

# In the Court of Appeal of Alberta

**Citation:** Ahmed v Alberta College of Pharmacy, 2025 ABCA 265

**Date:** 20250729  
**Docket:** 2301-0242AC  
**Registry:** Calgary

**Between:**

**Muhammad Maqbool Ahmed**

Respondent

- and -

**Alberta College of Pharmacy**

Appellant

- and -

**The College of Acupuncturists of Alberta**

Intervenor

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**The Court:**

**The Honourable Chief Justice Ritu Khullar  
The Honourable Justice Anne Kirker  
The Honourable Justice April Grosse**

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## **Memorandum of Judgment**

Appeal from the Order by  
The Honourable Justice J.T. Eamon  
Dated the 13th day of September, 2023  
Filed the 14th day of November, 2023  
(2023 ABKB 522, Docket: 2301 11541)

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## Memorandum of Judgment

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### The Court:

#### I. Overview

[1] In 2019, the *Health Professions Act*, RSA 2000, c H-7 (*HPA*), was amended to delineate sexual abuse and sexual misconduct as specific charges of unprofessional conduct and to specify the sanction for each. This appeal raises the challenge of interpreting these amendments within the structure of the *HPA*. Specifically, this appeal addresses the narrow question of whether a regulated professional found guilty of sexual abuse can seek an immediate stay of the automatic suspension of their license required by s 81.1(1) of the *HPA*.<sup>1</sup>

[2] This case involves the Alberta College of Pharmacy (College) and one of its regulated members, the respondent. The appeal was moot by the time it came to this Court, but we agreed to hear this issue as it is evasive of appellate review, and the 2019 amendments impact all the regulated professions under the *HPA*. For the purposes of this appeal, the parties agreed that the respondent's counsel would assume the role of an *amicus* to assist the Court in the interpretation of the legislation. It was also agreed that any restriction on publication to protect the identity of the complainant was no longer necessary given the narrow legal focus of this appeal hearing.

[3] The issue arises because the typical approach to professional disciplinary hearings under the *HPA* is to bifurcate them. The first, merits stage, is for the hearing tribunal to determine if unprofessional conduct has occurred and that finding is contained in written reasons. If so, a subsequent hearing addresses the appropriate sanctions with the hearing tribunal issuing further written reasons. A regulated professional has a right to appeal hearing tribunal decisions on merits and sanction to the council. The legislation has been interpreted to mean that there is one appeal period, which starts to run *after* the reasons for the sanction are issued. This is the interpretation of the *HPA* advocated by the College.

[4] With the 2019 amendments, upon the finding of sexual abuse at the conclusion of the merits stage, the hearing tribunal *must* immediately suspend the regulated professional's practice permit until it has decided on sanction: s 81.1(1). Section 82 addresses sanction for unprofessional conduct generally and offers a range of options from a caution to mandatory education to cancellation of registration and practice permit. The 2019 amendments *require* the hearing tribunal to cancel the regulated professional's registration and practice permit if the unprofessional conduct is based on a finding of sexual abuse: s 82(1.1)(a).

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<sup>1</sup> The relevant sections of the *Health Professions Act* are attached as Appendix A.

[5] A regulated professional may appeal “the decision” of the hearing tribunal within 30 days after “the decision” of the hearing tribunal is given to them: s 87. “A decision” remains in effect pending an appeal to the council unless it is stayed pending appeal: s 86(1).

[6] The chambers judge interpreted ss 86 and 87 of the *HPA* as permitting a regulated professional to apply for a stay of the interim suspension of the practice permit imposed by s 81.1(1) after the merits decision but *before* the sanctions decision. He found that each “decision” – merits and sanction – was capable of appeal separately to the council, and the regulated professional could apply for a stay of the interim suspension pending the appeal: ss 86(1), (4). In this appeal, the College argues the chambers judge erred and that a stay of the sanction can only be sought at the conclusion of all the proceedings before a hearing tribunal. That is because an appeal is available after the hearing tribunal has made a final decision, which includes orders relating to sanction under s 82, not before. At that stage, a regulated professional can apply for a stay pending the appeal.

[7] The implication of the College’s position is that when an interim suspension of a practice permit is imposed by s 81(1.1) upon a finding of sexual abuse, a regulated professional is unable to apply for a stay in the period between the merits and sanction decisions. They can only apply for a stay *after* the sanction hearing is complete and a decision on sanction is issued, including mandatory cancellation of the professional’s practice permit. There are typically several months between these two stages: in this case, it was more than four months.

[8] We disagree with the College’s position and agree with the chambers judge that the *HPA* permits a regulated professional to apply for a stay of the mandatory interim suspension of their practice permit imposed by s 81.1(1), albeit for different reasons than those given by the chambers judge.

## **II. Background**

[9] While this specific appeal is moot, some factual context assists in understanding the interpretive issue in this case.

[10] In July 2023, the hearing tribunal of the College found that the respondent, a registered pharmacist, had committed unprofessional conduct by having a consensual sexual relationship with a patient. The hearing tribunal concluded that the conduct fell within the definition of “sexual abuse” under s 1(1)(nn.1) of the *HPA* and suspended the respondent’s permit to practice pharmacy pending its decision on sanction as it was required to do by s 81.1(1).

[11] In September 2023, an appeal panel of the council refused to accept the respondent’s notice of appeal on the ground that the respondent lacked a right to appeal the merits decision before the sanction decision was issued. A stay committee of the council refused to stay the interim

suspension due to lack of jurisdiction: there was no “decision” under appeal, so no authority to stay the suspension pending appeal.

[12] The respondent immediately applied to the Court of King’s Bench for a stay of the interim suspension pending the outcome of his appeal of the merits decision, relying on s 86(3) of the *HPA*.

[13] On September 14, 2023, the chambers judge stayed the interim suspension of the respondent’s practice permit until the council’s decision on the merits appeal: *MA v Alberta College of Pharmacy*, 2023 ABKB 522 (*Reasons*). The chambers judge concluded that the respondent had a right under s 87 to commence an appeal of the hearing tribunal’s merits decision: *Reasons* at paras 50-52. He ordered the council to accept the respondent’s notice of appeal. Then, since the respondent had an extant appeal of the merits decision to the council, the chambers judge had authority to stay the interim suspension of the respondent’s practice permit pending the outcome of the appeal, which he did.

[14] The College then appealed the chambers judge’s decision to this Court.

[15] On November 17, 2023, the hearing tribunal issued its decision on sanction. It cancelled the respondent’s practice permit and registration, as it was required to do under s 82(1.1) in cases of sexual abuse, and imposed other sanctions.

[16] An appeal panel of the council heard the respondent’s appeal of the merits and sanction decisions in April 2024 and issued a decision largely dismissing the appeal in July 2024. A decision on costs followed in October 2024. The respondent has appealed those decisions to this Court, and the appeal is set down for hearing in December 2025.

### **III. Analysis**

#### **A. Decision on the merits is not a final decision**

[17] This appeal poses the challenge of how to interpret the specific 2019 amendments harmoniously with the rest of the *HPA*. Suspension or cancellation of a practice permit has always been available as sanctions for unprofessional conduct under the *HPA*, s 82. In 2019, these sanctions became mandatory for specific types of unprofessional conduct including sexual abuse and sexual misconduct. There is no indication that the Legislature considered the appeal rights of the regulated professional when it introduced and debated the 2019 amendments: Alberta Hansard, second reading, Bill 21, an “Act to Protect Patients”, October 31, 2018, p. 1685. Rather, the Legislature’s focus was on adding the mandatory penalties. Therefore, it is left to the courts to interpret the amendments to the *HPA* in a holistic manner.

[18] The parties argued this appeal responding to the *Reasons* by focusing on the rights that flow from the phrase “the decision of the hearing tribunal” in s 87 and whether separate rights of appeal arise from a decision on the merits and a decision on the sanction. The answer would then determine whether an appeal to the council could be filed pursuant to s 87 and therefore whether s 86 would apply, which permits a regulated professional to seek a stay from the council (or if unsuccessful, the Court of King’s Bench) pending appeal: s 86(1), (3).

[19] We agree with the College that the scheme of the *HPA* demonstrates an intention that appeal rights apply to the final decision of the hearing tribunal, that is after the conclusion of a sanctions hearing when the sanctions decision is issued.

[20] The *HPA* sets out a logical sequence under the heading “Decisions and Records” in Division 4 (dealing with Hearings and Decisions) and the first two sections of Division 5 (dealing with Appeals):

- s 80(1) – A hearing tribunal may decide that conduct “does or does not constitute unprofessional conduct”.
- s 82(1) – If a hearing tribunal finds unprofessional conduct it “may make one or more of the following orders” imposing sanctions.
- s 83 – The hearing tribunal must, after a reasonable time after the *conclusion of a hearing*, make a written decision which
  - describes each finding and the supporting reasons; and
  - any *order* made under this Part [Part IV].
- s 84 – The hearing tribunal must forward to the hearings director the written decision under s 83 (which includes any order) and the record. Only then does the legislation expressly require the hearings director to give a copy of the decision to the regulated professional and notify them of the right to appeal to the council: s 84(2).
- ss 87(1) and (2) – A notice of appeal of the hearing tribunal decision is required within 30 days of the regulated professional receiving the decision.
- s 86 – A hearing tribunal decision remains in effect pending appeal unless it is stayed.

[21] A few observations:

- While the *HPA* uses the term “decision” in different ways depending on the context, it is always used in the singular form: see for instance, ss 84, 86, 87. The hearing tribunal makes one formal decision, though, typically, it has two parts: the merits and sanction.

- The written decision, which includes any orders under Part IV (per s 83), and the record of the hearing must be forwarded by the hearing tribunal to the hearings director: s 84(1). Only then does the legislation require the hearings director to distribute a copy of the written decision to the complaints director and the registrar, the complainant, the regulated professional, and the Minister of Justice. At that stage, the hearings director notifies the regulated professional of their right to appeal: s 84(2). The right of appeal arises after the regulated professional formally receives a copy of the written decision and is notified of the right to appeal.
- The fact that the hearing tribunal must forward the record of the hearing, along with its written decision, to the hearings director indicates that the right of appeal arises only after the hearing tribunal has made a sanction decision. For one thing, the record of the hearing will include any evidence presented at the sanction hearing. For another, the hearing tribunal will often need the record of the hearing – particularly the evidence presented at the merits hearing – for the sanction phase.
- If s 80(2) applies, where the hearing tribunal believes on reasonable and probable grounds that a criminal offence may have occurred, the hearings director must “send a copy of the written decision under section 83 to the Minister of Justice”, including the record of the hearing if requested. This section does not contemplate notification to the Minister in a piecemeal fashion and contemplates that the hearing is concluded and the record is available.

[22] All of these reasons support the interpretation urged by the College that the regulated professional may appeal to the council after the hearing tribunal has issued its written decision on sanction, and a copy has been given to the regulated professional.

[23] The parties devoted some time to the issue of horizontal *stare decisis* described in *R v Sullivan*, 2022 SCC 19 and whether the decision in *Campkin v College of Social Workers of Alberta*, 2017 ABQB 358 bound the chambers judge in this case. *Campkin* dealt with a different issue, the ability to appeal preliminary decisions of a hearing tribunal. Therefore, its *ratio* did not bind the chambers judge: *Sullivan* at paras 6, 64, 86. Nevertheless, we do agree with the sentiment expressed in para 49 of *Campkin* that, presumptively, there is a single appeal to the council after the hearing tribunal’s decision making process is concluded.

#### **B. An interim decision to suspend a practice permit is susceptible to a stay**

[24] However, that is not the end of the analysis and a regulated professional in the respondent’s position is not left without a remedy. The availability to stay an interim suspension under s 81.1(1) does not depend on the ability to appeal a merits decision before the sanction phase has concluded.

[25] To interpret the *HPA* otherwise would undermine one purpose of Part IV, which addresses disciplinary proceedings in ss 54-96. The *HPA* is directed at protecting the public, maintaining public confidence in the profession, *and* ensuring it does so in a manner that is reasonably fair to the regulated professional in the complaint process: *Reasons* at para 47.

[26] Since an order suspending the regulated profession's practice permit under s 81.1(1) is *not* made after a final decision is issued and is made prior to an order under section 82, it falls within section 65 of the *HPA*.

[27] Section 65 deals with conditions and suspensions of a practice permit in a wide number of circumstances and applies "any time after a complaint is made until a hearing tribunal makes an order under s 82". Specifically, as related to this case, on the recommendation of a hearing tribunal, section 65 permits a person designated by the council to order the suspension of a practice permit until the completion of the hearing tribunal proceedings. Importantly, the section also preserves the ability of a regulated professional to apply to the Court of King's Bench for a stay of the suspension (or other interim order): s 65(2).

[28] Section 81.1(1) requires the immediate suspension of a regulated professional's practice permit upon a finding of sexual abuse "until an order is made under section 82". This section must be interpreted harmoniously with s 65, which includes the related safeguard of permitting the regulated professional to apply for a stay under s 65(2): *Willick v Willick*, [1994] 3 SCR 670 at p 689; Ruth Sullivan, *The Construction of Statutes*, 7th ed (Toronto: LexisNexis, 2022) at 323 [*Sullivan*]. It is presumed that the Legislature intended ss 65 and 81.1(1) to fit together to form an internally consistent framework governing interim suspension orders: *Sullivan* at 323. This is achieved by interpreting the mandatory suspension required by s 81.1(1) as a type of interim order governed by s 65. Accordingly, prior to any final sanction being ordered under s 82, a regulated professional in the respondent's position can apply to the Court of King's Bench for a stay of the mandatory interim suspension.

[29] Similarly, there is a presumption that the Legislature intended ss 81.1(1) to operate consistently with s 82(1.1). As noted, s 82.1(1.1) requires the hearing tribunal's sanction decision to include an order cancelling the regulated professional's practice permit and registration in cases where sexual abuse is found. In such cases, the regulated professional can apply to the council (or if unsuccessful, the Court of King's Bench) for a stay of the cancellation pending appeal: ss 86(1), (4). It would be illogical for the *HPA* to deny the regulated professional the ability to seek a stay of a mandatory interim suspension imposed under 81.1(1) but preserve their ability to seek a stay of a mandatory final cancellation of their registration and practice permit imposed under s 82(1.1). If there are good reasons to stay a mandatory final cancellation, those same reasons would often support staying a mandatory interim suspension. In some cases, the option to stay the final cancellation may well be rendered nugatory if there is no ability to stay the interim suspension.

[30] Purposive considerations also support this interpretation. One purpose of disciplinary proceedings under Part IV of the *HPA* is to treat regulated professionals fairly, which is reflected

in several provisions of that part. A regulated professional's interest in fair treatment includes access to interim relief pending the hearing tribunal's final decision. This is particularly true when a merits decision has found sexual abuse and has ordered the suspension of the practice permit under s 81.1(1), which may gravely affect the regulated professional's livelihood.

[31] Such an interpretation also avoids the confusion and unfairness that can arise with having different decisions, merits and sanctions, giving rise to different appeal periods. That raises concerns about multiple proceedings and increased costs for the regulated professions, and professionals, and creates a risk of missing appeal periods that apply to different decisions.

[32] This interpretation avoids litigation by installment and maintains clarity about what is a final decision and when an appeal period is triggered. And it also preserves the ability of a regulated professional to apply for a stay of the mandatory interim suspension of their practice permit.

#### IV. Disposition

[33] We agreed to hear the moot appeal to settle the question of whether a mandatory interim suspension of a practice permit pursuant to s 81.1(1) of the *HPA* could be stayed pending appeal. That question has been answered, and there is no need to comment further on the order of the Court below given its mootness.

[34] We are grateful to the College, the *amicus* and the intervenor for their assistance in addressing this matter.

Appeal heard on March 11, 2024 and October 28, 2024

Memorandum filed at Calgary, Alberta  
this 29th day of July, 2025

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Khullar C.J.A.

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Authorized to sign: Kirker J.A.

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Grosse J.A.

**Appearances:**

D.J. Marshall (no submissions)  
for the Respondent

D.J. Marshall  
*Amicus Curiae*

A.N. Chisholm  
for the Appellant

J.C. Gagnon (no appearance)  
M. Croden  
for the Intervenor

**Appendix A**  
**Excerpts of Relevant Portions of *HPA***

**1(1)** In this Act, . . .

(nn.1) “sexual abuse” means the threatened, attempted or actual conduct of a regulated member towards a patient that is of a sexual nature and includes any of the following conduct:

(i) sexual intercourse between a regulated member and a patient of that regulated member;

(ii) genital to genital, genital to anal, oral to genital, or oral to anal contact between a regulated member and a patient of that regulated member;

(iii) masturbation of a regulated member by, or in the presence of, a patient of that regulated member;

(iv) masturbation of a regulated member’s patient by that regulated member;

(v) encouraging a regulated member’s patient to masturbate in the presence of that regulated member;

(vi) touching of a sexual nature of a patient’s genitals, anus, breasts or buttocks by a regulated member; . . .

**65(1)** On the recommendation of the complaints director or the hearing tribunal, a person or committee designated by the council may at any time after a complaint is made until a hearing tribunal makes an order under section 82

(a) impose conditions on an investigated person’s practice permit generally or with respect to any area of the practice of that regulated profession, including the condition that the investigated person

(i) practise under supervision, or

(ii) practise with one or more other regulated members,

or

(b) suspend the practice permit of an investigated person, until the completion of proceedings under this Part.

(2) An investigated person may apply to the Court of King’s Bench for an order staying a decision by a person or committee under subsection (1).

(3) A copy of an application under subsection (2) must be given to the registrar. . .

**80(1)** The hearing tribunal may decide that the conduct of an investigated person does or does not constitute unprofessional conduct.

(2) If the hearing tribunal is of the opinion that there are reasonable and probable grounds to believe that the investigated person has committed a criminal offence, the hearing tribunal must direct the hearings director to send a copy of the written decision under section 83 to the Minister of Justice and on the request of the Minister of Justice also send a copy of the record of the hearing. . . .

**81.1(1)** If the subject-matter of a hearing relates to a complaint alleging sexual abuse, and the hearing tribunal decides that the conduct of an investigated person constitutes unprofessional conduct based in whole or in part on sexual abuse, the hearing tribunal must immediately order the suspension of the investigated person’s practice permit until an order is made under section 82. . . .

**82(1)** If the hearing tribunal decides that the conduct of an investigated person constitutes unprofessional conduct, the hearing tribunal may make one or more of the following orders:

(a) caution the investigated person;

(b) reprimand the investigated person;

(c) impose conditions on the investigated person’s practice permit . . .

. . .

(h) subject to subsection (1.1), cancel the registration and practice permit of the investigated person;

. . .

(l) any order that the hearing tribunal considers appropriate for the protection of the public.

**(1.1)** If the subject-matter of a hearing relates to a complaint alleging sexual abuse or sexual misconduct, and the hearing tribunal decides that the conduct of an investigated person constitutes unprofessional conduct based in whole or in part on sexual abuse or sexual misconduct, in addition to any order that the hearing tribunal may make under subsection (1),

(a) in respect of a decision of unprofessional conduct based in whole or in part on sexual abuse, the hearing tribunal must order the cancellation of the investigated person's practice permit and registration, and . . .

**83** The hearing tribunal must, within a reasonable time after the conclusion of a hearing before it, make a written decision on the matter in which it

- (a) describes each finding made by it,
- (b) states the reasons for each finding made by it, and
- (c) states any order made under this Part.

**84(1)** The hearing tribunal must forward to the hearings director

- (a) the written decision under section 83, and
- (b) the record of the hearing, consisting of all evidence presented before it, including
  - (i) the reports, exhibits and documents presented before it, and
  - (ii) a record of the evidence, including all testimony given before it, however recorded.

**(2)** The hearings director must, on receiving the decision and the record described in subsection (1), give a copy of the decision to

- (a) the complaints director and the registrar,
- (b) the complainant,
- (c) the investigated person, and
- (d) the Minister of Justice, if so directed or requested under section 80(2),

and notify the investigated person of the right to appeal the decision to the council.

**86(1)** A decision of the hearing tribunal remains in effect pending an appeal to the council unless the person or committee designated by the council, on written application, stays the decision pending the appeal.

(2) The investigated person may make a written submission with respect to an application under subsection (1).

(3) If the person or committee designated by the council

(a) decides not to stay the decision of the hearing tribunal, or

(b) does not make a decision within 10 days, excluding holidays, of the application,

the applicant may apply to the Court of King's Bench for a stay of the decision of the hearing tribunal pending an appeal to the council.

(4) A decision of the council remains in effect pending an appeal to the Court of Appeal unless the Court of Appeal, on application, stays the decision pending the appeal.

**87(1)** An investigated person or the complaints director, on behalf of the college, may commence an appeal to the council of the decision of the hearing tribunal by a written notice of appeal that

(a) identifies the appealed decision, and

(b) states the reasons for the appeal.

(2) A notice of appeal must be given to the hearings director within 30 days after the date on which the decision of the hearing tribunal is given to the investigated person.

(3) A hearings director must, on being given a notice of appeal,

(a) give a copy of the notice of appeal, and make a copy of the decision and record of the hearing available, to each member of the council or of the panel of council hearing the appeal,

(b) ensure that the complaints director, the investigated person and the complainant are given a notice of the hearing of an

appeal that states the date, time and place at which the council will hear the appeal, and

(c) ensure that the investigated person and the complaints director are given a copy of the record of the hearing.