

Court of King's Bench of Alberta

Citation: Sejnowski v Polish Hall, 2025 ABKB 419

Date: 20250709
Docket: 2303 16305
Registry: Edmonton

2025 ABKB 419 (CanLII)

Between:

Tadeusz Sejnowski

Applicant

- and -

Polish Hall and Polish Canadian Society

Respondents

**Reasons for Decision
of the
Honourable Justice T.G. Rothwell**

A. Overview

[1] The Applicant, Tadeusz Sejnowski (“Sejnowski”), a member of the Polish Canadian Society (the “Society”) commenced a Statement of Claim (the “Action”) against the Polish Hall and the Society alleging, *inter alia*, shortfalls related to governance and financial reporting requirements.

[2] The Polish Hall is owned and operated by the Society, the Polish Veterans Society (the “Veterans”) and the Polish Combatants’ Association in Canada Inc, Edmonton, Branch No 6 (the “Combatants”). The Society, the Veterans and the Combatants operate the Polish Hall through a Joint Venture Agreement (the “JVA”).

[3] Paragraph 51 of the JVA contains a mandatory arbitration provision. Applications Judge B. Summers, by way of Order dated November 15, 2023, stayed the Action pursuant to the

Arbitration Act, RSA 2000, c-4. The parties entered into an Arbitration Agreement dated February 14, 2024 and appointed Shari-Anne Doolaege, Q. Arb as their Arbitrator.

[4] Sejnowski proceeded with an arbitration and the Arbitration Award was released on July 26, 2024. Sejnowski sought leave to appeal on the following four findings/issues in the Arbitration Award in his original Application filed on March 11, 2025 when he was represented by counsel:

1. Sejnowski lacked standing to invoke the arbitration process or ability to enforce compliance with the JVA and the Society's Bylaws;
2. The historic audit committee process was sufficient to discharge the requirement for an annual audit pursuant to ss 35 and 36 of the JVA;
3. Finding that the term "all records and books of account of the Board and the Polish Hall" did not include the audited financials which are directed by ss 35 and 36 of the JVA; and
4. The Arbitrator demonstrated a reasonable apprehension of bias in her findings related to the Amendment and findings of "implied consent" to vary the terms of the JVA.¹

Sejnowski, representing himself, filed an amended Application on May 14, 2025 wherein he raised five additional findings/issues that he seeks leave to appeal:

5. Alternatively, an Order setting aside the Award on the basis that the Arbitrator has committed a corrupt or fraudulent act or there is a reasonable apprehension of bias;
6. An Order state (*sic*) that the JVA Arbitration clause, section 51, does not apply to members of the organization, and that the rights of members under the JVA should be addressed in court;
7. An Order declaring the amendment to the JVA invalid, as it was not approved by all members of the organizations that own the Polish Hall;
8. An Order to delete or modify section 24 of the PCS Bylaws due to its inconsistency with the Societies Act and depriving organization members of their rights regarding Polish Hall under the JVA; and
9. An Order to distribute a copy of the JVA to all members of the organization.

[5] Sejnowski argues that all of the proposed grounds are questions of law, are of sufficient importance and impact the rights of the parties to a degree that the test for leave is satisfied.

[6] The Society and the Polish Hall oppose the application arguing that the proposed grounds:

- Are not questions of law, but instead questions of mixed fact and law;
- Do not meet the sufficient importance test under s 44(2.1); and/or
- Are questions of law that were expressly referred to the Arbitrator.

¹ Sejnowski's brief of law at para 9.

[7] For the reasons that follow I decline to grant leave on any of the proposed grounds of appeal and dismiss Sejnowski's application for leave to appeal.

B. Test For Leave to Appeal

Statutory Provisions

[8] The parties' Arbitration Agreement did not contain a clause authorizing an appeal, therefore, Sejnowski is governed by the test set out in section 44 of the *Arbitration Act*.

[9] Section 44(2) provides:

If the arbitration agreement does not provide that the parties may appeal an award to the court on a question of law, a party may, with the permission of the court, appeal an award to the court on a **question of law**. [emphasis added]

[10] Section 44(2.1) further provides:

The court shall grant the permission referred to in subsection (2) only if it is satisfied that:

(a) the importance to the parties of the matters at stake in the arbitration justifies an appeal, and

(b) the determination of the question of law at issue will significantly affect the rights of the parties.

[11] The parties agree that leave is required and that leave may only be granted on a question of law.

[12] The parties' understanding is also consistent with this Court's interpretation of s 44 in *Driscoll v Hautz*, 2017 ABQB 168 at para 18 [*Driscoll*].

[13] Section 44(3) of the *Arbitration Act* provides:

Notwithstanding subsections (1) and (2), a party may not appeal an award to the court on a question of law that the parties expressly referred to the arbitral tribunal for decision.

[14] Section 44 imposes a high threshold and leave is rarely granted: *1285592 Alberta Ltd v Moderno Homes Inc*, 2018 ABQB 23 [*Moderno Homes*]. Put another way: "... this standard will be neither easy nor impossible to satisfy": *Driscoll* at para 22.

[15] Chief Justice Wittmann in *Capital Power Corporation v Lehigh Hanson Materials Limited*, 2013 ABQB 413 offered the following guidance at para 35:

What the Act requires, in both its general scheme and under s.44(2) specifically, is a very high standard when considering whether the importance to the parties of the matters at stake in the arbitration justifies an appeal. Mere pecuniary interest may not suffice, though I do not think it necessary to conclude that a pecuniary interest, no matter how significant, could not suffice on its own.

[16] If I find that a proposed ground of appeal is a question of law, I am not to consider the merits; however, I am required to consider whether the proposed question has arguable merit:

Alberta Medical Association v Alberta Health Services, 2019 ABQB 82 at para 17 [*Alberta Medical Association*].

What is a Question of Law?

[17] Justice Fruman in *Alberta (Workers' Compensation Board) v Appeals Commission*, 2005 ABCA 276 discussed the difference between a question of law and a question of mixed fact and law. At para 29 Fruman JA stated:

The concept of an extricable legal error can be difficult to understand. In *Housen* at para. 36, the Supreme Court provided clarification. In that case the alleged error was a finding of negligence, a question of mixed fact and law. The Court noted that when the error in a finding of negligence can be attributed to the application of an incorrect standard, a failure to consider a required element of a legal test or a similar error in principle, such an error can be characterized as an extricable error of law. However, when the issue on appeal involves a trial judge's interpretation of the evidence as a whole, or the application of the correct legal test to the evidence, there is no extricable error of law.

[18] Justice Antonio, as she then was, set out the following analytical framework in *Driscoll* at para 23 to assess whether leave should be granted:

- 1) Is the proposed ground a question of law? If it is not, the application fails.
- 2) Was it expressly referred to the arbitrator for decision? If so, the application fails.
- 3) Will determining the question of law significantly affect the rights of the parties? If not, the application fails.
- 4) Are the matters at stake of sufficient importance to the parties to justify an appeal? If not, the application fails.

[19] I adopt and will apply this framework noting that the second prong is not applicable to all grounds proposed for appeal. If necessary, I will also consider whether the question has arguable merit as discussed in *Alberta Medical Association*.

C. Analysis

Proposed Ground #1: Standing

[20] The parties referred the following issue to the Arbitrator for resolution:

1. Preliminary Matter: Does Mr. Sejnowski have standing to challenge or invoke the arbitration clause under the Joint Venture Agreement?²

[21] The Society and the Polish Hall argue that standing is a question of mixed fact and law and, in the alternative, if it is a question of law, leave should not be granted as it was a question expressly referred to the Arbitrator and barred by s 44(3) of the *Arbitration Act*.

[22] The Arbitrator held that Sejnowski was not a party to the JVA and accordingly did not have standing to commence an arbitration under the JVA: Arbitration Award at para 148.

² Page 1 of the Arbitration Agreement.

[23] Sejnowski notes that he is a member of the Society and argues that all issues involving him, the Society, and the Polish Hall were to be submitted to binding arbitration. Sejnowski argues that the Arbitrator erred in law by failing to consider his claims and standing relative to the Society and instead focused only on the JVA.

[24] It is not disputed that Sejnowski is a member of the Society or that he was designated as a director of the Polish Hall.

[25] By virtue of his membership in the Society he likely has standing to challenge decisions or actions of the Society; however, that was not the issue that was referred to the Arbitrator as a preliminary matter. The preliminary issue that was expressly referred related to the JVA, not the Society.

[26] The determination of whether an entity has standing under the JVA to invoke the arbitration clause is one of mixed fact and law. While the finding required the Arbitrator to interpret the JVA, the arbitrator had to consider the factual matrix that surrounded the issue including considering Sejnowski's relationship or lack thereof to the contract and the Society, the Polish Hall, the Veterans and the Combatants.

[27] I find no extricable legal issue relative to the Arbitrator's determination that Sejnowski did not have standing under the JVA to invoke the arbitration clause.

[28] In the alternative, if I am incorrect and the finding that he lacked standing is a question of law, I agree with the Society and the Polish Hall that this is an issue that was expressly referred to the Arbitrator and an appeal is barred by s 44(3) of the *Arbitration Act*. It is also well established that the doctrine of privity provides that a contract cannot confer benefits or obligations onto anyone but the parties to it: *Greenwood Shopping Plaza Ltd v Beattie*, 1980 CanLII 202, [1980] 2 SCR 228 at 236-38. Accordingly, I find that the ground of appeal has no real likelihood of success.

[29] I decline to grant leave on Proposed Ground #1.

Proposed Ground #2 – Historic Audit Process found Sufficient to Discharge Audit Requirement

[30] Sections 35 and 36 of the JVA read as follows:

(35) Within two (2) months from the financial year-end the Board shall prepare and deliver to each of the parties hereto the following financial statements:

- (a) A profit and loss statement for the financial year, and
- (b) A balance sheet signed by the Chairman, Vice-Chairman, and Treasurer, and
- (c) A report of the Chartered Accountant appointed to audit the books of the Polish Hall, and
- (d) A report outlining the operation of the Polish Hall during the financial year and outlining the proposed operation for the next financial year.

(36) An annual audit shall be made of the records and books of account of the Polish Hall and the Board by an independent Chartered Accountant appointed by resolution, unless the audit requirement is waived by all parties hereto as

shown by a certified copy of the resolution passed by each party waiving the audit requirements. The auditor shall hold office for one year or until a successor is appointed by resolution.

[31] The Arbitrator held that:

“the historical audit committee process used by the parties, and the annual financial reports have merit due to the implied consent through consistent audit committee use and member appointments, despite the absence of historical party resolutions to waive the JVA Chartered Accountant audit requirement.”

[32] The Society and the Polish Hall both argue that this finding is one of mixed law and fact..

[33] Sejnowski argues that the finding is a question of law but does not identify an extricable question of law. Sejnowski points to the decision of *Frank v Vogel & Company LLP*, 2012 ABQB 432 [*Frank*] as authority for the proposition that the interpretation of a partnership agreement was a question of law: para 22.

[34] In *Frank*, Justice McIntyre noted that the factual matrix was not in dispute and that the issue that leave was sought on was an extricable question of law: para 22.

[35] In contrast, in *Moderno*, Justice Neufeld, in considering an application for leave to appeal from a commercial arbitration decision, held at para 8:

Moreover, disputes involving contractual interpretation will almost always centre on questions of mixed law and fact. Interpretation of objective intent necessarily engages consideration of the factual matrix surrounding the contract, in the course of determining the meaning of the agreement. It also typically requires assessment of relevant facts and legal principles in determining whether a breach of contract occurred, by whom, and the remedies that flow.

[36] Sejnowski argues that in order for the principle of “implied consent” to apply it is necessary for the parties to be aware of the terms of the JVA. Sejnowski focused his argument on the knowledge of the parties. The issue of the parties’ knowledge of the JVA is a finding of fact, not a question of law.

[37] I find that the issue of whether s 36 of the JVA was complied with is a question of mixed fact and law as it required the Arbitrator to consider both the text of the JVA and the conduct of the parties to the JVA over an extended period of time.

[38] In the event that I am incorrect and the finding is a question of law I will consider whether the issue meets the test under s 44(2.1). With respect to the first element of the test being “importance to the parties,” there is no doubt that the absence of an audit conducted by a Chartered Accountant is important to Sejnowski as he has concerns with respect to financial reporting and governance. I conclude it is of lesser importance to the Society and the Polish Hall as they amended the JVA in January of 2024 to remove the audit requirement and had previously agreed to a similar process for many years. Turning to whether the determination will significantly affect the rights of the parties, I am not persuaded it will for the following reasons:

- The existence of the modified audit procedure is now well known and Sejnowski can take whatever steps he wishes relative to his concerns regarding reporting and accountability as his right to receive financial disclosure was confirmed by the Arbitrator: para 166 of the Arbitration Award;

- There would be little practical utility in requiring the production of audited statements dating back to 1981 and it would likely be difficult or impossible for the earliest years;
- Sejnowski’s rights as an individual and director of the Society are limited relative to his ability to compel an audit under the JVA and accordingly, there is little impact to his rights as an individual or as a director.
- The determination of what type of audit procedure will be implemented going forward will be made by the boards of the Society, the Veterans and the Combatants, not individual members or directors such as Sejnowski.

[39] For the foregoing reasons I decline to grant leave on this issue.

Proposed Ground #3

[40] The Arbitrator at paragraph 163 of her decision held that Sejnowski is “entitled to the Polish Hall Financial statements that currently exist”, but “not entitled to audited financial statements by a Chartered Accountant that do not currently exist for past years.”

[41] Sejnowski argues that the Arbitrator erred in her interpretation of sections 33, 35 and 36 of the JVA.

[42] The Society and the Polish Hall argue that this is a question of mixed law and fact, or, in the alternative, that it was a question of law explicitly referred to the arbitrator.

[43] I have already set out ss 35 and 36 under proposed ground of appeal #2. Section 33 reads as follows:

Any member in good standing of the parties hereto shall have access at all reasonable times to all records and books of account of the Board and the Polish Hall, provided however, that all records and books of account shall not be removed from their location.

[44] The Arbitrator, in coming to this conclusion, was required to interpret the provisions of the JVA and the course of conduct of the parties to the JVA regarding the preparation of financial documents over a number of years. Accordingly, I find that this is a question of mixed fact and law and is not a question of law. In the alternative, I would decline to grant leave to appeal on this finding under both branches of s 44(2.1) given that the finding directs that Sejnowski is not entitled to documents that don’t exist. Sejnowski’s governance concerns are not frivolous; however, the inability to seek financial records that were not prepared over the past 30–40 years is not sufficiently important given the passage of time, nor will Sejnowski’s rights be significantly impacted. It is difficult to imagine what potential remedies or useful steps could be taken relative to financial matters that occurred at the Polish Hall dating back to the 1980s, given the passage of time and limitations issues.

[45] For the forgoing reasons I decline to grant leave to appeal on the proposed ground.

Proposed Ground #4 and #5 – Bias and Corruption

[46] Section 45(1)(h) of the *Arbitration Act* deals with allegations of corruption, fraud and reasonable apprehension of bias:

45(1)(h) On a party's application, the court may set aside an award on any of the following grounds:

- (h) an arbitrator has committed a corrupt or fraudulent act or there is a reasonable apprehension of bias;

[47] Section 45(1)(f) provides an additional means by which parties can challenge an arbitration award on the basis of bias: *Flock v Flock*, 2007 ABQB 307 at 48-49. In *Mitchell v Mitchell*, 2019 ABQB 420, Justice Ashcroft held that cases of actual bias may also be brought under s 45(1)(f): para 12-21.

[48] The standard of review for a challenge grounded in bias is correctness: *Khela v. Mission Institution*, 2014 SCC 24 (S.C.C.) at para 79; *Anand v. Anand*, 2016 ABCA 23 (Alta. C.A.) at para 8; *Ironside v. Alberta (Securities Commission)*, 2009 ABCA 134 (Alta. C.A.) at para 102; and *Boardwalk Reit LLP v. Edmonton (City)*, 2008 ABCA 220 (Alta. C.A.) at para 174.

[49] *Wewaykum Indian Band v Canada*, 2003 SCC 45 [*Wewaykum*] is one of the leading cases on bias.

[50] Justice Ritter, in *Mountain Creeks Ranch Inc v Yellowhead (County) Subdivision and Development Appeal Board*, 2006 ABCA 126 considered an allegation of bias in relation to a member of a Subdivision and Development Appeal Board and described the test as:

A reasonable apprehension of bias arises where a reasonable person, knowledgeable of the facts of the situation, would conclude that it was likely that the decision maker would not decide fairly: *Wewaykum* at para. 60. The factors for determining if there is a reasonable apprehension of bias include asking whether the decision maker has a financial or personal interest in the outcome; a present or past link with either the party; earlier participation or knowledge of the litigation; or has expressed any sentiment or undertaken any activity illustrating bias: *Wewaykum* at para. 77. [para 9]

[51] Sejnowski points to the Arbitrator's finding that the JVA was properly amended to support his claim of bias and corruption. Sejnowski, in essence, disagrees with the Arbitrator's findings regarding "implied consent" and the findings of fact made by the Arbitrator and argues that this translates into a reasonable apprehension of bias and/or corruption.

[52] Sejnowski also points to the Arbitrator's recommendation that the Polish Hall reconsider the 2023 amendment to the JVA and argues it supports a finding that the amendment was not in the Polish Hall's best interest: para 169 of the Arbitration Award.

[53] Disagreeing with the factual findings of the Arbitrator is not sufficient to ground an allegation of actual bias or a reasonable apprehension of bias unless the findings were so perverse as to suggest bias. No such findings exist.

[54] Similarly, even if I were to accept that the amendments to the JVA removing the financial audit requirement were not in the Polish Hall's best interest, that does not support an argument of bias. While I must be careful not to wade into the merits of a proposed ground of appeal, I am allowed to consider whether a ground of appeal has any likelihood of success. It is not the Arbitrator's role to assess the merits of decisions made by the Polish Hall, but instead to determine whether they complied with the JVA.

[55] While an application for leave to appeal an arbitration award is generally conducted on the record, I am satisfied that it was appropriate for Sejnowski to file an affidavit to demonstrate a reasonable apprehension of bias or actual bias: *Clark v Unterschultz*, 2020 ABQB 338 at para 110. I note that s 45 allows me to set aside an award without the necessity of considering whether leave should be granted.

[56] Sejnowski filed an affidavit in support of his application for leave to appeal and did not include any evidence that would support a conclusion that the Arbitrator possessed a pecuniary interest in the matter, had any connection to the parties involved in the arbitration or engaged in any activity that would illustrate bias or corruption. During oral argument I asked Mr. Sejnowski to point me to any evidence of bias or corruption in his affidavit and he was unable to.

[57] The allegation of reasonable apprehension of bias, actual bias or corruption has not evidentiary foundation.

[58] For the foregoing reasons I decline to set aside the award on the basis of reasonable apprehension of bias, actual bias or corruption.

Proposed Ground #6

[59] Sejnowski seeks an order that s 51 of the JVA does not apply to him and that the rights of members of the Society should be addressed in court. I note that Sejnowski did not appeal Application Judge Summers' Order staying his Action or seek to revisit the Order. The issue of what matters may or may not proceed in court falls outside the ambit of an application seeking leave to appeal findings arising out of the Arbitration Award.

[60] I decline to deal with this issue.

Proposed Ground #7

[61] Sejnowski seeks to appeal the Arbitrator's decision that the Society, the Veterans and the Combatants' amendment to the JVA was invalid. The Arbitrator ruled that the unanimous consent of all three parties was needed to amend the JVA and that the "evidence provided showed a unanimous resolution from each party to amend four sections of the JVA": Arbitration Award paras 155–56.

[62] I conclude that this finding is one of mixed fact and law as it required the Arbitrator to review the resolutions and determine their legal effect (i.e. the amendments were made in compliance with the JVA). Accordingly, leave is not permitted.

[63] In the alternative, I am not persuaded that this issue significantly affects the rights of the parties or is important enough to merit granting leave for the same reasons that I outlined at para 38 of these Reasons. I also find that the likelihood of success of appeal on this point is low given that the resolutions were placed before the Arbitrator and were before me: *Alberta Medical Association* at para 17.

[64] I decline to grant leave on this ground for the foregoing reasons.

Proposed Ground #8

[65] Sejnowski seeks an order to delete or modify s 24 of the Society's bylaws due to its inconsistency with the *Societies Act*, RSA 2000 c S-14 and its effect on members' ability to exercise rights in relation to the Polish Hall.

[66] Section 24 reads as follows:

The affairs of the society shall be managed by the executive board who may exercise all such powers and do all such acts and things as may be exercised or done by the society and are not by the by-laws of the society or by law, expressly directed or required to be done by the society at a meeting of the members or otherwise. The board shall in carrying out their duties consider the wishes of the members as evidenced by any resolution passed at any General Meetings or Monthly Meetings of the members. Notwithstanding the generality of the foregoing, they shall prepare such reports to the General or Monthly Meetings as may be required of them and they shall prepare the preliminary budget for the forthcoming year for the submission to the members at the Annual General Meeting and they shall be responsible for seeing that the budget for the year, once approved by the members is adhered to along with any subsequent amendments approved by the members at a Special General Meeting. The executive board shall before each Biannual General Meeting appoint a nominating committee composed of one member from the executive board and at least one member who is not a member of the executive board and it shall be the duty of such nominating committee to obtain one nominee for each of the executive officers positions to be filled at the next Biannual General Meeting. Chairman of the Nominating Committee calls first meeting at least one month before Biannual Election Meeting.

[67] Sejnwoski did not plead or raise this issue in his Amended Statement of Claim that was placed before the Arbitrator. His Amended Statement of Claim did make allegations against the Society relative to their failure to provide him financial documentation and other records. Furthermore, the Arbitrator did not make a ruling regarding s 24 of the Society's bylaws. The Arbitrator referenced s 24 at paragraph 147 of her decision but did not make any ruling on it. In my view Sejnwoski is seeking to raise a new issue. The primary purpose of an arbitration process is to resolve matters and promote finality. Allowing parties to raise new issues undermines resolution and finality.

[68] Section 24 is a very broad section and Sejnwoski did not specify how it is inconsistent with the *Societies Act* or point to any particular act that was undertaken pursuant to it.

[69] Given that this issue was not pled or specifically dealt with by the Arbitrator I decline to grant leave to appeal on the issue.

Proposed Ground #9

[70] Sejnowski seeks an Order to distribute a copy of the JVA to members of the organization.

[71] Sejnowski pled in his Amended Statement of Claim that the JVA was a secret document: Amended Statement of Claim at para 18. He did not seek an order requiring the Society or the Polish Hall to distribute the JVA.

[72] The Arbitrator did not specifically rule on this issue; however, I note that Sejnowski acknowledges that he received a copy of the JVA in his Amended Statement of Claim. The JVA is also attached as an exhibit to the affidavit of Henry Lang, filed April 9, 2025 in this Action.

[73] I decline to grant leave on this issue for the following reasons:

- The issue was not raised, the Arbitrator did not consider it and there is no finding to appeal from;
- The Society, the Veterans and the Combatants are parties to the JVA and are aware of it given that they recently amended it;
- The JVA is in the public domain as it was attached to the affidavit of Henry Lang; and
- In light of the above, I am also satisfied that this ground of appeal is of limited importance to the parties and will not significantly affect their rights given that the JVA is in the public domain/realm.

D. Conclusion

[74] I decline to grant leave to appeal on any of the proposed grounds and decline to set aside the award on the basis of a reasonable apprehension of bias, actual bias or corruption. If the parties are unable to agree on the issue of costs, they may make arrangements to speak to me within 30 days of the release of these reasons.

Heard on the 12th day of June, 2025.

Dated at the City of Edmonton, Alberta this 09th day of July, 2025.

T.G. Rothwell
J.C.K.B.A.

Appearances:

Tadeusz Sejnowski
for the Applicant

Avnish Nanda
Nanda and Company
for the Respondent