

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Sandhu v. Fraser Valley Real Estate Board*,
2025 BCCA 6

Date: 20250109
Docket: CA49062

Between:

Jasbir Sandhu

Appellant
(Petitioner)

And

Fraser Valley Real Estate Board

Respondent
(Respondent)

Before: The Honourable Madam Justice Horsman
The Honourable Justice Skolrood
The Honourable Justice Winteringham

On appeal from: An order of the Supreme Court of British Columbia, dated April 20, 2023 (*Sandhu v. Fraser Valley Real Estate Board*, 2023 BCSC 640, Vancouver Docket S224182).

Counsel for the Appellant:

R.R. Hira, K.C.
R.N.A. Hira

Counsel for the Respondent:

D.R. Bennett, K.C.
K. Smiley

Place and Date of Hearing:

Vancouver, British Columbia
September 12, 2024

Place and Date of Judgment:

Vancouver, British Columbia
January 9, 2025

Written Reasons by:

The Honourable Justice Skolrood

Concurred in by:

The Honourable Madam Justice Horsman
The Honourable Justice Winteringham

Summary:

The appellant is a member of the Fraser Valley Real Estate Board and was disciplined by the Professional Conduct Committee of that organization, which decision was subsequently upheld by the Appeal Board of the organization. He petitioned to have the decisions set aside on the basis that they were oppressive or unfairly prejudicial contrary to s. 102 of the Societies Act, S.B.C. 2015, c. 18. The judge found that the appellant's reasonable expectations had not been breached and dismissed his petition.

Held: The appeal is dismissed. The judge made no reversible error in her assessment of the appellant's reasonable expectations or the impugned decisions.

Reasons for Judgment of the Honourable Justice Skolrood:

Introduction

[1] The appellant, Jasbir Sandhu, is a licenced real estate agent and the managing broker of a real estate agency. He is also a member of the respondent Fraser Valley Real Estate Board (“FVREB”), which is a voluntary, member-based association of real estate agents who work in the Fraser Valley. The FVREB is a registered society under the *Societies Act*, S.B.C. 2015, c. 18 [the *Act*].

[2] On October 20, 2021, following a hearing, the FVREB’s Professional Conduct Committee (the “Committee”) found that Mr. Sandhu had breached the Canadian Real Estate Association Code of Conduct (“Code”) and imposed penalties (“Hearing Decision”). Mr. Sandhu appealed to the FVREB Appeal Board (“Appeal Board”) which dismissed the appeal in March 2022 (“Appeal Decision”).

[3] Mr. Sandhu then filed a petition seeking to have both the Hearing Decision and the Appeal Decision set aside on the basis that the Decisions constitute oppressive and/or unfairly prejudicial conduct contrary to s. 102 of the *Act* and were procedurally unfair.

[4] The petition was heard by Justice Iyer, then of the Supreme Court, over two days in January 2023. On April 20, 2023, Iyer J. issued her reasons (2023 BCSC 640) dismissing the petition.

[5] Mr. Sandhu now appeals to this Court. For the reasons that follow, I would dismiss the appeal.

Background

[6] In February 2016, Mr. Sandhu took a leave of absence from his real estate agency to obtain medical treatment in India. Before doing so, he arranged for a colleague, Mr. Bassi, to stand in as interim managing broker. Mr. Sandhu informed the agents in his office of his forthcoming leave and Mr. Bassi’s appointment through an in-house text message system called Touchbase. He also made an

announcement to the same effect at a regular meeting of agents about a month before he left, the minutes of which meeting were made available to everyone at the agency.

[7] Mr. Sandhu was away from the agency for about two months. During his absence, an agent at his agency, Kamal Gill, encountered difficulties in a transaction in which she represented a vendor. When the transaction did not complete, the purchaser's agent, Charandeep Dhatt, demanded that Ms. Gill personally pay him \$8,000, which she did.

[8] Ms. Gill was not aware of Mr. Sandhu's absence or that Mr. Bassi was acting as interim managing broker. She had not read the message circulated on Touchbase and had not attended the meeting at which Mr. Sandhu made his announcement. After the situation with Mr. Dhatt arose, Ms. Gill called Mr. Sandhu and reached him in India. When she called Mr. Sandhu, Ms. Gill had already paid Mr. Dhatt the \$8,000. Mr. Sandhu suggested she contact Mr. Bassi, but she did not do so.

[9] When Mr. Sandhu returned, he assisted Ms. Gill in seeking redress against Mr. Dhatt, which included filing a complaint against Mr. Dhatt with the FVREB in July 2016. He also helped Ms. Gill with filing a civil claim against Mr. Dhatt in Provincial Court. That claim was dismissed on limitation grounds. In 2020, the Committee found that Mr. Dhatt had contravened various provisions of the Code and imposed penalties against him.

[10] In May 2020, Mr. Dhatt filed a complaint with the FVREB against Ms. Gill and Mr. Sandhu. Ms. Gill ultimately reached a consent resolution, but the complaint against Mr. Sandhu proceeded to a hearing following an investigation. Mr. Sandhu was issued a Notice of Hearing which indicated that Mr. Sandhu may have failed to properly supervise Ms. Gill. The notice particularized three possible breaches, only one of which is relevant to this appeal (the other two were dismissed following the hearing):

... Mr. Jasbir Sandhu may have failed to supervise and control the activities of Ms. Kamal Gill, and other personnel for which he is responsible in that he:

...

- b) may have failed to adequately communicate his leave of absence from the office or that there was an alternative Managing Broker to communicate with during his medical leave and absence from Canada...

[11] The hearing, after being adjourned twice, was held on October 12, 2021 before a hearing panel of the Committee. Mr. Sandhu was represented by counsel. Mr. Sandhu, Mr. Bassi, and Ms. Gill all testified, and Mr. Sandhu presented a book of documents.

[12] On October 20, 2021 the Committee issued the Hearing Decision in which it found that the allegation set out above was substantiated. The Committee said in part:

... Mr. Jasbir Sandhu failed to establish clear policies regarding the access of, and communication with, the replacement Managing Broker, as well as the role and responsibilities to be undertaken by the replacement Managing Broker. While he was away on medical leave, Mr. Sandhu continued to act as Member-Link, performing some duties of the Member-Link. In proceeding in this manner, Mr. Sandhu's actions caused confusion about his purported leave of absence and the availability of an alternative Managing Broker, thus undermining the adequacy of the communication provided to the REALTORS in his Brokerage regarding his leave, as well as the replacement Managing Broker's respective role during that time. The Hearing Panel found that there was no evidence to support direction was given to office staff or to the answering service that Mr. Sandhu was away and that a replacement Managing Broker was available to them.

[13] The Committee found that Mr. Sandhu had breached the Code. It reprimanded him, issued a letter of caution, and ordered him to pay \$3,647.47, which was one-third of the hearing costs.

[14] Mr. Sandhu filed an appeal in accordance with the FVREB bylaws. His appeal was heard on March 17, 2022 by the Appeal Board comprised of seven members of the FVREB. Mr. Sandhu's appeal was dismissed, and the penalty imposed was varied to require Mr. Sandhu to attend an education course for managing brokers. Mr. Sandhu was also ordered to pay appeal costs of \$9,369.33. No reasons were

given but the Appeal Decision was recorded in minutes dated March 23 and 24, 2022 and Mr. Sandhu was advised of the decision on March 25, 2022.

The Petition

[15] Mr. Sandhu filed his petition on May 24, 2022 seeking to set aside both the Hearing Decision and the Appeal Decision. As noted above, he alleged that the Decisions breached his reasonable expectations and constituted oppressive and/or unfairly prejudicial treatment contrary to s. 102 of the *Act*. He also alleged that they were procedurally unfair.

[16] At para. 37 of her reasons, the judge set out the reasonable expectations alleged by Mr. Sandhu that he claims were breached:

- a. If he provided evidence to meet the allegations against him, he would be cleared of any wrongdoing as alleged;
- b. The [FVREB] would act in accordance with its Constitution, Bylaws, Code and Standards;
- c. The [FVREB] would act in good faith in exercising its decision-making authority; and
- d. That if his appeal was dismissed and further penalties were imposed, reasons for dismissing the appeal would follow.

[17] In terms of procedural fairness, Mr. Sandhu argued that the FVREB failed to give him adequate notice under s. 70(3)(a) of the *Act* because the Notice of Hearing did not provide sufficient details of the allegations against him.

[18] With respect to the first and second expectations, the judge found that it was reasonable for Mr. Sandhu to expect that the Committee and Appeal Board would comply with the Constitution and Bylaws of the FVREB and that those bodies would make their decisions based on the evidence before them. However, she rejected the notion that Mr. Sandhu had a reasonable expectation about a particular outcome: at paras. 44–45.

[19] The judge then found that it was a reasonable expectation that the Committee and Appeal Board would act in good faith. Finally, given that the Bylaws expressly

state that the Appeal Board is not required to give reasons, she found that Mr. Sandhu's fourth identified expectation was not established: at paras. 46–47.

[20] A central element of Mr. Sandhu's claim that his reasonable expectations were breached was his complaint that he received inadequate notice that an issue would be made about policies concerning communications with office staff. He argued that, had he been so aware, he would have led evidence on that issue.

[21] The judge rejected this argument, noting that the description of the relevant allegation set out in the notice of hearing referred to a failure to adequately communicate his leave of absence from the office. According to the judge:

[51] This allegation informed Mr. Sandhu that the adequacy of his communications about his leave and Mr. Bassi's availability and role were in issue. Reasonably interpreted, it told him that the Committee was interested in what he did or did not communicate about his absence and Mr. Bassi's role, and with whom he did or did not communicate. It was up to Mr. Sandhu and his counsel to decide what evidence to tender on those topics. The fact that Mr. Sandhu did not tender evidence about policies or what, if anything, was said to office staff and the answering service was [*sic*] is not attributable to any defect in the notice he was given.

[22] Next, Mr. Sandhu argued that his reasonable expectations were breached because the two decisions were not based on the evidence. In considering this issue, the judge distinguished between a decision based on no evidence, which may amount to a breach of reasonable expectations, and a decision based on some limited evidence. The judge observed that the latter amounts to a non-reviewable disagreement about an outcome: at para. 54. In the judge's view, there was evidence before the Committee about what and when Mr. Sandhu communicated his absence to staff and Mr. Bassi's role. However, on the basis of this evidence the Committee found that those communications were insufficient to comply with the requirements of Article 22 of the Code. The judge also pointed to other evidence before the Committee that indicated there was confusion about Mr. Sandhu's role during his absence. In the circumstances, the judge was satisfied that the Committee's decision was based on evidence before it, thus Mr. Sandhu's reasonable expectation was not breached: at para. 56.

[23] The judge then turned to Mr. Sandhu's argument that the process was procedurally unfair, largely because of the time it took for the complaint to be dealt with following the original events giving rise to the complaint in 2016. The judge observed (at para. 42) that Mr. Sandhu's concerns about delay were not rooted in the Constitution and Bylaws of the FVREB thus he had no reasonable expectation about time limits for addressing complaints. The judge therefore addressed the delay issue under the common law principles of procedural fairness.

[24] The judge noted that the delay between the occurrence of the original events and the proceedings in the case was largely due to the gap in time before Mr. Dhatt filed his complaint against Mr. Sandhu in May of 2020, rather than in the period when the Committee was involved. She noted that Mr. Sandhu did not take the position before the Committee that it could not hear the complaint due to the passage of time. Nor did he take the position before the judge that the proceeding should be stayed, which the judge observed is the appropriate remedy for delay-caused abuse of process. The judge found that Mr. Sandhu had not established an evidentiary basis to support a finding that the proceeding was procedurally unfair due to delay: at para. 70.

Issues on Appeal

[25] On appeal, Mr. Sandhu alleges that the judge erred in four ways:

- a) in failing to find that the FVREB engaged in oppressive conduct contrary to Mr. Sandhu's reasonable expectations pursuant to s. 102 of the *Act*;
- b) in failing to find that the notice provided to Mr. Sandhu was inadequate pursuant to s. 105 of the *Act*;
- c) in misapprehending the evidence and failing to provide adequate reasons;
and
- d) in misinterpreting the onus of proof in the initial professional conduct hearing.

Legal Framework

[26] Mr. Sandhu sought relief principally under s. 102 of the *Act*, which provides in part:

Complaints by members

- 102** (1) A member of a society may apply to the court for an order under this section on the grounds that
- (a) the activities or internal affairs of the society are being or were conducted, or the powers of the directors are being or were exercised, in a manner oppressive to the member or to the member and one or more other members, or
 - (b) an act of the society was done or is threatened, or a resolution of the members or directors was passed or is proposed, that is unfairly prejudicial to the member or to the member and one or more other members.

[27] Section 102(2) identifies a wide range of remedies available to the court to address the matters complained of, including directing or prohibiting any act, regulating the conduct of the society’s activities or internal affairs and directing the society to compensate an aggrieved person.

[28] Section 105 is relevant to Mr. Sandhu’s complaint about the adequacy of the notice he was given:

Court may remedy irregularities

- 105** (1) This section applies if an omission, defect, error or irregularity in the conduct of the activities or internal affairs of a society results in
- (a) a contravention of this Act or the regulations,
...
 - (2) Despite any other provision of this Act, if an omission, defect, error or irregularity described in subsection (1) occurs,
 - (a) the court may, either on its own motion or on the application of a person whom the court considers to be an appropriate person to make an application under this section, make an order

- (i) to correct or cause to be corrected, or to negative or modify or cause to be modified, the consequences in law of the omission, defect, error or irregularity, or
- (ii) to validate an act, matter or thing rendered or alleged to have been rendered invalid by or as a result of the omission, defect, error or irregularity, and
- (b) the court may make any ancillary or consequential orders it considers appropriate.

[29] Mr. Sandhu invokes s. 105 in respect of an alleged breach of s. 70(3)(a) of the *Act*:

Discipline and expulsion of member

- 70 (1) The bylaws of a society may provide for the discipline or expulsion, or both, of members.
- (2) Unless the bylaws provide otherwise, a member of a society may be disciplined or expelled by special resolution.
 - (3) Before a member of a society is disciplined or expelled under subsection (2) or the bylaws, the society must
 - (a) send to the member written notice of the proposed discipline or expulsion, including reasons...

[30] In considering the proper analysis required of a judge on an application such as that brought by Mr. Sandhu, it is important to understand the nature of the exercise the judge is engaged in. The judge is not sitting on appeal from the society's decision nor is the judge conducting an administrative judicial review. Societies are not statutory bodies; they are typically private entities and the relationship with their members, and the parties' respective rights and responsibilities, are contractual in nature.

[31] The nature of this relationship was described in *Redekop v. Okanagan Mainline Real Estate Board*, 2017 BCSC 417 ("*Redekop SC*"), aff'd 2018 BCCA 226 ("*Redekop CA*"), which has some factual similarities to the present case.

Mr. Redekop was a realtor who was disciplined by the respondent board following a

complaint brought by another realtor member. Mr. Redekop sought to challenge the disciplinary decision as well as the board's regulations that authorized the disciplinary process. The case pre-dates the addition of s. 102 to the *Act*, so Mr. Redekop was required to bring an action against the board for breach of contract by way of a notice of civil claim.

[32] In this Court, Justice Harris summarized the principles governing the review of a discipline hearing conducted under the rules of a voluntary association:

[4] ... a member of such an association is entitled to adequate notice of allegations against him or her, a fair opportunity to respond to them, and an unbiased tribunal to adjudicate them: *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165 [*Lakeside*] at 175. These entitlements arise as a matter of contract between all members of the association, including the person subject to the discipline process. Members of an association, by joining it, agree to be bound by the association's rules governing its internal procedures.

[33] Courts have long taken a cautionary approach to interfering in the internal affairs of voluntary associations. See for example: *Bains v. Khalsa Diwan Society of Abbotsford*, 2021 BCCA 159 at para. 41 [*Bains*]; *Bajwa v. BC Liberal Party*, 2022 BCSC 194 at para. 43; and *Gowing v. Mayne Island Community Centre Society*, 2023 BCSC 1286 at para. 20.

[34] In *Redekop SC*, Justice Hyslop noted that the merits of a society's decision are not reviewable, citing *Lakeside* at para. 10.

[35] The scope of review that the Court may engage in changed with the addition of s. 102 under the new *Act* in 2016. That provision provides members of a society with remedies for oppressive conduct similar to those that have traditionally been available to corporate shareholders.

[36] The principles governing the interpretation and application of s. 102 were discussed by this Court in *Surrey Knights Junior Hockey v. The Pacific Junior Hockey League*, 2020 BCCA 348. There, Justice Fisher endorsed the analysis of Justice Brundrett in *Dalpadado v. North Bend Land Society*, 2018 BCSC 835 at para. 97 where he held that the test for oppression under s. 102 was similar to the

test developed by the Supreme Court of Canada in *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 for oppression in the corporate context.

[37] Justice Fisher summarized those principles at para. 116:

- section 102 gives a court a broad discretion to grant an equitable remedy to enforce what is not just legal, but fair;
- the inquiry into oppressive or unfairly prejudicial conduct is fact-specific and assessed on the basis of the reasonable expectations of the applicant member in the context of the relationships at play;
- factors relevant to determining reasonable expectations include the size, nature and structure of the society, the general practice in the business of the society, the relationship between the parties, past practice, steps the applicant could have taken to protect itself, representations and agreements made, and the fair resolution of conflicting interests between the society and its members;
- the applicant must establish harm to its peculiar legal or proprietary interests, distinct from the interests of other members: see *Jaguar Financial Corporation* at para. 179;
- if the applicant establishes a breach of reasonable expectations, the court must then determine whether the conduct complained of amounts to oppression or unfair prejudice; and
- while oppression connotes more serious conduct than unfair prejudice, bad faith need not be shown, as it is the effect rather than the subjective intent behind the impugned conduct that is key to a finding of oppression: see *Icahn Partners LP v. Lions Gate Entertainment Corp.*, 2011 BCCA 228 at para. 71; and *Wilson v. Alharayeri* at paras. 41–42.

[38] The analysis turns in large part on the reasonable expectations of the society member and whether those expectations have been breached by oppressive or unfairly prejudicial conduct of the society. Justice Fisher confirmed in *Surrey Knights* that a finding of reasonable expectations is a finding of fact, whereas a finding of oppression or unfair prejudice is a finding of mixed fact and law. Both are reviewable by this Court on the deferential standard of palpable and overriding error. The choice of remedies involves the exercise of discretion, which is also subject to deferential review unless based on errors of law, erroneous principles, irrelevant considerations, or they are unjust: at para. 67.

[39] I would add that while s. 102 expands the grounds on which the court may grant a remedy to the member of a society, it does not in my view demand a departure from the cautionary approach historically taken by the courts to interfering in the affairs of voluntary associations.

Did the Judge Err in Failing to Find that the FVREB Engaged in Oppressive or Unfairly Prejudicial Conduct?

[40] This is the central issue on appeal which is encompassed by the errors alleged at paras. 25 (a) and (c) above. I will address this issue first and then turn to the question of adequate notice.

[41] The main thrust of Mr. Sandhu’s argument is that there was no evidence to support the Committee’s finding that he failed to establish policies and clearly communicate about his absence. Thus, says Mr. Sandhu, his reasonable expectation that the Committee’s decision would be based on evidence was breached.

[42] Mr. Sandhu takes particular issue with the judge’s analysis of the sufficiency of the evidence before her and the distinction drawn between circumstances in which there is no evidence versus where there is some limited evidence supporting a decision:

[54] If there was no evidence to support the Committee’s conclusion, the FVREB would be in breach of Mr. Sandhu’s reasonable expectation that the Committee would decide the complaint based on the evidence before it. However, it is important to distinguish between a decision that is based on no evidence and a decision that is based on limited evidence. The former is contrary to the reasonable expectation that a decision-maker will decide based on the evidence before it. The latter is a non-reviewable disagreement about an outcome.

[Emphasis in original.]

[43] Mr. Sandhu submits that this passage reflects an error in principle in that it suggests the judge improperly applied a “no evidence” standard in reviewing the Committee’s decision. As stated in his factum (at para. 35): “It cannot be that a single iota of evidence renders a decision within the realm of reasonable expectations”.

[44] I agree that it would be an error in principle for a judge hearing an application under s. 102 of the *Act* to restrict their consideration to whether there was any evidence to support a decision of a society. That is particularly so where, as here, the reasonable expectation of the society member is that any decision concerning possible disciplinary measures would be based on the evidence before the disciplinary body. In these circumstances, the question for the judge is whether the society's decision can reasonably be supported on the evidence as a whole.

[45] In my view, despite the judge's discussion of no evidence versus limited evidence at para. 54 of her reasons, she was satisfied that the Committee's decision was in fact based on the evidence before it concerning what was communicated by Mr. Sandhu about his absence and the role of Mr. Bassi. This is clear from her analysis and findings at paras. 55–56. Of particular note, the judge found that the Committee had accepted Mr. Sandhu's evidence but concluded that it was insufficient to establish compliance with Article 22 of the Code.

[46] Mr. Sandhu effectively argues that the judge should have conducted her own analysis and weighing of the evidence to determine whether, in her view, the complaint was made out. Respectfully, that was not the role of the judge. Again, on review under s. 102 of the *Act*, having found that Mr. Sandhu had a reasonable expectation that the committee's decision would be based on the evidence, the judge was only required to consider whether the committee's decision could reasonably be supported on the evidence. To go beyond that would, in my view, amount to an impermissible intrusion into the affairs of the society.

[47] Before concluding on this issue, I will address Mr. Sandhu's arguments that the judge misapprehended the evidence, gave insufficient reasons, and erred in finding that there was no abuse of process by reason of delay. None of these arguments have merit.

[48] The misapprehension of evidence argument is simply another way of saying that the judge should have come to a different conclusion. However, Mr. Sandhu has not demonstrated any palpable and overriding error in the judge's factual findings.

The judge set out and considered the evidence before the committee, and the evidence before her. Mr. Sandhu may disagree with the conclusions she reached, but there is no basis to his claim that the judge misapprehended the evidence.

[49] In terms of the sufficiency of the judge’s reasons, the Supreme Court of Canada has held that the objective of proper reasons for judgment is:

- (1) To justify and explain the result;
- (2) To tell the losing party why he or she lost;
- (3) To provide for informed consideration of the grounds of appeal; and
- (4) To satisfy the public that justice has been done.

(*R. v. Walker*, 2008 SCC 34 at para. 19; see also *Shannon v. Shannon*, 2011 BCCA 397 at para. 6).

[50] The Supreme Court has also held that reasons for judgment must be both factually and legally sufficient. Factual sufficiency is concerned with what the judge decided and why, whereas legal sufficiency requires that the aggrieved party must be able to meaningfully exercise their right of appeal: *R. v. G.F.*, 2021 SCC 20 at paras. 71–74.

[51] Mr. Sandhu submits that the judge’s reasons do not respond to the live issues, fail to grapple with the evidence, fail to demonstrate the reasoning process that led to her conclusion, and do not permit meaningful appellate review.

[52] While the judge’s reasons are relatively brief, they do not in my view suffer from the flaws alleged by Mr. Sandhu. The judge properly recognized that the focus of her analysis was on Mr. Sandhu’s reasonable expectations and whether those expectations were breached by oppressive or unfairly prejudicial conduct. Central to that analysis was the adequacy of Mr. Sandhu’s communications concerning his absence. As discussed above, I am satisfied that the judge properly addressed the evidence led before the Committee on that issue and came to a reasoned conclusion. Again, Mr. Sandhu’s arguments are largely directed at urging this Court to come to a different conclusion, without demonstrating any error on the judge’s

part. Mr. Sandhu has not established that the judge's reasoning is indiscernible such that meaningful appellate review is not possible.

[53] Mr. Sandhu's abuse of process argument largely repeats his complaints about the judge's treatment of the evidence and the alleged onus reversal. I have addressed the former point above, and address the latter below, but I reject both. Otherwise, Mr. Sandhu's argument seems to rest on the position that the proceeding was unfair due to the passage of time between the original events surrounding his leave of absence and the date of the hearing. He argues in particular that certain evidence was no longer available at the time of the hearing.

[54] As the judge noted, the bulk of that time passed before Mr. Dhatt filed his complaint in 2020, during which the Board had no basis to conduct a hearing into Mr. Sandhu's conduct. As the judge observed, when a hearing was subsequently convened, Mr. Sandhu did not raise delay as a bar to proceeding: at para. 60. Nor did his petition filed in the Supreme Court allege abuse of process.

[55] Indeed, as the judge also noted, Mr. Sandhu raised the issue of delay before her as part of his argument that his reasonable expectations were breached: at para. 65. However, the judge found that because the FVREB's Constitution and Bylaws did not set out timelines for the filing and processing of complaints, Mr. Sandhu did not have a reasonable expectation that Mr. Dhatt's complaint would be considered in any particular time frame.

[56] That was sufficient to dispose of the delay issue, keeping in mind that Mr. Sandhu's petition alleged oppressive and/or unfairly prejudicial conduct breaching his reasonable expectations. In my respectful view, it was an error for the judge to then go on and consider Mr. Sandhu's delay complaint under the common law principles of procedural fairness.

[57] In *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall*, 2018 SCC 26, the Supreme Court of Canada held that there is no free-standing right to have the decisions of private voluntary associations reviewed on

procedural fairness grounds (at paras. 2, 24). The jurisdiction of the courts to intervene in the affairs of such organizations must be grounded in an existing legal right (at para. 26). Here, the legal right advanced by Mr. Sandhu is based on his alleged reasonable expectations which are addressed through the statutory mechanism set out in s. 102 of the *Act*. Once the judge found that Mr. Sandhu had no reasonable expectation to ground his delay complaint, that was the end of the analysis.

Did the Judge Err in Finding That Mr. Sandhu Was Given Adequate Notice?

[58] Mr. Sandhu submits that the judge erred in finding that his reasonable expectation of receiving proper notice of the case he had to meet was not breached. As part of his argument on this point, Mr. Sandhu submits that the judge effectively reversed the onus by requiring him to disprove the allegations made against him rather than considering whether the Board had proven them.

[59] As I understand Mr. Sandhu's argument, he says that he was invited to present evidence in response to the complaint against him. The particular complaint in issue alleged that Mr. Sandhu "may have failed to adequately communicate" information concerning his leave of absence and the role of the alternate managing broker in his absence.

[60] The Hearing Panel found that Mr. Sandhu had "failed to establish clear policies" relating to the role of the alternate managing broker and that there was no evidence of directions given to office staff or the agency answering service in connection with Mr. Sandhu's absence.

[61] Mr. Sandhu submits that issues pertaining to policies and directions to office staff and the answering service did not form part of the complaint notice he was given. He argues that it was therefore improper for the Hearing Panel, and the judge, to rely on the absence of such evidence to support the finding of misconduct. It is in this respect that Mr. Sandhu argues that the onus was reversed. Mr. Sandhu argues in his factum that the burden is not on him to "anticipate every single permutation of

issue that could be raised and present a defence to the infinite and unknown matters that could possibly relate to the notice.”

[62] In *Bains*, Justice Voith described the elements of proper notice under s. 70 of the *Act*, in the context of a challenge to a society’s decision to expel a member:

[46] There are, then, at least three distinct elements to the requirement for adequate notice. First, a member is entitled to timely notice of the meeting or hearing where their conduct is to be discussed. Second, the notice must identify that the potential expulsion of the member is at issue. Third, that notice should contain some description of the factual basis or concern that pertains to the behaviour or conduct of the member.

[63] In my view, these three elements apply with equal force to a proposed disciplinary decision short of expulsion.

[64] The central issue before the judge largely concerned the third element: did the Notice of Hearing adequately identify the basis of the complaint and the conduct of Mr. Sandhu that was in issue? The judge found that it did for the reasons set out at para. 51 of her reasons for judgment. In my respectful view, Mr. Sandhu has not demonstrated any reviewable error in the judge’s finding.

[65] As the judge noted, the adequacy of Mr. Sandhu’s communication was squarely raised by the Notice which, reasonably interpreted, informed Mr. Sandhu that the Committee’s focus was on what was or was not communicated about his absence and Mr. Bassi’s role as alternate Managing Broker. In my view, the Notice met the requirement articulated in *Bains* of setting out some description of the factual basis or concern underpinning the complaint: at para. 41.

[66] Mr. Sandhu’s position seems to suggest that, in addition to identifying the factual basis, the Notice should have alerted him to the types of evidence that he should lead to address the concern raised in the complaint. In my view, as observed by Voith J.A. in *Bains*, this would “impose an unrealistic standard for adequacy of notice in light of the context in which this case arises”: at para. 65.

[67] I agree with the judge that it was for Mr. Sandhu to determine what evidence he wished to lead in order to address that issue and that the failure to adduce evidence of relevant policies or specific communications was not attributable to any defect in the Notice: at para. 51.

[68] For these reasons, I would not accede to this ground of appeal.

Conclusion

[69] I would dismiss the appeal.

“The Honourable Justice Skolrood”

I AGREE:

“The Honourable Madam Justice Horsman”

I AGREE:

“The Honourable Justice Winteringham”