if the Committee had not found that Mr. Sirois's comment constituted bullying, they still would have found that he violated this provision.

There is simply no circumstance where it should be considered reasonable and appropriate to make insulting and derogatory comments against another member. The term "princess" was clearly meant as a derogatory term. It is neither positive nor neutral. To refer to any member of CKC in such a way is inappropriate and disrespectful.

v. Violation: P&PM Chapt IX Board of Directors SectD, Subs 1(f)

Section D, Subsection 1(f) of Chapt IX of the Policies and Procedures Manual states as follows:

> *Upon being elected, Board members are expected to read and become familiar with the documents governing the CKC including: The Animal Pedigree Act, the CKC By-laws, the Policies and Procedures and the CKC Code of Ethics. To support in this regard, Board members are expected to fully participate and engage in the board orientation process and documents. Board members are expected to be held to the highest standards with respect to provisions within these documents.*

The expectation under this provision is that Directors should be held to a higher standard when it comes to issues such as acting in accordance with the By-Laws, Policies and Procedures, and Code of Ethics.

Mr. Sirois was expected to be fully aware of the CKC Code of Ethics. He should have known his behaviour was inappropriate, and that it was not acceptable to make derogatory comments about a member of CKC. He has not lived up to this expectation.

vi. Violation: P&PM Chapt IX Board of Directors Sect D, Subs 6(c)

Section D, Subsection 6(c) of Chapt IX of the Policies and Procedures Manual states as follows:

> *Board members, when attending any show, trial or event, whether it be in the official capacity as a Board member or otherwise, shall at all times present and conduct themselves in a manner which is becoming to that of a member of the Board.*

While there is some duplication in this provision and 1(f) above, it goes without saying that name-calling another member is not conducting oneself in a manner becoming of a member of the Board.

This is not to say that Mr. Sirois was not entitled to disagree with Mr. Pettitt, or to express his disagreement even within his capacity as a Director. He was free to do so. He was not free to engage in name-calling or personal attacks to get his point across.

3. <u>Penalty</u>

On the penalty issue, Mr. Sirois urged the Committee that, if he was found guilty, the appropriate penalty should be a reprimand, if anything. Mr. Pettitt did not speak to the issue of penalty.

The available guidance for Committee members in determining an appropriate penalty is somewhat thin. CKC elects not to publish reasons for the decisions of its Discipline Committees or Appeal Committees. Therefore, while Mr. Sirois encouraged the Committee to give weight to the recent *Muth* decision, the Committee has nothing before it on which to rely as to what the facts of that case were or the reasons for the penalty given.

At Section A, Subsection 7 of Chapt XI of the Policies and Procedures Manual, there is some guidance offered:

> *Because the circumstances and individual motives will vary considerably from case to case alleging the same violation, it is not appropriate to establish fixed penalties for specific misconduct. Nevertheless, consistency in applying penalties is important to the demand for procedural fairness and natural justice. Therefore, attached as Appendix 1 is a compilation of what appears to be the generally accepted penalty and administrative hearing costs assessed for the various offences, based on a review of the decisions for the past several years. These should be accepted as guidelines for the Discipline and Appeal Committees, as well as for the Executive Director, and significant variations from these guidelines should only be made if the circumstances warrant.*

Within Appendix A, the Disciplinary Penalty for a Violation of the Code of Ethics is termination of membership for a period of one to ten years and administrative costs up to $250.00.

The other guidelines offer little help to this case. The Committee did consider the penalties assessed against a show giving club or its representatives for subjecting an exhibitor, club member, or member of the public to an indignity, which was a reprimand and administrative costs of $400.00, although it was felt that the comment made by Mr. Sirois was more than an “indignity”.

There are a number of factors which should be considered when assessing penalty, including proportionality, consistency, deterrence, protection from future harm, remediation (or rehabilitation), and any aggravating or mitigating factors.

In this instance, the Committee was especially concerned with the issue of deterrence and protection from future harm. Mr. Sirois did not demonstrate any insight into why his behaviour was problematic. Instead, he seemed more focused on trying to find ways to avoid arguing whether or not his behaviour was appropriate than on whether his behaviour was appropriate.

Bullying is toxic. There should be no tolerance of it in any organization. This should not be an exercise of determining just how bad a comment must be before it is "too bad." There is simply no context in which it would have been appropriate for Mr. Sirois to make the comment that he did, and the logical contortions that were undertaken trying to justify his comments do not give the Committee confidence that he would not engage in such behaviour again unless the consequences for doing so were sufficiently serious to discourage him from doing so.

The penalty should be serious enough to discourage anyone from engaging in such behaviour.

It was also considered as an aggravating factor that Mr. Sirois is a Director. The policies state that he should be held to a higher standard, and he should be. He represents the Club, and he should do so with integrity. Calling a member names behind his back is not acting with integrity. Failing to acknowledge when you have acted inappropriately is not acting with integrity.

Alternatively, Mr. Sirois has no disciplinary history. This was a singular incident, not a pattern of behaviour. Such circumstances mitigate against a harsher penalty.

The Guidelines suggest that, where there is a breach of the Code of Ethics, the minimum penalty would be termination of membership for at least one year. The Committee felt that such a penalty would be too harsh. Conversely, the reprimand suggested by Mr. Sirois did not adequately reflect the seriousness of the incident.

Accordingly, the Committee determined the appropriate penalty should be a suspension of six (6) months.

On the issue of administrative costs, there is even less to guide the Committee when assessing administrative costs. Ultimately, the Committee considered that the hearing in this matter was scheduled for thirty minutes. It lasted over an hour. There was considerable work undertaken to prepare for the hearing, much of which related to the many and varied preliminary arguments raised by Mr. Sirois in an effort to avoid having the Committee determine the complaint at all. In all of the circumstances, the Committee felt that costs of 400.00 were appropriate, and to the extent that such costs are higher than those usually assessed for a breach of the Code of Ethics, it is offset by the lower penalty of a six month suspension rather than a termination of membership.

<u>Replacement Appeal Committee Reason for Decision</u>

ANALYSIS AND DECISION OF THE REPLACEMENT APPEAL COMMITTEE

After thoughtful and thorough consideration of the materials on file and the arguments presented by the parties, the Appeal Committee finds that Mr. Sirois has breached the following:

- Section 11.1 of the CKC By-laws;

- Subsection 1(c) of the Policy and Procedures Manual, Chapter IX Board of Directors, section D;
- Subsection 1(c) of the Policy and Procedures Manual, Chapter IX Board of Directors, section D; and
- Appendix 1 of the Policy and Procedures Manual, Chapter IX Board of Directors.

The Committee overturns the findings of the Discipline Committee on the following items:

- Section 7.2(a) of the CKC By-Laws, specifically, the 4th bullet point of the Code of Ethics,
- Section 9.11 of the CKC By-Laws; and
- CKC Policy and Procedures Manual, Chapter IX Board of Directors Section D, Subsection 6(c).

Keeping that background in mind, the Appeal Committee finds it helpful to set out each item that it considered as part of this appeal, the Discipline Committee's findings and the Appeal Committee's determination.

1. Section 7.2(a) of the CKC By-Laws, specifically, the 4th bullet point of the Code of Ethics

Section 7.2(a) of the By-Laws reads as follows:

> I.2. CONDITIONS OF MEMBERSHIP In order to acquire and sustain membership in the Club, all persons must agree and adhere to the following conditions:
>
> (a) That they shall abide by the Codes of Ethics, Codes of Practice, By-laws, rules, regulations, policies and procedures of the Club;

The 4th bullet point of the Code of Ethics reads as follows:

> The Canadian Kennel Club is incorporated under the Animal Pedigree Act to be responsible for the registration, preservation and promotion of all CKC recognized breeds of dogs in Canada. The Canadian Kennel Club is a national membership organization representing purebred dog activities. The Board of Directors of The Canadian Kennel Club is elected from the membership representing their regional zones and is responsible to that membership. In order to achieve the goals and objectives of The Canadian Kennel Club, its members agree to adhere to the following principles:
> ….
> • In order to preserve and enhance each breed's characteristics, The Canadian Kennel Club supports and encourages participation in shows, trials and other events. All members, whether they are exhibitors, handlers, judges or assistants will participate in such activities with honesty, fairness and integrity, ever mindful of the practice of "good sportsmanship"; Members shall not engage in any activity that might be considered malicious, threatening or constitute bullying, including but not limited to social media; [Board Motion #15-12-20]
> ….

(i) What the Discipline Committee Found

The Discipline Committee found that the Mr. Sirois calling the Mr. Pettitt a "princess" constitutes bullying and inappropriate behaviour within the meaning of the Code of Ethics. While bullying may include repeated behaviours, a single incident of sufficient seriousness can also be considered bullying. In this instance, this was a remark made by a Board member against a member of the CKC, that was either

intended to cause or should reasonably have been known to cause humiliation or other forms of harm to another individual's feelings, self-esteem and reputation. The Committee does not consider it relevant that the conversation was meant to be private; it is expected that members would conduct themselves with integrity at all times, not just when being observed by outsiders.

(ii) The Appeal Committee's Finding

The key question to be asked is whether what transpired following the Dachshund webinar on February 28, 2024 is whether Mr. Sirois' conduct constituted bullying.

The Appeal Committee accepts that the Appellant did not call the Respondent a "princess." As noted above, what the Appellant said was "…he is well known as a princess…" The Appellant states that he was simply repeating words used by a presenter and that he assumed that she had been referring to Mr. Pettitt when she made remarks. His evidence in this regard was consistent in both the original discipline hearing and in front of the Appeal Committee.

The Appeal Committee finds no evidence to suggest that Ms. Alexander's use of the term "princess" in her presentation was referring to Mr. Pettitt. It is also unable to accept the Appellant's position regarding what Ms. Alexander might have meant by the use of this term as it amounts to pure speculation. Further, the Appeal Committee notes that Ms. Alexander was not called as a witness in the original discipline hearing such that she could clarify her remarks, who she might have been referring to or why she chose the words she did.
Further, when the complete post-webinar video is viewed, it is also clear that it is Ms. Schenk who first made comments about Mr. Pettitt, followed by Ms. Weiss who introduces the discussion about the use of the term "princess" and that the Appellant responds to her. In this context, the Appeal Committee finds that it is unlikely that Mr. Sirois intended to cause harm to Mr. Pettitt by remarks that were made in response to a line of conversation that was started by two other people.

The Appeal Committee was not directed to any Canadian Kennel Club document that defined the term "bullying." In the absence of any guidance in that regard from the CKC's By-laws or other CKC documents, a commonly accepted definition of bullying must be used. The Appeal Committee accepts the Appellant's submissions in this regard: the behaviour must usually be repetitive and must be intended to cause harm to the recipient. It also accepts that in order to be considered bullying, a single incident must be egregious.

The Discipline Committee seems to rely on the fact that Mr. Sirois is a member of the Board of the Directors as being part of its rationale for finding that bullying occurred. Respectfully, Mr. Sirois' position at the time that he made his comments should not be a factor in determining whether bullying occurred: his position at the time speaks to the appropriate penalty for his conduct, not to whether his actual comments amount to bullying.

The Appeal Committee accepts that this was a single, isolated incident and that a reasonable person viewing the entire matter objectively, having reviewed both the complete post-webinar video, the surrounding context of the comments made by Ms. Alexander during the webinar, the record of the original discipline proceedings and the written and oral submissions of this appeal, would not come to the conclusion that the Respondent's conduct amounts to bullying or intimidation.

All three participants in the post-webinar discussion were behaving inappropriately however, the Appeal Committee is only tasked with assessing Mr. Sirois' conduct following the Dachshund webinar held on February 28, 2024.

The Appeal Committee finds that Mr. Sirois' comments were unprofessional, disrespectful and hurtful to Mr. Pettitt. His conduct was also unbecoming a member of the Canadian Kennel Club Board of Directors. But his conduct did not amount to bullying or intimidation.

The Appeal Committee overturns the Discipline Committee finding in this regard and dismisses this allegation.

2. Section 9.11 of the CKC By-laws

Section 9.11 of the CKC By-laws provides as follows:

> 9.11 NON-INVOLVEMENT BY BOARD 1.1 Under no circumstances should the Board of Directors as a whole, nor any individual member of the Board, entertain discussion, intervene, give direction to, attempt to influence or interfere in any way at any time with any member of the Discipline Committee, the Appeal Committee, the Registration Committee or members of staff, regarding any matter before such committees.

(i) What the Discipline Committee Found

The Discipline Committee found that Mr. Sirois was speaking to the Director of Operations, in the context of a matter that was before the Registration Committee, namely the classification of the Dachshund. Mr. Sirois' words were either intended to diminish the impact of the statement given by Mr. Pettitt during the webinar on the issue, or should reasonably have been known to have such effect.

(ii) The Appeal Committee's Finding

The Appeal Committee recognizes the inappropriateness and unprofessionalism of the Appellant's statement that clearly referred to Mr. Pettitt. However, even though the classification of the Dachshund was before the Registration Committee, having had the benefit of being able to review the complete post-webinar video and all of the evidence before it, the Appeal Committee finds that there is no evidence that the Appellant's comments constituted intervening, giving direction to, attempting to influence or interfere in any way at any time with any member of the Registration Committee regarding the matter of the classification of the Dachshund.

The Appeal Committee therefore finds that it cannot sustain the findings of the Discipline Committee concerning this allegation and dismisses it.

3. Section 11.1 of the CKC By-laws

Section 11.1 of the CKC By-laws provides as follows:

> 11.1 DUTIES OF BOARD MEMBERS Members of the Board shall act in the best interests of the Club and its members.

(i) What the Discipline Committee Found

The Discipline Committee found that Mr. Sirois did not act in the best interests of the Club when, while he was representing the Club in his capacity as a Board member, he chose to make hurtful and derogatory comments about another member.

(ii) The Appeal Committee's Finding

Based on the evidence before it, the Appeal Committee sees no reason to disturb this finding of the Discipline Committee.

4. CKC Policy and Procedures Manual, Chapter IX Board of Directors Section D, Subsection 1(c)

Section D, Subsection 1(c) reads as follows:

> D. Code of Conduct for Board Members
>
> (1) Principal Responsibilities
>
> ….
>
> (c) The Board must be seen as a corporate body, managing as a whole and collectively acting in the best interests of The Canadian Kennel Club. It is therefore imperative that all Board members continually maintain a level of mutual respect in the performance of their duties, whether those duties being performed are at the table, in their respective zones or in communication with the membership of The Canadian Kennel Club or the general public.
>
> ….

(i) What the Discipline Committee Found

The Discipline Committee found that Mr. Sirois failed to maintain a level of mutual respect when performing his duties by making hurtful and derogatory comments about another Club member.

(ii) The Appeal Committee's Finding

Based on the evidence before it, the Appeal Committee sees no reason to disturb this finding of the Discipline Committee.

5. CKC Policy and Procedures Manual, Chapter IX Board of Directors Section D, Subsection 1(f)

Section D, Subsection 1(f) reads as follows:

> D. Code of Conduct for Board Members
>
> (1) Principal Responsibilities
>
> ….
>
> (f) Upon being elected, Board members are expected to read and become familiar with the documents governing the CKC including: The Animal Pedigree Act, the CKC By-laws, the Policies and Procedures and the CKC Code of Ethics. To support in this regard, Board members are expected to fully participate and engage in the board orientation process and documents. Board members are expected to be held to the highest standards with respect to provisions within these documents.
>
> ….

(i) What the Discipline Committee Found

The Discipline Committee found that Mr. Sirois is expected to be held to the highest standards with respect to the provisions in the APA, CKC By-laws, Policies and Procedures and the Code of Ethics. Mr. Sirois failed to conduct himself in a manner consistent with the highest standards of those documents.

(ii) The Appeal Committee's Finding

Based on the evidence before it, the Appeal Committee sees no reason to disturb this finding of the Discipline Committee.

6. CKC Policy and Procedures Manual, Chapter IX Board of Directors Section D, Subsection 6(c)

Section D, Subsection 6(c) reads as follows:

> (6) Attending Shows and Events
>
> ….
>
> (c) Board members, when attending any show, trial or event, whether it be in the official capacity as a Board member or otherwise, shall at all times present and conduct themselves in a manner which is becoming to that of a member of the Board.
>
> ….

(i) What the Discipline Committee Found

The Discipline Committee found that the webinar was an event being hosted by the CKC and in which the Mr. Sirois was acting in his capacity as a member of the Board. He did not conduct himself in a becoming manner by making hurtful and derogatory comments about another member.

(ii) The Appeal Committee's Finding

While the Appeal Committee agrees that the Dachshund webinar itself was an event as contemplated in CKC Policy and Procedures Manual, Chapter IX Board of Directors Section D, Subsection 6(c), it is unable to find that the post-webinar discussion and commentary that are the subject of the matter before it constitutes an event as contemplated in subsection 6(c).

That at least one event participant remained on the live feed, observed and recorded the post-webinar discussion does not, in all of the circumstances presented in this matter, constitute attendance at an event.

7. CKC Policy and Procedures Manual, Chapter IX Board of Directors, Appendix 1

The relevant sections of Appendix 1, which concerns the role and responsibilities of CKC Board members provides as follows:

Personal Characteristics to Consider

- Possess: honesty, sensitivity to and tolerance of differing views, friendly responsive approach, zone-building skills, personal integrity, and a sense of humour.

Responsibilities

- Abide by the By-laws, code of conduct and other policies that apply to the Board.

(i) What the Discipline Committee Found

The Discipline Committee dismissed this allegation, finding that the job description is based on the expectations set out in the By-laws, Code of Ethics and Policy and Procedures Manual, but does not create a separate obligation or expectation of Mr. Sirois.

(ii) The Appeal Committee's Finding

Given that the Appeal Committee has sustained one violation of the By-laws and two violations of the Policy and Procedures Manual, it cannot be said that the Appellant was possessing personal integrity during the post-webinar conversation or that he had been abiding by the By-laws and Code of Conduct during the post-webinar conversation.

It therefore and necessarily follows that the Appellant has breached Appendix 1 of the CKC's Policy and Procedures Manual, Chapter IX Board of Directors.

I. PENALTY

The Appeal Committee has sustained the Discipline Committee's findings regarding breaches of section 11.1 of the CKC By-Laws and subsections 1(c) and 1(f) of the CKC's Policy and Procedures Manual, Chapter IX Board of Directors Section D.

It has also found that, given it's other findings, Appendix 1 of the CKC's Policy and Procedures Manual, Chapter IX Board of Directors has been breached.

A penalty has to be proportional to the conduct found to be offside.

The Appellant is a member of the CKC Board of Directors and should be held to a high standard of conduct.

The Appeal Committee recognizes that Mr. Pettitt is genuinely hurt and embarrassed by the comments made by the Appellant and by the CKC staff who participated in the post-webinar discussion. Mr. Pettitt also shared that he is fearful of further retaliatory conduct and uncertain of his ability to participate safely and confidently in further CKC activities. We hope that Mr. Pettitt will be able to find a way to continue participating in CKC events in the future.

While the Appellant admits to making the comments during the post-webinar video, the Appellant has not appropriately acknowledged the impact that his comments have had on Mr. Pettitt.

In comparison to the behaviour that resulted in a 90-day suspension imposed in the *Muth* matter, the behaviour of the Appellant in this matter is, quite simply, not comparable to the seriousness of the behaviour discussed in that matter.

This appears to be an isolated incident and while the Appeal Committee is unable to find that the impugned conduct rose to the level of bullying, it has still found that Mr. Sirois' comments following the Dachshund webinar held on February 28, 2024 were unprofessional, disrespectful and hurtful to Mr. Pettitt. His conduct was also unbecoming a member of the Canadian Kennel Club Board of Directors.

As there is no suggestion that the Appellant has breached any provision related to registration services, the Appeal Committee does not find it appropriate to restrict his activities in this regard.

After a thorough and thoughtful review of all of the information before it, and balancing all of the factors presented by both parties, the Appeal Committee finds that a termination of membership for a period of 30 days both acknowledges the hurt caused to Mr. Pettitt and the conduct of the Appellant who was a member of the CKC Board of Directors at the time of the incident.

Finally, given that multiple violations of CKC policies have been sustained, the Appeal Committee sees no reason to disturb the finding that administrative costs are assessed at $400.

I. CONCLUSION

For the reasons set out above, the Appeal Committee finds that Mr. Sirois' membership in the Canadian Kennel Club is terminated for a period of 30 days.

The Appeal Committee upholds the administrative costs assed in the amount of $400.00.