

# Court of King's Bench of Alberta

**Citation: Stacey's Happy Place v Alberta Health Services, 2025 ABKB 279**

**Date:** 20250407  
**Docket:** 2210 01214  
**Registry:** Red Deer

2025 ABKB 279 (CanLII)

Between:

**2248870 Alberta Ltd., operating as "Stacey's Happy Place"**

Applicant

- and -

**Alberta Health Services and Public Health Appeal Board**

Respondents

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**Memorandum of Decision  
of the  
Honourable Justice Bonnie L. Bokenfohr**

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## **I. Introduction**

[1] 2248870 Alberta Ltd. operating as "Stacey's Happy Place" (the Applicant) is a small family run business that sells books, prepackaged snacks, and beverages. The Applicant has a food handling permit issued by Alberta Health Services (AHS) to sell snacks and beverages.

[2] A public health emergency was declared in the Province of Alberta on March 17, 2020. The Chief Medical Officer of Health (CMOH) issued several orders pursuant to the *Public Health Act*, RSA 2000, c P-37 (*PHA* or the Act) that imposed restrictions on individuals and businesses. AHS was responsible for enforcing the CMOH orders. In October 2021, the CMOH orders included masking requirements, physical distancing requirements, and restrictions on providing indoor food and beverage services.

[3] On October 15, 2021, AHS issued to the Applicant a Food Handling Permit Notice of Suspension (Suspension Order) and an Order of an Executive Officer Notice of Defined Closure (Closure Order). The Applicant appealed both Orders to the Public Health Appeal Board (the Board or PHAB). The Board confirmed both Orders: PHAB Appeal No.:18-2021.

[4] The Applicant brings this application for judicial review of the Board decision seeking a declaration that the decision was unreasonable and reached in a manner that was procedurally unfair.

[5] For the reasons set out below I find that the decision of the Board was unreasonable. Although typically a re-hearing would be ordered following this finding, in these circumstances the Court will decline to exercise its discretion to remit the matter back for re-hearing. The Applicant is no longer subject to the Orders at issue and a re-hearing is not an efficient use of scarce public resources.

## II. Background

[6] CMOH orders 44-2021, 45-2021, and 46-2021 are relevant to this matter. These CMOH Orders required that:

- Masks be worn in public indoor spaces;
- Any medical exception to masking had to be proven with an exemption letter completed by a health professional;
- Social distancing of two meters was required between individuals not part of the same household unit; and
- Indoor dining was prohibited unless a business verified its patron's vaccination status or negative COVID test result prior to serving them.

[7] AHS was responsible for enforcing the CMOH orders. By the beginning of October 2021 AHS had taken a number of enforcement actions against the Applicant and the Applicant had unsuccessfully appealed those actions to the Board. As well, by early October 2021 one of the Applicant's owners was facing prosecution for offences under the *PHA*.

[8] The Applicant and its owners had advised AHS that they did not want the specific Inspector (Inspector) and Manager (Manager) that were going to be witnesses in the *PHA* prosecution attending at the Applicant's premises.

[9] On October 6, 2021, AHS received a complaint through its online complaint portal that the Applicant was not following the masking requirements and was not verifying vaccination status prior to allowing individuals to dine indoors.

[10] On October 8, 2021, the Inspector and Manager attended the Applicant's premises. The door was locked, and the owners denied the Inspector and Manager entry. The Inspector and Manager attended again later that day. The door was not locked. The Inspector and Manager entered the premises. They were quickly confronted by the owners. The interaction was captured on video with audio recording. The owners yelled at the AHS Inspector and Manager and demanded that they leave. The Inspector and Manager were unable to conduct the inspection.

[11] On October 14, 2021, the Manager issued the Closure Order on the grounds that AHS had been obstructed from conducting an inspection of the establishment. The Closure Order required the Applicant to immediately stop food and beverage service.

[12] On October 14, 2021, the Manager also issued the Suspension Order on the basis that there was ongoing noncompliance with CMOH orders and obstruction of an AHS executive officer contrary to s 71 of the *PHA*.

[13] The Manager attended at the premises of the Applicant on October 15, 2021, accompanied by RCMP, to serve the Closure and Suspension Orders.

[14] On October 19, 2021, AHS received another public complaint through its online complaint portal that the Applicant had posted the Closure Order on the door but that they were still serving food and drinks contrary to the Order. On October 26, 2021, AHS received another complaint through its online complaint portal that the Applicant was not requiring masking, was not checking vaccine status, and was allowing indoor dining.

[15] On October 28, 2021, an AHS Director (Director) conducted an inspection. The Inspection Report states that in addition to other violations the Applicant was operating without a valid permit and staff were not masked.

[16] The Applicant appealed both the Closure and Suspension Orders issued on October 14, 2021, to the Board. The appeal hearing proceeded over three days with the Applicant and AHS providing written and oral submissions. The appeal hearing transcript and written submissions form part of the Record on this judicial review. The last day of the hearing was February 9, 2022. The Board advised the Applicant in writing on March 18, 2022, that the Suspension and Closure Orders were confirmed and that detailed written reasons would follow. Reasons for the Board's decision were provided in April 2023.

[17] The Originating Notice for judicial review was filed in December 2022. In April 2023, the Board successfully applied to be added as a Respondent by Order.

[18] The Closure Order was lifted June 13, 2022, and the Suspension Order was lifted on May 13, 2022. At the time of the judicial review the Applicant was not subject to any AHS executive officer orders.

### **III. Issues**

[19] The parties have raised many issues. I will not be addressing them all. The following issues are dispositive of the judicial review. They are also relevant to future AHS actions and PHAB appeals.

1. Was it reasonable for the Board to confirm an Order issued under the *PHA* for obstruction only?
2. What is the nature of an appeal to the PHAB?
3. Was it unreasonable or procedurally unfair for the Board to refuse to admit evidence of the Applicant regarding history between the Owners and the individual AHS Manager and Inspector?

#### IV. Preliminary Issue – Mootness

[20] The Suspension Order was lifted on May 13, 2022. The Closure Order was lifted on June 13, 2022. The AHS Orders that are subject of this judicial review are no longer in force. The Board’s decision confirmed the Orders; however, the judicial review remedies sought by the Applicant are no longer relevant. The lifting of the Closure and Suspension Orders effectively gave the Applicants the remedies they were seeking.

[21] The Orders are no longer a live issue. I am, however, going to exercise my discretion and hear the judicial review application despite it being moot.

[22] A concern for judicial economy is a factor for a court to consider when deciding whether to exercise its discretion to hear a matter that is moot. Being mindful of judicial economy and the need to conserve judicial resources I have narrowed the review to those issues that are of sufficient public importance that a resolution is in the public interest. The declaration of a public health emergency and the orders issued by the CMOH pursuant to the *PHA* were extraordinary. Individuals and businesses were subject to restrictions that significantly impacted their business interests and daily lives. It is likely that similar issues will recur if a public health emergency is declared in the future. The authority to issue an Order on the basis of obstruction only is a legal issue the review of which will benefit AHS in the exercise of its authority in future. The nature of the appeal before the Board is an issue that will continue to arise. Finally, the evidentiary issues raised in this review are intertwined with the nature of the appeal.

[23] Finally, I note that the same mootness argument was advanced by AHS in judicial reviews brought in relation to other decisions of the Board involving this Applicant. Both Justice Malik and Justice Rickards exercised their discretion to hear those judicial reviews.

#### V. Analysis

##### Standard of Review

[24] The parties agree and the law is clear that the standard of review applicable to the merits of the PHAB’s decision is reasonableness.

Reasonableness review aims to give effect to the legislature’s intent to leave certain decisions with an administrative body while fulfilling the constitutional role of judicial review to ensure that exercises of state power are subject to the rule of law...

It follows that the focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker’s reasoning process and the outcome. The role of courts in these circumstances is to review, and they are, at least as a general rule, to refrain from deciding the issue themselves. Accordingly, a court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the “range” of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the “correct” solution to the problem. The Federal Court of Appeal noted in *Delios v Canada (Attorney General)*, 2015 FCA 117, 472 NR 171, that, “as reviewing judges, we do not make our own yardstick and then use that yardstick to measure what the administrator did”: para 28... Instead, the reviewing court must consider only whether the decision made by the administrative decision maker —

including both the rationale for the decision and the outcome to which it led — was unreasonable.

As explained above, where the administrative decision maker has provided written reasons, those reasons are the means by which the decision maker communicates the rationale for its decision. A principled approach to reasonableness review is one which puts those reasons first. A reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with “respectful attention” and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion...

Developing an understanding of the reasoning that led to the administrative decision enables a reviewing court to assess whether the decision as a whole is reasonable. As we will explain in greater detail below, a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision.

Attention to the decision maker’s reasons is part of how courts demonstrate respect for the decision-making process... In *Dunsmuir*, this Court explicitly stated that the court conducting a reasonableness review is concerned with “the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes”: para 47. Reasonableness, according to *Dunsmuir*, “is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process,” as well as “with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”: *ibid*. In short, it is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision maker to those to whom the decision applies. While some outcomes may be so at odds with the legal and factual context that they could never be supported by intelligible and rational reasoning, an otherwise reasonable outcome also cannot stand if it was reached on an improper basis.

This Court’s jurisprudence since *Dunsmuir* should not be understood as having shifted the focus of reasonableness review away from a concern with the reasoning process and toward a nearly exclusive focus on the outcome of the administrative decision under review. Indeed, that a court conducting a reasonableness review properly considers both the outcome of the decision and the reasoning process that led to that outcome was recently reaffirmed in *Delta Air Lines Inc v Lukács*, 2018 SCC 2, [2018] 1 SCR 6, at para 12. In that case, although the outcome of the decision at issue may not have been unreasonable in the circumstances, the decision was set aside because the outcome had been arrived at on the basis of an unreasonable chain of analysis. This approach is consistent with the direction in *Dunsmuir* that judicial review is concerned with both outcome and process. To accept otherwise would undermine, rather than demonstrate respect toward, the institutional role of the administrative decision maker. (*Citations omitted*)

*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 82-87.

[25] With respect to issues of procedural fairness the parties agree that the standard of review is correctness. The Court will assess whether the PHAB proceedings were fair, or not, as required in the circumstances.

**Issuance of an Order under the PHA for obstruction only**

[26] The PHA provides AHS executive officers with the authority to do the following:

- conduct inspections,
- apply to the Court if an owner refuses to allow an executive officer to exercise the power of inspection,
- issue written orders if the executive officer has reasonable and probable grounds to believe that:
  - a nuisance exists in or on a public place that was the subject of an inspection; or
  - the owner of a public place or any other person is in contravention of the PHA or its regulations.

[27] An AHS executive officer may issue an order requiring the closure of a public place or any part of it.

[28] The relevant provisions of the PHA at the time the Orders were issued provided:

**59(1)** An executive officer may inspect any public place for the purpose of determining the presence of a nuisance or determining whether this Act and the regulations are being complied with.

**(2)** An executive officer making an inspection under subsection (1) may

- (a) at any reasonable hour enter in or on the public place that is the subject of the inspection;

... ..

**60.1** An executive officer making an inspection who enters in or on a public place or private place under section 59 or 60 may be accompanied by

- (a) a police officer whose presence is required by the executive officer for the purposes of assisting with the inspection, or

... ..

**61(1)** Where the owner of a public place or a private place refuses to allow an executive officer to exercise the executive officer’s powers under section 59 or 60 or hinders or interferes with the executive officer in the exercise of those powers, the executive officer may apply to a judge of the Court of King’s Bench for an order directing the owner to do or refrain from doing anything the judge considers necessary in order to enable the executive officer to exercise the executive officer’s powers, and the judge may make the order accordingly.

**(2)** An application under subsection (1) may be made *ex parte* where the judge considers it proper to do so.

**62(1)** Where, after an inspection under section 59 or 60, the executive officer has reasonable and probable grounds to believe that a nuisance exists in or on the public place or private place that was the subject of the inspection or that the place or the owner of it or any other person is in contravention of this Act or the regulations, the executive officer may issue a written order in accordance with this section.<sup>1</sup>

(2) An order shall be served on the person to whom it is directed and shall set out the reasons it was made, what the person is required to do and the time within which it must be done.

(3) Where the order is directed to a person who is not the registered owner, a copy of it shall also be served forthwith on the registered owner.

(4) An order may include, but is not limited to, provisions for the following:

...

(c) requiring the closure of the place or any part of it;

[29] The *PHA* includes a provision that makes it an offence to obstruct an AHS executive officer in the execution of their duty:

**71** No person shall obstruct, molest, hinder or interfere with a person in the execution of any duty imposed or in the exercise of any power conferred on the person by this Act or the regulations.

... ..

**73(1)** A person who contravenes this Act, the regulations, an order under section 62 or an order of a medical officer of health or physician under Part 3 is guilty of an offence.

(2) A person who contravenes an order under section 62 or an order of a physician under Part 3 is liable to a fine of not less than \$100 and not more than \$5000 for each day or part of a day during which the contravention occurs or continues.

(3) A person who contravenes this Act, the regulations or an order of a medical officer of health under Part 3 is, if no penalty in respect of that offence is

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<sup>1</sup> Section 62(1) was amended in late 2021 (change effective December 15, 2021). Section 62(1) now reads:  
**62(1)** An executive officer may issue a written order in accordance with this section if the executive officer has reasonable and probable grounds to believe, based on

(a) an inspection of a public place under section 59 or a private place under section 60, or  
(b) a report or test, regardless of whether the report or test is required to be produced or performed under this Act, if a public place or private place was not inspected under section 59 or 60, that a nuisance exists in or on the public place or private place, or that the place or owner of the place or any other person is in contravention of this Act or the regulations.

prescribed elsewhere in this Act, liable to a fine of not more than \$100 000 in the case of a first offence and \$500 000 in the case of a subsequent offence.

(4) Where a person is convicted of an offence under this Act, the judge, in addition to any other penalty the judge may impose, may order the person to comply with the provision of this Act or the regulations or the order for the contravention of which the person was convicted.

[30] The prosecution of a *PHA* offence proceeds by operation of the *Provincial Offences Procedure Act*, RSA 2000, c P-34.

[31] The Closure Order states the following:

WHEREAS I, an Executive Officer of Alberta Health Services, have inspected the above noted premises pursuant to the provisions of the Public Health Act, RSA 2000, c. P-37, as amended;

AND WHEREAS such inspection disclosed that the following conditions exist in and about the above noted premises which are or may become injurious or dangerous to the public health or which might hinder in any manner the prevention or suppression of disease, namely:

- a. Obstructing Executive Officers from conducting an inspection of the food establishment.

AND WHEREAS such inspection disclosed that the following breaches of the Public Health Act and the Food Regulation, Alberta Regulation 31/2006 and the Food Retail and Foodservices Code exist in and about the above noted premises, namely:

- a. Obstructing Executive Officers from conducting an inspection of the food establishment. This is in contravention of section 71 of Public Health Act which states, "No person shall obstruct, molest, hinder, or interfere with a person in the execution of any duty imposed or in the exercise of any power conferred on the person by this Act on the regulation."

AND WHEREAS, by virtue of the foregoing, the above noted premises are hereby declared to be Closed.

NOW THEREFORE, I hereby ORDER and DIRECT:

1. That the Owner immediately close the above noted premises to food and beverage service.

The above conditions were noted at the time of inspection and may not necessarily reflect all deficiencies. You are advised that further work may be required to ensure full compliance with the Public Health Act and regulations, or to prevent a public health nuisance.

[32] The Suspension Order was issued pursuant to s 11(b) of the *Food Regulation*, Alta Reg 31/2006:

- 11 A regional health authority may suspend a permit where it considers that

- (a) there is an unsanitary condition in the food establishment, or
- (b) there has been a contravention of the Act, an order under section 62 of the Act, the regulations under the Act or a term or condition of a permit, whether or not the permit holder has been prosecuted in respect of the contravention.

[33] The Suspension Order states the following:

This notice is to inform you that your food handling permit has been suspended pursuant to s 11(b) of the Food Regulation, Alta Reg 31/2006, due to the following reasons:

1. Ongoing non-compliance of Chief Medical Officer of Health Orders.
2. Obstructing an executive officer which is not compliant with section 71 of the Public Health Act.

In order for the suspension to be lifted, the following criteria must be met:

1. Compliance with the executive officer Order dated October 14, 2021, to the satisfaction of an Executive Officer.
2. Compliance with all relevant Chief Medical Officer of Health orders including but not limited to CMOH 44-2021, CMOH 45-2021, CMOH 46-2021, and CMOH 47-2021 as may be amended or varied by subsequent Records of Decisions, in response to a public health emergency; and
3. Allow unobstructed access to an executive officer for the purpose of conducting an inspection.

[34] Before the PHAB, the Applicant argued that the *PHA* did not give AHS the authority to issue the Closure Order or Suspension Order on the basis of obstruction alone. The Applicant argued that in circumstances where the owner of a public place is alleged to have obstructed, hindered, or interfered with an inspection, the *PHA* requires AHS to make an application to the Court of King's Bench. Before the Court, AHS must prove the allegation of obstruction, and the Court can direct the appropriate relief. AHS's authority is restricted from having the unilateral ability to allege obstruction and close a business based solely on their discretion. Section 61 of the *PHA* would not be necessary if an AHS executive officer had the authority to issue orders where an owner refuses to allow an inspection or hinders or interferes with an executive officer in their effort to conduct an inspection.

[35] AHS argued that the *PHA* allows for a Closure Order to be issued subsequent to an obstruction. Section 71 provides that obstruction of an inspection is an offence. Section 62 provides that a closure order may be issued if an executive officer has reasonable and probable grounds to believe that the place or owner or any other person is in contravention of the *PHA*. The Act's prohibition against obstructing an inspection as set out in s 71 means that any such obstruction constitutes a contravention of the Act.

[36] The Board found that the Applicant obstructed the Inspector and Manager from inspecting the premises on October 8, 2021. The Board decision notes that s 71 of the *PHA* expressly prohibits the obstruction of AHS inspectors from carrying out their statutory right to inspect premises. The Board confirmed the Orders. The Board did not *expressly* address the

argument of the Applicant. The fact that the Board confirmed the Closure Order implies, however, that the Board held that AHS had the authority to issue the Closure Order on the basis of obstruction alone.

[37] The Supreme Court in *Vavilov* provided general guidance to reviewing courts on a reasonableness review and specific additional guidance within that framework in matters of statutory interpretation. Where the meaning of a statutory provision is in dispute, the administrative decision maker's reasons must demonstrate that the decision maker was alive to the interpretive issue: *Vavilov* at paras 119 and 120.

[38] A reviewing court does not undertake a *de novo* analysis or ask itself what the correct decision would have been: *Vavilov* at para 116. The “modern principle” of statutory interpretation applies. The words of a statute must be read “in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament:” *Vavilov* at para 117, citing *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 at para 21 and *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at para 26, both quoting Elmer A. Driedger, *Construction of Statutes*, 2nd ed (Toronto: Butterworths, 1983), at p 87. The Supreme Court further explored the role of a reviewing court on a question of statutory interpretation in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67. At para 42, the Court stated:

Where the meaning of a statutory provision is in dispute, the administrative decision maker must demonstrate in their reasons that they were alive to the “essential elements” of statutory interpretation: “the merits of an administrative decision maker’s interpretation of a statutory provision must be consistent with the text, context and purpose of the provision” (*Vavilov*, at para 120). Because those who draft statutes expect that the statute’s meaning will be discerned by looking to the text, context and purpose, a reasonable interpretation must have regard to these elements — whether it is the court or an administrative decision maker tasked with the interpretative exercise (*Vavilov*, at para 118). In addition to being harmonious with the text, context and purpose, a reasonable interpretation should conform to any interpretative constraints in the governing statutory scheme, as well as interpretative rules arising from other sources of law...

[39] The Board’s reasons do not demonstrate that they grappled with the statutory interpretation issue.

[40] At the appeal hearing the Applicant clearly raised the issue of whether the Closure Order could be issued on the basis of obstruction alone. The Board did not engage in the statutory interpretive exercise required by the question before them.

[41] The Board does not provide reasons for their implied decision that AHS was authorized to issue an Order on the basis of obstruction of an inspection only. In the absence of reasons, there is nothing to suggest the Board was alive to the interpretive issue. For example, the Board did not address the plain and ordinary meaning of the wording in s 62 which states that after an inspection the executive officer may issue a written order.

[42] Additionally, the Board did not address the wording and interplay of s 62 together with ss 71 and 73.

[43] It is possible that there is a reasonable interpretation that supports a finding that the Closure Order could be issued solely on the basis that the inspection was obstructed. It is not, however, for this Court to engage in that exercise.

[44] I am mindful of the Supreme Court of Canada's repeated reminder that it is not the role of a reviewing Court to conduct its own statutory interpretative analysis. I am also mindful that deference is required where an administrative decision maker is interpreting its home statute and that reviewing courts are not to conduct a line by line analysis but rather to review the decision and reasons as a whole. I have conducted my review with all of these directions and cautions utmost in mind. I have come to the conclusion, however, that the Board's reasons do not demonstrate that the Board grappled with the statutory interpretation exercise required by the question before them or was alive to and engaged the essential elements of statutory interpretation. As such, the decision is unreasonable.

#### **Nature of an appeal to the PHAB**

[45] The PHAB stated in its decision that the evidence must show that when the Orders were issued, AHS had reasonable and probable grounds to believe that a nuisance existed on the premises or that there was a contravention of the Act or regulations: at para 23.

[46] At the appeal hearing AHS sought to admit evidence of the AHS Director who conducted an inspection on October 28, 2021, two weeks after the Orders were issued on October 14, 2021. The Applicant objected to the admission of the Director's evidence on the basis that it was irrelevant to the issue of whether there was a basis to issue the Orders on October 14, 2021.

[47] The Board admitted the evidence of the Director on the basis that the Board was not bound by the rules of evidence applicable to common law courts. The PHAB Rules of Procedure stated as a general principle that the Board shall admit any relevant evidence that is not privileged. The Board stated that relevant evidence is evidence having a tendency to make the existence of any fact that is of consequence to the determination of the appeal more or less probable than it would have been without the evidence. The Board held that it was of the view that it needed to hear the evidence of the Director and would then determine the appropriate relevance or weight to attach to the evidence: PHAB Appeal No.: 18-2021 at para 9.

[48] The Board detailed the Director's evidence in its reasons. Despite stating at the beginning of its reasons that it would determine the appropriate relevance or weight to attach to the Director's evidence, the Board did not do so. The Board does not, at any point in its analysis and reasons, address the relevance or weight that it was giving to the Director's evidence.

[49] The failure of the Board to address this issue of relevance or weight is significant because it goes to the nature of the PHAB appeal. It is not clear exactly what the nature of an appeal is before the PHAB.

[50] What standard of review does PHAB use to review the decision of AHS to issue the Orders? Is PHAB reviewing whether the AHS decision to issue the Orders was reasonable, or correct? Is the PHAB review limited to the information that was known to AHS at the time the Orders were issued, or can the PHAB consider new evidence and determine whether the grounds exist to issue the Orders as of the date of the hearing? The answers to these questions are not clear in the PHAB decision.

[51] AHS argued at the appeal hearing that it was appropriate for the Board, when deciding whether to confirm an Order, to take into account the factual context which exists at the time of the hearing. This suggests that an appeal before the PHAB is a hearing *de novo* where the Board has the ability to hear evidence that led to the issuance of the subject Order as well as new evidence up to the date of the hearing to determine whether the Order(s) should be confirmed. AHS took the same position at the judicial review, arguing that it would be inappropriate to constrain the Board to the facts that were known at the time of the Orders. AHS argued that a purposeful interpretation of the *PHA*, which is designed to protect public health, requires the Board be able to consider new evidence as it exists at the date of the hearing as significant material changes can occur in the time between an Order being issued and an appeal being heard.

[52] The Applicant argues that the appeal before the Board was limited to a review of whether the evidence existed at the time the Orders were issued to support the issuance of the Orders.

[53] The following statements of the Board are relevant to this issue:

- “In order for the Board to confirm the Orders, the evidence must show that when the Orders were issued, AHS had reasonable and probable grounds to believe that a nuisance existed on the Premises, or that there was a contravention of the Act or the regulations”: at para 23; and
- “...the Board finds that AHS has proven on a balance of probabilities that... they properly issued the Orders because they had reasonable and probable grounds to believe that...”: at para 27.

[54] The language of the Board suggests that the Board is reviewing the AHS decision as of the date that the decision to issue the Orders was made by AHS. It also suggests that the Board is assessing whether the decision to issue the Orders was correct. The Board does not, however, address AHS’ argument that the appeal is a hearing *de novo* such that the Board can consider new evidence up to the date of the hearing to decide whether to confirm the Order.

[55] The Board’s failure to address this argument may not have been significant were it not for the fact that they admitted the evidence of the AHS Director that was obtained after the Orders were issued and then failed to state in their reasons whether they were relying on that evidence or giving it any weight in making their decision to confirm the Orders. This is particularly significant given that the Applicant objected to the admission of the evidence, challenged its relevance, and objected to any weight being given to it.

[56] The Board’s failure to address the relevance and weight that it attributed to the evidence of the Director renders the decision unreasonable. It is not possible from the Board’s reasons or decision to assess what, if any, weight was given to the Director’s evidence. This alone would render the decision unreasonable in the circumstances of this case in the face of the Applicant’s objections. The Board’s failure to address the relevance and weight that it attributed to the evidence of the Director also renders the decision unreasonable because it goes directly to the nature of the PHAB appeal. In the absence of clarity with respect to the role that the Board was undertaking, this Court is unable to assess the reasonableness of its decision. Clarity on this issue by the PHAB in future decisions will be of significant assistance in any subsequent judicial review of those decisions.

## **Refusal to admit evidence of Applicant regarding history with the AHS Manager and Inspector**

[57] At the appeal hearing the Applicant argued that the Orders should not have issued on the basis of obstruction because the Applicants believed they were justified in refusing to allow the AHS Manager and Inspector from entering the premises to conduct an inspection on October 14, 2021. In other words, the Applicant attempted to argue that it had a ‘defence’ to the obstruction. The Applicant was not arguing that they did allow the Manager and Inspector to conduct the inspection. The Applicant admitted to not allowing the Manager and Inspector on the premises to conduct an inspection. The Applicant’s position, however, was that they believed that they were justified in doing so.

[58] The Applicant sought to put forward evidence that at least one of the Applicant’s owners was facing prosecution. The Applicant and AHS referred to these proceedings in argument as both criminal and quasi-criminal proceedings. The proceedings were brought by the Crown against one of the Applicant owners. The prosecution was pending, and the Manager and Inspector were witnesses in the pending prosecution.

[59] Prior to October 14, 2021, the Applicants had advised AHS and the Manager and Inspector that they did not want the Manager and Inspector to attend at the premises to conduct inspection unless the Applicant’s legal counsel was present. This was characterized by the Applicant as notice to the Manager and Inspector to “cease and desist.” The Applicant took this position on the basis that the Manager and Inspector were witnesses in the pending prosecution. The Applicant suggested that AHS send someone other than the Manager and Inspector to conduct inspections.

[60] The Board held at the hearing that the Board would not consider evidence or arguments or submissions that related to events prior to the October 14, 2021, Orders. The Board stated that anything that happened prior to the events that immediately led up to the issuance of the October 14, 2021, Orders was not relevant. The Board further stated that “...the panel is not convinced that we are here to consider anything regarding the obstruction arguments being raised by the [the Applicant]”: Transcript of Proceedings, Certified Record of Proceedings, p HAB001917, 1919.

[61] On judicial review the Applicant argues that it was unreasonable and/or procedurally unfair for the Board to refuse to admit evidence or allow submissions from the Applicant regarding history between the owners and the individual AHS Manager and Inspector. The Applicant maintains that this evidence was directly relevant to the issue of the obstruction and whether the Applicant owners had a ‘defence’ to the obstruction or were otherwise justified in refusing to admit the two specific individuals who attended to conduct the inspection on October 14, 2021.

[62] The Applicant argues that this evidentiary decision of the Board is especially unreasonable and egregious given its decision to admit the evidence of an inspection that occurred two weeks after the Orders were issued. The two decisions cannot rationally or logically stand together.

[63] AHS argues that the Applicant did advance this defence fully in its written submissions. Further, AHS argues that the Applicant did, in fact, elicit all the evidence required to advance this argument: the fact that one of the owners was facing charges initiated by law enforcement;

the Manager had provided information to law enforcement; and the fact that the Applicant had advised AHS, the Manager, and Inspector that the Applicant was taking the position that their legal counsel had to be present if the specific AHS Manager and Inspector were going to be on the premises to conduct inspections.

[64] I remain mindful of the Supreme Court of Canada’s direction that it is not the role of a reviewing Court to conduct its own analysis and that reviewing courts are not to conduct a line by line analysis but rather to review the decision and reasons as a whole. In the circumstances of this case, it was unreasonable for the Board to fail to address the Applicant’s argument that it had a ‘defence’ for the obstruction and therefore the Orders should not have issued on that basis.

[65] Once the Board made the decision (impliedly) that orders under the *PHA* can be issued on the basis of obstruction alone it was necessary for the Board to consider and issue reasons with respect to the ‘defence’ advanced by the Applicant. This ‘defence’ was a significant element of the submissions of the Applicant. The position of the Applicant may not have any merit. If the Board had set its mind to the issue, it may be that the Board would have decided that AHS was entitled to send the specific AHS Manager and Inspector despite a pending prosecution in which the individuals were witnesses. It is not for this Court to engage in this analysis. This was the role of the Board. It was necessary for the Board to set their mind to the argument and make a decision on the issue. The failure to do so renders the decision of the Board unreasonable.

### **Remedy**

[66] I have held that, applying a reasonableness standard, the decision of the Board cannot be upheld. Where an administrative decision maker’s decision cannot be upheld, the appropriate remedy will most often be to remit the matter for re-hearing. In this instance, however, I find that it is appropriate for the Court to exercise its discretion not to remit the matter back for re-hearing. The Applicant is no longer subject to the Orders at issue. A re-hearing is not an efficient use of public resources.

## **VI. Conclusion**

[67] The Applicant’s judicial review is granted. Although the typical remedy would be to remit the matter for rehearing, the Court exercises its discretion not to do so.

Heard on the 24<sup>th</sup> day of April, 2024.

**Dated** at the City of Red Deer, Alberta this 7<sup>th</sup> day of May, 2025.

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**Bonnie L. Bokenfohr**  
**J.C.K.B.A.**

**Appearances:**

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for the Plaintiff

John Siddons, Alberta Health  
for the Respondent, Alberta Health Services

Stuart Chambers, McLennan Ross LLP  
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Yutian Jiang, McLennan Ross LLP  
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