In the Court of Appeal of Alberta

Citation: Dr Ignacio Tan III v Alberta Veterinary Medical Association, 2026 ABCA 32

Date: 20260205
Docket: 2403-0164AC
Registry: Edmonton

Between:

Dr. Ignacio Tan III and Prime Vet Corporation

Appellants

- and -

Alberta Veterinary Medical Association

Respondent

The Court:

The Honourable Justice Jolaine Antonio
The Honourable Justice Jane Fagnan
The Honourable Justice Joshua B. Hawkes

Memorandum of Judgment

Appeal from the Decisions by
The Committee of Council of the
Alberta Veterinary Medical Association
Dated the 19th day of June, 2024
and the 6th day of September, 2024

Memorandum of Judgment

The Court:

I. Introduction

[1] A Hearing Tribunal of the Alberta Veterinary Medical Association (ABVMA) found the appellant Dr Tan guilty of four counts of unprofessional conduct, and his company the appellant Prime Vet Corporation (Prime Vet), guilty of two counts of unprofessional conduct. The Hearing Tribunal ordered among other things that the appellant Dr Tan receive a reprimand, be suspended from practice for one year, and that the appellants pay fines totalling $20,000 and costs of $35,000.

[2] The appellants appealed the Hearing Tribunal's findings and the penalties and costs imposed to the Association's Committee of Council (Council). The Council confirmed the Hearing Tribunal's decisions and ordered the appellants to pay costs of the appeal.

[3] We deny the appeal of the decision of the Council regarding the findings of unprofessional conduct against the appellants and the sanctions imposed. We allow the appeal as it relates to costs and remit that issue back to the Council for a determination in light of these reasons.

II. Background

History

[4] Dr Tan practiced as a veterinarian in Alberta. At times his license has been restricted, including the period between March 2020 to June 2021 when he was restricted from supervising other veterinarians whose own licenses required that they be supervised in practicing veterinary medicine. Such veterinarians include what are known as Supervised Limited Practice (SLP) veterinarians.

[5] The appellants owned and operated Mercy Animal Hospital (MAH). In March 2020, the appellants hired Dr Nirajkumar Makadiya, a foreign-trained veterinarian, nominally as a veterinary medical assistant. Donna Shurman, a Registered Veterinary Technologist, was designated as his supervisor. For part of his employment at the hospital, Dr Makadiya was an SLP veterinarian, and could only practice veterinary medicine under the immediate or direct supervision of a qualified registered veterinarian. At other times during his employment, Dr Makadiya was unlicensed and was prohibited from practicing veterinarian medicine.

[6] Mr Khal Moustarah had a dog named Webster that received treatment at the hospital between July and December 2020. Mr Moustarah found those services to be unsatisfactory and made a complaint to the ABVMA.

[7] On June 9, 2022, the ABVMA notified Dr Tan that he was required to answer four allegations:

i. That between April 8, 2020 and January 7, 2021, he employed an unlicensed veterinarian who practiced veterinary medicine.

ii. That during the period March 15, 2020 to April 8, 2020 and January 8, 2021 to June 12, 2021, Dr Tan supervised a SLP Registered Veterinarian while his license was restricted which prohibited him from providing supervision.

iii. That as the responsible veterinarian, Dr Tan failed to ensure that communications from MAH, including as between his staff and clients, were professional in all respects.

iv. That Dr Tan failed to create and/or maintain complete and appropriate medical records for Webster.

[8] The ABVMA also notified Prime Vet that it was required to answer the following allegations:

i. That Prime Vet employed an unlicensed veterinarian, Dr Makadiya, to practice veterinary medicine.

ii. That Prime Vet failed to ensure the actions of the staff employed at MAH were professional in all its dealings with the clients, specifically with respect to communications with clients.

[9] The matter proceeded to a hearing, and the Hearing Tribunal found Dr Tan and Prime Vet guilty on all counts (the "Merits Decision"). As a result of the findings of unprofessional conduct, the Hearing Tribunal imposed sanctions on the appellants (the "Sanctions Decision") detailed further below.

[10] The appellants appealed the Merits Decision and the Sanctions Decision to the respondent's Committee of Council, (Council), pursuant to sections 44 and 45 of the *Veterinary Profession Act*, RSA 2000, c V-2 [*VPA*]. On July 11, 2024, the Council confirmed the decisions.

III. Grounds of Appeal

[11] The appellants advanced a total of 11 enumerated grounds of appeal – seven alleging errors of mixed fact and law by the Hearing Tribunal, and four alleging errors by the Council in failing to intervene and correct errors made by the Hearing Tribunal. These are distilled into five arguments articulated in the appellants' factum. We address those arguments as enumerated below.

IV. Standard of Review

[12] Section 45.1 of the *VPA* provides that an investigated person "may appeal to the Court of Appeal any finding, order or direction of the Council under section 45".

[13] The standards of review applicable to the Council and to this Court were recently summarized in proceedings involving the same parties as follows:

> (a) The Committee of Council relied on this Court's guidance respecting the internal standard of review in reviewing the Hearing Tribunal's decision. That guidance is set out at paragraph 35 of *Yee v Chartered Professional Accountants of Alberta*, 2020 ABCA 98, and need not be repeated here.
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> (b) The standards of review set out in *Housen v Nikolaisen*, 2002 SCC 33, apply to this Court's review of the Committee of Council's decision. Conclusions on questions of law are reviewed for correctness; findings of fact and findings on questions of mixed fact and law are reviewed for palpable and overriding error unless there is an extricable error of law.
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> (c) Sanctions and costs in professional disciplinary matters are reviewed for reasonableness.[1]

V. Analysis

Arguments not raised at the hearing under appeal

[14] Section 45.1 of the *VPA* is the statutory basis of this appeal and permits an appeal of an order or direction from the Council, not from the originating decision of the Hearing Tribunal. Arguments that were not raised at the appeal before the Council should only be permitted where the considerations articulated in *Alberta (Information and Privacy Commissioner) v Alberta Teachers Association* have been satisfied.[2] Foundational reasons against raising new arguments available but not raised before the applicable Hearing Tribunal are summarized as follows:

a) respect for the intent of Parliament and provincial legislatures in delegating decision-making powers to administrative bodies, as opposed to the court;

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[1] *Dr Ignacio Tan III v Alberta Veterinary Medical Association*, 2025 ABCA 119 at para 104, citing *Dr Ignacio Tan III v Alberta Veterinary Medical Association* 2024 ABCA 94 at para 2.

[2] *Alberta (Information and Privacy Commissioner) v Alberta Teachers Association*, 2011 SCC 61 at paras 23-26.

b) the need to accord deference to the decisions of statutory decision-makers, particularly when a decision-maker has specialized functions or expertise; and

c) the prejudice that arises if the court does not have an evidentiary record adequate to consider the new issue.[3]

[15] These considerations apply with particular significance in this case. The statutory delegation of professional regulation to bodies with the requisite technical expertise has been frustrated. The effect of failing to raise these arguments before those bodies also creates a deficient record as we do not have the benefit of the reasons of either the Hearing Tribunal or the Council on these issues.[4] Finally, as noted by the Supreme Court of Canada and many other appellate courts, the traditional standard of review cannot be applied to issues not raised before lower courts.[5]

Expansion of charges against Dr Tan and Prime Vet and findings related to unprofessional communications

[16] The appellants submit that their right to procedural fairness before the Hearing Tribunal was breached by the respondent expanding the scope of its inquiry from a specific incident (a phone call between a specific staff member and a client that occurred on December 10, 2020, and steps taken thereafter) to include other incidents and practices that the Hearing Tribunal deemed unprofessional.

[17] The appellants correctly cite authorities for the proposition that the notice of hearing is what properly determines the scope of the conduct in question. An accused has the right to know the case he or she must answer.[6]

[18] In the present case, the notices of hearing regarding unprofessional communication against both the appellants were not restricted to a single incident. Rather, both were drafted broadly alleging that Dr Tan "failed to ensure that communications from MAH, including as between your staff and clients, were professional in all respects" and that Prime Vet "failed to ensure that the

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[3] *The Owners, Strata Plan VR 1120 v Civil Resolution Hearing Tribunal*, 2022 BCCA 189 at para 45.

[4] *Oleynik v Canada (Attorney General)*, 2020 FCA 5 at paras 71-72; *Ouimet v Canada (Attorney General)*, 2021 FCA 200 at para 22.

[5] See e.g. *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 52; *Bank of America v Canada (Attorney General)*, 2025 FCA 9 at paras 6-7; *Liquor Control Board of Ontario v Ontario (Information and Privacy Commissioner)*, 2024 ONCA 803 at para 21.

[6] *Alsaadi v. Alberta College of Pharmacy*, 2021 ABCA 313 at para 25.

actions of the staff employed at MAH were professional in all its dealings with clients, specifically with respect to its communications with clients".

[19] Further, it was clear from the complaint submitted by Mr Moustarah that the inability to communicate directly with Dr Tan, and Dr Tan's failure to return calls were matters of significant concern. Mr Moustarah described his inability to speak directly with Dr Tan as "the worst part" of his interaction with the appellants. The Investigation Report summarized these complaints. These matters were also raised in the evidence during the hearing, and counsel for the appellants cross-examined Mr Moustarah regarding his communication with Dr Tan. They were also addressed in closing argument by counsel for the Complaints Director.

[20] The Hearing Tribunal found that both appellants took appropriate steps to address and curtail inappropriate communication by staff with clients. However, they found that Dr Tan failed to respond to repeated requests for communication from Mr Moustarah and failed to return calls in a timely manner. This conclusion was within the inclusive scope of the Notice of Hearing. It was also reflected in the disclosure, evidence at the hearing, and closing submissions by counsel for the Complaints Director. We also note that this ground was not raised before the Council. For all of these reasons we conclude that this ground of appeal fails.

Findings related to employment of an unlicensed veterinarian who practices veterinary medicine, and supervision of an SLP veterinarian while Dr Tan's license was restricted

[21] Dr Makadiya was licensed as an SLP veterinarian from March 15, 2020 to April 8, 2020; unlicensed from April 8, 2020 to January 8, 2021; and licensed as an SLP veterinarian again from January 8, 2021 to June 12, 2021. During all of that time he was employed at MAH as a veterinary medical assistant. Notwithstanding that designation, the Hearing Tribunal found that Dr Makadiya did in fact practice veterinary medicine while unlicensed and employed at MAH, and that Dr Tan knowingly or recklessly allowed him to do so.

[22] The Hearing Tribunal heard evidence from Samantha McMillan, a former employee at MAH, that Dr Makadiya performed veterinarian work including treating a pet for a broken toenail, performing surgeries including dog and cat neuters, dispensing medications, and monitoring anesthesia. She believed he was in fact hired as a veterinarian. Other evidence included an interview given by Ms Shurman, another employee at MAH, and subsequently confirmed by her during the investigation phase, although recanted in part by her at the hearing, that Dr Makadiya performed veterinarian tasks including monitoring anesthesia during surgery, and taking patient temperature, blood pressure, and respiration readings ("TPRs"). At the hearing Ms Shurman stated that she saw Dr Tan in surgery with Dr Makadiya and assumed he was monitoring anesthesia; that he placed IV catheters under her supervision; and that he would take patient TPRs and record them in the anesthesia sheet.

[23] The appellants argued before the Council that the Hearing Tribunal erred in failing to identify the appropriate tests for considering the credibility of witnesses and assessing the evidence. That is a different argument than the one now posed here. The appellants now submit there is a fundamental incompatibility between the evidence of Ms McMillan and Ms Shurman, such that both cannot be correct; and that the Hearing Tribunal erred by finding both to be credible without addressing this incompatibility. The specific conflict alleged is that Ms McMillan gave evidence including that she witnessed Dr Makadiya performing surgeries with Ms Shurman in attendance, but that Ms Shurman testified that she was not present at any such surgeries.

[24] Like the previous ground, this is a new argument and is inappropriate to raise on appeal. To the extent it deserves comment, it is clear from the reasons as a whole that the Hearing Tribunal discounted Ms Shurman's *viva voce* exculpatory evidence and preferred her initial (and subsequently confirmed) statement. It is also clear that there was evidence of Dr Makadiya performing other veterinarian services when Ms Shurman may not have been present. For example, Ms McMillan testified:

> Q And so when Dr. [Makadiya] was performing some of the tasks that you mentioned, so I will hone in on a few as an example. For example, if Dr. [Makadiya] was doing a spay or neuter was Ms. Shurman there with him?
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> A Not all the time. I believe Ms. Shurman worked I want to say Tuesdays and Thursdays at Mercy and then the other days she worked at another clinic, Lakeview or the Southside Animal Hospital, one of those, so she wasn't there every day. So there were times where other technicians were with Dr. [Makadiya] while he was performing spays and neuters.

[25] It is entirely reasonable that these two witnesses could observe different things at different times or that one may not have been present when the other was at some of the incidents recounted. The Hearing Tribunal's findings of fact in this regard are reviewed on a palpable and overriding error standard, and we find no reason to disturb the Hearing Tribunal's findings.

Findings related to medical records breaches

[26] The appellants contend that the Hearing Tribunal erred by relying on their own expertise without reference to the by-laws which set the minimum standards to which veterinarians are to be held. Thus, it is argued the Hearing Tribunal failed to distinguish between acceptable and optimal record keeping, and the resulting decision relating to medical records is unreasonable.

[27] This claim is directly contradicted by the reasons of the Hearing Tribunal which directly reference the section of the bylaws applicable to medical records. Further, the Hearing Tribunal also refers to the Medical Records Handbook provided to guide the implementation of the standards relating to records. Counsel for the Complaints Director invited the Hearing Tribunal to use their own experience and expertise in evaluating the conduct of Dr Tan. Counsel for Dr Tan made similar submissions, urging the Hearing Tribunal members to use their experience in determining whether the conduct in question was unprofessional or whether it fell "somewhere in the middle of the gray area that leads all the way up to perfection perhaps." This argument was not advanced by counsel for the appellants in the appeal to the Council. Rather, counsel submitted that the failure of the ABVMA to set formal and published technical standards and procedures for the practice pursuant to the legislation undermined the conclusions of the Hearing Tribunal's findings of unprofessional conduct. A similar argument was made and rejected by this Court in an appeal by Dr Tan regarding other unprofessional conduct found by the ABVMA.[7] For all of these reasons this argument also fails.

Decision on sanctions

[28] The parties provided submissions regarding sanctions to the Tribunal. The Complaints Director requested sanctions including:

- a reprimand,
- six-month suspension from practice,
- fines totaling $20,000 ($10,000 for the breach of the order suspending him from supervising, and $10,000 for failure to create and maintain adequate records),
- payment of the ABVMA's full costs of the hearing in the amount of $65,000,
- Dr Tan to complete a university level ethics course and attend an ABVMA Registration Day,
- prohibition from supervision for five years, and
- that in the event the Complaints Director deemed there to be a violation of this order, Dr Tan be suspended pending a hearing.

The appellants requested sanctions including:

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[7] *Dr Ignacio Tan III*, 2025 ABCA 119 at paras 75, 105-106.

- a reprimand,
- prohibition from supervision for one year,
- a fine of $10,000 for breach of the previous order,
- fines of $1,000 for each of the other allegations of which the appellants were found guilty (which we assume would total $5,000, reflecting three other findings of guilt for Dr Tan and two for Prime Vet), and
- that the appellants would pay 25% of the costs of the hearing ($16,250, assuming $65,000 in costs).

[29] Following the receipt of submissions from the parties, the Hearing Tribunal issued the Sanctions Order on February 17, 2024 including the following:

a) a reprimand,

b) suspension of Dr Tan for six months,

c) fines totaling $20,000,

d) costs of $35,000,

e) Dr Tan was prohibited from supervising another veterinarian, veterinary student, or veterinary technologist student for five years,

f) Dr Tan was required to complete a university level ethics course within one year, and

g) if the Complaints Director deemed there to be a violation of any of the foregoing, Dr Tan would be suspended pending a hearing.

[30] The appellants argued to the Council that the Tribunal failed to give weight or consider mitigating factors; imposed disproportionate sanctions; and improperly delegated enforcement powers to the Complaints Director. The Council found that the Hearing Tribunal had not neglected to consider mitigating factors, because in essence there were none. It upheld the Sanctions Order as reasonable.

[31] As noted above, this appeal is an appeal of the decision of the Council. The applicable standard of review is set out in *Housen*. Sanctions and costs may be reviewed for reasonableness, and new arguments on appeal should only be raised in very limited circumstances.

[32] Sanctions may serve multiple and overlapping purposes, including protection of the public, maintaining public confidence in the integrity of the profession, deterrence both of the sanctioned individual and of other members of the profession, and rehabilitation. Some sanctions, such as fines, are almost entirely punitive. Proportionality is fundamental: "Maintaining public confidence in the integrity of the profession does not require overly punitive sanctions, nor, as a sentencing objective, should it override the other factors that must be considered and balanced."[8] Overall, "the selection of a fit sentence is within the mandate of the Hearing Tribunal, which must consider and weigh all the competing objectives of the sentencing process. The decisions of the Hearing Tribunal and the Appeal Panel will not be disturbed on further appeal to this Court unless they are unreasonable or based on an error in principle."[9]

[33] Both the Hearing Tribunal and the Council referred in their reasons to the analysis set out in *Jaswal v Medical Board (Newfoundland)*, 1996 CanLII 11630 (NL SC), 138 Nfld & PEIR 181. The appellants accept the use of the factors enumerated in *Jaswal* but argue that the Hearing Tribunal failed to ground its reasons in those factors. They submit that the Hearing Tribunal placed too much emphasis on Dr Tan's disciplinary history, and applied progressive discipline in a case where it is unwarranted, in effect disciplining Dr Tan on the basis that he was ungovernable. The appellants further argue that the sanctions are so severe that they are *prima facie* unreasonable, and that the Hearing Tribunal failed to consider mitigating factors.

[34] The Council considered and rejected the mitigating factors proposed by the appellants. It held that the absence of publicized standards was not a mitigating factor in the circumstances, and that "while harm to animals could rightly be considered an aggravating factor, that does not mean that its absence is a mitigating factor." There is no reviewable error in the Council's decision on these points.

[35] With respect to Dr Tan's disciplinary history, it is acknowledged that Dr Tan has been subject to previous discipline. The Hearing Tribunal explicitly considered the principle of progressive discipline in determining appropriate sanctions, although it did not make any finding that he was ungovernable:

> Finally, the Hearing Tribunal carefully considered Dr. Tan's position with respect to ungovernability and emphasizes that it has not made a finding as to ungovernability. Instead, and consistent with submissions from both parties, the concept of progressive discipline is clearly applicable to these circumstances. Dr. Tan's pattern of unprofessional conduct supports the imposition of serious and significant penalty orders. In short, increasing the severity of penalty orders for

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[8] *Charkhandeh v College of Dental Surgeons of Alberta*, 2025 ABCA 258 at para 89.

[9] *Charkhandeh* at para 91.

> repeat offences is warranted to act as a deterrent since prior penalties have not had a sufficient deterrent effect on Dr. Tan.

[36] Relatedly, the appellants argue that progressive discipline is only appropriate where the member repeats the same form of misconduct, relying on *Murray Lessing (Re)*, 2013 LSBC 29 (CanLII). *Lessing* simply states that progressive discipline should not be applied in all cases and might not apply in the case of a member guilty of a "minor infraction" who had previously engaged in conduct meriting a suspension. It is not a blanket prohibition of progressive discipline except in cases of similar repeated misconduct. We do not accept the appellants' argument in this regard.

[37] With regard to the overall severity of the sanctions, it is worth commenting on the imposition of both fines and suspension. Sanctions should be aimed at protection of the public but also proportionate to the gravity of the offence and the moral culpability. "Denunciation, retribution, and punishment are not primary objectives of the sanctioning process, except to the extent that they serve the objective of protection of the public."[10] The imposition of a maximum fine can be problematic, and when combined with suspension or expulsion from the profession may not "serve any legitimate incremental function" but rather be "simply a piling on of punitive measures."[11] In the present case, the Hearing Tribunal did not impose the maximum fines, and the penalties cannot be said to amount to a "piling on". We do not identify any reviewable error in the penalties imposed.

Decision on costs

[38] The Hearing Tribunal issued its ruling on sanctions and costs together. It considered that the Complaints Director was successful in proving all of the allegations against the appellants but did not find full indemnity of costs to be appropriate. It held that Dr Tan and Prime Vet should be required to pay "significant" costs, in keeping with its findings that his unprofessional conduct was serious, represented a serious breach of professional standards, and displayed "a blatant disregard for the role of the ABVMA and demonstrated a pattern of serial unprofessional conduct." It ordered costs of $35,000, representing "a portion of the costs of the investigation and hearing."

[39] The Hearing Tribunal decision on costs was rendered on February 17, 2024, and the Council decision upholding it was rendered on June 19, 2024. Both were based on this Court's decision in *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336. Neither had the benefit of this Court's decision in *Charkhandeh v College of Dental Surgeons of Alberta*. The appellants filed a Notice of Appeal to this Court before *Charkhandeh* was released.

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[10] *Charkhandeh* at para 93, citing *Abrametz v Law Society of Saskatchewan*, 2023 SKCA 114 at paras 77-79.

[11] *Charkhandeh* at para 96.

VI. Conclusion

[40] In *Charkhandeh*, this Court clarified the approach to be taken regarding the allocation of costs in disciplinary proceedings. In the circumstances of this case, we conclude that it is appropriate to return the matter of costs back to the Council for reconsideration using the principles articulated in that case.

[41] The appeals are otherwise dismissed.

Written submissions filed December 11 and 18, 2025

Appeal heard on December 3, 2025

Memorandum filed at Edmonton, Alberta
this 5th day of February, 2026.

Antonio J.A.

Authorized to sign for: Fagnan J.A.

Hawkes J.A.

Appearances:

D. Girard
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for the Appellants

K.A. Smith, KC (no appearance)
N. Tran
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