# In the Court of Appeal of Alberta

**Citation: Sunray Manufacturing Inc v Alberta, 2025 ABCA 131**

**Date:** 20250415
**Docket:** 2403-0073AC
**Registry:** Edmonton



**Between:**

**Sunray Manufacturing Inc**

Appellant

- and -

**His Majesty the King in the right of Alberta, Minister of Justice & Solicitor General, Minister of Service Alberta, Director of Fair Trading, the Appeal Board Appointed Pursuant to the *Consumer Protection Act*, Appeal Board Regulation, Alta Reg 195/1999**

Respondents

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**The Court:**

**The Honourable Justice Jack Watson**
**The Honourable Justice William T. de Wit**
**The Honourable Justice Alice Woolley**

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**Memorandum of Judgment**

Appeal from the Decision by
The Honourable Justice L.K. Harris
Filed the 8th day of March, 2024
(2024 ABKB 130, Docket: 2203 01695)

## Memorandum of Judgment



**The Court:**

[1] The appellant challenges a decision of a chambers judge which upheld a decision of an Appeal Board reviewing the order of the Director of Fair Trading that found the appellant had contravened the *Consumer Protection Act*, RSA 2000, c C-26.3 (*CPA*) and directing that the appellant cease certain unfair trading practices under section 157 of the *CPA*. The business transaction at the centre of the dispute was the purchase and sale of a hot tub with associated features.

[2] The chambers judge found that the Appeal Board and the Director had jurisdiction to deal with the matter as an "unfair practice" regarding a "consumer transaction" under section 5 of the *CPA*, referring to the definition of a "consumer transaction" within section 1(c) of the *CPA*. Section 1(c), in turn, defines a "consumer transaction" to cover the supply or agreement to supply "goods or services". The Board's role as a *de novo* decider arises under section 179 of the *CPA* and brings into play section 13 of the *Appeal Board Regulation*, Alta Reg 195/99 as to appeal procedures.

[3] The chambers judge's role exists under section 181 of the *CPA*. Section 181 is an appeal provision engaging the traditional standards of review for appeals: see ***eg International Air Transport Association v Canada (Transportation Agency)***, 2024 SCC 30 at paras 25-26, 496 DLR (4th) 385; ***Law Society of Saskatchewan v Abrametz***, 2022 SCC 29 at paras 27-28, 470 DLR (4th) 328; ***Canada (Minister of Citizenship and Immigration) v Vavilov***, 2019 SCC 65 at paras 33, 36-52 and 65-67, [2019] 4 SCR 653. The right of appeal under section 181 of the *CPA* is not limited to a 'question of law or jurisdiction' as arises in many statutes.

[4] The effect of the foregoing is that the standards of review applicable to the function performed by the chambers judge was correctness on questions of law and palpable and overriding error on questions of fact and questions of mixed fact and law, absent, in the latter regard, of an extricable question of law or a question of constitutional dimensions demanding a single answer: compare ***Housen v Nikolaisen***, 2002 SCC 33 at para 8, [2002] 2 SCR 235; ***International Air Transport Association*** at paras 25-26; and ***Société des casinos du Québec inc. v Association des cadres de la Société des casinos du Québec***, 2024 SCC 13 at paras 45 and 92-96, 491 DLR (4th) 385.

[5] The first of five grounds raised by the appellant before the chambers judge asserted that the majority of the Appeal Board erred "in determining that the Respondents have jurisdiction over this matter". The second to fourth grounds of appeal argued before the chambers judge challenged the Appeal Board's findings of unfair practices under sections 6(2)(c), 6(3)(c) and 6(3)(d) and

6(4)(n) of the *CPA.* The fifth ground of appeal asserted that "procedural fairness" was not given to the appellant during the hearing of November 3, 2021, before the Appeal Board.

[6] The chambers judge rejected the first ground of appeal on the basis that the hot tub and its accoutrements was not a "fixture" to land, and even if it were, such fixture is not excluded from the coverage of "goods and services". We agree with the conclusion of the chambers judge but see the matter more simply. When the consumer transaction was entered into, the consumer was not buying something already 'fixed' to the land. The consumer was buying something that could be delivered on a truck to a location where it might or might not be fixed to the land. The hot tub in question was a "good" at the time of the transaction and its delivery would be a "service". The suggestion that this was not a "consumer transaction" and was excluded from the consumer protection objectives of the *CPA* has no merit. This conclusion is supported by the language of section 2.1 of the *CPA*, as the chambers judge noted. This is not a close call.

[7] The second to fourth grounds of appeal raise questions as to whether on the facts the specified provisions of the *CPA* were engaged. Palpable and overriding error was the review standard and the chambers judge made no error in finding that the grounds relating to section 6(3)(c) and section 6(4)(n) of the *CPA* were not made out. We need not rehearse the reasons of the chambers judge on these points. In sum, we agree with her conclusions.

[8] The chambers judge did find error by the Appeal Board as to the invocation of section 6(2)(c) of the *CPA* and quashed that finding by the Board. The respondents did not cross-appeal from that element of the decision of the chambers judge. Consequently, we need not say anything about it except to observe that the chambers judge did not make a legal decision of precedential import and was only dealing with the facts before her as to that provision of the *CPA*.

[9] The final ground of appeal concerned whether the process before the Appeal Board denied the procedural fairness to which, in this specialized context, the appellant was entitled to get. The appellant set out five different complaints. We affirm the chambers judge's reliance on ***AltaLink Management Ltd v Alberta Utilities Commission***, 2023 ABCA 325 at paras 35-38, 66 Alta LR (7th) 212 as appropriate in this review.

[10] The chambers judge, at para 105 of her reasons, opined that the hearing before the Appeal Board was "close to a judicial process" and had potential impacts of significance. The broad flexibility of the Appeal Board as to reception of evidence and procedure as was given by the Legislature has self-evident purposes of efficiency and simplicity without the strictures of the court system, but exclusion of fair hearing was not one of them. Nor could it be.

[11] That said, the reasons of the chambers judge at paras 117 to 123 of her decision dispose of the first four fairness complaints and we discern no error in those reasons. We agree with her that it should not be that an Appeal Board member should lose composure during such an appeal. But the argument before the chambers judge was only, according to the appellant's counsel on appeal, that "at a certain point, you know, in my submissions the questioning was fairly aggressive". This Court relies upon the characterization by the chambers judge that the oral hearing followed by written submissions was fair and there was not adjudicative prejudice in what happened. We also observe that the phenomenon of interrupted proceedings over the internet seems to be a fact of life nowadays, but it is not automatic that such deficiencies in communication necessarily destroy the essence of the proceedings.

[12] The appellant's counsel's factum escalates the complaint about fairness by asserting that "[t]he tribunal's argumentative questions definitely show that its members may have been biased against Sunray": [AF para 70]. The appellant's counsel's submissions, at para 77, include an assertion that:

> … The Director's decision to issue the Order is of great importance to Mr. Roberts, his family, and Sun Ray's employees. The issuance of the Order and subsequent loss of reputation affects their lives. Sun Ray, through no fault of its own, has faced challenges and this Order further exacerbates these challenges by hindering its ability to operate successfully. Given these circumstances, a higher degree of procedural fairness must be afforded.

It was not clear what counsel meant by referring to a "higher degree of procedural fairness" in the factum or the oral hearing of this appeal.

[13] Relatedly, the appellant contends that the handling of the case by the Appeal Board majority raised a reasonable apprehension of bias. Claims of reasonable apprehension of bias require specificity and substantiation by more than what this Court has been given -- which essentially are comprised of subjective inferences by the appellant.

[14] It is long established that reasonable apprehension of bias is not made out by subjective impressions of an unsuccessful party (or disbelieved party) but rather is an objective standard with a high burden of proof: ***Committee for Justice and Liberty et al v National Energy Board et al***, [1978] 1 SCR 369; ***Cojocaru v British Columbia Women's Hospital and Health Centre***, 2013 SCC 30 at para 22, [2013] 2 SCR 357 and ***Yukon Francophone School Board, Education Area #23 v Yukon (Attorney General)***, 2015 SCC 25 at paras 20-26, [2015] 2 SCR 282. Impugned comments during a hearing must be considered in the whole context. The Appeal Board here divided so, clearly, the Appeal Board understood the case advanced by the appellant. The appellant

was not entitled to a result that was favorable. It was entitled to a process that was fair having regard to "the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth": ***Russell v Duke of Norfolk***, [1949] 1 All ER 109 at p 118, cited in ***Committee for Justice***, at para 46. The fairness of the process is not assessed as related to the "very sensitive or scrupulous conscience": ***Committee for Justice*** at para 44.

[15] Questions being posed or statements being made by members of a decider tribunal *during* a hearing do not, by themselves and automatically, make the hearing unfair. Deciders are not considered fair only if they are as inscrutable as a sphinx: ***R v Brouillard***, [1985] 1 SCR 39, 16 DLR (4th) 447 at para 17; ***Yukon Francophone School Board*** at para 27. Questions during a hearing are not an unusual phenomenon nor proof of bias even if they might reflect the formation of a preliminary view of the matter: compare ***Emmons v Alberta (Workers' Compensation Board)***, 2024 ABCA 78 at para 26, [2024] AJ No 249 (QL), leave denied [2024] SCCA No 270 (QL) (SCC No 41263). It all depends on the circumstances taken as a whole, which was a question for the chambers judge. We are not persuaded that the chambers judge erred in rejecting the arguments of process unfairness and reasonable apprehension of bias.

[16] The last fairness point raised for the appellant concerns the sufficiency of the reasons of the Appeal Board. Challenges to the intelligibility, reviewability and accountability of reasons involve assessment of whether the reasons are functionally sufficient. That a lay Board's reasoning might be less than eloquent or immaculately articulate may reveal that the decision is unreasonable in whole or in part. But deficiencies in clarity are not, *per se*, a question of fairness or of law inviting review for correctness. As pointed out in ***Vavilov*** at paras 304-313, as the deferential approach as to evaluation of reasons:

> … puts substance over form in situations where the basis for a decision by a specialized administrative actor is evident on the record, but not clearly expressed in written reasons. Quashing decisions in such circumstances defeats the purpose of deference and thwarts access to justice by wasting administrative and judicial resources. [at para 304]

***Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association,*** 2011 SCC 61 at paras 48-55 and 56-72, [2011] 3 SCR 654 provide an example of this. There, this Court and the Supreme Court discussed "implicit" decisions and noted that the fact that reasons given required the appeal or review court to import content from elsewhere in the record to complete the appeal or review evaluation did not necessarily mean the decision falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law": ***Dunsmuir v New Brunswick***, 2008 SCC 9 at para 47, [2008] 1 SCR 190.

[17] We agree with the chambers judge that one can sift the lengthy reasons of the Appeal Board, despite their imperfections, and reach a conclusion that the analysis and conclusions were within the margin of appreciation given to such an Appeal Board by the Legislature, except in the one respect mentioned by the chambers judge as noted above.

[18] In the end, we are satisfied that the reasoning and the conclusion of the chambers judge was sound. The appeal is dismissed with costs consistent with those imposed by the chambers judge.

Appeal heard on April 10, 2025

Memorandum filed at Edmonton, Alberta
this 15th day of April, 2025

Watson J.A.

de Wit J.A.

Woolley J.A.

**Appearances:**

C.M. Floden
for the Appellant

S.A. Meenai
for the Respondents