

Court of King's Bench of Alberta

Citation: Dugandzic v Alberta (Human Rights Commission) 2025 ABKB 49

Date: 20250127
Docket: 2401 11082
Registry: Calgary

2025 ABKB 49 (CanLII)

Between:

Stephen Dugandzic

Applicant

- and -

Alberta (Human Rights Commission) and the Law Society of Alberta

Respondents

Decision of the Honourable Justice N.F. Dilts

[1] Mr. Dugandzic applies in Urgent Chambers for an order staying a hearing currently underway before the Alberta Human Rights Tribunal (the “Tribunal”). He seeks a stay of the hearing while he pursues an application in the Court of King’s Bench for judicial review of certain interlocutory decisions made by the Tribunal in the course of the hearing.

[2] It is important for the parties to know the outcome of this application promptly, particularly given deadlines they currently face in the hearing.

[3] In providing a timely decision, I am very cautious of oversimplifying what has been a complex administrative hearing. I am also very cautious of acknowledging the magnitude of Mr. Dugandzic’s health concerns. Mr. Dugandzic has produced significant evidence on this application that he has serious psychological and mental health concerns that have had devastating impact on his life and livelihood.

Background

[4] Mr. Dugandzic is a member of Law Society of Alberta (“LSA”); he has been on leave from practice since April 2020.

[5] In 2018 the LSA began an investigation into Mr. Dugandzic's practice. Arising from that investigation, in December 2020, Mr. Dugandzic filed a human rights complaint against the LSA alleging that the LSA discriminated against him on the grounds of real and perceived mental and physical disabilities.

[6] On October 12, 2022 the Human Rights Commission directed a hearing into Mr. Dugandzic's complaint. Mr. Dugandzic requested expedited dates for the hearing and that request was granted. The hearing commenced in May 2023; evidence was completed in February 2024. In that nine month period, the parties participated in 32 hearing days.

[7] Mr. Dugandzic expresses significant concern about the delays that have accumulated during the hearing, and particularly the delays in the time taken for the Tribunal to issue interlocutory rulings. There is no dispute that all of the delays have exacerbated Mr. Dugandzic's health concerns and that further delay in resolving his complaint will continue to exacerbate his already significantly compromised condition.

[8] On August 12, 2024, Mr. Dugandzic filed an application in the Court of King's Bench for judicial review of interlocutory rulings made by the Tribunal on both May 24, 2024 and July 4, 2024. Those rulings relate to the evidence of Dr. Pachet. In its May 24, 2024 decision, the Tribunal dismissed Mr. Dugandzic's application to reopen the proceedings to allow him to file additional evidence to address the evidence of Dr. Pachet. In its July 4, 2024 decision the Tribunal denied Mr. Dugandzic's request to refer eight questions of law to the Court of King's Bench under s 31 of the *Alberta Human Rights Act*, RSA 2000, c A-25.5.

[9] On January 8, 2025, Mr. Dugandzic amended his application for judicial review of the Tribunal's interlocutory orders to seek judicial review of the Tribunal's October 26, 2023 evidentiary ruling in which Dr. Pachet was qualified to give expert opinion evidence, and its January 24, 2024 ruling in which Mr. Dugandzic was denied the opportunity to refer to Dr. Pachet's clinical notes during cross-examination.

[10] There is currently no date set in the Court of King's Bench for the hearing of Mr. Dugandzic's application for judicial review of these four interlocutory decisions. Mr. Dugandzic has requested an expedited date for his judicial review application; that request was denied. He intends to renew his request for an expedited date.

[11] The only steps remaining in the hearing are closing submissions from the parties and the Tribunal's ultimate decision. The Tribunal has set a deadline for closing submissions of February 14, 2025.

[12] Mr. Dugandzic brought an application before the Tribunal seeking a stay of the hearing pending judicial review of the interlocutory decisions. On October 22, 2024, the Tribunal dismissed that application: *Dugandzic v Law Society of Alberta*, 2024 AHRC 124. Prior to that decision being issued, Mr. Dugandzic filed an urgent application in the Court of King's Bench seeking a stay of the Tribunal's consideration of the stay application. That urgent application was dismissed.

[13] Mr. Dugandzic now comes into Urgent Chambers asking this Court to stay the hearing until the judicial review of the interlocutory decisions has been heard and decided.

[14] Mr. Dugandzic is concerned that should the Tribunal make its final decision before a decision is made on the judicial review of the interlocutory decisions, the Tribunal's final decision will be based on a significantly flawed evidentiary record. He is gravely concerned that the interlocutory decisions of the Tribunal be judicially reviewed before the Tribunal makes its final decision. His ultimate concern is that he has been denied a right to a fair hearing and that if the Tribunal relies on Dr. Pachet's evidence in reaching its final decision, the only viable remedy the reviewing Court will have to correct the errors made by the Tribunal will be to direct a re-hearing of his complaint. Given Mr. Dugandzic's health, he says being directed to a re-hearing would be personally and irreparably devastating. He is also concerned that he will not have the personal or financial capacity to undertake a judicial review of the final decision.

[15] This collection of circumstances gives rise to what Mr. Dugandzic says are extraordinary circumstances obligating the Court of King's Bench to intervene now to stay the hearing pending the outcome of the judicial review of the interlocutory decisions.

[16] The LSA maintains that Mr. Dugandzic's application for a stay is premature and that Mr. Dugandzic has failed to demonstrate that this case presents the kind of rare and exceptional circumstances that would justify the Court's intervention now to stay the completion of the hearing. The LSA says Mr. Dugandzic can make submissions to the Tribunal as to the value it should place on Dr. Pachet's evidence or the risk of relying on that evidence in reaching its final decision. The LSA says Mr. Dugandzic must do so and that the Tribunal must be permitted to render its final decision. Importantly, in the event Mr. Dugandzic disagrees with the Tribunal's final decision and seeks judicial review of that final decision, the LSA submits that Court of King's Bench has broad remedial tools, including returning the matter to the Tribunal with directions regarding the use or treatment of the evidence in question. It says that ordering a re-hearing of Mr. Dugandzic's complaint is not the sole nor even the most likely outcome.

Preliminary Issue of Standing

[17] Counsel for the Tribunal requested standing on this application to address its concerns regarding the timing of the stay application and to respond to any questions I might have regarding the Tribunal and its processes. Counsel for Mr. Dugandzic did not object to Tribunal counsel's participation in providing limited written and oral submissions.

[18] Whether the Tribunal is permitted standing on these applications is a matter of discretion: *Ontario (Energy Board) v Ontario Power Generation Inc*, 2015 SCC 44 at para 57. In exercising my discretion, I am to balance the need to ensure that I can make a fully informed determination of the issues before me while maintaining and protecting the impartiality of the Tribunal. Protecting the impartiality of the Tribunal is particularly important where the hearing has not yet been concluded and the Tribunal's final decision has not yet been rendered.

[19] Given the narrow role the Tribunal proposed to take on this application, I was satisfied that permitting the Tribunal's participation in the application to the limited extent proposed would not compromise its impartiality.

Application for a Stay and the Threshold Issue of Prematurity

[20] The test for a stay of proceedings is well known. A stay may be ordered if the applicant satisfies the Court, on a balance of probabilities, that there is a serious question to be determined, that the applicant will suffer irreparable harm if the stay is not granted, and that the balance of convenience favours granting the stay: *RJR-MacDonald Inc v Canada (AG)*, 1994 CanLII 117 (SCC). The test for determining whether there is a serious issue to be determined is a low threshold that is met if the issue is not frivolous or vexatious: *RJR-MacDonald* at p 335. Irreparable harm refers to the nature of the harm, not its magnitude. It includes harm that cannot be cured. The balance of convenience involves assessing whether the greater harm will arise from the granting or refusal of a stay.

[21] On an application for a stay pending judicial review of an interlocutory decision, I am not to undertake an in depth examination of the merits of the application for judicial review. That said, while I am not tasked with determining the merits of Mr. Dugandzic’s application for judicial review of the Tribunal’s interlocutory orders, it is essential to situate this application for a stay within that context.

[22] In *Alberta (Director of Public Lands Disposition Management Section, Land Policy and Programs Branch, Lands Division, Alberta Environment and Parks) v Syncrude Canada Ltd*, 2023 ABKB 447 at para 31, Justice Feth observed that concerns about the prematurity of an application for judicial review may be addressed either as a threshold issue on an application for stay or may be addressed within the *RJR* tripartite test itself. In *Fawcett v College of Physicians and Surgeons of Alberta (Complaint Review Committee)*, 2022 ABCA 416 at para 12 the Alberta Court of Appeal observed that the issue of litigation by installment on an application for a stay may be addressed independently as a preliminary matter, or under the tri-partite test in *RJR-MacDonald*.

[23] While I note that Justice Feth in *Syncrude* considered the issue of prematurity within his analysis of the tripartite test, in the circumstances of this case, I have concluded that it is most efficient to consider the issue of prematurity of the application as a threshold issue.

[24] Absent “rare and exceptional circumstances” the judicial review of interlocutory decisions or procedural issues should occur after an administrative hearing is concluded and a tribunal’s final decision is issued. In *Sturt v Chartered Professional Accountants of Alberta*, 2023 ABCA 146 at para 7, the Alberta Court of Appeal observed:

As a matter of curial deference, interlocutory and procedural issues, including an allegation of procedural fairness arising from an inadequate investigation, should generally occur after the administrative proceedings have concluded, save for rare and exceptional circumstances. **The general rule is that until the administrative board or tribunal has had an opportunity to address the matter, such applications are premature.** In addition to curial deference, challenges in proceedings that interrupt, delay or bifurcate a tribunal’s work are to be avoided. (emphasis added)

[25] The policy considerations underlying that direction include the concern that permitting judicial review of interlocutory orders risks fragmenting or bifurcating administrative processes: *Sturt* at paras 7 and 13. The fragmentation of an administrative process that occurs when a party requests rulings on interlocutory decisions adds expense, creates unnecessary delays,

and consumes additional judicial resources: *Workum v Alberta Securities Commission*, 2006 ABCA 181 at para 2; *Fawcett* at para 19.

[26] In *Blench v Cheng*, 2024 ABCA 73 at para 14, citing *Sturt*, the Alberta Court of Appeal addressed the question of appellate review of interlocutory decisions in the civil law context. It observed that premature intervention regarding interlocutory rulings can undermine the operation of the decision maker, “destabilizing” their ability to make authoritative orders. In my view, that concern applies equally in the administrative law context.

[27] The posture to be taken by this Court is one of restraint. The following quote from the decision in *CB Powell Limited v Canada (Border Services Agency)*, 2010 FCA 61 at para 33 is particularly instructive:

Courts across Canada have enforced the general principle of non-interference with ongoing administrative processes vigorously. This is shown by the narrowness of the “exceptional circumstances” exception Suffice to say, the authorities show that very few circumstances qualify as “exceptional” and the threshold for exceptionality is high Concerns about procedural fairness or bias, the presence of an important legal or constitutional issue, or the fact that all parties have consented to early recourse to the courts are not exceptional circumstances allowing parties to bypass an administrative process, as long as that process allows the issues to be raised and an effective remedy to be granted”

[28] As Mr. Dugandzic seeks a stay of an ongoing administrative process to pursue the judicial review of interlocutory decisions, he must demonstrate that there are exceptional circumstances that justify the Court’s intervention. It is a high hurdle and not one easily overcome: *Sturt* at para 13.

[29] In *Thielmann v The Association of Professional Engineers and Geoscientists of the Province of Manitoba*, 2020 MBCA 8 at para 50, the Manitoba Court of Appeal commented that weight should always be given to the overarching consideration that an administrative tribunal should be given the opportunity to render its decision, and to provide reasons that can be considered by the court on any eventual review.

[30] The factors that may assist in determining whether an applicant has demonstrated rare and exceptional circumstances include hardship and prejudice, irreparable harm, delay and whether the process or proceedings are so deeply flawed that it is clear and obvious that judicial review will be successful: *Theilmann* at para 45.

[31] Mr. Dugandzic says he has established exceptional circumstances by pointing to the hardship and irreparable harm he will experience should the Tribunal make its decision on a flawed evidentiary record that arises out of unfair proceedings. He submits that unless the wrongs are righted now, he will be left to pursue judicial review of the final decision with the inevitable outcome that the Court will direct a re-hearing of his complaint. He says the factors that are present in this case favour a curing of the record prior to the Tribunal making its final decision. He says that the only remaining viable alternative to correct the wrong will be through a re-hearing of his complaint which he says would be intolerable.

[32] In my view, whether I consider the prematurity of Mr. Dugandzic's application for a stay as a threshold issue or within the application of the *RJR* tripartite test, I am satisfied that Mr. Dugandzic has not demonstrated that this is an extraordinary case that warrants judicial intervention in the form of a stay.

[33] The window for ordering a stay of an administrative hearing pending judicial review of interlocutory decisions is a very narrow one. In *Syncrude* at para 45, the Court observed that procedural fairness concerns including concerns regarding the admissibility or reliance on evidence are not exceptional circumstances that would warrant a stay of an administrative process prior to completion. A stay of an administrative hearing pending judicial review of interlocutory decisions may be appropriate in the exceptional case where the hearing is so deeply flawed that there is a strong likelihood that the hearing would have to be conducted again, as may be the case when there are concerns regarding bias or issues of jurisdiction: *Lourenco v Hegedus* 2017 ONSC 3872 at para 6.

[34] The Supreme Court of Canada stated in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 141 that a reviewing Court's remedies are not limited to directing a re-hearing of the complaint. If a reviewing Court finds that the Tribunal's decision was unreasonable, it will most often be appropriate to remit the matter back to the decision maker for reconsideration with the benefit of the Court's reasons.

[35] I conclude that Mr. Dugandzic cannot overcome the high threshold of establishing that in the circumstances of this case there are exceptional circumstances that warrant a stay of the hearing pending the outcome of the judicial review of the interlocutory decisions.

[36] Mr. Dugandzic argues that he has been denied the right to a fair hearing as a result of the interlocutory decisions made by the Tribunal. Mr. Dugandzic has the opportunity to raise all of his concerns regarding the Tribunal's reliance on the evidence of Dr. Pachet in his closing submissions to the Tribunal. Once the Tribunal issues its final decision, should Mr. Dugandzic conclude that the decision is unreasonable, he can seek judicial review of the decision and can raise his concerns regarding procedural fairness at that time.

[37] Mr. Dugandzic expresses concern that at the end of the day, the inevitable outcome of these proceedings will be a direction by the Court of King's Bench of a re-hearing of Mr. Dugandzic's complaint. I cannot accept that the outcome of a judicial review of the Tribunal's final decision in this case will most likely be a re-hearing of Mr. Dugandzic's complaint. The reviewing Court may provide directions as to the appropriate use of all or portions of the evidence; it may provide directions that evidence be disregarded in its entirety. Notably, all parties will have the opportunity to address with the reviewing Court the appropriate remedy should they be of the opinion that the Tribunal's decision is unreasonable. In doing so, they will no doubt reference the history of the proceedings, the delays to date, and the incredible toll taken.

[38] Mr. Dugandzic says that exceptional circumstances arise from the devastating consequences to him of further delay. Unfortunately, it appears to me that there will be delay regardless of the outcome of this application. While Mr. Dugandzic prefers the scenario where he endures the certain delay associated with waiting for the judicial review of the interlocutory decisions and then the conclusion of the hearing, in my view, permitting the Tribunal to complete

its work now is more likely to result in less duplication of effort, less delay, and fewer wasted resources.

[39] None of us know how the evidence of Dr. Pachet will be used by the Tribunal or the weight it will be given. The Tribunal should be allowed to fulfill its mandate. All parties will then make informed and reasoned decisions as to their next steps.

[40] Mr. Dugandzic's application in Urgent Chambers for a stay of the hearing pending the judicial review of the Tribunal's interlocutory decisions is denied.

[41] I will note that despite filing a lengthy brief in advance of the Urgent Chambers hearing, and despite being given the opportunity to make full oral submissions in Urgent Chambers, and despite counsel being aware of the Court's intention to provide its reasons on this application by today, counsel for Mr. Dugandzic provided additional written materials to the Court as this decision was being finalized. I have reviewed and considered those additional written materials; my conclusion is unchanged.

Heard on the 24th day of January, 2025.

Dated at the City of Calgary, Alberta this 27th day of January, 2025.

N.F. Dilts
J.C.K.B.A.

Appearances:

Jarret Janis
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